

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

(APPELLATE JURISDICTION)

(IA No. 328 /2025 & IA No. 252 / 2025)

in

Company Appeal (AT) (CH) (Ins) No.211/2024

In the matter of:

**IDBI Bank Ltd.
No. 115, Anna Salai, Saidapet
Post Bag No. 805, Chennai
600015**

**..... Applicant /
Appellant**

V

**KRS Erectors Pvt. Ltd.
F-2, Second Floor, Naina Residency,
Plot No. 344, Road No.07, Kakatiya Hills,
Madhapur, Shaikpet, Hyderabad,
Telangana – 500081**

..... Respondent No.1

**Ms. Anuradha Bisani,
(Erstwhile Liquidator and Chairman
of the Monitoring Committee of
Lanco Infratech Limited)
#3-6-106/A, Flat No. 102,
Om Sri Sai Towers Street No. 19,
Near Vijaya Diagnostic Center,
Himayatnagar, Hyderabad**

..... Respondent No.2

**Lanco Infratech Limited,
F-2, Second Floor, Naina Residency
Plot No. 344, Road No.07, Kakatiya Hills,
Madhapur, Shaikpet, Hyderabad,
Telangana – 500081**

..... Respondent No.3

Present :

For Applicant/
Appellant : Mr. Allwin Godwin, Mr. Sagar Dhawan,
Mr. Anoop Rawat, Mr. Vimal Asthana,
Ms. Aishani Das & Ms. Niranjana Pandian,
Advocates

For Respondents : Mr. E. Om Prakash, Senior Advocate
For Mr. Ravikiran Singh & Ms. R. Moneshaa,
Advocates for R1 & R3
Ms. Anuradha Bisani, Liquidator / R2

ORDER
(Hybrid Mode)

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

1. Primarily the issue which is the subject matter of this instant Company Appeal is arising out of an Impugned Order of 28.05.2024, as it was passed by the learned NCLT, Hyderabad Bench in IA (IB) No. 41 / 2024 as preferred in CP (IB) No. 111 / 07 / HDB / 2017.

2. The consequential effect of the impugned order had been that, the conclusion drawn by the Tribunal in Para Nos. 36, 37 & 38 relating to the implementation of the Acquisition Plan, directing the Monitoring Committee to be formed under Clause 3.9 and 3.10 of the Acquisition Plan so as to ensure the adherence of timelines for the purposes of implementation of the Acquisition Plan, as laid down in Annexure I, which was directed to be strictly adhered to by M/s. KRS Erectors Private Limited and any deviation of any nature whatsoever or a breach of any of the terms and conditions of the Acquisition Plan by M/s. KRS Erectors Pvt. Ltd., the Chairman of the Monitoring Committee, shall bring the same to the notice of the Adjudicating Authority, who would take appropriate steps for forfeiture of the margin

money or any other or all other amount deposited by or entitled to under the plan by M/s. KRS Erectors Pvt. Ltd.

3. The Impugned Judgment in its Para 27 had observed that, since the Respondent No. 1 has breached the terms of the Clauses of the Acquisition Plan, the Applicant would be entitled to initiate the actions in terms of the observations which had been made in Para 50 of IA No. 561 / 2021.

4. Consequentially, based upon the aforesaid observations, the ultimate conclusion was arrived at, whereby the learned NCLT, has provided yet another opportunity the Respondent for the implementation of the Acquisition Plan. However, that was made applicable subject to the restrictions made in the directions as contained in Para 38 of the Impugned Order.

5. The said Company Appeal came up for consideration before this Tribunal at an admission stage and by an Interim Order of 24.06.2024, while directing the Respondents to file their counter and issuing notices to the unserved Respondents, we kept the directions as contained in Para Nos. 37 & 38 in abeyance.

6. Another Company Appeal being Company Appeal (AT) (CH) (INS) No. 232 / 2024, with other, Company Appeal (AT) (CH) (INS) No. 233 / 2024 came up for consideration before this Appellate Tribunal on 07.08.2024

and considering the implications of the earlier Interim Order granted by us on 24.06.2024, we passed yet another Interim Order in the aforesaid two Appeals filed subsequently, particularly that as the directions contained in Para 19 of the order dated 07.08.2024, which is extracted hereunder:

“19. In order to balance the equities and particularly in order to meet the objective and owing to the conditions that the implementation of the Acquisition Plan itself is in debate and in dispute in these Appeals, the interest of justice would be served, if the amount which the Appellant is likely to receive towards dividend, prior to hearing of this Appeal finally, would be deposited into the Accounts held and operated by the Liquidator and if any such amount is deposited, the Liquidator is casted upon a mandate by this Tribunal, that she would ensure to deposit the said amount in a Fixed Deposit and the same would not be disturbed in any manner except with the prior leave of this Tribunal.”

7. The consequential effect of the directions given therein, while considering the conditions for the implementation of the Acquisition Plan itself, it was observed that the amount if any, which has been deposited by the Appellant and is likely to be received towards the dividend, it was directed to be deposited into the accounts held and operated by the Liquidator and if any such amount is deposited, the Liquidator was casted upon a mandate by this Tribunal to ensure the deposit of the said amount is kept into the Fixed Deposit.

8. Be that as it may, we are not at this stage concerned with the Interim Order, which had been referred to hereinabove. During the pendency of the

Appeals, the Appellant IDBI Bank Limited has filed an Interlocutory Application, i.e. IA No. 252 / 2025, in Company Appeal (AT) (CH) (INS) No. 211 / 2024, wherein a new party is being sought to be introduced, which is not party to the principal Company Appeal, namely Maharashtra State Power Generation Company Limited (MSPGCL), through its Office of Chief Engineer (Projects & Planning), Prakashgad, 3rd Floor, Bandra (East), Mumbai.

9. The said Application was instituted before the Registry of this Tribunal on 14.02.2025. Initially an objection was raised as how the Application i.e. IA No. 252 / 2025, would at all be tenable for the purposes of seeking a relief by way of a restraint as against Respondent No. 1 (MSPGCL) who was not a party to the proceedings of the Company Appeals. Since, the nature of relief was modulated in such fashion, the question came up for consideration as to whether at all the relief framed as below could at all be granted. The relief clause is extracted as under:

“(a) The Applicant / Appellant humbly prays that this Hon’ble Appellate Authority restrains the Respondent No. 1 from taking any actions such as alienating / disposing / dealing with the assets of the Corporate Debtor lying at the Respondent No. 1’s premises, in furtherance of the letter of the Respondent No. 1 dated 07 February 2025 bearing reference letter no. CE (P&P)/COMM/KRD/LITL/Claim/100123, pending disposal of the present appeal; or

(b) Alternatively, direct the Respondent No. 3 to take control and custody of the assets of the Corporate Debtor lying at the Respondent No. 1's premises and proceed for sale of the assets and deposit the proceeds in the liquidation account of the Corporate Debtor.''

10. In order to override the initial objection taken by the Registry on the Application IA No. 252 / 2025, seeking an interim relief of a restraint from alienating, disposing and dealing with the Assets of the Corporate Debtor, as against Respondent No. 1 namely Maharashtra State Power Generation Company Limited, the Appellant filed yet another Interlocutory Application being IA No. 328 / 2025 wherein they have prayed for to amend the cause title of IA No. 252 / 2025. The relevant relief is extracted hereunder:

''(a) The Applicant / Appellant humbly prays that this Hon'ble Appellate Authority permits the Applicant / Appellant to amend the cause title in I.A. No. 252 of 2025 in Company Appeal (AT) (CH) (Ins) 211 of 2024 as filed in Annexure A of the present application and consequently permit the Applicant / Appellant to file a clean copy of I.A. No. 252 of 2025 in Company Appeal (AT) (CH) (Ins) 211 of 2024 as filed in Annexure B of the present application.''

11. In fact, the relief which as modulated in IA No. 328 / 2025 would be absolutely irrelevant for the purposes of considering the IA No. 252 / 2025 because placement of Maharashtra State Power Generation Company Limited in the array of Respondents in IA No. 252 / 2025 either as Respondent No. 1 or at any other number, will hardly have any bearing in considering the Application IA No, 252 / 2025, itself on its merits.

12. Further, reshuffling of the array of parties in IA No. 252 / 2025, is not at all required to make it compatible with the Memorandum of Appeal. Thus, as far as **IA No. 328 / 2025** is concerned, the same being misconceived is rejected.

13. Now the issue which arises for consideration, is in the context of the relief which has been sought by the Appellant in IA No. 252 / 2025, where he has sought an Order of Injunction, as against the Maharashtra State Power Generation Company Limited, who not being a party to the proceedings of the Company Appeal, whether the interim application at all could have been held to be maintainable.

14. The question for consideration would be, that as to whether at all such type of an Interlocutory Application, could be preferred in a Statutory Appeal preferred under Section 61 of I & B Code, 2016, for restraining a party, who is not a party to the proceedings from doing an act, which was prayed for in the Appeal.

15. The learned counsel for the Appellant in response to the initial objection raised by the Respondents about the sustainability of IA No. 252 / 2025, had submitted that an Interlocutory Application can be preferred in a pending Statutory Appeal, even as against a non-party to the proceedings particularly when the subject matter of the Appeal is likely to be affected by

any act of alienation, if it is permitted to be carried out by Respondent No. 1 (who is not a party to the Appeal).

16. For the purposes to justify his contention that an injunction could be granted against a party who is not a party to the Appeal, the Appellant submitted that in the light of the provisions contained under Section 19 of I & B Code, 2016, even a non-party to the proceedings can be enjoined by this Appellate Tribunal from doing an act and for the aforesaid purpose, he has referred to Section 19 of the I & B Code, 2016.

17. The said provisions contained, under Section 19 of the I & B Code, 2016, is titled as *“personnel to extend co-operation to the Interim Resolution Professional”*. The head note of the provision itself is quite explicit in its terms that, any personnel of the Corporate Debtor, its Promoters or any other person associated with its management, of the Corporate Debtor shall extend all assistance and co-operation to the IRP, as may be required by him, for the purposes of managing the affairs of the Corporate Debtor. Meaning thereby, an Application under Section 19 can be initiated against a person who is not a party to the proceedings, but, he has to be one among the category of persons referred to under Sub-Section (1) of Section 19, who have a direct nexus and control over the Assets of the Corporate Debtor, over which the CIRP proceedings have already been initiated. The said provision contained

under Section 19, will enable the Ld. Adjudicating Authority to issue directions to any other person to co-operate with the IRP.

18. Thus, the said provision cannot be interpreted and be expanded to be understood, in a manner to include that it could be applied for the purposes of seeking of a restraint by way of an injunction as against a party, who is not a party to the Company Appeal. Hence, Section 19 itself has got no applicability so far as seeking of an injunction against Respondent No. 1 in IA No. 252 / 2025 is concerned.

19. The learned counsel for the Appellant, has further attempted to justify his contention by drawing attention of this Appellate Tribunal to Section 25, which he yet again attempted to read that as if, it has conferred the powers to the Appellate Tribunal to pass an Injunction Order even as against a person who is not a party to the proceedings.

20. Once again, Section 25 pertains to the duties expected to be performed by a Resolution Professional. It is in quite contra-distinction that the functioning of the Liquidator, IRP or RP is much distinct to one another. The duties which the RP has to perform under Section 25 cannot be construed and be expanded to be construed in such a manner to arrive at a conclusion as if, it could confer a power to the Appellate Tribunal to injunct a party who is not a party to the proceedings. Thus, the meaning given to Section 25 on

its simpliciter reading is that it only assigns the duty to be performed by the Resolution Professional. It does not have any ingredient of the powers of the Appellate Tribunal to injunct the party, who is not a party to the proceedings of the Company Appeal. Under law, we cannot add something to provision, which is otherwise not intended by legislature.

21. Sometimes the law has to be rigid in its applicability. The rigidity has to be from the view point that, though there might be a possibility of very fatal consequences, which may follow due to non-grant of injunction, but then, being the Courts created under the Statute and particularly while exercising the Appellate Jurisdiction, we have to be conscious that, we ought not to exercise our powers, which are not specifically carved out or vested upon us under the provisions of law, so as to make the Company Appeal, to take the shape as if it is a public interest litigation, where an Interim Order could be in the shape of an Order in Rem, restraining a public at large or any specific person as pointed out by the party to the proceedings.

22. Reference is made to Sections 35 & 36 once again. The said provisions relate to the powers and duties of the Liquidator and the Liquidation Estate. On a complete and composite meaningful reading of the provisions contained under Section 35 & 36 and particularly Sub-Section (n) of Section 35 to which the Ld. Counsel of Appellant draws our attention and attempts

to project as if it was an expansion of powers vested with the Appellate Tribunal to pass an Order of Injunction, against a party who is not a party to the proceedings before it, the interpretation of the Ld. Counsel turns out to be a misnomer. Section 35 is confined to laying down of the powers and duties of the Liquidator, which he has to perform, upon being appointed as a Liquidator. Similarly, such power as vested with the Liquidator under Section 36 of I & B Code, 2016, will be related to their Liquidation Estates.

23. The provisions of Sections 35 & 36 are not an answer as sought for by us from the Appellant, with regards to the question as to how the Appellate Tribunal can injunct a party, who is being, for the first time, made as a party in an Interlocutory Application without even being impleaded in the main Memorandum of Company Appeal.

24. The basic cannons of law requires that, any positive injunction or restraint as against a party should always be under a normal set of circumstances, against a party who is party to the proceedings itself and not against a third party, who is not before this Tribunal, because no Orders of Injunction could be passed in a manner to take the adversary by way of surprises and being unheard, particularly when there is a judicial restraint sought for against a party to the proceedings.

25. The learned counsel for the Appellant has submitted that the Appellate Tribunal can expand its powers in order to meet the ends of justice owing to the overriding effect given to the provisions of the I & B Code, 2016, as provided under Section 238 of I & B Code, 2016.

26. The overriding effect of the provisions of the Code as contemplated under Section 238, does not envisage passing of an Interim Order affecting the Civil Rights of a person or a party who is not a party to the proceedings, without hearing the party concerned who is likely to be affected by any orders to be passed particularly when the party is, for the first time, introduced in an Interlocutory Application without there being a corresponding impleadment in the main Appeal. Hence, Section 238 (2) will be of no relevance so far as the argument extended by the learned counsel for the Appellant to the Application IA No. 252 / 2025 is concerned.

27. Having failed on the above counts, the learned counsel for the Appellant has made reference to Sub-Regulation 3 of Regulation 33 of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016, to suggest that power has been conferred upon the Ld. Adjudicating Authority to stop a sale.

28. The restrictions of Sub-Regulation 3 of Regulation 33, are restrictions which has been imposed upon the Liquidator as defined under the I & B

Code, 2016, under Sub-Section (18) of Section 5, which contemplates that the Liquidator means an Insolvency Professional appointed as a Liquidator in accordance with the provisions contained on the Chapter III or Chapter IV of this part, means Part No. 2 of the I & B Code, 2016.

29. Sub-Regulation (3) of Regulation 33 restricting the Liquidator to proceed for the sale of an Asset, if he believes it to be a collusive sale between the Buyer or the Corporate Debtor or the related Parties.

30. If that be the situation, the provisions of Regulation 33(3) cannot be expanded to empower the Ld. Adjudicating Authority, acting on the report of the Liquidator, to prevent a Third Party from proceeding with an action like sale of assets which does not come under the action contemplated under Regulation 33(3) which is basically a sale of a collusive nature. This is not a circumstance which is present in the instant Appeal at the stage when the Appellant presses his IA No. 252 / 2025.

31. Owing to the fact that a Third Party being an alien to the proceedings and not a principal party who had been chosen in a proceeding of the Appeal, cannot be permitted to be exclusively introduced for the purposes of seeking an Interim Order against a party who is not before us and who has even not been before the learned Adjudicating Authority, the Application **IA No. 252**

/ **2025** would stand rejected qua the grant of injunction as against Maharashtra State Power Generation Company Limited.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

28/04/2025

SR/MS