NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 584 of 2020

[Arising out of Order dated 14.02.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in C.A.931(PB)/2019 in (IB)-563(PB)/2018]

IN THE MATTER OF:

Andhra Pradesh State Financial Corporation
Plot OS No. 2, 2nd Cross, 3rd Road,
Industrial Park, Auto Park, Vijayawada – 520007
Through its Authorised Signatory **...Appellant**

Versus

1. Kalptaru Steel Rolling Mills Ltd.
Through Prabhakar Nandiraju, Resolution Professional
121, First Floor, Vardhman market,
Outer ring road, Vikas Puri,
New Delhi – 110018
And also at
11-12-7, Road No.1,Shri Rama Krishna Puram,
Hyderabad, Telangana - 500035.

2. Andhra Bank
Through its General Manager
Having Head Office at 5-9-11,
Dr. Pattabhi Bhavan, Saifabad
Hyderabad – 500004 and
Having office also at
Assets Recovery Branch,
1st Floor, Andhra Bank Building,
Sultan Basar, Koti,
Hyderabad – 500095 **...Respondents**

Present:

For Appellant:	**Mr. Gautam Singh, Advocate.**
For Respondents:	**Mr. Anoop Prakash Awasthi, Ms. Prapti Singh, Mr. Parthivi Ahuja, Advocates for R-1.**
	Mr. P.B.A. Srinivasan, Mr. Parth Tandon, Mr. V. Aravind, Advocates for R-2.

Cont'd…/

With

<u>Company Appeal (AT) (Insolvency) No. 68 of 2021</u>

[Arising out of Order dated 19.11.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A. No.2123 (PB)/2019 in (IB)-563(PB)/2018]

<u>IN THE MATTER OF:</u>

Andhra Pradesh State Financial Corporation
Plot OS No. 2, 2nd Cross, 3rd Road,
Industrial Park, Auto Park, Vijayawada – 520007
Through its Authorised Signatory **...Appellant**

Versus

1. Kaltaru Steel Rolling Mills Ltd.
Through Prabhakar Nandiraju, Resolution Professional
121, First Floor, Vardhman market,
Outer ring road, Vikas Puri,
New Delhi – 110018
And also at
11-12-7, Road No.1,Shri Rama Krishna Puram,
Hyderabad, Telangana - 500035.

2. Union Bank of India
Through its General Manager
Having Head Office at 5-9-11,
Dr. Pattabhi Bhavan, Saifabad
Hyderabad – 500004 and
Having office also at
Assets Recovery Branch,
1st Floor, Andhra Bank Building,
Sultan Basar, Koti,
Hyderabad – 500095 **...Respondents**

Present:

For Appellant: **Mr. Gautam Singh, Advocate.**

For Respondents: **Mr. Anoop Prakash Awasthi, Ms. Prapti Singh, Mr. Parthivi Ahuja, Advocates for R-1.**

Mr. P.B.A. Srinivasan, Mr. Parth Tandon, Mr. V. Aravind, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed by the same Appellant challenging order dated 14.02.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi approving the Resolution Plan of the Corporate Debtor - Kalptaru Steel Rolling Mills Ltd. and order dated 19.11.2020 allowing the application I.A. No.2123 (PB)/2019 filed by the Resolution Professionals seeking direction to the Appellant for releasing original title deeds of the property mortgaged with the Appellant by the Corporate Debtor.

2. The Appellant - Andhra Pradesh State Financial Corporation has sanctioned a Term Loan of Rs.7.70 Crores on 11.01.2008 and Additional Term Loan of Rs.12.30 Crore on 27.01.2009 to the Corporate Debtor. Loan was secured by the mortgage and hypothecation of the land, plant and machinery. On 17.06.2013, the Appellant took over the possession of the mortgaged property as there was default on behalf of the Corporate Debtor to pay Term Loan. Possession was taken by the Appellant under Section 29 of the State Financial Corporation Act, 1951. Appellant gave advertisements for sale of the mortgaged assets of the Corporate Debtor but sale could not be completed. An application under Section 7 was filed by Andhra Bank against the Corporate Debtor in which an order was

passed on 14.08.2018 by the Adjudicating Authority admitting Section 7 application. The Andhra Bank and the Appellant were two Financial Creditors claiming Rs.90,33,20,878/- and Rs.46,26,59,125/- respectively. Publication was made calling for Expression of Interest on 16.10.2018 in pursuance of which Resolution Applicant- M/s Shiva Ferric Pvt. Ltd. submitted Resolution Plan. Andhra Bank has voting share of 66.13% whereas the Appellant had voting share of 33.87%. The Resolution Plan was approved by CoC on 07.05.2019. The Appellant filed objection to the Resolution Plan. By order dated 31.01.2020, the objections of the Appellant were rejected by the Adjudicating Authority. By a subsequent order dated 14.02.2020, the Resolution Plan was approved. The Appellant aggrieved by the order dated 14.02.2020 has come up in this Appeal.

3. Company Appeal (AT) (Insolvency) No. 68 of 2021 has been filed against order dated 19.11.2020 by which I.A. No.2123 (PB)/2019 filed by the Resolution Professionals has been allowed. In the I.A. No.2123 (PB)/2019 following prayers have been made by the Resolution Professional:

> *"a. Record compliance of the implementation of the approved Resolution Plan (approved vide order dated 14.02.2020) of the Corporate Debtor M/s Kalptaru Steel Rolling Mills Ltd. by the Resolution Applicant M/s Shiva Ferric Pvt. Ltd.*

b. *Issue directions to the respondent Andhra Pradesh State Financial Corporation (APSFC) for releasing the following original title deeds of the property mortgaged with M/s APSFC by the Corporate Debtor Kalptaru Steel Rolling Mills Ltd. I.e. the Secured Financial Creditor being 'All that plot Nos.55 & 56 admeasuring 47839.60 sq yards together with building and sheds in survey no.92,94 & 95 situated at Growth Centre, Thumkunta village, Hindupur Mandal, Anantapur District of Andhra Pradesh State. Bounded by North-18.18 meters wide Road, South-Plot No.57, East-Plot No. 51 & 52, West-18.18 meters wide Road.*

c. *Pass such other or further orders as may be deemed just and fit under the circumstances of the case."*

4. Learned counsel for the Appellant challenging the order dated 14.02.2020 submits that the application which was filed by the Andhra Bank was highly barred by time and very initiation of the proceedings was illegal. The provision of limitation Act became application by Amendment dated 0606.2018 and Hon'ble Supreme Court in ***"B. K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates, (2019) 11 SCC 63"***, has laid down that limitation for filing Section 7 application is only three years. The Appellant was a Secured Creditor, who had taken possession

of the assets in the year 2013 and the liquidation value of the assets mortgaged with the Appellant is 16.33 Crores, hence, the Appellant was entitled to be paid liquidation value of its secured assets. The Corporate Debtor was not a going concern and approval of Resolution Plan as a going concern is wholly illegal. It is submitted that the objections raised by the Appellant to the Resolution Plan has not been appropriately considered.

5. Learned counsel for the Resolution Professional refuting the submissions of learned counsel for the Appellant submits that there is no error in the order approving the Resolution Plan. The objection raised by the Appellant to the Resolution Plan were disposed of by order dated 31.01.2020, which order has never been challenged by the Appellant. The Resolution Plan having approved by the CoC in its commercial wisdom the same is not justiciable. It is submitted that issue of limitation raised by the Appellant is wholly misconceived. The order initiating the CIRP was challenged by the Appellant before the Hon'ble Supreme Court in a Special Leave Petition (Civil) Dairy No(s). 22842/2020 which was dismissed by the Hon'ble Supreme Court on 04.01.2021, hence, it is not open for the Appellant to raise the question that the application under Section 7 was barred by time. The distribution of amount to the Financial Creditors i.e. Andhra Bank and the Appellant is as per the voting share and there is no error in such distribution.

6. Learned counsel for the Andhra Bank has also supported the Resolution Plan. It is submitted that when the order dated 31.01.2020

passed by the Adjudicating Authority dismissing the objections filed by the Appellant to the Resolution Plan has been rejected, which order is not under challenge, it is not open for the Appellant to raise any issue.

7. We have heard learned counsel for the parties and perused the record.

8. First submission of learned counsel for the Appellant is that the application under Section 7 filed by the Andhra Bank is barred by time. It is to be noted that in the objections which was filed by the Appellant to the Resolution Plan only issue raised by the Appellant was with regard to apportionment of amount to the dissenting Financial Creditor which was repelled by the Adjudicating Authority on 31.01.2020. At no point of time any issue regrading limitation of Section 7 application has been raised. The order passed by the Adjudicating Authority dated 14.08.2018 admitting Section 7 application filed by Andhra Bank was challenged by the Appellant by filing a Special Leave Petition (Civil) Dairy No(s). 22842/2020 which petition was dismissed on 04.01.2021 by following order passed by the Hon'ble Supreme Court:

> ***"O R D E R***
>
> *Permission to file Special Leave Petition is granted.*
>
> *There is an inordinate delay of 705 days in filing the Petition which has not been explained*

> *satisfactorily. Even otherwise, we do not find any merit in this Special Leave Petition.*
>
> *The Special Leave Petition is, accordingly, dismissed both on the ground of delay as well as on merits. Pending application(s), if any, shall stand disposed of."*

9. When the challenge to the Section 7 application filed by the Appellant on all grounds has been rejected by the Hon'ble Supreme Court, the Appellant cannot be permitted to challenge initiation of CIRP on the ground of limitation in this Appeal.

10. Learned counsel for the Respondent No.1 in Company Appeal (AT) (Ins.) No. 68 of 2021 has brought on record the copy of the Special Leave Petition filed by the Appellant challenging the order initiating the CIRP. Learned counsel for the Respondent No.1 has pointed out that in the Special Leave Petition the ground regarding Section 7 application being barred by time has also been raised, which Special Leave Petition having been dismissed the Appellant cannot be permitted to raise the issue of limitation.

11. We, thus, are of the view that the Appellant cannot be heard to say that initiation of CIRP itself was bad. What is challenged in this Appeal is approval of Resolution Plan by order dated 14.02.2020 and subsequent order passed on the I.A. of the Resolution Professional.

12. Now coming to the submission of learned counsel for the Appellant that objections raised by the Appellant have not been adequately considered by the Adjudicating Authority, suffice it to say that the objection was filed by the Appellant raising ground that Resolution Plan is not in accordance with the Code which objection has been rejected on 31.01.2020 by the Adjudicating Authority, which order has never been challenged. The Adjudicating Authority in the impugned order has also noticed certain objection raised by the Appellant Financial Creditor and the Adjudicating Authority has returned a finding that there has been equitable treatment between both the similarly situated secured creditors, CoC had approved the Resolution Plan by the requisite majority. The submission of the Appellant that Corporate Debtor was not a going concern, hence, there was no question of approving the Resolution Plan, also need to be rejected. In Para 52 of the impugned order the Adjudicating Authority has referred to the reply submitted by the Resolution Professional where it was mentioned that the Resolution Plan contains the provision for takeover of the Corporate Debtor as going concern and amalgamation of the Corporate Debtor with the Resolution Applicant. The Resolution Plan also contains provision for implementation of the plan through a monitoring committee. The Adjudicating Authority rightly observed that resolution is the rule and the object of the Code is to promote resolution. The Adjudicating Authority in detail considered the various parts of the plan which has been held to be compliant to the Section 30 of the Code.

13. Learned counsel for the Appellant has relied on the judgment of Hon'ble Supreme Court in ***"Ram Chandra Singh vs. Savitri Devi & Ors, Civil Appeal No. 8216 of 2003, decided on 09.10.2003"***. Hon'ble Supreme Court in the said judgment has laid down that order passed by a Court without jurisdiction is a nullity. Learned counsel for the Appellant has replied on Para 39, where following has been held:

> *"39. It was further observed:*
>
> > *"It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such.""*

14. The submission of the Appellant that the order passed by the Adjudicating Authority is nullity since it is passed on an application which

is barred by time, need no acceptance for the reasons as we have indicated above. The challenge to the order initiating CIRP on Section 7 application has been rejected by the Hon'ble Supreme Court in the Special Leave Petition filed by the Appellant, hence, it is no more open for the Appellant to contend that the order passed by the Adjudicating Authority was without jurisdiction. The judgment of the Hon'ble Supreme Court in ***"Ram Chandra Singh vs. Savitri Devi & Ors"*** relied by the Appellant has no application in the facts of the preset case.

15. Learned counsel for the Resolution Professional has rightly placed reliance on the judgment of Hon'ble Supreme Court in ***"India Resurgence ARC Pvt. Ltd. vs. Amit Metaliks Ltd. & Anr., Civil Appeal No. 1700 of 2021"***, where the Hon'ble Supreme Court has held that distribution of the amount to the Financial Creditors as per the decision of the CoC cannot be permitted to be challenged. In Para 13.1, the Hon'ble Supreme Court laid down following:

> *"13.1. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest."*

16. We, thus, are satisfied that there are no grounds made out to interfere with the order approving the Resolution Plan.

17. Now, coming to the order dated 19.11.2020 passed by the Adjudicating Authority allowing I.A. No.2123 (PB)/2019, suffice it to say that the order dated 19.11.2020 is a consequential order to the approval of the plan dated 14.02.2020 which needs no interference by this Appellate Tribunal.

18. In result, both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

13th December, 2022

Archana