NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.1715 OF 2024

(Arising out of judgement and order dated 02.07.2024 passed by National Company Law Tribunal, Chandigarh in Company Petition No. CP(IB) No.365/ChD/PB/2024 titled SASF Vs Dwarikadhish Spinners Ltd)

In the matter of:

Mr Amit Chaturvedi
Ex Director of Dwarikadhish Spinners Ltd
98 Eastern Avenue,
Sainik Farm,
New Delhi 110062 Appellant

Vs

1. Stressed Assets Stabilization Fund,
   Though its Manager
   Smt Shreshtha Paul,
   3rd Floor,
   IDBI tower,
   WTC Complex,
   Cuffe Parade
   Mumbai 400005

2. Ms Dwarikadhish Spinners Ltd
   Th: Mr Prem Chand Goyal,
   IRP for Dwarikadhish Spinners Ltd
   1, Village Kouli Majra,
   Tehsil Derabassi, Lalru
   Distt SAS Nagar 140501

   Also at
   House No.1-F
   Adjoining Municipal House
   Model Town,
   Patiala
   Punjab 147001 Respondent

For Appellant: Ms. Purti Gupta, Ms. Heena George, Advocates

For Respondent: Mr. Anand Varma, Ms. Apoorva Pandey, Advocates

ORDER

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present appeal has been filed against an impugned order dated 02.07.2024 passed by the Ld. National Company Law Tribunal, Chandigarh Bench in Company Petition No. *IB-365/CHD/PB/2018* titled as Stressed Assets Stabilization Fund Vs M/s Dwarikadhish Spinners Ltd. The Ld. Adjudicating Authority has allowed a petition under Section 7 of IBC filed by the Respondent No.1 herein, despite the fact on 23.07.2019 a scheme of arrangement under Section *391-394* of the Companies Act, 1956 has been approved by the High Court of Punjab & Haryana.

2.B Before proceeding further let us state few brief facts.

3. In the year 2008 a scheme of arrangement under Section *391-394* of the Companies Act, 1956, being CP No. *51/2008* was initiated by the Corporate Debtor which was approved by the *75%* of the creditors of the Corporate Debtor *viz* Dwarikadhish Spinners Ltd.

4. *Qua* the said scheme of arrangement the first motion application *viz* CP No. *51/2008* was filed before the Punjab & Haryana High Court seeking sanction of the scheme of arrangement between Corporate Debtor and its creditors, including Respondent No.1.

5. Between March to June 2008, the Meeting of the Creditors of the Corporate Debtor were convened as per due procedure laid down under the Companies Act, 1956. On 20.06.2008 the Respondent No.1 sent a letter showing its intention on agreeing to Option No. *III* for the scheme of arrangement, whereby Respondent No.1 agreed to receive Rs. *459.36* lakhs with certain terms and conditions.

6. On 21.06.2008 under the Chairmanship of Ms Ritu Singh, Advocate, the meeting of the creditors was convened and thereafter on 25th July, 2008, the first motion petition was approved by the Punjab & Haryana High Court.

7. On 30.07.2009 the second motion petition being CP No. *89/2009* was filed in the High Court of Punjab & Haryana, but between *2009 to 2018* the second motion petition remained pending for various reasons, including disputes amongst several secured creditors, the corporate debtor and other parties. Rather Respondent No.1 moved before the Ld. DRT for possession of the property of corporate debtor under the SARFEASI Act. However, the said application was stayed by the Punjab & Haryana High Court as the scheme for arrangement was pending.

8. On 12.10.2018 the Respondent No.1 filed a petition under Section 7 of IBC before the Ld. Adjudicating Authority while concealing the factum of pendency of the Scheme for Arrangement before the Ld. Punjab & Haryana High Court. On 23.07.2019 the second motion petition was allowed by the Hon'ble Punjab & Haryana High Court approving the said scheme of arrangement and with a direction the scheme shall be binding on the appellant as well as all its stake holders, i.e. all creditors alongwith Respondent No.1 herein.

9. On 23.09.2019 the copy of the order dated 23.07.2019 passed in CP No. *89/2009* was sent to the Respondent No.1 by the appellant with a choice to Respondent No.1 either to stick with Option No. *III* already opted for or any other option provided in the scheme. However, on 02.08.2022 the Respondent No.1 filed an application for recall of the order dated 23.07.2019 in CP No. *89/2009* which allowed the second motion petition and the said

order dated 2307.2019 was thus recalled by the Punjab & Haryana High Court.

10 On 10.10.2022 the company appeal PP No. *14/2022* was filed before the Hon'ble Division Bench of Punjab & Haryana High Court and while issuing notice in the said appeal, the operation of recall order dated 2nd August, 2022 was stayed.

11. On 28.10.2022 the appellant filed an affidavit alongwith an order dated 10.10.2022 before Ld. NCLT but ultimately on 02.07.2024, the impugned order was passed whereby the Ld. Adjudicating Authority allowed the CP under Section 7 of the IBC 2016 filed by the Respondent No.1.

12. Thus the question before us is whether the Ld. NCLT ought to have exercised jurisdiction under Section *7* of the Code, when a Scheme of Arrangement was already in existence, as approved by the Ld. Single Judge of the Punjab & Haryana High Court on 23.07.2019 itself.

13. It is the submission of the learned counsel for the Respondent No.1 that in the present case the lenders have unanimously agreed to withdraw the consent to the scheme of arrangement upon Corporate Debtor's failure to take steps in filing of the second motion petition in time and the withdrawal of such consent was communicated to the Corporate Debtor *vide* letter dated 03.07.2019 and that the lenders even filed objections before Hon'ble High Court bringing to the notice of the High Court the consent of lenders stands withdrawn as period for filing second motion had elapsed and only for this reason, the scheme sanctioned order dated 23.07.2019 was recalled by the Ld. Single Judge on an application filed by the lenders and though the said order was stayed by the Ld. Division Bench of Punjab & Haryana *vide* its order

dated 10.10.2022 but it did not quash the order dated 2nd August, 2022 passed by the Ld. Single Judge and the same still exists.

14. Now admitted fact as they emerge are the order of recall dated 2nd August, 2022 stands stayed in APP No.*14/2022* by the Ld. Division Bench of Punjab & Haryana High Court. The said appeal is still pending before the Punjab & Haryana High Court and is now listed on 19th August, 2025.

15. The question is what we need to do till the pendency of the appeal before the Ld. Division Bench of Punjab & Haryana High Court where the legality of the scheme is being challenged. Admittedly an approved scheme has a statutory force and is binding upon all its creditors and it operates as a judgement in rem. Admittedly the scheme was initially accepted by the requisite majority of creditors, including the Respondent No.1 (SASF). Admittedly the Hon'ble High Court had sanctioned the scheme on 23.07.2019 i.e. much prior to the impugned admission order dated 02.07.2024. Thus admittedly at the time of admission of the petition, a sanctioned scheme, as approved, was already in existence. Section *391(3)* of the Companies Act, 1956 makes an approved scheme binding on all the parties, including Respondent No.1 and it cannot resile. Further Section *391(6)* of the Companies Act, 1956 provides for stay of all coercive action against the sanction of the scheme of arrangement. Admittedly in its order dated 10.10.2022 in CPP *14/2022* the Hon'ble Division Bench noted there was a consent of *75%* of the creditors under the Scheme.

16. It was one of the submission of the appellant, consent once given could not be withdrawn by lenders and their refusal to accept the payment upon sanction of the scheme cannot be considered as a default on the part of the

Corporate Debtor. Now the withdrawal of the consent or default is an issue pending before the Ld. Division Bench of High Court and it was not appropriate for Ld. Adjudicating Authority to over-reach such jurisdiction. Per force, as the scheme of arrangement was sanctioned on 23.07.2019 there existed a novation of contract and the debt stood resolved *per* Suresh Kr Reddy Vs Canara Bank and others *2023 (5) SCR 387*.

17. Further Section 7 of the IBC uses the word "*may*", making admission of a petition discretionary. Now the facts and circumstances so warrant, the Adjudicating Authority should have kept the *admission in abeyance* till the App No.14/2022 was decided.

18. The mandate of Section *7* of the Code is to explore a resolution for the benefit of the company and it had already taken place under a sanctioned scheme, when it stood sanctioned *vide* order dated 23.07.2019. Such a rehabilitation was in line with the object of the Insolvency Code. Admittedly the insolvency proceedings are not recovery proceedings and SASF, the predecessor of M/s Omkar *viz* Respondent No.1 had admittedly settled at *Rs.459.36* lakhs under the scheme of arrangement and now in its insolvency petition is claiming an inflated amount of Rs.*154* crores.

19. In Lavkash Verma V M/s Vigneshwara Developers Pvt Ltd (IB)-1076(ND)/2019, an admission order passed under Section *7* of the Code, was kept in abeyance since a scheme of arrangement was approved by the High Court of Delhi.

20. The learned counsel for the Respondent No.1 though referred to Grand Developers V Nitin Batra, dated 15.05.2024 in CA (AT)(Ins) No.899/2024 wherein despite the scheme of arrangement pending between the parties the

petition under Section 7 of IBC was directed to be continued, but to our mind the said judgment shall not be applicable to facts since in the cited case, the scheme of arrangement was still pending, but whereas in the present case the scheme has already been sanctioned *prior* to filing of Section *7* petition of the IBC. Secondly the reliance of Respondent No.1 upon Forech India Ltd Vs Edelweiss Assets Reconstruction Co *(2019) SCC 549* is also not correct since it was a case of winding up of the company and not a case of scheme of arrangement.

21. In the light of the above circumstances we are of the considered view as the objections to the scheme are still pending in APP No.14/2022 before the Hon'ble Division Bench of Punjab & Haryana High Court and as the order of recall in CP No. *89/2009* stands stayed in APP No. *14/2022* much prior to the passing of the impugned order and as the Respondent No.1 ought to have disclosed the factum of sanctioning of scheme before the Ld. NCLT; hence in these circumstances the Ld. NCLT ought to have at least waited till disposal of App No. *14/2022* pending before Ld. Division Bench of Punjab & Haryana High Court, now listed for 19.08.2025. Thus in this case we set aside the order of admission under Section *7* of IBC passed by Ld. NCLT, though keeping the petition filed under Section *7* of IBC pending and only after the APP No. *14/2022* is disposed of, the Ld. NCLT should have a fresh look in the matter in the light of the order passed in APP No. *14/2022* (supra).

22. The appeal is disposed of in terms of the above.

23. Pending applications are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 18-08-2025
BM