

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 194/2023
(IA Nos. 629 & 630/2023)
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 27/06/2023 in IA
(IBC)/380(CHE)/2023, IA(IBC)/490(CHE)/2023,
IA(IBC)/1023(CHE)/2023 & INV.P/IBC/5(CHE)/2023 in IBA/976/2019,
passed by the ‘Adjudicating Authority’, (National Company Law
Tribunal, Special Bench – I, Chennai)

In the matter of:

Dr. Palani G Periasamy **...Appellant**
V
CA M. Suresh Kumar Liquidator,
Dharani Sugars and Chemicals Limited & Anr. **...Respondents**

Present :

For Appellant : Sr. Adv. P H Aravind Pandian a/w Adv. Mr. J. Manivannan
For Respondent : Mr. AG Sathyanarayana for R1,Liquidator
Mr. B Dhanaraj, Adv. for R2

ORDER

(Virtual Mode)

Per: Justice Rakesh Kumar Jain:

11/07/2023: This appeal is filed by the Promoter and erstwhile Director of Dharani Sugars & Chemicals Limited, assailing the order dated 27.06.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Special Bench – 1, Chennai) by which the applications i.e. I.A.(IBC)/380/CHE/2023, I.A.(IBC)/490/CHE/2023 and INV. P/5(CHE)/2023 filed in IBA/976/2019 by the RP seeking extension of CIRP beyond the period of 330 days has been dismissed and allowed

I.A.(IBC)/1023/CHE/2023 filed by the Resolution Professional for liquidation of the Corporate Debtor.

2 Shorn of unnecessary details, the CIRP proceedings in respect of Dharani Sugars and Chemicals Limited (Corporate Debtor) was initiated on 29.07.2021 and S. Rajendran was appointed as the Interim Resolution Professional. The order dated 29.07.2021 was challenged by an appeal i.e. CA (AT) (Ins) No. 208 of 2021. The NCLAT passed an order on 27.08.2021 which is reproduced as under:-

“Since the main instant Company Appeal is taken up for Hearing, the I.A.No.418 of 2021 filed by the ‘Appellant’/‘Petitioner’ seeking urgent hearing of the main Company Appeal stands closed.

Heard the Learned Counsel Mr.T.K. Bhaskar, Advocate appearing for the ‘Appellant’ in the present main Company Appeal.

At this stage, the Learned Counsel for the 1st Respondent/Bank of India Mr.T. Ravichandran informs this ‘Tribunal’ that he appears for the 1st Respondent and prays for time to file ‘Vakalat’ and accordingly he is permitted to file Vakalat. He is also permitted to file Reply/Response/Counter of 1st Respondent within 10 days from today, before the ‘Office of the Registry’ not only through e-filing but also through Hardcopy and the same shall be exchanged between the parties well in advance before the next date of Hearing.

Soon after the receipt of the copy of the Reply/Response/Counter of the 1st Respondent, it is open to the Learned Counsel for the Appellant to file ‘Rejoinder’, if any, within three days thereafter, before the ‘Office of the Registry’ (not only through e-filing but also through Hardcopy) and the copy of the same shall be served to the other side well in advance before the next date of Hearing.

In the meanwhile, the Learned Counsel for the 2nd Respondent is directed to file ‘Status Report’ before the ‘Office of the Registry’

(not only through e-filing but also through Hardcopy) and the copy of the same shall be served to the other side without fail.

Till the next date of Hearing, the meeting of 'Committee of Creditors' slated today i.e. 27.08.2021 at 3.30 p.m. shall stand deferred.

The 'Office of the Registry' is directed to List the matter on 14.09.2021."

3. Thereafter, on 18.04.2022 the NCLAT passed the following order which is reproduced as under:-

"At request of Mr. T.K. Bhaskar, the Learned Counsel for the Appellant coming out with the reason that due to the 'intervening holidays' during the last week, the Appellant was not in a position to mobilize 'Money' and hence prays for a week's time.

It is 'abundantly' and 'lucidly' made quite clear that, if the Appellant, is not availing this opportunity, without any further reference to the Appellant, the 'interim order' granted earlier by this 'Tribunal' stands vacated automatically.

The 'Office of the Registry' is directed to List this matter on 26.04.2022."

4. On 26.04.2022, the NCLAT passed the following order which is reproduced as under:-

"Adequate opportunity has been provided to the Appellant. As such, the order dated 18.04.2022 passed by this 'Tribunal' is not availed by the Appellant, as of today. Hence, it is made clear that there is no 'Interim Order' prevailing in the instant 'Appeal'.

Added further, the Interim Resolution Professional / Respondent No.2 is to proceed further in the manner known to law and in accordance with the law.

The "Office of the Registry" is directed to 'List' the matter on 14.07.2022."

5. It is pertinent to mention that the period of CIRP was extended by the CoC and consequently by the Adjudicating Authority from time to time. The

RP filed three applications seeking extension of CIRP period beyond 330 days, namely, I.A. (IBC)/380/CHE/2022 – 20.02.2023 to 21.03.2023, I.A.(IBC)/490/CHE/2022 – 22.03.2023 to 20.05.2023 and Diary No. 3305118/01516/2023 – 21.05.2023 to 18.08.2023. During the pendency of these applications, the RP filed another application i.e. I.A. No. 1023 of 2023 for seeking liquidation of the Corporate Debtor.

6. It has been recorded in the minutes of the CoC meeting held on 18.05.2023 that the resolution plans did not get the requisite votes neither it has been found that there has been any resolution plan pending nor any application under Section 12A for consideration before the Adjudicating Authority.

7. The Adjudicating Authority, after taking into consideration the entire facts and circumstances as well as referring to the decision of the Hon'ble Supreme Court in the case of *Essar Steels Through Authorized Signatory Vs. Sathish Kumar Gupta & Ors. (2020) 8 SCC 531* and a decision of the NCLAT in the case of *Vivek Raheja, RP in CA (AT) (Ins) No. 331 of 2021* held that the CIRP of the CD must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings) which can be extended only under exceptional circumstances and that too for a short period of time if it is required for approval of the resolution plan but since there is neither the

resolution plan pending nor any application under Section 12A of the Code pending for consideration before the Adjudicating Authority, therefore, it has observed that there is no question of extending the period further beyond the period of 330 days and dismissed all three applications filed by the RP observing that the RP is blowing hot and cold in the same breath because he has filed the applications for extension of period of 330 days as well as the application for liquidation of the corporate debtor as the earlier two resolution plans were rejected with 91.92% votes and no further plan was there.

8. Counsel for the Appellant has argued vehemently and could only refer to the application i.e. Diary No. 3305118/01516/2023 whereby the RP had asked for extension of time from 21.05.2023 to 18.08.2023 and submitted that at the time when the impugned order dated 27.06.2023 was passed, the said application was pending.

9. We have heard Counsel for the Appellant and perused the record with his able assistance. We could not find any substance in the argument of Counsel for the Appellant because the CoC had time and again extended the period which was allowed by the Adjudicating Authority but two resolution plans in respect of the Corporate Debtor were rejected with the majority of the vote of 91.92% by the CoC and at that time the CoC was aware that 330 days time period in respect of the Corporate Debtor had already been over.

Moreover, it has been categorically observed by the Adjudicating Authority that neither any plan was pending nor any application under Section 12A of the Code was pending for their consideration, therefore, the period of CIRP cannot be extended on the flimsy grounds much beyond the period of 330 days as has been held by the Hon'ble Supreme Court in the case of Essar Steels Through Authorised Signatory (Supra). Therefore, the applications filed for extension of time by the RP has rightly been dismissed and the application filed by the RP for an order of liquidation of the Corporate Debtor has rightly been passed which does not require interference by this Tribunal.

10. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is hereby dismissed. However, without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

Sheetal