

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.176/2023
(IA Nos.570/2023, 571/2023, 572/2023 & 164/2025)

IN THE MATTER OF:

MR. SHASHI GALADA,

Shareholder-Director of

Galada Power and Telecommunication Limited

B 0702, Jayabheri The Peak,

Narsingi, Ranga Reddy District

Hyderabad – 500 075

... APPELLANT

Vs

MR. NITIN VISHWANATH PANCHAL,

Erstwhile – RP of

Galada Power and Telecommunication Limited

Admin. Office Galada Towers

301, Begumpet Hyderabad – 500016

...RESPONDENT NO. 1

AMRUTHA CONSTRUCTIONS PRIVATE LIMITED

#390, Amrutha Towers 2nd Cross,

80 feet road, RMV 2nd Stage Sanjaynagar

Bangalore – 560094

...RESPONDENT NO. 2

Present :

For Appellant : Mr. R. Sankaranarayanan, Senior Advocate

Mr. Aditya Manubarwala, Advocate

For Mr. Amogh Simha, Advocate,

Mr. Ashwin Kumar, Advocate

For Respondents : Mr. T.K. Bhaskar, Advocate for R1

Mr. Ravi Rajagopalan, Advocate for R2

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

For the last few couple of occasions, when this company appeal was taken up, the Ld. Counsel for the Respondent, had raised an objection, from two perspectives, which are as follows:-

- (i) Since the Resolution Plan has now been fully implemented and the proceeds have been distributed, hence for all practical purposes, the Company Appeal has been rendered infructuous.
- (ii) The Ld. Counsel for the Respondent has also submitted that, owing to the fact that the Appellant in the instant company appeal has chosen to describe himself as shareholder/director of the Corporate Debtor, the company appeal filed under Section 61 of the I & B Code, 2016, (Code) at the behest of the Appellant in his status of being a shareholder, would not be maintainable.

2. The Ld. Counsel for the Appellant has attempted to argue to the contrary, contending thereof that the impugned order would be vitiated because he would be otherwise entitled to be extended with the benefit of having acquired the status of being, that, of an MSME company and hence the benefit in relation to it, is to be extended to the Appellant in accordance with, the provisions contained under Section 240A of the I & B Code, 2016, and that the Resolution Plan submitted by him in the capacity of the suspended Director of the Corporate Debtor which is a MSME entity should have been considered.

3. In order to deal with the arguments as extended by the respective counsels for the parties in the instant company appeal, it becomes inevitable for this Appellate Tribunal to deal with the respective arguments, only for the purposes of the question, as to whether the Appellant is entitled to get the benefit of Section 240A of the I & B Code, 2016, since having acquired the status of being an MSME entity. At the same time, it becomes necessary to answer the first question, as to, whether this company appeal will survive because of the fact that the Resolution Plan has already been implemented on 25.07.2023, and it is a fact, which is not even disputed by the Ld. Counsel for the Appellant.

4. Primarily, the Ld. Counsel for the Appellant has submitted based upon the pleadings made in the written submissions, that the proceedings of approval of the Resolution Plan it ought not to have been given effect to, owing to the aforesaid implication of the acquisition of the status of an MSME entity by the Corporate Debtor and the status of the Appellant as the suspended Director of the Corporate Debtor. But for the purposes of better appreciating the aforesaid argument of the Ld. Counsel for the Appellant, it becomes relevant for us to consider as to, whether at all the aforesaid benefit of being Director of a MSME entity could be extended to the Appellant, owing to the fact, that, it is the own case of the Appellant in the written submissions that, the Appellant's status is that of a shareholder in the Corporate Debtor i.e., M/s. Galada Power and Telecommunication Limited (GPTL) (hereinafter to be referred as the Corporate

Debtor). Admittedly, the Appellant claims to have an equity shareholding of 0.24% of the Corporate Debtor and he along with his other family members, the description of whom was given in the proceedings, claims to be, holding 11% of the total shares of the Corporate Debtor. But, this Tribunal is not required to venture into the quantum of shares held by the Appellant & his family members, for the reason being, that, the Instant Company Appeal, has not been preferred by the other set of shareholders and since they have not preferred any appeal in this regard before this Appellate Tribunal, as against the impugned order, this Appellate Tribunal need not to venture into the issue of what implications would such shareholding of the family members of the Appellant would have over the instant company appeal and its maintainability as having preferred by share holder.

5. The Appellant has contended, that, the Corporate Debtor is engaged in the manufacturing of aluminum, alloy rods and conductors (AAAC) for transmission & distribution of electric power, and satisfies the conditions for being registered as an ‘**enterprise**’, under Section 2(e) of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), and therefore he as the shareholder-director of the Corporate Debtor ought to have been granted a benefit of Section 240A of the I & B Code, 2016, to propose a Resolution Plan for the Corporate Debtor during the CIRP proceedings, which was drawn by Stressed Assets Stabilization Funds (SASF), the Financial Creditor (FC) against the

Corporate Debtor under Section 7 of the I & B Code, 2016, in CP (IB) No. 384/7/HDB/2018.

6. Few dates and events need to be noted down for the purposes of answering the question as to whether at all, the Appellant would be entitled to avail the benefit given under Section 240A of the I & B Code, 2016, as claimed by him. It is an admitted position that, the Corporate Debtor was admitted to the CIRP proceedings by an order of 14.08.2019 and the Interim Resolution Professional (IRP) was appointed, and as a consequence thereto, CIRP proceedings stood commenced on 14.08.2019. On that date, the Corporate Debtor did not have the status of being an MSME entity. It had never been the case of the Appellant at any stage in the proceedings before the Ld. Adjudicating Authority that, as on the date of admission of the Corporate Debtor, into the CIRP proceedings, the Corporate Debtor had acquired the status of being a MSME enterprise. There is no document on record, to show that the management of Corporate Debtor had ever attempted to acquire the status of being an MSME company prior to commencement of CIRP proceedings on 14.08.2019. Since the Appellant did not agitate this aspect from the said perspective before the Ld. Adjudicating Authority, another question, which would be incidentally falling for consideration for us would be, as to whether, at this belated stage when the Resolution Plan has already been approved by the Ld. NCLT and has been implemented, the entire proceedings could be set back, so as to enable the Appellant to prefer a Resolution

Plan as Director of the Corporate Debtor under Section 29A to be read with Section 240A of the Code.

7. In the proceedings initiated, after the admission of Corporate Debtor into CIRP proceedings by the order of 14.08.2019, the Respondent No. 1 (RP) invited and collated the claims and constituted the Committee of Creditors (CoC). On 06.11.2019 he issued 1st invitation for Expression of Interest and on 17.06.2021 he issued 2nd invitation for submission of Resolution plan with the last date fixed as 04.08.2021 for submission of said plan. Nine Proposed Resolution Applicants submitted EoI's and four out of them submitted Resolution Plans as on 04.08.2021. The Committee of Creditors (CoC) approved the Resolution Plan of Respondent No. 2, on 17.09.2021 and Respondent No. 1 (RP) filed the IA No. 583/2021 in the aforesaid Company Petition CP(IB)No.387/7/HDB/2018 on 06.10.2021, seeking approval of the said Resolution Plan submitted by Respondent No. 2, by invoking the provisions contained under Section 30(6) and Section 31(1) of the I & B Code, 2016, to be read with Regulation 39 (4) of IBBI Insolvency Resolution Process for Corporate Persons (IRPfor CP) Regulations 2016. The Ld. NCLT approved the Resolution Plan on 25.05.2023. Meanwhile on 19.05.2023, Appellant addressed a letter to RP along with supporting documents, requesting him to register the Corporate Debtor as MSME and obtain to Udyam Registration number. He has also submitted his Resolution Plan to RP on the same date. Subsequently on 22.05.2023, he filed 2 IAs before

Ld. NCLT, seeking a direction to the RP to register the CD as an enterprise under the MSMED Act 2006 and to consider the Resolution Plan submitted by him under Section 240A of the I & B Code, 2016, Ld. NCLT approved the Resolution Plan of Respondent No. 2 on 25.05.2023 by passing order on IA No. 583/2021.

8. It is to be noted that the Appellant by his own admission, send a detailed letter for the first time on 19.05.2023 to Respondent No. 1 (RP) along with supporting documents requesting the Respondent No. 1 to take steps to register the Corporate Debtor as MSME enterprise and to obtain udyam registration number so as to enable the Corporate Debtor to get the status of being an MSME company. Thus, admittedly as on CIRP commencement date that is, 14.08.2019 the registration as such, as an MSME was not available with the Corporate Debtor. We have to bear in mind that, the CIRP proceeding stood initiated on 14.08.2019, and therefore the status of the Appellant for the purpose of CIRP would have to be the status which the Appellant would be enjoying on 14.08.2019. Any subsequent development or subsequent acquisition of a certificate as an MSME company by the Corporate Debtor will not have a retrospective application regards their legal status, as it existed on 14.08.2019 and that too particularly, under the circumstances of the instant case, when the Appellant in any of the proceedings which were held before the Ld. Adjudicating Authority, has never raised a claim on the basis of being an MSME company.

9. What is more important to note is that, it is an admitted case of the Appellant he filed the interlocutory application before the Ld. NCLT Hyderabad on 22.05.2023, seeking for a direction to the Respondent No. 1, to register the Corporate Debtor as an enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, and that he filed another interlocutory application seeking a direction to RP to consider the Resolution Plan submitted by him on 18.05.2023, under Section 240A of the I & B Code, 2016. Owing to the aforesaid pleading raised by the Appellant, it is clear that the Appellant sought for the status of a MSME company for the first time by filing an application to the said effect only on 22.05.2023, since CIRP of the Corporate Debtor, commenced on 14.08.2019, itself, filing of the application seeking registration of Corporate Debtor as an MSME company under MSMED Act, 2006, will not in any way help in redetermining the status of the Corporate Debtor, as to be that of an MSME company, with retrospective effect i.e., on the date when the CIRP proceedings stood initiated.

10. Under the given facts and circumstances of the case, the Ld. Adjudicating Authority had proceeded to approve the Resolution Plan of the Respondent No. 2, by the impugned order dated 25.05.2023, which is a subject matter under challenge in the instant company appeal. Primarily, the grounds agitated by the Ld. Counsel for the Appellant is that, the Ld. Adjudicating Authority has erred at law in granting an approval to the Resolution Plan by the impugned order of

25.05.2023, by ignoring his interlocutory applications already filed before Ld. Adjudicating Authority and the right of Corporate Debtor to be registered as an MSME enterprise, given the fact that Corporate Debtor fulfilled all relevant criteria. Further, the Appellant contends that, because the Ld. Adjudicating Authority failed to consider that, Resolution Plan, thus approved, had not provided statutory dues payable towards the employees and workmen under the applicable laws such as the Employees' Provident Fund (EPF) Act and the Payment of Gratuity Act, 1972, and hence the Resolution Plan may be set aside.

11. The Ld. Counsel for the Appellant has challenged the impugned order, as per the memorandum of appeal, as preferred by him, on the grounds that, the order happens to be a non-speaking order, and that the mandatory MSME registration was not done and the relevant provisions of the IBC vis-à-vis MSME enterprises was not followed and that the entire process is barred by bias and illegalities. In expansion of his argument to the aforesaid three precepts of arguments, the Ld. Counsel for the Appellant has further submitted that, the impugned order approving the Resolution Plan has not given any justification as to how the value of Corporate Debtor was maximized. When his Resolution Plan offered Rs. 42.3 Crores against Rs. 32.43 Crores offered by the approved plan.

12. To support his argument, he has referred to the judgment of ***Saravana Global Holdings Limited & Another Vs Bafna Pharmaceuticals Limited & Another, 2019 SCC Online NCLAT 962***. Particularly, the reference has been

made by the Ld. Counsel for the Appellant to the contents of Para 18 of the said judgment. The same is extracted hereunder: -

“18. Therefore, it is clear that 'I&B Code' envisages maximization of value of the assets of the 'Corporate Debtor' so that they are efficiently run as going concerns and in turn, will promote entrepreneurship. The preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no 'Resolution Plan' or the 'Resolution Plan's submitted are not up to the mark.'”

13. There cannot be any second thought that, the IBC Code endeavours for the maximization of the value of the assets of the Corporate Debtor. But in the context in which the said proposition is being sought to be attracted in the instant company appeal, it is from this perspective that the Appellant's status ought to have been considered as an MSME registered enterprise, and it should have been given an offer for submission of the plan for maximizing the value of the Corporate Debtor. But, the said principle under the given set of facts and circumstances of the case, as enunciated by the judgment of the Saravana Global Holdings Limited & Another (Supra), will not be applicable in the instant case, because as already discussed above, the status of the Corporate Debtor of being that of as an MSME Registered enterprise, could only be determined with regards to the status as it enjoyed on the date when the company was put to the CIRP proceedings, that is on 14.08.2019, which admittedly, according to the Appellant themselves, was not the status of MSME enterprise, since the Appellant himself

has filed the application seeking for an appropriate direction to Respondent No. 1, to register the Corporate Debtor as an enterprise falling under MSMED Act, 2006, only on 22.05.2023.

14. Besides that, this ground, was never agitated by the Appellant in its pleadings, before the Ld. Adjudicating Authority. Thus, any pleading raised to the contrary, holding it to be a non-speaking, order is a non-sustainable ground, and it cannot be accepted by this Tribunal.

15. The Appellant has further submitted that, the impugned order suffers from the vices because the approved Resolution Plan does not satisfy the covenants contained in Section 30 (2) of the I & B Code, 2016, since it failed completely to provide for the statutory dues of employees/workmen under the applicable laws, that the Employees' Provident Fund (EPF) and the Payment of Gratuity Act, 1972. While opposing the stand taken by the Appellant, the Ld. Counsel for the Respondent No. 2, has submitted that, this ground is not available for the Appellant to be argued, for the reason being that, the appeal itself would not be maintainable at their behest, because the Appellant's status in the proceedings has been that of a “shareholder” and “director”, of the Corporate Debtor. The Appellant's status has never been that of a promoter of the Corporate Debtor, and as such, the petition at the behest of the Appellant in the status of being the “shareholder”, would not be tenable, and it deserved to be dismissed on this count itself. He further submits that so far, as the claims pertaining to the Resolution

Plan, covered under Section 30 (2) with regards to the workmen dues etc. are concerned that may not be the concern of the Appellant because he was acquiring the status as that being of the shareholder, cannot contend upon with regards to the aforesaid plea raised pertaining to the grant of the dues payable under the Employees' Provident Fund (EPF) and Miscellaneous Provisions Act, 1952. Ld. Counsel for the Respondent, has also raised a preliminary objection contending thereof that the entire contention raised by the Appellant of having the status of MSME enterprise would not be tenable because of the fact, that, from commencement of CIRP on 14.08.2019 till approval of CoC of the Resolution plan on 07.09.2021, the Appellant had never raised any claim of its right to submit a Resolution Plan under Section 240A of the I & B Code, 2016, at this stage, and that the 330 days period for conclusion of the CIRP proceedings stood exhausted on 23.09.2021, and the application for approval of Resolution Plan had been preferred as early as on 05.10.2021 by way of an IA No. 583/2021 by Respondent No. 1. Further, the Appellant preferred his claim by filing the two interlocutory applications, before the Ld. Adjudicating Authority, signed by him in his individual capacity, as being that of a shareholder/director, long after the completion of the period of 330 days of CIRP which stood exhausted on 23.09.2021, and therefore no benefit could possibly be extended to the Appellant. He has further submitted, that since the Appellant did had the prior knowledge about the Corporate Debtor being placed under the CIRP proceedings on

14.08.2019, and he has neither showed any interest in presenting any plan or in raising a claim either in the capacity of the shareholder or in the capacity of being a director of an MSME enterprise, no claim of any nature whatsoever could at all be entertained to be adjudicated and that too, at the behest of the Appellant, and thus, the entire controversy which has been agitated by the Appellant in the instant appeal will not be tenable.

16. The Respondents have further submitted that, since the Appellant's status being that of a shareholder of the Corporate Debtor, the proceedings either before NCLT or NCLAT at their behest would not be maintainable, except under very limited circumstances owing to the judgments delivered by two co-ordinate benches of the NCLAT (in the matter of Nirej Vadakkedathu Paul V Sunstar Hotels and in Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. & Anr.) holding thereof that the ambit of the Appellate provision contained under Section 61 of the I & B Code, 2016, which provides for initiation of proceedings, by “**any person aggrieved**”, will not lead to an inference that, the word ‘aggrieved person’ therein would include within it the “**shareholders**” in the definition of “**person**” as contained under Section 3 (23) of the Code. Further, the matter of shareholder vis-à-vis CIRP process was referred to larger bench to decide as to whether a shareholder has the locus to challenge a Section 7 proceedings and the Three-Member Bench of this Tribunal has answered the question emphatically in its judgment dated 22/07/2025, that the proceedings at the behest of the

shareholder would not be maintainable, in Company Appeal (AT) (CH) INS No. 62/2023, Park Energy Private Limited Versus State bank of India & Another. In the said judgment, we have also dealt with as to what implication would the judgment of Byju Raveendran would carry, for the purposes of including the shareholders as to be within the definition of aggrieved person and, we have answered it otherwise that the shareholders will not be falling within the parameters of an aggrieved person and thus, the proceedings at their behest would not be maintainable.

17. The Ld. Counsel for the Respondent has further submitted that after the approval of the plan, of Respondent No. 2, by the CoC, the same became binding on the Prospective Resolution Applicants and therefore, the CoC did not even attempt to consider the plan purported to have been submitted by the Appellant on basis of the claim that the Corporate Debtor is a MSME enterprise. Further, there will be a presumption that even if the Appellant had submitted a Resolution Plan, within the prescribed time (which is not the case here) the same would be barred under Section 29A of the I & B Code, 2016, as there was no certificate of MSME registration, which was ever placed on record in the proceedings before the Ld. Adjudicating Authority for the purposes to enable the Appellant to establish their status of being a MSME Enterprise to claim the benefit of Section 240 A of the I & B Code, 2016.

18. As we have already observed, that since the Appellant's status being that of a shareholder, he will have no right to prefer an appeal under Section 61 of the I & B Code, 2016, since having held to be not an aggrieved person, the reference made by the Ld. Counsel for the Appellant to the judgment as rendered by this Tribunal will have no relevance since the issue about the shareholder's right has been determined by a judicial verdict by the Three-Member Bench, which will prevail over the ratio of the division bench and would not be applicable. Having said so and having very clearly observed at the initial stage of the argument, as to whether the Resolution Plan has been approved and implemented, in fact, the answer has been in an affirmative on part of the Appellant admitting the fact that the Resolution Plan has already been fully implemented and the proceeds have already been distributed. Hence, for all practical purposes, no cause as such survives as of now, with changed circumstances, in the instant appeal to be answered by this Tribunal where an appeal has been preferred at the behest of the shareholder. Hence, the issue raised by the Appellant is answered accordingly, that, as on the date when the proceedings of the CIRP was initiated, since the Appellant had not placed any document or evidence to show its registration as to be MSME Enterprise, he will not be entitled for any benefit of Section 240 A of the Code.

19. Besides that, since the proceedings of the company appeal having been drawn by the Appellant in the status of being the shareholder and the director of

the Corporate Debtor, which has been otherwise answered by the larger Bench of the NCLAT, that the proceedings at the behest of the shareholder would not be maintainable, the same deserves to be dismissed, and more importantly, because of the fact that as of now, when the claim has already been settled and the Resolution Plan has been approved by the impugned order, it doesn't require to be ventured into, to put the proceedings *de novo* to the stage from where the Appellant claims himself to be an MSME Enterprise.

20. Lastly, after having meticulously gone into the impugned order, which is under challenge, we find that the impugned order, which has been rendered by the Ld. Tribunal, does not suffer from any vices particularly owing to the findings, which has been recorded by the Ld. Tribunal, about the processes adopted from the stage of declaration of the Corporate Debtor to face the CIRP proceedings, the public announcements made on 28.08.2019, calling for the submission of Form G on 06.11.2019 and its consequential extension as published on 22.11.2019 and 2nd initiation for Form G on 17.06.2021 with last date fixed as on 04.08.2021, the meetings of CoC etc., since the Appellant failed to submit any EoI at any point of time before the Resolution Professional. Till the entire process were all but completed, no EoI of any nature whatsoever submitted by the Appellant as of now would be tenable. Hence, confining the conclusion which is to be derived by this Tribunal, that because of the fact that as of now the plan submitted by Respondent No. 2 has already been approved by CoC with 100%

majority voting, it has already been implemented in full and the proceeds have already been distributed and that the Appellant since had never raised the Expression of Interest/Resolution Plan at an appropriate point of time, based upon the status of registration as an MSME Enterprise, nothing survives in this appeal to be decided qua the question raised by the Appellant. Having said so, the company appeal, as of now, owing to the changed circumstances and owing to the claim based upon a non-existent grounds, would not be tenable. Hence, the ‘appeal’ lacks ‘merit’, and the same is accordingly ‘dismissed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

06/08/2025
SN/MS/RS