

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 136 / 2022
& (IA No. 323 / 2022 & IA No. 190/2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the 'Impugned Order', dated 08/04/2022 in
IA No.79 / 2022 in CP (IB) No. 262/7/HDB/2018, passed by the
'Adjudicating Authority', National Company Law Tribunal,
Hyderabad Bench, Hyderabad)

In the matter of:

International Asset Reconstruction Co. Pvt. Ltd.

Registered Office : 709, 7th Floor, Ansal Bhawan
16, Kasturba Gandhi Marg,
New Delhi – 110 001
India

Address for Service: A-601/602/605,
6th Floor, 215, Atrium Kanakia Spaces
Andheri Kurla Road, Andheri (East)
Mumbai – 400 093

.... Appellant

v.

Erstwhile Committee of Creditors of Transstroy
Tirupati-Tiruthani-Chennai Tollways Pvt. Ltd.

Represented by Indian Bank (Lead Bank),
Mr. PSS Sudhakar Rao (Authorised Signatory),
AGM (SAM) Branch, 5-1-679,
Surabhi Arcade, Bank Street, Koti,
Hyderabad – 500 001

.... Respondent No.1

Mr. Sanjay Mishra
Erstwhile Resolution Professional
Transstroy Tirupati-Tiruthani-Chennai
Tollways Private Limited
Dreams Complex, 4C – 1605, LBS Marg,
Bhandup (W), Mumbai – 400 078

.... Respondent No.2

Present :

For Appellant : Mr. Krishna Srinivasan, Senior Advocate
For Mr. T.K. Bhaskar, Mr. Srinath Sridevan,
and Mr. K. Harishankar, Advocates

For Respondent-1 : Mr. Krishna Gandhi, Advocate

For Respondent-2 : Mr. Ravi Charan and Ms. Niharika, Advocates

J U D G M E N T

(Physical Mode)

05/04/2023 :

Justice M. Venugopal, Member (Judicial) :

Heard both sides.

2. The Learned Counsels appearing for the respective 'Parties', have expressed their point of view, before this 'Tribunal', for 'setting aside', the 'Findings', in the 'Impugned Order' dated 08.04.2022, passed by the 'Adjudicating Authority', 'National Company Law Tribunal', Hyderabad Bench, Hyderabad, in IA No. 79 / 2022 in CP(IB) No. 262 / 7 / HDB / 2018, in respect of certain observations made in Paragraph Nos. 6, 9, 10, 11 and

14 to the extent that, it finds 'Failure' / 'Default', on the part of the 'Appellant'.

3. It is relevantly pointed out by this 'Tribunal' that, in the 'Rejoinder Affidavit' dated 21.01.2023 (Filed on behalf of the 'Appellant'), in Comp. App (AT) (CH) (INS.) No. 136 of 2022, at Paragraph No. 11 (b), it is observed as under:

“Without prejudice to the above and without admitting to the legality of the invocation of the Bank Guarantee, with the sole objective of reaching a closure of the issues involved and for the purpose of putting matters to rest once and for all, the Appellant is willing to forego its prayer for restoration of the bank guarantee or the amounts recovered by the Respondent No.1 from the same. It is clarified that does not admit to any fault nor does it admit to the legality of the invocation of the Bank Guarantee but is only ready to waive / forego its claim in that regard with the sole objective of putting all issues to rest for good. It is submitted that the Appellant is making the aforesaid concession on the basis that all adverse observations and directions against the Appellant, save and except for the directions for invocation of the Bank Guarantee, as contained in the Impugned Order are set aside and no further proceedings are initiated against the Appellant and / or its Directors / Officials, emanating from the Resolution Plan and as such, the prayers sought in paragraphs 21 (i) (i.e., setting aside of the findings in the Impugned Order as contained in paragraphs 6, 9, 10, 11 and 14 to the extent that it finds failure / default of the Appellant) and 21 (ii) (i.e., setting aside of the directions contained in paragraphs 10 and 14 of the Impugned Order) of the Appeal may therefore be allowed and the directions to initiate prosecution against the Appellant (and / or its Directors / Officials) be set aside.”

4. According to the Appellant, despite its all possible endeavours 'NHAI', had declined to agree to a 'Terms of Resolution Plan', thereby, diminishing the possibility of implementation of the 'Resolution Plan', and in the absence of an 'Approval', from 'NHAI', it was impossible to revive the 'Corporate Debtor', which will go to the root of the implementation of the 'Resolution Plan'.

5. As a matter of fact, the plea of the Appellant is that, the 'Resolution Plan', could not be implemented within the adumbrated period, mainly because of NHAI's resistance to the execution of the 'Supplementary Agreement', being an 'integral part' of an 'Approved Plan'.

6. The other stand of the Appellant is that, it cannot be blamed nor it is responsible for the non-implementation of the 'Resolution Plan'.

7. It is to be remembered that the 'Terms of Resolution Plan', being implemented, ofcourse, depends upon the contingent on execution of necessary documents, by 'NHAI' (inclusive of the 'Supplementary Agreement').

8. In any event, the refusal on 'NHAI', in not accepting the 'Terms of Resolution Plan', cannot in any manner, be attributed, to the 'Appellant', which took all reasonable and commercially possible steps, to fulfil the 'Conditions Precedent'.

9. That apart, it cannot be brushed aside that the Appellant, had not claimed a 'relief of Cancellation of the Resolution Plan'. Instead, it was sought for by the '1st Respondent', in its own 'commercial wisdom'.

10. Be that as it may, in view of the foregoing and also considering the fact that there is no objection on the side of the 'Respondents', for this 'Tribunal', to 'expunge' / 'set aside', the 'Findings' in the 'Impugned Order', dated 08.04.2022, passed by the 'Adjudicating Authority', in IA No. 79 / 2022 in CP(IB) No. 262 / 7 / HDB / 2018, in particular in paragraph Nos. 6, 9, 10, 11 and 14, this 'Tribunal', on an entire conspectus of the attendant facts and circumstances of the case, in a 'holistic fashion', to prevent an 'aberration of justice', and to secure the 'ends of justice', hereby 'Expunges', the 'Observations' / 'Findings' (including the aspect of 'Initiation of Proceedings', under Section 74 (3) of the I & B Code, 2016), made by the 'Adjudicating Authority' / 'Tribunal', in the aforesaid paragraph Nos. 6, 9, 10, 11 and 14 of the 'Impugned Order', dated

08.04.2022, passed by the `Adjudicating Authority` in IA No. 79 / 2022 in CP (IB) No. 262 / 7 / HDB / 2018.

With the aforesaid observation(s) / direction(s), the instant Comp. App (AT) (CH) (INS.) No. 136 of 2022, stands `**Disposed of**'. No costs. The connected pending `Interlocutory Applications`, if any, are `**Closed**'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

SR / TM