

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Ins.) No. 645 of 2022

In the matter of:

Daiichi Sankyo Ltd.

....Appellant

Vs.

Religare Comtrade Ltd. & Ors.

....Respondents

Present

For Appellant: Mr. Rakesh Dwivedi, Sr. Advocate, Mr. Mukul Rohatgi, Sr. Advocate, Mr. Arun Kathpali, Sr. Advocate along with Mr. Kunal Chatterji, Mr. Amit Kumar Mishra, Devna Arora, Mr. Varad Choudhary, Ms. Gauri Goburdhun, Ms. Samridhi Hota, Ms. Bani Brar & Ms. Diksha Gupta, Advocates.

For Respondents: Mr. Amit Sibal, Sr. Advocate along with Mr. Siddharth Sharma, Ms. Anandini K Rathore, Ms. Aishwarya Singh, Mr. Vinay Tripathi, Mr. Rishabh Sharma, Mr. Mayank Bhargava, for R-1.
Mr. Sandeep Devashish Das, Caveator/R-1.
Mr. Gautam Singhal, for RP/R-3.

ORDER
(Virtual Mode)

03.06.2022: Heard Learned Senior Counsel Mr. Rakesh Dwivedi on behalf of the Appellant and Learned Senior Counsel Mr. Amit Sibal on behalf of the Respondents and the IRP who has also appeared before us.

This appeal has been filed against the Order dated 13.05.2022 in CP (IB) No. 231 (PB)/2022 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi), whereby, an application filed by the M/s Religare Comtrade Limited- Respondent No. 1 under Section 7 of the IBC Code has been admitted.

Learned Counsel for the Appellant submit that there is an award in favour of the Appellant dated 29th April, 2016 in which the Corporate Debtor as well as

other Judgment Debtors owned money. To satisfy the award in proceedings before Delhi High Court objection were filed by Corporate Debtor & Ors. which were rejected and SLP against that order was also dismissed.

Further, it is submitted that the M/s. Religare Comtrade Limited has filed Application under Section 7 Application along with other concerns have filed 23 Insolvency proceedings against different entities to defeat the claim of the Appellant against which proceeding the Hon'ble Supreme Court of India had passed an Interim Order on 05th April, 2019 in SLP 2447/2019. It is submitted that Hon'ble Supreme Court of India has stayed all proceedings before the NCLT filed under Section 7, whereby, all 23 proceedings including the proceedings initiated by the Religare Comtrade Limited were also stayed which is mentioned in the order of the Hon'ble Supreme Court of India.

It is submitted that Section 7 Application has been filed in March, 2022 was another attempt to bail out the Corporate Debtor from its liability and it is submitted that in the proceedings under Section 7 the Corporate Debtor neither appeared not contested the proceedings whereas the Adjudicating Authority has admitted the application.

It is submitted that the copy of the Order dated 05th April, 2019 passed by the Hon'ble Supreme Court of India has not been referred in the Application under Section 7, rather in one of the paragraph it was mentioned that Section 7 application was filed by the Applicant but no further details were given.

From the perusal of the Impugned Order it does not indicate that Adjudicating Authority was made aware of the order of the Hon'ble Supreme Court dated 05.04.2019.

Learned Senior Counsel Mr. Amit Sibal appearing on behalf of the Respondent submit that since the loan was given of Rs. 99 crore to the Corporate Debtor by the Applicant and the limitation was to runout, hence, the Respondent No.1 had no option except to file the Application to save the Limitation. It is further submitted that the Applicant has itself taken action against the M/s RHC holding Pvt. Ltd. and the application under Section 7 has been filed for recovering its dues. It is open for the Appellant to approach the Hon'ble Supreme Court against the Order passed by NCLT impugned in the present Appeal, since, the matter is according to the Appellant is pending.

Learned Counsel for the Respondent further submit that Adjudicating Authority did not commit any error in admitting the Application.

We have considered the submissions of the Counsel for the Parties and peruse the record.

The Order of the Hon'ble Supreme Court dated 05th April, 2019 passed in SLP No. 20417/2017 is as follows:-

“ORDER: Contempt Petition (C) No. 2120/2018 will be heard on 11.4.2010.

Both the respondents present today i.e. Mr. Malvinder Mohan Singh (respondent no. 12 in the contempt petition) and Mr. Shivinder Mohan Singh (respondent no. 13 in the contempt petition) will remain personally present on the next date fixed.

Further proceedings in Company Petition Nos. (IB)-667(PB)/2018 titled Religare Finvest vs. Tara Alloys Limited, (IB)-668(PB)/2018 titled Religare Finvest vs. Torus

Buildcon Private Limited, (IB)- 669(PB)/2018 titled Religare Finvest vs. Platinum Infrastructure Private Limited, (IB)-670(PB)/2018 titled Religare Finvest vs. Tripoli Investment & Trading Company, (IB)-671(PB)/2018 titled Religare Finvest vs. A&A Capital Services, (IB)-672(PB)/2018 titled Religare Finvest vs. Fern Healthcare Private Limited, (IB)-673(PB)/2018 titled Religare Finvest vs. Modland Wears Private Limited, (IB)-674(PB)/2018 titled Religare Finvest vs. Zoltan Properties Private Limited, (IB)-675(PB)/2018 titled Religare Finvest vs. AD Advertising Pvt. Ltd., (IB)-676(PB)/2018 titled Religare Finvest vs. Star Artworks Private Limited, (IB)-677(PB)/2018 titled Religare Finvest vs. Artifice Properties Private Limited, (IB)-678(PB)/2018 titled Religare Finvest vs. Rosestar Marketing Private Limited, (IB)-679(PB)/2018 titled Religare Finvest vs. Volga Management and Consultancy Private Limited, (IB)-680(PB)/2018 titled Religare Finvest vs. Annies Apparel Private Limited, (IB)-681(PB)/2018 titled Religare Finvest vs. Gurudev Financial Services Private Limited, (IB)-682(PB)/2018 titled Religare Finvest vs. Shri Dham Distributors Private Limited, (IB)-1176(PB)/2018 titled Religare Finvest vs. Best Health Management Private Limited, (IB)-1177(PB)/2018 titled Religare Finvest vs. Devera Developers Private Limited, (IB)-1178(PB)/2018 titled Religare Finvest vs. Vitoba Realtors Private Limited, (IB)-1378(PB)/2018 titled Religare Comtrade Limited vs. Decent Financial Services Private Limited, (IB)-1379(PB)/2018 titled Religare Enterprises Limited vs. ANR Securities Private Limited, (IB)-1380(PB)/2018 titled Religare Comtrade Limited vs. Best Healthcare Private Limited and (IB)-1384(PB)/2018 titled Religare Comtrade Limited vs. Blue Line Finance Private Limited pending before the National Company Law Tribunal, shall remained stayed until further orders.

I.A. No. 58004/2019 in SLP(C) No. 20417/2017 (filed by the petitioner(s) for directions) and I.A. No. 49889/2019 in SLP(C) No. 20417/2017 (filed by ICICI Bank Ltd. for intervention) will also be listed alongwith the contempt petition on 11.4.2019.”

Perusal of the Order indicate the Religare Comtrade Limited also had filed an Application under Section 7 and one of the Party whose Section 7 Application was stayed. The NCLT in consequence to the Order of Hon’ble SC itself on 11th

April, 2019 stayed all 23 Insolvency proceeding and which Interim Order passed by the Supreme Court is still continuing.

It is submitted by the Appellant that without disclosing the all correct facts before the NCLT order has been obtained and further the proceedings are collusive proceeding between the Applicant and the Corporate Debtor to help the Corporate Debtor which ought not to have been admitted.

Submissions raised by the Counsel for the Parties needs consideration. Issue Notice. Notice on behalf of Respondent No.1 is accepted. Let the Reply be filed within three weeks.

List the Appeal on 20.07.2022.

In the meantime, the impugned Order dated 13.05.2022 shall remain stayed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Naresh Salecha]
Member (Technical)

Simran/nn