

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.287/2024
(IA Nos. 754 & 755/2024)

(Arising out of the 'Impugned Order' dated 28.05.2024 in
IA No.7/2024 in CP(IB) No.97/7/HDB/2022, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Division Bench – I, Hyderabad)

In the matter of:

Dr. Aveena Gudapati,
Flat No.301, Block-A,
Venkata Sudarshan Apartments,
Ameerpet, Hyderabad,
Telangana – 500 016.

.... Appellant

v.

Krishna Mohan Meenavalli,
Managing Director,
M/s. String Metaverse Ltd,
Sy. No.66/2, Street No.3, 2nd Floor,
Rai Durgam, Prashanth Hills, Nav Khalsa,
Gachi Bowli, Rangareddi, Hyderabad,
Telangana, India, 500 008.

... 1st Respondent

Bio Green Papers Limited,
Rep. by Resolution Professional,
Mr. Krishna Mohan Meenavalli,
Having its registered office at
Flat No.E1, Plot No.45, Surya Residency
Siddartha Nagar, Vengalrao Nagar Post
Hyderabad – 500 038.

... 2nd Respondent

Katepalli Venkateswara Rao,
6-3-1069, 1089A, Flat No.201,
Narvens Vaishnao Saudam Gulmohar Avenue,
Near Villa Marie College, Raj Bhavan Road,
Somajguda, Hyderabad – 500 082.

... 3rd Respondent

Present:

For Appellant : Mr. B.S.V. Prakash Kumar, Advocate

JUDGMENT
(Hybrid Mode)

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

1. The Appellant herein had earlier preferred a Comp App (AT) (CH) (Ins) No.280/2024, being aggrieved against the Impugned Order of 28.05.2024 as it was passed in unnumbered IA (e-filing No).1414/2024 which was preferred in CP(IB) No.97/7/HDB/2022. In the said Company Appeal the basic question under consideration was as to whether the application preferred by the applicant therein claiming himself to be a 3rd Party/Shareholder of 2nd Respondent / Corporate Debtor, praying to set aside the order of admitting the Corporate Debtor into CIRP proceedings under Section 7 of I & B Code on the grounds that the Section 7 application was preferred with malicious intention and hence the same cannot be proceeded with in the light of the provisions contained under Subsection(3) of Section 65 of the Insolvency and Bankruptcy Code, could have been entertained by the Learned Adjudicating Authority.

2. The Learned Adjudicating Authority, observing that since the Corporate Debtor was undergoing the CIRP Proceedings and Resolution Plan voted by the requisite majority of the Committee of Creditors (CoC), is awaiting approval by it, since the Appellant had earlier preferred a Company Petition (IB) No.337/7/HDB/2021 praying for drawing of the CIRP Proceedings against the Corporate Debtor, which stood rejected by order dated 10.10.2022, since the

Appellant filed the said Application (1414/2024) after the Resolution Plan was moved by Resolution Professional for approval in IA No.7/2024 and since no material worth relying, in support of the allegation of malice and fraud has been placed before it, proceeded to pass an order on 28.05.2024 thereby rejecting the said application (1414/2024). Further, Learned Adjudicating Authority approved the Resolution Plan preferred in IA No.7/2024 on 28.05.2024, with the following order: -

“Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code”.

3. The said decision taken on 28.05.2024 on the unnumbered application was challenged in Comp App (AT) (CH) (Ins) No.280/2024 which has since been dismissed by this Tribunal.

4. The Appellant has once again approached this Tribunal, being aggrieved against the Order of 28.05.2024, as passed in IA No.7/2024 preferred in CP(IB) No.97/7/HDB/2022, challenging the Impugned Order by virtue of which the Learned Adjudicating Authority had approved the Resolution Plan, on the reasoning that it satisfied the touchstone of the provision contained under Section 30(2), to be read with Regulation 37, 38, 38 (1A) and 39(4) of IBBI (Insolvency

Resolution Process for Corporate Persons) Regulation 2016 and that the Resolution Applicant, was eligible to be considered under Section 29A of the I & B Code. The approval of the Resolution Plan was made subject to the condition that it should not be construed as a waiver to any statutory obligation or liabilities of a Corporate Debtor which would be dealt by the appropriate authority as per law and that, post approval of the Resolution Plan, any pending avoidance application, shall be continued to be considered by the Corporate Debtor as provided under Chapter IX(5) of the plan. The Appellant has contended that the Resolution Plan in IA No.7/2024 has been approved without dealing with the material facts in the unnumbered IA. But it is seen that Learned Adjudicating Authority has considered the grounds set forth by the Appellant in detail, including various other IAs preferred by him during the course of CIRP before rejecting the said unnumbered application. It is also seen that the appeal filed by the Appellant in CA(AT) (CH) (Ins) No.25/2023, challenging rejection of his Section 7 application in CP(IB) No.337/7/HDB/2021 before this Tribunal has also been dismissed by an order dated 09.09.2024 on grounds that the Appellant has participated in CIRP by submitting his claim in Form C and that the Resolution Plan has been approved.

5. The Learned Counsel for the Appellant has referred to the Judgment reported in 2024 SCC Online NCLAT 462 Ashmeet Singh Bhatia Vs Pragati

Impex India Private Limited & Anr., but the said case will not be much relevance to be made applicable for the reason being that

(i) In the said case, the Tribunal was dealing with a case as against the Impugned Order passed on an Intervention Application.

(ii) The Appellant therein was claiming a right in the capacity of being a homebuyer; the facts of the said case since being absolutely distinct to the one at hand, as it pertained to a different subject altogether, will not be applicable.

6. Consequently, since the Resolution Plan itself which has been approved by the Impugned Order dated 28.05.2024 satisfies the test of Section 30(2) to be read with Section 30(6) of the Insolvency and Bankruptcy Code and since it does not suffer from any defect which could be at all be agitated by the Appellant when he himself has independently agitated the proceedings under Section 7 of the Insolvency and Bankruptcy Code, the Appeal is held to be devoid of merit and the same is accordingly rejected.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM
20.11.2024