NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (CH) (INS.) No. 417 / 2023
in
(IA No. 1268, 1269 & 1270/2023)

(Filed under Section 61(1) & (4) of the Insolvency and Bankruptcy Code, 2016)

(Against the Impugned Order dated 31.10.2023 in I.A. 404/BB/2023 in CP (IB) No. 68/BB/2018 passed by the 'Adjudicating Authority', National Company Law Tribunal, Bengaluru Bench)

In the matter of:

Linen Art Private Limited
Having Registered Office At
Tex centre Premises Society,
Gala 202 H Wing,
26/A, Chandivali Road,
Opp. Saki Vihar Road, Sakinaka,
Mumbai – 400 072. **… Appellant**

Versus

1. Canara Bank
Large Corporate Branch,
"Ramanashree Building", 18,
3rd Floor, M.G. Road,
Bangalore – 560 001. **…Respondent No. 1**

2. State Bank Of India
Commercial Branch,
Krishi Bhavan,
Hudson Circle,
Bangalore – 560 001. **…Respondent No. 2**

3. IDBI Bank Ltd.
Specialised Corporate Branch,
No. 102, Shakthi Comforts Tower,
KH Road,
Bangalore – 560 027. **… Respondent No. 3**

4. Mr. Radhakrishnan Dharmarajan
Scott Garments Ltd.,
No. 31, Third Floor, Krishna
1st Avenue, 100 Fee Road,
Ashok Nagar, **… Respondent No. 4**
Chennai – 600 083.

Present:

For Appellant : Mr. P.H. Arvindh Pandian, Senior Advocate
For Ms. Tahura Anzar, Advocate

For Respondent: Mr. ML. Ganesh, Advocate for Caveator
Mr. T. Ravichandran, Advocate, For R3

O R D E R
(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 31.10.2023 passed by the National Company Law Tribunal, Bengaluru Bench in IA. No. 404/BB/2023 in CP (IB) No. 68/BB/2018, whereby and whereunder the Adjudicating Authority has allowed Liquidation of the Corporate Debtor Company, M/s. Linen Art Pvt. Ltd. / the Appellant / the erstwhile SRA preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as "the Code").

2. Learned Counsel for the Appellant submitted that the Adjudicating Authority has erroneously allowed the Application seeking Liquidation on the ground that the Appellant had not adhered to the terms of the Resolution Plan. It is submitted that the implementation of the Resolution Plan is under challenge and the same is before this Tribunal in CA (AT) (CH) (Ins.) No. 220 & 221 / 2023 and therefore the Adjudicating Authority ought not to have initiated Liquidation, on account of which the Corporate Debtor is pushed to a Corporate Death and the livelihood of more than thousand workers is at stake.

3. It is submitted that the Resolution Plan was approved vide Order dated 16.09.2019 and the Appellant had already spent an amount of Rs.53.20 Crores for implementation of the Plan and filed IA No. 29/2021 on 02.02.2021 seeking a direction to the Financial Creditors to consider a few modifications in the Resolution Plan. The original Plan was of Rs. 223.41 Crores and based on the fresh assessment it was proposed to increase the payout in the plan by another Rs.5 Crores to Rs. 228.41 Crores. The Appellants sought for modification in the timeline for sale of non-core assets. The First Respondent approved the revised payment schedule without considering the other payment aspects before the CoC vide letter dated 29.09.2021 and enhanced the amount from Rs.160 Crores to Rs.169.22 Crores. It is submitted that the First Respondent vide letter dated 05.10.2021 replied that the other suggestions for modifications would be examined at the appropriate time. It is submitted that the delay was caused due to the acts of the Respondent Bank and that the CoC had accepted the modification of the Resolution Plan in part by their own letter dated 29.09.2021 and cannot be permitted to approbate and reprobate at the same time.

4. It is submitted that the Appellant was willing to arrange for Rs.35 Crores as on 02.02.2023 and also produced a letter from an interested Company for purchase of Peenya Plant for Rs. 41.60 Crores and also arranged Rs.50 Crores on

21.02.2023 and sought to deposit the same in a no-lien account but the same was not acceptable to the Respondent Bank. It is submitted that if the Appellant is allowed to manage the Corporate Debtor Company, the amount shall be repaid to the Respondent bank in a short period while protecting the interest of the Company in the Going Concern.

5. Learned Counsel for the First Respondent submitted that a Joint Lenders Meeting was convened on 02.08.2023 wherein it was resolved as follows:

> *"i. The SRA to pay Rs.50 Cr. By 19.08.2023 before the next date of hearing i.e., 21.08.2023 through Cash/DD only, otherwise, he has to undertake that he will not oppose the liquidation application filed by the financial creditors.*
> *ii. Further balance payment to be done before 30.09.2023 along with interest. In case SRA fails to make the balance payment, then the amount of Rs. 50 Crores, deposited by the SRA will be forfeited and he has to undertake not to oppose the liquidation Application."*

6. It is submitted that the Appellant had undertaken before this Tribunal that Rs. 50 Crores will be deposited before 31.08.2023, but has failed to do so. The Resolution Plan was approved on 16.09.2019, IA No. 87 / 2020 was filed on 05.02.2020 seeking implementation of the Plan, but due to the Pandemic, the Application could not be taken up for hearing and the SRA failed to comply with the Plan for more than 8 months. Hence, IA No. 443 / 2020 was filed seeking Liquidation of the Corporate Debtor Company. During course of this proceeding, the Appellant filed IA No. 29 / 2021 seeking modification of Plan and cited the forensic audit and the Pandemic situation as reasons for failing for implementation of the Plan. Several rounds of discussions were held and the Appellant sent a letter dated 12.08.2021 stating that it was ready to deposit Rs.25 Crores in a no-lien account and the balance Rs.15 Crores would be paid within three weeks from the date of approval. Except for the First Respondent, all other CoC members rejected the modified Plan. The First Respondent being a majority shareholder of the CoC accepted the modified Plan, but the Appellant failed to apply even with the revised Plan Despite repeated communication. More than two and half years has lapsed and the Appellant has paid only Rs.32.60 Crores under the Plan from 2019.

7. It is further submitted that in IA No. 53 / 2022 filed on 10.02.2022, the First Respondent/Canara Bank has prayed for declaration that the resolution plan has failed and sought for the exclusion of 924 days from 24.07.2019 to 02.02.2022, to reinstate the CoC and Resolution Professional, so that the CIRP can be restored to permit the Financial Creditors and to forfeit Rs. 32.60Crores deposited. The Hon'ble NCLT vide its order dated 25.05.2023 disposed of the Applications granting liberty to the First Respondent to take necessary steps in accordance with law, allowing the forfeiture of Rs.32.60 Crores already paid and declared that the RA has failed to implement the Resolution Plan.

8. IA No. 363 / 2022 and IA No. 404 / 2023 were filed by the Monitoring Committee of Scott Garments and Canara Bank respectively on 19.08.2022 and 12.06.2023 and the Adjudicating Authority vide common Order dated 31.10.2023 allowed the Liquidation. It is contended that the Appellant has intentionally protracted the implementation of the Plan and hence this Appeal is required to be dismissed.

9. **Assessment:** It is seen from the record that the Resolution Plan was approved by the CoC by a majority of 74% on 28.07.2019 and the Adjudicating Authority has approved the said Plan vide Order dated 16.09.2019. After considerable delay of more than a year, during the pendency of proceedings in IA No. 443 / 2020, the Appellant filed IA No. 29 / 2021 seeking modification of the Resolution Plan, on the ground that the forensic audit and the Pandemic have delayed the implementation of the Plan. It is seen from the record that the Adjudicating Authority vide a common Order dated 09.03.2021 disposed of all the three Applications IA Nos. 87,443 / 2023 & IA No. 29 / 2021 with a direction to the CoC to reconsider the grievance of the SRA and take a reasonable and dispassionate decision on the issue by keeping in mind the object of the Code. Admittedly there were several rounds of discussions held and the Appellant sent a letter dated 12.08.2021 where it sought for modification for the repayment Plan promising to deposit Rs.25 Crores in a no-lien account and a balance 15 Crores within three weeks from the date of approval.

10. We find force in the contention of the Learned Counsel for the First Respondent that though the other CoC members, SBI and IDBI, did not accept the modified payment terms, the First Respondent being the majority voting shareholder of the CoC accepted the modified payment terms way back on

29.09.2021, but the Appellant did not comply with the terms and hence, no further opportunities are required to be given.

11. It is not in dispute that the Appellant did not pay the balance amounts despite repeated communication by the First Respondent on 25.10.2021 and 30.10.2021. On 20.07.2022, it was recorded by the Adjudicating Authority that the Plan was not complied with and one more weeks' time was granted. But still there was no compliance. On 16.11.2022, a direction was given to pay Rs. 50 Crores to the Appellant to show their *bonafide* but still there was no compliance. IA No. 367 / 2022 was filed on 05.07.2022 by the Appellant before the Adjudicating Authority a direction to sell the Peenya Plant but as implementation of the Plan itself has failed, IA No. 367 / 2022 was disposed of as infructuous.

12. It is evident from the record that though almost two and half years has lapsed from the date of approval of the Plan and several opportunities were given to the Appellant and the modified payment terms were also accepted by the First Respondent, even then the Appellant did not pay the required amount of Rs. 83.07Cr by November 2021. Therefore, the contention of the Learned Counsel for the Appellant that if the Appellant is allowed to manage the Corporate Debtor Company, the Appellant shall repay the money to the Bank in a 'short period', is untenable, specifically having regard to the fact that the Plan was approved way back in 2019, IBC is a time-bound process, and several opportunities were given for implementation of the original Plan as well as the modified Plan. Keeping in view the law laid down by the Hon'ble Apex Court in ***Ebix Singapore Pvt. Ltd. vs. Educomp Solutions Ltd.*** reported in (2022) 2 SCC 401, wherein the Hon'ble Apex Court has clearly emphasised the importance of adhering to strict timelines, keeping in view the scope and objective of the Code. In the instant case as the Appellant / SRA could not implement the Resolution Plan within the specified time, the Adjudicating Authority has rightly, as provided for under Section 33 of the Code, allowed IA No. 363 / 2022 & IA No. 404 / 2023, filed by the Monitoring Committee of Scott Garments and Canara Bank respectively, seeking Liquidation.

13. For all the foregoing reasons, this Appeal is dismissed at the threshold. No Order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

21/12/2023
RO/TM