

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal(AT)(Insolvency) No. 1028 of 2020

IN THE MATTER OF:

BRS Ventures Investment Ltd.

...Appellant

Vs

Registrar of Companies, Guwahati

...Respondent

With

Company Appeal(AT)(Insolvency) No. 1042 of 2020

IN THE MATTER OF:

Assam Company India Ltd.

...Appellant

Vs

Registrar of Companies, Guwahati

...Respondent

Present:

**For Appellant:Mr. Ajay Gaggar, Ms. VineetaRathore andMr. Robin
Sirohi, Advocates**

For Respondent Mr. Aswin N S, JTA, ROC, Guwahati, for Respondent.

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal has been filed by 'Appellant' under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the impugned order dated 09.10.2020 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Guwahati Bench in I.A No. 05/2020 in CP(IB) /20/GB/2017.
2. The Appellant in Company Appeal (AT) (Ins) No. 1028 of 2020 – M/s.BRS Ventures Investment Ltd (BRS) who is the Resolution Applicant of 'Assam Company India Ltd(ACIL)- Appellant in Company

Appeal (AT) (Ins) No. 1042 of 2020) against whom 'Corporate Insolvency Resolution Process' (CIRP) was initiated in October 2017. The Appellant in both the appeals asking the Registrar of Companies, Guwahati (RoC) in whose jurisdiction of the ACIL falls to allow it to increase the authorized share capital without paying any fees or stamp duty in accordance with Resolution Plan. On getting no reply from the Respondent who was approached in January, 2019, the Appellants filed a Petition before the Adjudicating Authority again in the year 2020 vide IA No.05/2020 in CP(IB) /20/GB/2017 with a prayer to allow the Petitioner/Applicant to increase the authorized share capital without paying any fees / Stamp duty to the RoC. Prior to this, the Adjudicating Authority has also heard the similar application for waiver of fees to the RoC in IA 71/2019 for increasing the share capital. Though the then Adjudicating Authority also dismissed the said application by an order dated 25.10.2019 relying on the fact that the order of 20.09.2018 passed by the Adjudicating Authority approving the Resolution Plan, did not provide such waiver or concession. The Adjudicating Authority held on 09.10.2020 in IA No. 05/2020 in CP (IB) No.20/GB/2017 that this application has also been filed for the same relief once again. The Adjudicating Authority after hearing both the parties observed that the expansion of business or increase of authorized capital is a decision of the Corporate Debtor. The Adjudicating Authority did not find any merit in the said application and rejected the same.

3. Brief facts of the case as submitted by the Appellant are as follows:
 - a. ACIL is the Corporate Debtor / the Company against which the CIRP was initiated by the Tribunal vide its order dated 26.10.2017.

- b. BRS is the Resolution Applicant whose plan was approved by Committee of Creditors (CoC) in its meeting held on 10.08.2018 with 100% voting.
- c. The Resolution Applicant / BRS plan was approved by the Adjudicating Authority on 20.09.2018 wherein Hon'ble Mr. Justice P.K.Saikia- Judicial Member has elaborately explained about the mandatory requirements and the Resolution plan in para 9 of its order dated 20.09.2018. He has provided for all the issues except the compliance of Chapter-IX -waival of fees on increased authorized capital/ restructure capital.
- d. The Resolution Applicant is insisting that once it is mentioned in the Resolution Plan whether it is explicitly approved or not, he is entitled for those remissions.
- e. Accordingly, he is seeking reliefs of waival of fees and stamp duty for such increasing capital by the new company.
- f. The Appellant has also submitted two citations as given below:

Ghanashyam Mishra and Sons Pvt. Ltd through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director and others reported as 2021 SCC Online 313- para 86 as given below:

“Para 86- As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and

the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.”

In the case Committee of Creditors of Essar Steel India Limited Through Authorized Signatory Vs. Satish Kumar Gupta Andors reported as 2019 SCC Online SC 1478- vide para 88 is stated below:

“Para 88 - For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these

reasons, the NCLAT judgment must also be set aside on this count.

4. The representative of RoC explained that the Ministry of Corporate Affairs has General Article No.12/2020 dated 30.03.2020 is applicable in this case & the same as stated below:

General Circular No. 12/2020

F.No. 02/01/2020-CI,V

**Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi-110001

Dated: 30/03/2020

To

*All Regional Directors,
All Registrar of Companies,
All Stakeholders*

Subject: Companies Fresh Start Scheme, 2020.

Sir(s),

In furtherance of the Ministry's Circular No. 11/2020, dated 24th March, 2020 and in order to facilitate the companies registered in India to make a fresh start on a clean slate, this Ministry has decided to take certain alleviative measures for the benefit of all companies.

*2. Companies Act, 2013 requires all companies to make annual statutory compliance by filing the Annual Return and Financial Statements. Apart from this, various other statements, documents, returns, etc are required to be filed on the MCA21 electronic registry within prescribed time limits. Filing fees for filing such statements, documents, returns, etc is governed by section 403 of the Companies Act, 2013 read with **Companies (Registration Offices and Fees) Rules 2014.***

3. The Ministry has received representations from various stakeholders requesting for grant of one-time opportunity, so as to enable them to complete their pending compliances by filing necessary documents in the MCA-21 registry including annual filings without being subject to a higher additional fees on account of any delay.

*4. In order to give such an opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry, the Central Government in exercise of powers conferred under section 460 read with section 403 of the **Companies Act, 2013** has decided to introduce a Scheme namely "**Companies Fresh Start Scheme, 2020 (CFSS-2020)** condoning the delay in filing the above mentioned documents with the Registrar, insofar as it relates to charging of additional fees, and granting of immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings. Only normal fees for filing of documents in the MCA-21 registry will be payable in such ease during the currency of CMS-2020 as per the provisions of section 403 read with Companies Registration Offices and Fees Rules, 2014 and section 460 of the Act..*

5. In addition, the scheme gives an opportunity to inactive companies to get their companies declared as 'dormant company' under section 455 of the Act by filing a simple application at a normal fee. The said provision enables inactive companies to remain on the register of the companies with minimal compliance requirements.

6. The details of the Scheme are as under:-

(i) The scheme shall come into force on the 01.04.2020 and shall remain in force till 30.09.2020

(ii) Definitions – In this Scheme, unless the context otherwise requires,

(a) ‘Act’ means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);

(b) “Company” means a company as defined in clause (20) of section 2 of the Companies Act, 2013;

(c) “defaulting company means a company defined under the Companies Act, 2013, and which has made a default in filing of any of the documents, statement, returns, etc including annual statutory documents on the MCA-21 registry.

(d) “Designated authority” means the Registrar of Companies having jurisdiction over the registered office of the company;

(e) “Immunity certificate’ means the certificate referred to in subparagraph of paragraph 6 of the Scheme;

(f) “inactive Company means a company as defined in Explanation (i) to sub-section (1) of section 455(1) of the Companies Act, 2013;

(iii) – Any ‘defaulting company” is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of this Scheme:

(iv) Manner of payment of normal fees for filing of belated documents and seeking immunity under the Scheme – Every defaulting company shall be required to pay normal fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable. Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents. Any other consequential proceedings, including any proceedings involving interests of any shareholder or any other person qua the company or its directors or key managerial personnel would not be covered by such Immunity For Example, under section 420, every company is required to file a return of allotment within the period provided therein. However, the proviso to section 42(4) also requires that the utilisation of money raised through private placement shall not be made unless the return of allotment has been filed in the registry. Now, the immunity under the Scheme shall only be available in respect of the proceeding for imposing penalty On account of delay in filing the return of allotment, but not on account of utilization of the money raised through private placement prior to the filing of the return with the registry.

The RoC has also submitted that in accordance with the provisions of the Act and related regulation they are charging the fees and stamp duty as applicable to the Company.

5. We have carefully gone through the submission made by the parties, the order of the Adjudicating Authority approving the Resolution Plan and the rejection of waiver of fees or stamp duty, Government instruction on the subject as furnished by the parties including the citations.

6. The Adjudicating Authority while approving the Resolution Plan has expressly covered the issues as required for the approval of the plan and nowhere such waiver is explicitly or implicitly provided for. We also do not see any reason that when a new company takes over and starts at a new slate and take certain management decision then everything cannot be exempted at a later stage as it is a business decision to expand the business and based on those probability of cash inflow, cash outflow is provisioned for.
7. We are in agreement with the Ld. Adjudicating Authority and do not find any merits in these appeals. Hence, we feel that the appeals deserve to be dismissed and are hereby dismissed. Pending application, if any, stands disposed of.

Interim order, if any, passed by this Appellate Tribunal stands vacated.

No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

09th August, 2021

New Delhi

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