

National Company Law Appellate Tribunal, New Delhi
Principal Bench
Comp. App. (AT)(Ins.) No. 451 of 2021

IN THE MATTER OF:

VipulDilip Shah &Ors.

...Appellants

Vs.

Parinee Developers Pvt. Ltd.

Through RP Subhash Chandra Modi &Anr.

...Respondents

Present:

For Appellant: Mr. Ashish Dholakia, Sr. Advocate with Mr. Anuj P. Agarwala, Mr. Aayush Agarwala, Advocates

**For Respondent: Mr. B. Gopalakrishnan, Advocate for R1
 Mr. ArunKathpalia, Sr. Advocate with Ms. Surekha Raman, Ms. Ferzana Behramkamdin, Ms. Aashi Sirohiwala, Mr.Vijay Valsan, Ms. Diksha Gupta, Advocates for R2**

With
Company Appeal (AT)(Ins.) No. 442 of 2021

IN THE MATTER OF:

STCI Finance Ltd.

...Appellant

Vs.

Parinee Developers Pvt. Ltd.

Through RP Subhash Chandra Modi

...Respondent

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Ms. Surekha Raman, Ms. Ferzana Behramkamdin, Ms. Aashi Sirohiwala, Mr. Vijay Valsan, Ms. Diksha Gupta, Advocates

For Respondent: Mr. B. Gopalakrishnan, Advocates for R1,

ORDER
(Through Virtual Mode)

05.08.2021: We have heard Ld.Counsels for the parties at length.

2. The Appellant Vipul Dilip Shah & five Ors. being Promoters and Shareholders of the Parinee Developers Pvt. Ltd. (Corporate Debtor) have

filed the Appeal CA (AT) (Ins) No. 451 of 2021 and STCI Finance Ltd. (Financial Creditor) has filed the Appeal CA (AT) (Ins) No. 442 of 2021. In both the Appeals the order dated 31.05.2021 has been assailed whereby ld. Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai, Court-II) dismissed the Application I.A. No. 264 of 2021 in CP (IB) No. 4147/MC/C-II/2019 filed under Section 12A of the IBC.

3. Brief facts of these Appeals are that STCI Financial Ltd. (Financial Creditor) filed Application under Section 7 of the IBC against the (Corporate Debtor) Parinee Developers Pvt. Ltd. The Application was admitted by the Adjudicating Authority vide order dated 09.06.2020 and Subhash Chandra Modi was appointed as an Interim Resolution Professional (IRP). Thereafter, the CoC was duly constituted and resolved to appoint IRP as RP during its meeting dated 18.07.2020. on 08.12.2020 the Promoters sent a settlement proposal which outlined plan for revival of operation of the Corporate Debtor and full payment to the lenders including principal, interest and all the expenses.

4. On 08.02.2021 during the CoC meeting the RP placed for FA before the Members of CoC of the Corporate Debtor and a Resolution was placed for their votes. The CoC has approved the Resolution (Settlement Deed) with 99.91 % votes in favour of the Resolution, thereby approving the settlement and withdrawal of the Application admitted under Section 7 of the IBC. Thereafter, the RP as per the direction of the CoC filed an Application I.A. No. 264 of 2021 under Section 12A of the IBC. Ld. Adjudicating Authority after hearing ld. Counsels for the parties, vide impugned order dated 31.05.2021 dismissed the Application filed under Section 12A of the IBC.

5. Being aggrieved with this order the aforesaid Appeals have been filed.
6. Ld. Sr. Counsel Mr. Arun Kathpalia representing Financial Creditor in CA (AT)(Ins) No. 442 of 2021 submits that Ld. Adjudicating Authority has entered into an issue which is totally irrelevant and beyond the scope under Section 12A of the IBC. The parties have amicably settled their dispute and terms of the settlement do not violate any provision of law.
7. Ld. Sr. Counsel for the Appellant further submits that Ld. Adjudicating Authority ought not have disregarded the unanimous Resolution of the CoC in exercise of their commercial wisdom and with a view to ensure repayments of debts and continuity of business of the Corporate Debtor which is over all main objective of the IBC.
8. Ld. Adjudicating Authority has erred in its finding with respect to the CoC having taken law in its own hand in as much as more delay in complying with procedural requirement under the IBC do not and cannot pose any detriment to the commercial wisdom of the CoC to approve the settlement deed. The finding of Ld. Adjudicating Authority has to absence of a backup plan is contrary to the terms of the settlement deed itself which expressly provides that in the case of any default in making outstanding payments in terms of the settlement deed, the lenders would have the right to move the Adjudicating Authority for revival of CIRP. However, dismissed the Application under Section 12A of the IBC on the basis of irrelevant considerations and hyper-technical observations.
9. Ld. Counsel for the Appellant in CA (AT) (Ins) No. 451 of 2021 supports the argument advanced by the Ld. Sr. Counsel for the Appellant

representing Financial Creditors. Ld. Counsels for the Respondents (Corporate Debtor) also in agreement with the aforesaid submissions.

10. After hearing Ld. Counsels for the parties, we have gone through the impugned order.

11. Ld. Adjudicating Authority has dismissed the Application under Section 12A of the IBC mainly on grounds that: (i) The IBC and CIRP Regulation provide for various activities to be completed in a time bound manner and model time lines is provided for the same. However, the CoC has not complied the provisions of IBC as well as Regulation. (ii) In the settlement there is condition that after receipt of the approval for withdrawal of the Application under Section 7 of the IBC within 60 days, they would receive their outstanding amount constituting monetary committee is not inline of IBC and CIRP Regulation, (iii) No backup plan is provided in case of failure to meet short fall within the time line agreed by the parties. (iv) The Settlement proposal contends a lot of uncertainty and depends on future events.

12. We have considered the ground for dismissal of the Application. We are of the considered view that the legislation has provided a procedure for withdrawal of Application under Section 7, 9 or 10 of the IBC. In this case, the CoC has been constituted, therefore, the Application for withdrawal approved by the 99.9% voting shares of the CoC and the Application has been filed through the RP as provided under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations).

13. We have gone through the settlement deed. There is a provision in the settlement deed that in case the settlement fails, the lenders may file Application for revival of CIRP or may file Application for initiation of contempt proceedings against the promoters of the Company. None of the conditions of settlement is against the provisions of IBC and Regulation and CoC has taken a commercial decision by voting shares of 99.9%. In such a situation, it is not appropriate to dismiss the Application on the ground that the CoC has not taken steps in time bound manner as provided in IBC and Regulations.

14. We are of the view that the impugned order is not sustainable in law. Hence, it is hereby set aside, the Application under Section 12A is allowed and the Application filed by STCI Finance Ltd. under Section 7 of the IBC is withdrawn. Resultantly, the Corporate Debtor Company is released from all the rigour of law and is allowed to function independently through its board of directors with immediate effect. The settlement deed has already taken on record and reproduced verbatim in the impugned order, such terms of the settlement shall be binding on all the parties of the settlement.

15. As per the Settlement, the payment of IRP/RP's fees and CIRP costs shall be borne by the Corporate Debtor.

Thus, the Appeals are allowed as aforesaid, no order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

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