NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins) No. 341 of 2021

[Arising out of Impugned Order dated 20th July, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Chennai Bench, Chennai) in MA No. 1433/2019 in CP 941/IB/2018]

IN THE MATTER OF:

M/s P.S. Constructions
Represented by its Proprietor,
Mr. Manoj Sinha
L-12, Agrassen Magar, Ring Road No.1
Opp. D.D. Nagar, Police Thana
Raipur (C.G.) ...Appellant

Versus

1. **Consortium of Resolution Applicant**
   (UV Asset Reconstruction Company Limited and WL Structures Private Limited)
   Resolution Applicant of M/s. GVR Infra Projects Limited
   704, 7th Floor, Deepali Building,
   Nehru Place, New Delhi – 110019 ...Respondent No.1

2. **The Monitoring Committee**
   (Rep. the erstwhile Committee of Creditors)
   Through Ms. Vandana Garg as the Monitoring Agent,
   252, Veer Savarkar Marg, Shivaji Park
   Mumbai – 400028 ...Respondent No.2

3. **GVR Infra Projects Limited**
   (Corporate Debtor)
   VBC Solitaire, 9th & 10th Floor, NO. 47 & 49,
   Bazullah Road, T. Nagar, Chennai – 600017 ...Respondent No.3

With

Company Appeal (AT) (CH) (Ins) No. 342 of 2021

IN THE MATTER OF:

Ramsant Infrastructure
Proprietor Mr. Vivek Kumar Gupta

Near HPCL Petrol Pump Bagicha Road
Kansabel Village
Jashpur, Chattisgarh – 496223 **...Appellant**

Versus

1. **Consortium of Resolution Applicant**
   (UV Asset Reconstruction Company Limited and WL Structures Private Limited)
   Resolution Applicant of M/s. GVR Infra Projects Limited
   704, 7th Floor, Deepali Building,
   Nehru Place, New Delhi – 110019 **...Respondent No.1**

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   Through Ms. Vandana Garg as the Monitoring Agent,
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   Mumbai – 400028 **...Respondent No.2**

3. **GVR Infra Projects Limited**
   (Corporate Debtor)
   VBC Solitaire, 9th & 10th Floor, No. 47 & 49,
   Bazullah Road, T. Nagar, Chennai – 600017 **...Respondent No.3**

Present:

For Appellant : Mr. M. Dinesh Kumar, Advocate

For Respondent : None

J U D G M E N T
(Virtual Mode)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The present Appeals are filed against the common Impugned Order dated 20.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Special Bench, Chennai) in MA No. 1433/2019 in CP 941/IB/2018 and in MA No. 99/2020 in CP 941/IB/2018, whereby the

Adjudicating Authority allowed the application being MA 1433/2019 filed by the Resolution Professional for the approval of Resolution Plan.

Brief Facts:

Appellant's Submissions:

2. The Learned Counsel appeared for the Appellants submitted that the Appellants are aggrieved by the impugned order whereby the Learned Adjudicating Authority approved the Resolution Plan under Section 30(6) of the I&B Code, 2016.

3. It is submitted that the Appellants are the Operational Creditors of the Corporate Debtor and the Adjudicating Authority initiated CIRP against the Corporate Debtor vide order dated 15.10.2018 in CP No. 941 of 2018 and M/s Vandana Garg appointed as Resolution Professional on 22.12.2018. The 1st Appellant filed its claim under Form-B before the Resolution Professional on 29.04.2019 and the amount claimed by the Appellant in CA (AT) Ins. 341 of 2021 is Rs. 2,46,61,500/- and the claim of the Appellant in CA (AT) Ins. 342 of 2021 Rs. 1,00,51,043/-. The list of Operational Creditors was prepared by the RP as on 08.11.2019. The CIRP period was extended from time to time by the Learned NCLT, Chennai. The Resolution Professional filed MA 1433/2019 in CP 941/2018 under Section 30(6) of the I&B Code, seeking approval of Resolution Plan submitted by the 1st Respondent herein i.e. Consortium of Resolution Applicant (UV Asset Reconstruction Company Ltd. and WL Structures Pvt. Ltd.). The Learned NCLT vide impugned order dated 20.07.2020 approved the Resolution Plan which proposed a total payment of

Rs.368.5 crore to all the Stakeholders. The total claims admitted by the RP was Rs.2,477/- Crores and the admitted claims of Operational Creditors were Rs.175.13 Crores, however, the Resolution Plan provide a sum of Rs.3 crore to the Operational Creditors.

4. It is submitted that both the Appellant's are being an Operational Creditors were not part of deliberative process of any of the CoC meetings nor was any information made available to the Appellant's by the Resolution Professional with respect to the settlement proposal of the Operational Creditors claim. Further, the 1st Respondent herein filed IA 858/2020 in CP 941/2018 before the NCLT, Chennai seeking the reliefs as prayed therein more particularly to allow the revision of Resolution Plan as regards amended shareholding pattern and to exclude the time period from the date of rejection of the Applicants request by the RBI and to enable the Applicant to comply with implementation of the Resolution Plan approved by the Tribunal in MA 1433/2019 in CP 941/2018 vide an order dated 20.07.2020. The said application filed by the 1st Respondent herein was allowed by the Learned NCLT vide its order dated 09.04.2021. It is submitted that the Appellants in both the Appeals received e-mail dated 26.07.2021 from the Resolution Professional of the 3rd Respondent whereby it was informed the Appellants to check the bank account details and claim settlement amount. The claim of the Appellant in Company Appeal No.341/2021 was Rs.2,85,45,693/- and the amount admitted as on 08.11.2019 by the claims team was Rs.56,59,876/- and the Plan provides a meagre amount of Rs.84,618/- as the

settlement amount of the Appellant. The Appellant in Company Appeal No.342/2021 made a claim of Rs.1,00,51,043/- and the amount admitted as on 08.11.2019 by the claims team was Rs.10,16,128/- and the Plan provides a meagre amount of Rs.15,191.80.

5. It is submitted that the Hon'ble NCLT has failed to consider that the Appellants in both the Appeals being Operational Creditors were not part of the deliberations / meetings of the CoC therefore, the Appellants were not privy to the contents of the Resolution Plan approved by the impugned order. The Appellants never had an opportunity to oppose the Resolution Plan on its merit. Further, it is submitted that the approval of the Plan is not in accordance with law.

6. In view of the reasons as stated above, a Learned Counsel prayed this Bench to allow the Appeal by setting aside the impugned order dated 20.07.2020 passed by the NCLT, Chennai Bench in MA 1433/2019 in CP No. 941/2018.

Analysis / Appraisal:

7. Heard the Learned Counsel appeared for the Appellants in both the Appeals and the Tribunal intend to dispose of the Appeals at the stage of admission itself, therefore, no notice was ordered to the Respondents. The Appeals have been listed on 11.02.2022 and at the request of Counsel for the Appellant the matter was adjourned to 04.03.2022, even on 04.03.2022 the matter was adjourned to 10.06.2022. On 10.06.2022 this Tribunal heard the

Learned Counsel for the Appellant and adjourned the matter to 14.06.2022 and the Appeal was finally taken up for hearing and heard the Appellant and reserved for passing orders on 14.06.2022.

8. It is an admitted fact that CIRP initiated against the Corporate Debtor by the Adjudicating Authority (NCLT, Chennai) vide its order dated 15.10.2018 and the IRP was appointed on 22.12.2018. The Appellants in both the Appeals filed their claims respectively in Form-B before the Resolution Professional on 29.04.2019. After due compliance of law, the Resolution Professional filed an Application being MA 1433/2019 in CP 941/2018 under Section 30(6) of the I&B Code, 2016 seeking the approval of the Resolution Plan submitted by the 1st Respondent herein. It appears that after deliberations with the Resolution Applicant finally the 1st Respondent herein became the Successful Resolution Applicant. The Resolution Applicant sought to revise the plan dated 29.08.2019 and requested the RP and the CoC to consider the revised offer. The Successful Resolution Applicant submitted a Resolution Plan dated 06.11.2019 for the consideration by the CoC. The CoC deliberated upon the Resolution Plan and having found it to be feasible and viable in accordance with Section 30(4) of the Code and Regulation 39(4) of the CIRP Regulations and the plan has been approved with a majority of 67.9% of the CoC voted in favour of the plan on 27.11.2019.

9. It is seen that the plan submitted by the 1st Respondent is in compliance with the technical and commercial requirement of the RFRP and is also

incompliance with the Code as well as the Regulations. The Resolution Applicant enclosed the compliance certificate in Form-H of the Schedule and complied the procedure as per law.

10. The Learned Adjudicating Authority in its order dated 20.07.2020 at para 25 extracted the distribution of voting share of the CoC held on 27.11.2019 in its 16th meeting. From the table it is seen that 19 Members of CoC present and assented in favour of the Resolution Plan submitted by the 1st Respondent herein. From the calculation of voting share, it comes to approximately 70% of voting share in the CoC out of 100% assented in favour of the plan. Further, the Resolution Applicant proposed make payments towards the Resolution claims and dealt with the interest of all the Stakeholders in the manner as stated in para 27 of the impugned order. From the table, it is also seen that the claims of the Operational Creditors was Rs.175.13 Crores and the proposed payment made Rs.3 Crores. In para 29 of the impugned order the Adjudicating Authority stated as under:

> *"As per Clause 7A of Part-B of the Resolution Plan, the payment of Rs.3 Crores which is to be paid to the Operational Creditors as against their total claim of Rs. 175.13 Crores, will be paid within 60 days from the effective date".*

11. The 1st Respondent herein filed an Application before the Adjudicating Authority in IA 858/2020 in CP 941/2018 praying the Adjudicating Authority to allow the revision of the Resolution Plan as regards the amended shareholding pattern and exclusion of time period to enable the Applicant to

comply with the implementation of the plan with necessary revision as sought for in the application. The Learned Adjudicating Authority after hearing the respective parties allowed the Application as prayed for vide order dated 09.04.2021. The Appellants in both the Appeals are only aggrieved by the order passed by the Adjudicating Authority dated 20.07.2020 in approving the Resolution Plan submitted by the 1st Respondent herein, more particularly with respect to payments made to them.

12. The Resolution Professional vide its mail dated 26.07.2021 addressed to the respective parties stating that the claim settlement can be checked through the website as given in the e-mail. From the impugned order it is evident that the CoC in their commercial wisdom approved the Resolution Plan submitted by the 1st Respondent herein and the same has been approved by the Learned Adjudicating Authority vide its order dated 20.07.2020 and there is no discrimination shown towards the Appellants in both the Appeals being Operational Creditors. This Tribunal is of the view that the commercial wisdom of the Committee of Creditors cannot be interfered with by this Tribunal in absence of any illegality or infirmity or violation of any statutory provisions of law. This Tribunal is of the view that the plan is in accordance with law and do not find any legal infirmity or illegality in the Resolution Plan, which was rightly approved by the Adjudicating Authority vide order dated 20.07.2020.

13. The Hon'ble Supreme Court time and again held that the commercial wisdom of the CoC cannot be interfered with by the NCLT and NCLAT. Also, the recent judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 1811-1812/2022 between Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Others dated 03.06.2022, whereby and whereunder at para 27 observed as under:

> *"27. This court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of "Arun Kumar Jagatramka vs Jindal Steel and Power Limited and Another" (2021 7 SCC 474):*
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> > *"95.....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum*

and should not disturb the foundational principles of the IBC.....”

14. In view of the reasons as stated above, this Tribunal comes to an irresistible and inescapable conclusion that the Company Appeals being Company Appeal No.341/2021 and Company Appeal No.342/2021 are devoid of merit and liable to be dismissed. Accordingly, both the Appeals are dismissed. The I.A. No.705 and 706 of 2021 in Company Appeal No.341 of 2021 are closed. Also I.A. No. 707 and 708 of 2021 in Company Appeal No.342 of 2021 are closed. Parties to bear their own costs.

[Justice Venugopal M.]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

11th July, 2022

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