

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.315/2024
(IA Nos.836 & 837/2024)

(Arising out of the 'Impugned Order' dated 19.07.2024 in IA(IBC)1285/2024
in I.A. No.4/2024 in I.A. No. 590/2023 in CP(IB)129/95/HDB/2022, in
IA(IBC)1286/2024 in IA 1792/2023 in IA (IBC) 590/2023 in CP(IB) No.
129/95/HDB/2022 and in IA(IBC)/1287 in IA(IBC) 590/2023 in
CP(IB)129/95/HDB/2022 passed by the 'Adjudicating
Authority', (National Company Law Tribunal', Hyderabad Bench)

IN THE MATTER OF:

TUMMALA SRI GANESH
H. No. 7-1-29/B/13, Leelanagar,
Begumpet, Hyderabad – 500 073.
V

... Appellant

STATE BANK OF INDIA
Stressed Asset Management Branch
D. No. 5-9-76, 2nd Floor, Prabhat
Towers Chappel Road, Opposite to SBI
Amaravathi LHO Gunfoundry Abids,
Hyderabad – 500 001

... 1st Respondent

MALIGI MADHUSUDHANA REDDY
Resolution Professional of
Mr. Tummala SRI GANESH
M M R Lion Corp, 4th Floor,
HSR Eden, Beside Cream Stone,
Road No.2, Banjara Hills,
Hyderabad - 500 034

... 2nd Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.316/2024
(IA Nos.839 & 840/2024)

(Arising out of the 'Impugned Order' dated 19.07.2024 in
I.A.(IBC)/1291(HYD)/2024 in I.A.(IBC)/02(HYD)/2024 in
I.A.(IBC)/591(HYD)/2023 in C.P. (I.B.) No. 131/95/HDB/2022,
I.A.(IBC)/1292(HYD)/2024 in I.A.(IBC)/1790(HYD)/2023 in
I.A.(IBC)/591(HYD)/2023 in C.P. (I.B.) No. 131/95/HDB/2022 and
I.A.(IBC)/1293(HYD)/2024 in I.A.(IBC)/591(HYD)/2023 in in C.P.

(I.B.) No. 131/95/HDB/2022, passed by the `Adjudicating Authority', (National Company Law Tribunal', Hyderabad Bench)

IN THE MATTER OF:

TUMMALA YUGANDHAR

H. No. 7-1-29/B/13, Leelanagar,
Begumpet, Hyderabad – 500 073.

... Appellant

V

STATE BANK OF INDIA

Stressed Asset Management Branch

D. No. 5-9-76, 2nd Floor, Prabhat

Towers Chappel Road, Opposite to SBI

Amaravathi LHO Gunfoundry Abids,

Hyderabad – 500 001

... 1st Respondent

MALIGI MADHUSUDHANA REDDY

Resolution Professional of

Mr. Tummala SRI GANESH

M M R Lion Corp, 4th Floor,

HSR Eden, Beside Cream Stone,

Road No.2, Banjara Hills,

Hyderabad - 500 034

... 2nd Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.319/2024

(IA Nos.846 & 847/2024)

(Arising out of the `Impugned Order' dated 19.07.2024 in

I.A.(IBC)/1288(HYD)/2024 in I.A.(IBC)/03(HYD)/2024 in

I.A.(IBC)/589(HYD)/2023 in C.P. (I.B.) No. 126/95/HDB/2022,

I.A.(IBC)/1289(HYD)/2024 in I.A.(IBC)/1793(HYD)/2023 in

I.A.(IBC)/589(HYD)/2023 in C.P. (I.B.) No. 126/95/HDB/2022 and

I.A.(IBC)/1290(HYD)/2024 in I.A.(IBC)/589(HYD)/2023 in in C.P.

(I.B.) No. 126/95/HDB/2022, passed by the `Adjudicating

Authority', (National Company Law Tribunal', Hyderabad Bench)

IN THE MATTER OF:

TUMMALA PAVANI

H. No. 7-1-29/B/13, Leelanagar,
Begumpet, Hyderabad – 500 073.

... Appellant

V

STATE BANK OF INDIA

Stressed Asset Management Branch
D. No. 5-9-76, 2nd Floor, Prabhat
Towers Chappel Road, Opposite to SBI
Amaravathi LHO Gunfoundry Abids,
Hyderabad – 500 001

... 1st Respondent

MALIGI MADHUSUDHANA REDDY
Resolution Professional of
Mr. Tummala SRI GANESH
M M R Lion Corp, 4th Floor,
HSR Eden, Beside Cream Stone,
Road No.2, Banjara Hills,
Hyderabad - 500 034

... 2nd Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.320/2024
(IA Nos.848 & 849/2024)

(Arising out of the 'Impugned Order' dated 19.07.2024 in
I.A.(IBC)/1294(HYD)/2024 in I.A.(IBC)/05(HYD)/2024 in
I.A.(IBC)/587(HYD)/2023 in C.P. (I.B.) No. 127/95/HDB/2022,
I.A.(IBC)/1295(HYD)/2024 in I.A.(IBC)/1791(HYD)/2023 in
I.A.(IBC)/587(HYD)/2023 in C.P. (I.B.) No. 127/95/HDB/2022 and
I.A.(IBC)/1296(HYD)/2024 in I.A.(IBC)/587(HYD)/2023 in in C.P.
(I.B.) No. 127/95/HDB/2022, passed by the 'Adjudicating
Authority', (National Company Law Tribunal', Hyderabad Bench)

IN THE MATTER OF:

TUMMALA DEVENDER
H. No. 7-1-29/B/13, Leelanagar,
Begumpet, Hyderabad – 500 073.

... Appellant

V

STATE BANK OF INDIA
Stressed Asset Management Branch
D. No. 5-9-76, 2nd Floor, Prabhat
Towers Chappel Road, Opposite to SBI
Amaravathi LHO Gunfoundry Abids,
Hyderabad – 500 001

... 1st Respondent

MALIGI MADHUSUDHANA REDDY
Resolution Professional of
Mr. Tummala SRI GANESH
M M R Lion Corp, 4th Floor,

HSR Eden, Beside Cream Stone,
Road No.2, Banjara Hills,
Hyderabad - 500 034

... 2nd Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.321/2024
(IA Nos.850 & 851/2024)

(Arising out of the 'Impugned Order' dated 19.07.2024 in I.A.(IBC)/137(HYD)/2024 in I.A.(IBC)/1782(HYD)/2024 in I.A.(IBC)/588(HYD)/2023 in C.P. (I.B.) No. 111/95/HDB/2022, I.A.(IBC)/138(HYD)/2024 in I.A.(IBC)/1782(HYD)/2023 in I.A.(IBC)/588(HYD)/2023 in C.P. (I.B.) No. 111/95/HDB/2022, I.A.(IBC)/695(HYD)/2024 in I.A.(IBC)/588(HYD)/2023 in in C.P. (I.B.) No. 111/95/HDB/2022 and I.A.(I.B.C.)/818(HYD)/2024 in C.P.(IB) No. 111 of 2022, passed by the 'Adjudicating Authority', (National Company Law Tribunal', Hyderabad Bench)

IN THE MATTER OF:

TUMMALA PADMAVATHI
H. No. 7-1-29/B/13, Leelanagar,
Begumpet, Hyderabad – 500 073.
V

... Appellant

STATE BANK OF INDIA
Stressed Asset Management Branch
D. No. 5-9-76, 2nd Floor, Prabhat
Towers Chappel Road, Opposite to SBI
Amaravathi LHO Gunfoundry Abids,
Hyderabad – 500 001

... 1st Respondent

MALIGI MADHUSUDHANA REDDY
Resolution Professional of
Mr. Tummala SRI GANESH
M M R Lion Corp, 4th Floor,
HSR Eden, Beside Cream Stone,
Road No.2, Banjara Hills,
Hyderabad - 500 034

... 2nd Respondent

Present:

For Appellant

: Mr. P.H. Arvindh Pandian, Senior Advocate
For Mr. C.V. Shailandhran & Mr. Ujjwal Jain,
Advocates

For Respondent No.1 : Mr. Pranava Charan, Advocate

For Respondent No.2 : Mr. Maligi Madhudhana Reddy, RP

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

These are a bunch of five Company Appeals. The precise facts and law involved in each of these appeals since being common in nature they are being decided together.

- 1. Comp App (AT) (CH) (Ins) No.315/2024** has been preferred by the present appellant being aggrieved against the common Impugned Order dated 19.07.2024, as it was rendered in IA(IBC)/1285/2024 in IA/4/2024, as well as, in IA(IBC)1286/2024 in IA/1792/2024 and in IA/1287/2024, (all in IA/590/2023 in CP(IB) No.129/95/HDB/2022).
- 2. Comp App (AT) (CH) (Ins) No.316/2024** has been preferred by the present appellant being aggrieved against the common Impugned Order dated 19.07.2024, as it was rendered in IA(IBC)1291/2024 in IA(IBC)/2(HYD)/2024, in IA(IBC)1292/2024 in IA No.1790/2023 and in IA/1293 (all in IA(IBC) 591/2023 in CP(IB) No.131/95/HDB/2022).
- 3. Comp App (AT) (CH) (Ins) No.319/2024** has been preferred by the present appellant being aggrieved against the common Impugned Order dated 19.07.2024, as it was rendered in IA(IBC)1288(HYD)/2024 in IA(IBC)/03(HYD)/2024, in IA(IBC)1289(HYD)/2024

in IA(IBC)/1793(HYD)/2023 and in IA/1290/2024 (all in IA(IBC)/589(HYD)/2023 in CP(IB) No.126/2022).

4. Comp App (AT) (CH) (Ins) No.320/2024 has been preferred by the present appellant being aggrieved against the common Impugned Order dated 19.07.2024, as it was rendered in IA(IBC)1294/2024 in IA No.5/2024, in IA(IBC)1295/2024 in IA No.1791/2023 and in IA/1296/2024 (all in IA(IBC)/587/2023 in CP(IB) No.127/95/HDB/2022).

5. Comp App (AT) (CH) (Ins) No.321/2024 has been preferred by the present appellant being aggrieved against the common Impugned Order dated 19.07.2024, as it was rendered in IA(IBC)137/2024 in IA No.1782/2023, in IA(IBC)138/2024 in IA No.1782/2023 and in IA/695/2024 (all in IA No.588/2023 in CP(IB) No.111/95/HDB/2022).

Facts of the cases as involved are given below:-

Each Appellant had preferred 3 Interlocutory Applications each before NCLT, Hyderabad on which a common impugned order has been passed on 19.07.2024 rejecting those Applications. Out of the three applications thus preferred, two sought to recall an earlier order passed by the NCLT on 07.02.2024 under section 118(3) of I&B Code confirming that the repayment plans have not been completely implemented. The third application prayed for issue of directions from the Tribunal to the Resolution Professional and the Financial Creditor to

accept the money which was due and payable under the repayment plan, which was submitted by the appellant herein and as it stood approved by the Hon'ble NCLT, vide its order dated 13.09.2023, as rendered in IA No.587, 588, 589,590 & 591 of 2023 in the respective Company Petitions.

The appellants happen to be the personal guarantors as per the Guarantee Agreement and consequential Supplemental Guarantee Deed that were executed by them in favour of the Respondent No.1(the bank in question) in order to honour the obligations of the principal borrower i.e., Chadalvada Infratech Limited. The principal borrower/debtor, owing to the default committed in remittance of its financial dues payable, was admitted into the Corporate Insolvency Resolution Process by a judgment rendered on 23.09.2021 in CP(IB) No.1/7/HDB/2020.

The IBBI (Insolvency Resolution Process for personal guarantors for Corporate Debtor) Regulations 2019, was brought into effect, by a gazette notification No.2019-20/GN/REG050, with effect from 20.11.2019. Under the said Regulations, demand notice was raised, as against the appellants by the Respondent bank in the capacity of being the personal guarantors as per the terms of Regulations of 2019, by issuance of demand note on 21.10.2021. When despite of the demand raised by Respondent No.2, when the amount was not remitted, the 1st Respondent (i.e., Bank) / the financial creditor filed Company Petitions being CP(IB)/129/95/HDB/2022, CP(IB)/131/95/HDB/2022,

CP(IB)/126/95/HDB/2022, CP(IB)127/95/HDB/2022 and CP(IB)/111/95/HDB/2022 against the respective Personal Guarantors / Appellants herein. Upon hearing of the aforesaid Company Petitions preferred under Section 95 of the I & B Code, seeking initiation of the Insolvency Resolution Proceedings, against the respective personal guarantors, NCLT, Hyderabad Bench granted interim moratorium an order dated 20.04.2022, appointed the Resolution Professional and directed him to submit report under section 99, within a period of ten days and also directed the FC to issue notice to the personal guarantors / appellants herein.

The proceedings of the aforesaid Company Petition proceeded ex-parte against the appellant. Consequentially, the Respondent No.2 filed a report recommending admission to the IRP Proceedings. NCLT delivered its judgement on 21.06.2022 admitting the petitions preferred under section 95 of the Code and directed the RP to continue further process in relation to preparation of a repayment plan in consultation with the PGs/ Appellants herein and the FC / Respondent.1 herein.

The RP/ Respondent No.2 herein accordingly issued a public notice inviting claims from his creditors by way of issuance of publication of 08.07.2022, setting a deadline of receipt of such claims by 28.07.2022. Further, by an email communication of 26.07.2022, the RP asked the appellants herein, to prepare the repayment plan. The Appellants submitted individual repayment

plans on 15.08.2022, and accordingly, the 2nd respondent placed the repayment plan along with his report before NCLT, Hyderabad on 19.08.2022 for grant of its approval. However, after holding joint consultation with the creditor and personal guarantors and after detailed deliberations, a revised repayment plan was prepared and the same was put up in the respective company petitions before the Hon'ble NCLT on 26.12.2022 for approval with an application praying for condonation of delay. Some time was consumed in reconciling the differences in the application numbers, in dealing with the application seeking to withdraw the repayment plan and in dealing with the statement by FC to the effect that its abstention will mean a vote of rejection. Ultimately, on 13.09.2023 the NCLT, Hyderabad Bench approved the repayment plans submitted before it, of the respective personal guarantors / appellants herein in IAs 589, 590, 591, 587 & 588 of 2023 and copy of such orders was made available on 27.09.2023. The repayment plans thus approved were directed to be implemented within the time frame as provided therein, consequently by an order of 29.09.2023.

In order to implement the repayment plan, the Resolution Professional shared the bank details of the FC to the personal guarantors and requested to remit the amount in terms of the approved repayment plan through his email correspondence dated 16.10.2023 and 25.10.2023. Owing to the apparent non-compliance of the conditions of the approved repayment plan and non-remittance of the amount within the time schedule, the RP/ Respondent No.2 herein

submitted his report, that the personal guarantors had failed to make the repayment as per the terms of the plan, and in the time schedule framed in terms of the repayment plan, under section 118(2) of the Code before the NCLT, Hyderabad Bench on 31.10.2023 which was registered on 15.11.2023. The NCLT, Hyderabad Bench vide an order of 11.12.2023 had reserved the orders on the respective IAs filed by RP in this regard. The RP sent notice under Regulation 20(1) of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019 on failure to implement the repayment plan 28.11.2023. Consequent to it, when despite of such notice, the amount was not remitted, RP filed another set of IAs under section 118(2) of the Code submitting before NCLT that the repayment plan has not been implemented in full on 20.12.2023. The Adjudicating Authority / NCLT after a number of hearings, issued orders under section 118(3) of the Code on 07.02.2024 on the two sets of IAs filed by the RP before it under section 118(2) of the Code and by such orders, it took on record the report of RP noting failure of the Repayment Plan and granted liberty to the FC to file bankruptcy application against the Personal Guarantors / Appellants herein.

Accordingly, the FC / Respondent No.2 herein filed IA(IBC)/1333(HYD)/2024 before the NCLT, Hyderabad Bench on 29.03.2024 seeking initiation of “**bankruptcy process**” against the personal guarantors (the appellants).

The Appellants / personal guarantors, upon acquiring knowledge of the application having been preferred by the 1st Respondent, for initiating the bankruptcy process, filed Applications individually before NCLT, Hyderabad being IA 1287, 1290, 1293, 1296 and 695 of 2024, praying for acceptance of a certain amount towards fulfilment of the conditions of the repayment plan and to direct the Respondent / Bank to accept it. Further, the Appellants also filed 2 Recall Applications each before the NCLT on 29.04.2024, being IA 1288 & 1289, 1285 & 1286, 1291 & 1292, 1294 & 1295 and 137 & 138 of 2024, seeking to recall the order passed by it on 07.02.2024 which granted liberty to the Respondent-1 / Bank to initiate bankruptcy proceedings.

In a set of common orders dated 19.07.2024 passed against each individual personal guarantor / Appellant herein, NCLT rejected the IAs filed before it as described above. It is these orders which are being challenged in the instant Appeals.

It is the contention of the Appellants that the insolvency resolution process was not conducted as per the provisions of the Code and due process has not been followed, that the bank account details were shared at a very belated stage, that notice under Rule 20(1) was not served on them prior to filing of the report of RP u/s 118(2) of the Code, that 2 sets of reports u/s 118(2) of the Code were filed at two different dates before NCLT, that they were not given sufficient opportunities to demonstrate these shortcomings in the process followed leading to issue of

orders u/s 118(3) of the Code, that the Bank did not respond to their offer of repayment of the entire amount under repayment plan which was made after submission of the report of RP u/s 118(2) of the Code, that the same Bank accepted the repayment done by Mr. K. Ramesh and Mr. Suresh Reddy after the repayment plan period was over while it denied to do so in their case, that the Hon'ble NCLT failed to take cognisance of the bona fides and sincerity of the Tummala family personal guarantors, that it erred in kickstarting the bankruptcy proceedings under chapter IV of Part III of the Code despite taking cognisance of the offer of repayment in form of a demand draft by the Appellants and that it failed to recall its own order dated 07.02.2024 despite the Appellants showing a number of shortcomings in the documents submitted before it which led to pronouncement of such order, even though it had powers to do so.

In this context, it is seen from the records that the five personal guarantors / appellants herein apparently have not complied with the conditions and timelines of the repayment plan, despite of the communications which were sent by the Resolution Professional.

Under law the repayment plan will have to be regulated in accordance with Regulations 20 of IBBI Regulations and the stipulated time frame has to be strictly adhered to and in an event of the breach of repayment, by the personal guarantor, the legal consequences would automatically follow as per the provisions contained under Section 118 of the I & B Code. As per Section 118,

the plan would be deemed to have come to an end, if it has not been fully implemented. Section 118 contemplates that, when the Resolution Professional finds that, the schedule of the approved repayment plan has not been complied with, and he submits his report accordingly under Subsection (2) of Section 118 of the I & B Code, the Learned Adjudicating Authority is legally supposed to pass an order on the basis of the report thus submitted, fortifying the aspect of non-implementation of the repayment schedule and explicitly stating that the repayment plan has not been fully implemented. The consequential effect of such order will be the same as that under Section 115(2) where the Learned Adjudicating Authority rejects the repayment plan as per the covenants of Section 114 and it entitles the creditor for filing of an application under Section 121 for initiation of the process of “bankruptcy”. Section 118 and its implication in the instant appeals, becomes an important issue which needs to be considered. The provisions of section 118 of the Code is extracted hereunder: -

“118. Repayment plan coming to end prematurely – (1) A repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan.

(2) Where a repayment plan comes to an end prematurely under this section, the resolution professional shall submit a report to the Adjudicating Authority which shall state –

(a) the receipt and payments made in pursuance of the repayment plan;

(b) the reasons for premature end of the repayment plan; and

(c) the details of the creditors whose claims have not been fully satisfied.

(3) The Adjudicating Authority shall pass an order on the basis of the report submitted under sub-section (2) by the resolution professional that the repayment plan has not been completely implemented.

(4) The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy order under Chapter IV.

(5) The Adjudicating Authority shall forward to the persons bound by the repayment plan under section 115, a copy of the –

(a) report submitted by the resolution professional to the Adjudicating Authority under sub-section (2); and

(b) order passed by the Adjudicating Authority under sub-section (3).

(6) The Adjudicating Authority shall forward a copy of the order passed under sub-section (4) to the Board, for the purposes of recording entries in the registry referred to in section 196”.

The implications of these provisions would be dealt with hereinafter. However at this stage it will be necessary to mention the parameters which are prescribed for initiation of a “bankruptcy” order under Section 121. It provides that in an eventuality of an order passed by an Adjudicating Authority under Sections 100(4), or 115(2), or 118(3), a bankruptcy application could be filed within three months from the date of order passed by the Learned Adjudicating Authority under Subsection (1) of Section 121. Section 121 is extracted hereunder: -

“121.Application for bankruptcy – (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely: -

(a) Where an order has been passed by an Adjudicating Authority under sub-section (4) of section 100; or

(b) Where an order has been passed by an Adjudicating Authority under sub-section (2) of section 115; or

(c) Where an order has been passed by an Adjudicating Authority under sub-section (3) of section 118.

(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners”.

In the instant appeals, the Appellants have sought to challenge a set of orders of NCLT, rejecting their applications to recall a set of Orders passed on 07.02.2024 on the respective IAs recording the failure of repayment plan and granting liberty to the creditor to initiate an application under Section 121, for the purpose of initiation of the bankruptcy proceedings as against the personal guarantors due to their failure to pay the amount under the repayment plan , under the deeming clause of Section 118 of the I & B Code.

The basis of the aforesaid orders of NCLT dated 07.02.2024 was that the Personal Guarantors / appellants of these Company Appeals have clearly failed to comply with the conditions of depositing the amount as per the repayment plan and that, since there was a breach of repayment plan as contemplated under

Regulation 20 of IBBI (Insolvency Resolution Process for Personal Guarantors) 2019, the RP was fully within his rights to submit his report u/s 118(2) of the Code. Further in the Order passed on 07.02.2024, granting liberty to initiate Section 121, detailed reasoning has been given as to why the application preferred by the RP was considered and allowed. Part of the order of 07.02.2024 becomes relevant to be extracted to establish as to under what conditions the recall application as preferred by the appellants deserve rejection.

What has come on record and apparent from the documents too, including the order sheet of the proceedings of NCLT on 02.01.2024, 08.01.2024 & 07.02.2024 that despite consistent requests made to the personal guarantors/the appellants herein, they have failed to implement the repayment plan and this failure has resulted into declaration of the failure of Repayment Plan and consequent initiation of bankruptcy process. The Tribunal has clearly observed that, despite of opportunities given for implementation of the repayment plan, it was not followed and that, there was no contravention of Regulation 20 and accordingly, it has denied to recall the order dated 07.02.2024 thereby granting liberty to initiate Section 121, “bankruptcy process” against the personal guarantors. It is this order (i.e., 19.07.2024) which is common in all 5 company appeals under consideration here. It goes without saying that Section 118 of the Code has a self-contained deeming clause that, when there is a failure to make the payment as per the repayment plan, the said plan which earlier stood approved

by the Learned Adjudicating Authority on 13.09.2023 under section 114(1), will cease to have its life and consequentially owing to the deeming clause, the grant of liberty to the creditor to initiate action under Section 121 cannot be faulted in any manner.

The Learned Counsel for the Appellants submits that in case of 2 other personal guarantors, the stipulations of the repayment plan have been diluted and the repayment amount has been accepted even after the lapse of the time period prescribed in the respective repayment plans. Particularly he emphasizes upon the words “All persons” as referred to under Section 118 (1) and he submits that, when Subsection (1) of Section 118 refers to “all persons”, it will mean that the Appellants should be meted out with the same treatment, as it is alleged to have been extended to other personal guarantors to whom the liberty was granted, by accepting the money even after the lapse of the period under the repayment plan. This “negative parity”, is a philosophy which is un heard of in the judicial proceedings. Particularly, when the inference which could be drawn by the aforesaid argument would be that, the appellant will be deemed to admit that he has committed a default in the repayment plan, as approved on 13.09.2023 and had not paid the amount despite repeated communications imparted by the Resolution Professional for payment of the same and thus “negative parity”, cannot be a basis to dilute the provisions of Section 121 of the I & B Code, in view of the deeming clause contained under Subsection (1) of Section 118 of the

I & B Code, due to non-fulfilment of the mandatory condition of implementation of the repayment plan within the time period mentioned in the repayment plan itself.

The Appellants submit that, in furtherance of the repayment plan of 13.09.2023, though admittedly there had been a default in adhering to the repayment schedule, they had remitted 25% of the amount as on 27.10.2023 and this should be taken as a proof of their sincerity and adherence to the repayment plan. However this cannot be taken as basis for granting the liberty and latitude to escape from the implication of Section 118 and the consequential action under Section 121 of the I & B Code, for the purpose of initiation of the bankruptcy process.

Payment of the initial instalments cannot give a leverage or an excuse to commit subsequent default in the future repayment schedule given under the repayment plan. The initial payment which was made on 27.10.2023 and it can at the best be interpreted to express the bonafides of the Appellants towards acceptance and enforcement of the repayment plan, but it cannot be used as a foundation to grant liberty to the appellants to commit default in honouring the terms and conditions of the repayment plan.

Consequentially, the reasons which have been assigned in the Impugned Orders for declining to recall the Orders passed on 07.02.2024, declaring the premature end of repayment plan and granting liberty to proceed u/s 121 of the

Code, do not suffer from any apparent legal vices which could call for any interference by the tribunal in the exercise of the Appellate Jurisdiction, in the absence of there being any apparent factual or legal flaw. This judgment would be taken as to be the reason for the dismissal of Comp App (AT) (CH) (Ins) Nos.315, 316, 319, 320 & 321/2024, all pending applications would stand disposed of.

Let the copy of this judgment be placed on all these accompanying Company Appeals.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM