NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

Principal Bench, New Delhi

Company Appeal (AT) (Ins) No. 378 of 2022

IN THE MATTER OF:

Anil Chhabria **...Appellant**
Vs.
SBICAP Trustee Company Ltd. & Ors. **....Respondents**
Present:

For Appellant:	**Mr. Kumar Anurag Singh, Zain A Khan, Advocates**
For Respondents:	**Ms. Aastha Kaushal and Mr. Amogh Joshi and Ms. Sneha Jaisingh, Mr. Anshul Singh, Advocates for R1 Mr. Yash Jariwala, Advocate for R2 Mr. Nausher Kohli and Mr. Jash Shah, Advocate for R3**

O R D E R

(Virtual Mode)

02.06.2022: This Appeal is preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') against the impugned order dated 28th March, 2022 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-V) in I.A. NO. 122 and 164 of 2022 C.P.(IB) No. 380(MAH)/2021 (for short "Impugned Order") whereby the application filed under Section 12A of the Code read with Rule 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (for short 'Regulation') seeking withdrawal of the 'Corporate Insolvency Resolution Process' (for short 'CIRP') against the Corporate Debtor (for short 'CD') on account of a settlement having been arrived at between the CD and the Financial Creditor (for short 'FC') on 05th January, 2022.

In brief, an Application under Section 7 of the Code was filed by the SBICAP Trustee Company Ltd (for short 'SBICAP')/FC before the

Adjudicating Authority. The Adjudicating Authority admitted the application and initiated CIRP on 06^{th} September, 2021 against the Respondent therein, namely, M/s.Radius Estate Projects Private Limited (for short 'Radius Private Limited'). Consequent thereupon, on 14^{th} September, 2021, the Insolvency Resolution Professional (for short 'IRP') issued a public announcement calling upon all the 'Creditors' to submit their proof of claim on or before 27^{th} September, 2021.

One of the 'Creditor' namely, 'Dewan Housing Finance Corporation Ltd' (DHFL), allegedly taken over by 'Piramal Capital and Housing Finance Limited' (Piramal), submitted the proof of their claim of Rs. 2343,90,99,483/-

The Appellant herein filed an Appeal i.e. CA(AT) (Ins) No. 820 of 2021 against the order dated 06^{th} September, 2021 before this 'Appellate Tribunal' in which, vide order dated 05^{th} January, 2022, in view of the settlement, said to have been arrived between SBICAP and Radius Private Limited, stay was granted regarding Constitution of 'Committee of Creditors' (for short CoC). The Appeal i.e. CA(AT) (Ins) No. 820 of 2021 was ultimately disposed of with the order dated 05.01.2022:

> *"It is represented on both sides that the matter has been settled between the parties and as such, the Learned Counsel for the Appellant seeks permission from this Tribunal to withdraw the instant Comp. App. (AT) (Ins) No. 820 of 2021. Acceding to his said request, the instant Comp. App. (AT) (Ins) No. 820 of 2021 is dismissed as withdrawn. No Costs. It is open to the parties to file the Settlement terms copy before the 'Adjudicating Authority'*

and to seek appropriate remedy in the manner known to Law and in accordance with Law. If they so desire/advised. All connected Interlocutory Applications are closed."

Apropos, the Financial Creditor - SBICAP moved an application to the IRP under Section 12A of the Code with Form FA and Consent form of 'Radius Private Limited'. On 12.01.2022 while the said application was pending, an application bearing no. IA No. 164 of 2022 came to be filed at the instance of Piramal to intervene in the said proceedings. It is pertinent to mention here that admittedly, post public announcement, the IRP had received 134 claims aggregating to Rs. 5326.66 Crores out of which Rs. 2632.86 Crores was admitted, claim of Rs. 398.56 Crores was not admitted and claim of Rs. 2305.36 crores were kept under verification. The application filed under Section 12A of the Code, bearing I.A No.122 of 2022, did not find favour and the same was dismissed by the Adjudicating Authority, vide impugned order dated 28th March, 2022 with the following observations:

"30.This bench is conscious of the fact that the IRP has received 134 claims aggregating to Rs. 5326.66 crores, out which claims of Rs. 2632.86 crores have been admitted, claims of Rs.398.56 crores were not admitted and claims of RS. 2305.36 crores were kept under verification, cannot be brushed aside. This raises a red flag and is of serious concern in view of the factual matrix that Radius Group is undergoing financial turmoil and if the withdrawal of CIRP is permitted, it will lead to multiplicity of proceedings

and the Creditors are seeking effective Resolution of the CD.

31. This Bench notes that there has been unconscionable settlement between the parties by virtue of the settlement agreement which proposes the payment of Rs. 3 crores as against the entire claim of Rs. 23,85,42,463/- and offers staggered payment to be paid in six instalments. Therefore, the purported settlement lacks bona fide. Hence, this Bench is of the opinion that the interest of the Creditors will not be protected if the withdrawal of the CIRP against the CD is allowed. The Bench has no doubt in its mind that considering the CIRP proceedings are in rem, the substantial claims of the Financial Creditors cannot be disregarded, in view of part settlement of a single Creditor."

Aggrieved against the impugned order, the present appeal has been preferred and counsel for the Appellant has argued that after the amendment in Rule 30A of the Regulations w.e.f. 25th July, 2019, the application under Section 12A can be made before the Adjudicating Authority in two situations i.e. before the Constitution of CoC and after the Constitution of CoC. It is submitted that Section 12A only enables the Adjudicating Authority to allow the withdrawal of the application, admitted under Section 7, 9 or 10 of the Code, if an application is made by the Applicant with the approval of CoC by voting share of 90%.

It is further submitted that in the present case CoC was not constituted. Therefore, the rigor of voting share of 90% will not apply and thus the application was filed in view of Rule 30A(1)(a), 3 & 6 of the Regulations which has not been looked into by the Adjudicating Authority while passing the impugned order. Learned counsel for the Appellant has further submitted that the findings recorded by the Adjudicating Authority in para 31 of the impugned order are also unwarranted and unfounded.

It is submitted that there is only one creditor who had filed the application under Section 7 of the Code, agreed to settle the financial dispute with the CD by staggering the amount due to be paid in stages and had not made any complaint about bona fide of the settlement arrived at, the observations of the Adjudicating Authority that the settlements lack bona fide is totally unwarranted and uncalled for. Counsel for the Appellant, in support of his submission has relied upon the decisions of this Appellate Tribunal in the case of Gouri Prasad Goenka Vs. Surenda Kumar Agarwal & Anr. CA(AT)(Ins) No. 105 of 2020 and Arun Tejpal Vs. Rakesh Yadav CA(AT)(Ins) No. 298 of 2021.

In reply, counsel appearing on behalf of the Intervener has vehemently argued that once the CIRP has been initiated, all the creditors have a right to lodge their claim before the IRP and in that process, they do not require to file any separate application under Section 7 of the Code. It is also submitted that the intervener has a major part of recovery running into Rs. 2444/- Crore approx. which constitutes 60% part of the total outstanding to be paid by the CD. He has refereed to the decision of Swiss Ribbons Pvt. Ltd. and Anr. Vs Union of India and Ors. 2019 4 SCC 217 to contend that once the

Code gets triggered by admission of a Creditors petition under Section 7 to 9, the proceedings before the Adjudicating Authority, being a collective proceeding, is proceedings in rem. He also submitted that ignoring claim of the intervener at this stage and asking him to take his remedy under Section 7 of the Code would cause multiplicity of litigation and also lift the moratorium which has been created on account of the appointment of IRP with the initiation of the CIRP. The anxiety of the intervener is that the CD may not dispose of his assets in order to deprive the Financial Creditor like the Intervener who is to recover huge amount of the dues.

We have heard learned counsels for the parties and perused the records.

At the outset, we may make it clear that we are not touching the inter se merits of the issues raised by both the parties before us as we are not satisfied with the finding recorded by the 'Adjudicating Authority' in para 31 of the impugned order wherein it has been observed that application filed under Section 12A lacks bona fide without their being any material before it.

Secondly, the 'Adjudicating Authority' has not taken into consideration Regulation 30-A and discussed its import in a case like in hand in which the counsel for the Appellant has vehemently argued that Application filed before the constitution of the CoC has to be treated differently and the Adjudicating Authority is not supposed to sway with the amount involved which is to be recovered by various claimants who are already before the IRP.

Therefore, in the facts and circumstances of the case, we deem just and expedient to set aside the impugned order dated 28th March, 2022 and remand the case back to the Adjudicating Authority with a direction to decide it once again after taking into consideration the import of Regulation 30A which has been substituted in the Regulations w.e.f 25.07.2019 and has come post decision in Swiss Ribbion (supra).

The parties are directed to appear before the Adjudicating Authority on **13th June, 2022**. The Adjudicating Authority is further directed to decide the matter afresh as early as possible.

It is made clear that we have not expressed any opinion on the merits of the case. The Appeal is allowed with the aforenoted direction.

The Registry is directed to send a copy of this order to the 'Designated Registrar' of concerned 'Adjudicating Authority'. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

[Dr. Ashok Kumar Mishra]
Member (Technical)

Raushan/RR