

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.270/2024
(IA No.723/2024)

In the matter of :

S. Srinivasan,
Personal Guarantor,
M/s. Sri Venkatram Spinners Pvt. Ltd.
265/159, Madurai Raja Kadai Street,
Rajapalayam, Virudhunagar-626117

... Appellant

V

State Bank of India,
Rep. by Assistant General Manager,
Stressed Asset Management Branch
1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037

...Respondent

Present:

For Appellant : Mr. V. Arvind Rajagopal, Advocate

For Respondent : Mr. R. Sugumaran, Advocate

ORDER
(Hybrid Mode)

25.04.2025:

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

1. The State Bank of India, the Respondent herein to the present Company Appeal, being Company Appeal (AT) (CH) (INS) No. 270 / 2024 on 22.03.2024, had initiated the proceedings under Section 95 of I & B Code, 2016, before Ld. NCLT in CP(IB)/94(CHE)/2024, for drawing Insolvency Resolution Process (IRP) proceedings as against the Personal Guarantor Mr. S. Srinivasan, the Appellant herein.

2. Subsequently, State Bank of India had filed an application for withdrawal of the said Company Petition, filed u/s. 95 of the Code on 31.05.2024.

3. The said Application / Memo, was taken into consideration by the Ld. Tribunal and the Ld. Tribunal has passed the Impugned Order on 03.06.2024, permitting the withdrawal of the Company Petition, preferred under Section 95 of I & B Code, 2016, with the liberty to file a fresh Application obviously in accordance with law, at a later stage. Consequentially, the pending Interlocutory Applications were directed to be rendered infructuous.

4. The Appellant herein i.e. Personal Guarantor was the opposite party to the proceedings under Section 95 of the Code, as drawn by the Respondent i.e. State Bank of India. He has sought to challenge the Impugned Order dated 03.06.2024, permitting State Bank of India to withdraw the Petition filed by it.

5. The question which emerges for consideration is, that whether the principles of ``Dominus Litus'', under which the opposite party to the proceedings is not permitted to impose upon the proceedings to be carried by the Applicant and where the Applicant or the Plaintiff or the Petitioner to the proceedings, being the master of his own case alone will have the prerogative, either to continue with the proceedings or to drop it at any stage, by withdrawing it, in accordance to his choice, can be overridden?

6. The second question will be as to whether, the opposite party to the proceedings, i.e. the Appellant herein in the status of being a Personal Guarantor, can at all question the Order passed, permitting withdrawal of the proceedings under Section 95 of I & B Code, 2016, drawn against him, at the behest of the State Bank of India, who was the initiator of the said proceedings and who had filed the Memo to withdraw his proceedings.

7. The answer would be that, so far as the Appellant is concerned, who was an opposite party to the proceedings under Section 95 of I & B Code, 2016, he

has got no legal status or right as such to question the Order permitting withdrawal of proceedings by the Respondent herein (SBI).

8. Though the Ld. Counsel for the Appellant has attempted to argue the matter from the perspective that the Memorandum of withdrawal of proceedings itself cannot be taken as to be a solitary basis for withdrawing the proceedings and it ought to have been filed in accordance with the Rule 10 & 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

9. It is to be held that filing of an application of withdrawal of proceedings in conformity with the stipulations contemplated under Rule 10 & 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, may not be rigidly construed particularly when the Applicant himself is seeking a withdrawal of the application which was filed by him only, because, if at all, any prejudice is caused, it would be caused to the Applicant himself, who is seeking withdrawal of his own proceedings drawn by him, against the Appellant.

10. The provisions contained therein under Rule 10 & 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, on which the Ld. Counsel for the Appellant has harped upon, could be treated as to be directory in nature and not a mandatory in nature, since being procedural in nature, the same will not have much wider implications, as far as the withdrawal of the proceedings are concerned at the behest of the Respondent, who was the Applicant to the proceedings under Section 95 of I & B Code, 2016.

11. Even otherwise also, the stage at which, the Applicant to the proceedings under Section 95 of the Code, has filed the Application / Memo, seeking withdrawal of the same was at a very pre-matured stage, that is, at Section 99

stage and the Application u/s. 95 of the Code was yet to be admitted. At this stage, as per Rule 11 (1) (a), Ld. Adjudicating Authority can permit withdrawal of application on request of Applicant himself and it will not need approval of 90% of the Creditors. Further, no concrete proceedings had been initiated which could have enabled the Appellant to oppose the application for withdrawal. Since, the Appellant has got no legal right as such to have any grievances in the proceedings till the proceedings of Section 95 reaches to the stage of Section 100, the instant Appeal at his behest of the Appellant would be fallacious.

12. Hence, as far as the Appellant is concerned, since no prejudice is caused to him, by withdrawal of the proceedings, since, being the opposite party to the proceedings under Section 95 of I & B Code, 2016, and the withdrawal has been sought by the Applicant / State Bank of India, the opposite party herein, there is no cause of action, as such for the Appellant to put a challenge to the order of withdrawal of the proceedings which was filed by the Respondent, who has sought withdrawal.

13. The instant Company Appeal (AT) (CH) (INS) No. 270 / 2024, lacks merit and the same is accordingly dismissed. The connected pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR/MS