NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 97 of 2023

IN THE MATTER OF:

Rohit Jindal **....Appellant**

Vs.

Fanendra Harakchand Munot **....Respondents**
Resolution Professional of Shree Siddhi Vinayak Ispat Pvt. Ltd. & Ors.

Present:
For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Shikhil Suri, Ms. Mahima Agarwal and Ms. Vidhi Kapoor, Advocates**
For Respondents: **Ms. Madhur Jhavar, Advocate for RP/R-1.**

O R D E R

30.01.2023: Heard Learned Senior Counsel Mr. Krishnendu Datta appearing for the Appellant and Learned Counsel appearing for the Resolution Professional.

2. This appeal has been filed against the order dated 23.12.2022 by which order Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) has approved the Resolution Plan. The Appellant is the suspended Director of the Corporate Debtor who aggrieved by the approval of plan has come in this appeal. Mr. Krishnendu Datta has raised following three submissions:

i. Learned Counsel for the Appellant submits that in the plan the statutory authority have not been treated as secured creditors and the allocation of the amount to the statutory authority has been done as an Operational

Creditor which is contrary to the Judgment of Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Limited [2022 SCC Online SC 1162].*

ii. He submits that the valuation of the assets is on the lower side as compared to the valuation which was under taken by the Bank one year before the initiation of the CIRP.

iii. He submits that the Andhra Bank, Bank of Baroda, Punjab National Bank and Oriental Bank of Commerce has been treated as unsecured Financial Creditor on the basis of Corporate Guarantee which guarantee was never invoked hence they ought not to have been accepted as unsecured Financial Creditors.

3. Learned Counsel for the Resolution Professional refuting the submission of the Appellant submits that appellant being a suspended Director has no locus to raise the aforesaid issue. It is submitted that appellant was part of the meeting of the CoC and these issues were never raised before the Committee of Creditors. It is submitted that plan remained pending for two years before the Adjudicating Authority and could be approved only on 23.12.2022 and this appeal is nothing but to thwart the implementation of the plan.

4. We have considered the submission of the counsel for the appellant and perused the record.

5. Coming to the first submission of the counsel for the appellant that statutory authority has not been treated as secured creditors and he submits that the said question is a question of law which can be raised by anyone challenging the plan because the approval of the plan has to be in accordance

with law. We have proceeded to examine the submission of the counsel for the appellant on merits. The judgment which has been relied by the counsel for the appellant in *State Tax Officer vs. Rainbow Papers Limited* was a case where the appellants i.e. State Tax Officer has filed an I.A. No. 224 of 2018 before the Adjudicating Authority claiming that they have first charge and the said application was rejected by the Adjudicating Authority against which the matter was taken in the appeal and thereafter appeal was filed before the Hon'ble Supreme Court. The said fact has been being noted in paragraph 1 of the judgment of the Hon'ble Supreme Court, which is to the following effect:

> *"These appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016, hereinafter referred to as 'IBC', is against a judgment and order dated 19th December, 2019, passed by the National Company Law Appellate Tribunal (NCLAT) dismissing Company Appeal (AT)(Insolvency) No. 404 of 2019 filed by Appellant, against an order dated 27th February 2019 of the Adjudicating Authority, rejecting the application being I.A No.224/271/272/337 of 2018 and P-01 of 2019 in C.P. No. (IB) 88/9/NCLT/AHM/2017 filed by the appellants and holding that the Government cannot claim first charge over the property of the Corporate Debtor, as Section 48 of the Gujarat Value Added Tax, 2003, hereinafter referred to as the "GVAT Act", which provides for first charge on the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty etc. under the said GVAT Act, cannot prevail over Section 53 of the IBC."*

6. The present is the case where the statutory authorities have not come up in the appeal raising question with regard to their treatment as Operational Creditors. The judgment of Hon'ble Supreme Court was in the background that when the statutory authorities were questioning the treatment of the statutory authority as not secured creditors, the Hon'ble Supreme Court went into the issue and held that they are entitled to be treated as secured creditors. We, thus, at the instant of the appellant, cannot permit the appellant to assail the approval of the plan on the said ground.

7. The second submission of counsel for the appellant is with regard to valuation of the assets, the valuation of the assets was undertaken by the Resolution Professional in accordance with the CIRP Regulation, 2016. The promoters if they were aggrieved by the valuation taken by the IRP/RP and the valuation received before the CoC, the course open for the promoters was to approach the Adjudicating Authority questioning the valuation at the relevant time when the question could have been gone into and examined before Form-G was issued and Form-H has been submitted by the Resolution Professional on the basis of the valuation undertaken in the process. At this stage, appellant cannot be allowed to raise the question of valuation.

8. Coming to the third submission of the appellant that the Andhra Bank, Punjab National Bank and Oriental Bank of Commerce could not be treated as unsecured creditors since the corporate guarantee on basis of which they have been treated as unsecured creditors was never invoked, in the resolution process the claim submitted by the aforesaid banks as unsecured creditors was

accepted by the RP, appropriate stage for challenging the acceptance of the claim was to file an I.A. before the Adjudicating Authority which was not done by the appellant or any one. At this stage, appellant cannot be allowed to raise the question of admission of the claim of the aforesaid banks as unsecured creditor.

9. We do not find any good ground to interfere in the order of the Adjudicating Authority. There is no substance in any of the submissions of the appellant. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

sa/nn