

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 840 of 2022

(Arising out of Order dated 20th January, 2022 passed by National Company Law Tribunal, Court No. V, Mumbai Bench in I.A. No. 691 of 2021 in CP(IB) No. 3942/MB/2019)

IN THE MATTER OF:

Mr. Jaidev Laxmidas Panchmatia,

UMA 309 E, Chitnavis Marg, Civil Lines,
Nagpur 440010

...Appellant

Versus

1. Mr. Fanendra H Munot

Resolution Professional of the Corporate Debtor,
13, 2nd Floor, NKY Tower,
Ajni Square, Wardha Road,
Nagpur 440010

2. Committee of Creditors (CoC)

Which comprises of:

- a. Union Bank of India
- b. Yes Bank
- c. RBL Bank
- d. IDFC Bank
- e. Tata Capital Finance Services Limited
- f. Indiabulls Consumer Finance Limited
- g. Magma Fincorp Ltd.

...Respondents

Appellant: Ms. Fatima Barodawalla, Advocate.

Respondent: Mr. Arvind Nayar, Sr. Advocate, Mr. Manish Srivastava,
Mr. Akshay Joshi, Advocates for R-2/ UBI.
Ms. Madhur Jhavar, Advocate for R-1.

J U D G E M E N T

ASHOK BHUSHAN, J:

1. This Appeal has been filed challenging the Order dated 20th January, 2022 passed by National Company Law Tribunal, Court V, Mumbai Bench

(hereinafter referred to as **“The Adjudicating Authority”**) in I.A. No. 691/2021 in C.P.(IB) No. 3942/MB/2019. By I.A. No. 691/2021, the Appellant has challenged rejection of Resolution Plan submitted by the Applicant.

2. Brief facts of the case are:-

- (i)** The Corporate Debtor LB Industries Pvt. Ltd. is a registered MSME. A Company Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“The Code”**) was filed by the Wood Preservers Private Limited-Operational Creditor against the Corporate Debtor.
- (ii)** On 13.11.2019, Union Bank of India issued a Show Cause Notice against the Appellant, Corporate Debtor and other directors of the Corporate Debtor asking to show cause within 15 days as to why they may not be declared defaulter as per guidelines of the Reserve Bank of India.
- (iii)** On 19.11.2019, Company Petition filed by the Operational Creditor was admitted. Show Cause Notice dated 13.11.2019 was replied by the Appellant. After issuance of Form-G, the Appellant submitted a Resolution Plan on 04.08.2020. A Writ Petition No. 2248 of 2020 was filed challenging the show cause notice dated 13.11.2019 which was disposed of by the High Court observing that Union Bank of India to follow the RBI Guidelines.
- (iv)** The Resolution Plan submitted by the Appellant came to be considered by the Committee of Creditors (CoC in short) in 7th Meeting held on 30.09.2020. It was suggested in the Meeting that Corporate

Debtor having classified as fraud and willful defaulter, Appellant is not eligible to submit a Resolution Plan. Resolution Professional was authorized to check the eligibility of the Resolution Applicant and inform the same. Resolution Professional on 08.10.2020 conveyed to the Appellant that Resolution Plan submitted by the Appellant is not being considered since the Union Bank of India has declared the account as fraud. In the 8th CoC meeting dated 09.11.2020 it was noted that Appellant is not eligible under Section 29A of the Code to submit the Resolution Plan. It was resolved that there is no need to send a separate communication for disapproval of the plan to the Appellant. CoC in its Meeting dated 09.11.2020 resolved that there is no requirement of making any application seeking extension of the Corporate Insolvency Resolution Process (CIRP in short).

(v) The Resolution Professional filed an I.A. No. 173 of 2021 seeking direction for liquidation.

(vi) The Union Bank of India issued an Order dated 25.05.2021 declaring Borrower, Promoter and Directors as willful defaulter. An application to review the Order dated 25.05.2021 passed by the Identification Committee was filed by the Appellant. The Review Committee vide its order dated 01.07.2021 refused to review and confirmed the order passed by the Committee declaring the Promoter and Borrower as willful defaulter. Challenging the Order dated 25.05.2021 and the order dated 01.07.2021, writ petition no. 3456 of 2021 was filed by the Directors of the Corporate Debtor before the

High Court of Bombay, Nagpur Bench which stayed the above orders of the Identification Committee.

(vii) An application filed by the Appellant being I.A. No. 691 of 2021 challenging the rejection of the Resolution Plan came to be heard and dismissed by Order dated 20th January, 2022. This Appeal being C.A. (AT) Ins. No. 840 of 2022 has been filed challenging the order dated 20th January, 2022 passed in I.A. No. 691 of 2021.

(viii) The application no. 173 of 2021 filed by the Resolution Professional seeking liquidation of the Corporate Debtor was also heard and allowed by a separate order dated 20th January, 2022. The Adjudicating Authority directed for Liquidation as no Resolution Plan had been approved in the CIRP. Resolution Professional was appointed as Liquidator.

(ix) Against the Order dated 20th January, 2022 passed in I.A. No. 173 of 2021, no Appeal has been filed.

3. We have heard Ms. Fatima Barodawalla, Advocate for the Appellant, Mr. Arvind Nayar, Sr. Advocate with Mr. Manish Srivastava, Advocate for Union Bank of India.

4. Learned Counsel for the Appellant submits that on the day when Resolution Plan submitted by the Appellant came for consideration before the CoC, there was no declaration by Union Bank of India as willful defaulter it was only notice dated 13.11.2019 issued by Union Bank of India which was immediately objected by the Appellant and ultimately order declaring the promoter and director as willful defaulter was passed on 25.05.2021. The decision of the CoC that Appellant is not eligible under Section 29A is

erroneous decision. Appellant was entitled to submit a Resolution Plan which was not considered on merits. It is further submitted that against the order dated 25.05.2021 declaring promoter and directors as willful defaulter, review application was filed which too was rejected on 01st July, 2021. Both the orders have been challenged by the Directors in Writ Petition before the High Court being Writ Petition No. 3456 of 2021. In which Writ Petition, High Court has already stayed the Order dated 25.05.2021 hence the order passed by the Union Bank of India declaring willful defaulter is not operative as on date.

5. Learned Sr. Counsel appearing for the Union Bank of India submits that before issuing show cause notice dated 13.11.2019 to the Appellant, Identification Committee held its meeting on 15.10.2019 where decision was taken that Appellant is willful defaulter. It is submitted that the Corporate Debtor who had availed credit facility from the Union Bank of India has committed default in payment of total outstanding due to the Corporate Debtor on 13.09.2022 is Rs. 110,57,00,000/-. Letter dated 13.11.2019 issued to the Appellant is reporting the fact of willful defaulter. Learned Sr. Counsel further submitted that Corporate Debtor is at present under liquidation and Liquidation Order dated 20th January, 2022 passed in I.A. No. 173 of 2021 has not been challenged by the Appellant. The Liquidation Proceeding is going on hence rejection of the Resolution Plan submitted by the Appellant in CIRP is inconsequential. It is submitted that the Liquidator has in fact issued e-Auction Notice which e-Auction Notice were not proceeded with due to Interim Order passed by this Tribunal on 06.03.2023.

6. We have considered the submissions of Learned Counsel for the parties and have perused the record.

7. The submission which has been pressed by Learned Counsel for the Appellant is that Appellant was not disqualified under Section 29A of the Code to submit the Resolution Plan and at the time when Plan came for consideration there was no order of identification committee declaring the Appellant as willful defaulter. The question to be answered is as to whether the Appellant was disqualified at the time when the Resolution Plan submitted by the Appellant came for consideration.

8. The Resolution Plan was submitted by the Appellant on 04.08.2020. Appellant being promoter of the Corporate Debtor has submitted the plan it being MSME. Resolution Plan was considered in CoC Meeting held on 30.09.2020 and 09.11.2020. The notice issued by the Union Bank of India to the Corporate Debtor, the Directors, Guarantors and the Appellant was dated 13.11.2019. Notice was on the subject reporting as willful defaulters. Show cause notice stated that outstanding sum is Rs. 85,38,51,794.80/- and the account being NPA and the Appellant and CD failed to regularize account in spite of repeated requests. The show cause notice stated following:

“As per the guidelines of Reserve Bank of India, list of defaulting firm/company along with the names of current directors and names of directors associated with the company at the time the account was classified as defaulter is to be furnished to Credit Information Companies (CICs) for circulation amongst the Banks/FIs. This will make you ineligible to raise further loan from banks and financial institutions in future. Bank also

reserve its right to publish your photograph with name as willful defaulter of the bank in daily newspaper for the information of public in general and bank may also disclose the information pursuant to the requirements of any statute/law or court/tribunal order without giving any prior notice to you.

In case of non-receipt of any communication to the contrary from your end within 15 days of this letter, we shall declare you as willful defaulter and initiate appropriate steps as advised here in above.

Thanking you”

9. The above show cause notice clearly indicates that in case of non-receipt of any communication within 15 days, bank shall declare willful defaulter and initiate appropriate steps. Appellant submitted a Reply to the communication of Identification Committee vide Letter dated 27.11.2019 and ultimately the order was passed by Identification Committee on 25th May, 2021. By order dated 25th May, 2021, the Identification Committee directed as under:

“Hence, the committee concluded that the said borrower/its promoters/directors/guarantors be declared as willful defaulters.

The Committee directed that the order be served on the borrower/promoters/whole time directors/guarantors allowing them to file appeal against the order of Identification Committee within 15 days to place the same before Review Committee for final view. Ordered accordingly.

Sd/-

M. Ravindra Babu

*(Convener for Identification
Committee on willful defaulter)”*

10. Thus for the first time identification committee declared promoters including the Appellant as willful defaulter by order dated 25.05.2021. There was no order in existence prior to 25th May, 2021 declaring the Appellant as willful defaulter. Appellant applied for review of the order which review was also rejected by Letter dated 01st July, 2021.

11. The Appellant has further stated that against the order dated 25th May, 2021 as well as Order dated 01st July, 2021, writ petition no. 3456 of 2021 was filed in which writ petition, High Court of Bombay at Nagpur Bench passed an Interim Order dated 20.09.2021 copy of the order has been brought on record as Exhibit A to the Rejoinder. Order passed by the High Court is as follows:

“1. Heard.

2. The contention is that the impugned orders passed by the Identification Committee for Wilful Defaulter and Review Committee do not record any findings as regards the petitioners being willful, intentional or deliberate defaulters, which is the requirement of the law. The next contention is that pendency of Corporate Insolvency Resolution process and passing of order of moratorium by NCLT Bench, Mumbai have also not been considered while passing the impugned orders. The further contention is that the order to be passed by the Review Committee must be the one which is manned by an officer different from the one who as a member of the First Committee of the Bank had passed the order. Reliance has been placed upon the case of SBI ..vs. Jah Developers (P) Ltd., reported in (2019) 6 SCC 787.

3. Issue notice for final disposal at admission stage to the respondents, returnable after four weeks.

4. *Shri U.M.Aurangabadkar, learned ASGI waives service of notice for the respondent No.4.*

5. *Meanwhile, there shall be interim stay to the effect and operation of the impugned orders, until further orders.”*

12. The order of the High Court dated 20th September, 2021 is still in operation as submitted by Learned Counsel for both the parties. In view of the order of the High Court, the order of identification committee dated 25th May, 2021 as well as the Review Order dated 1st July, 2021 is not in operation. It is thus clear that in view of the Interim Order passed by the High Court, Appellant cannot be held to be willful defaulter as on date.

13. Although we have found that Appellant was not willful defaulter at the time he submitted the Resolution Plan and at the time his plan came for consideration, we cannot lose sight of the fact that by another order dated 20th January, 2022 passed in I.A. No. 173 of 2021 filed by the RP seeking liquidation, Adjudicating Authority has passed an order on 20th January, 2022 which has been brought on record at page 393 of the Appeal paper Book by the Appellant himself. The order dated 20.01.2022 having not been challenged has attained finality. The Corporate Debtor is in the Liquidation and Liquidation Process has commenced subsequent to the Order dated 20th January, 2022. Liquidation Process having commenced there is no occasion for issuing any direction for consideration of the Resolution Plan of the Appellant. However, the Appellant if so advised can submit a scheme for compromise or arrangement with creditors as contemplated by Section 230 of the Companies Act, 2013 and Regulation 2B of Insolvency and Bankruptcy Board of India (liquidation process) Regulations, 2016. It is also relevant to notice that according to the Regulation 2B, compromise or

arrangement proposed under Section 230 has to be completed within 90 days of order of liquidation. But we having by this order held that order of identification committee declaring the promoters/directors as willful defaulter is not in operation which we have found by order of the date, ends of justice will be served if 90 days period is allowed to the Appellant to submit a compromise or arrangement to the Liquidator. We having permitted the Appellant to submit a compromise or arrangement by this Order, ends of justice will be served if liquidation process be kept on hold for a period of 90 days to enable the compromise or arrangement to be finalized as contemplated by Regulation 2B of the Liquidation Regulations, 2016.

14. In view of the foregoing discussion and conclusion, we dispose of this Appeal in following manner:-

- a.** The order of the Adjudicating Authority dated 20th January, 2022 upholding the decision of CoC declaring the Appellant as ineligible to submit a Resolution Plan under Section 29A is set aside. It is held that Appellant was eligible to submit a plan on the date of its submission as well as on the date it came up for consideration.
- b.** However, in view of the Corporate Debtor being ordered to be liquidated vide separate Order dated 20th January, 2022 which order has not been challenged, no direction can be issued for consideration of Resolution Plan submitted by the Appellant afresh.
- c.** The order of identification committee dated 25th May, 2021 and 1st July 2021 rejecting review not being in operation as on date, we permit the Appellant to submit compromise or arrangement before the Liquidator within 30 days from date of this order which may be

considered by the Liquidator for taking appropriate steps in accordance with law. The Liquidator shall endeavor to take a final decision with regard to the compromise or arrangement within 60 days thereafter.

- d. For a period of 90 days, further liquidation proceedings shall be kept on hold by the Liquidator.
- e. After 90 days from this order in event no compromise or arrangement as contemplated by Regulation 2B is approved, the Liquidation Proceeding shall be continued thereafter and completed in accordance with law.
- f. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
25th May, 2023

Basant B.