

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 454/2024
IA Nos. 1238, 1239 & 1240 / 2024

In the matter of:

Dr. Yartagadda Krishna Mohan
S/o. Sh. Srinivasa Rao,
Aged about 56 Years,
R/o. 6-3-661/A/3, Flat No. 3,
Bhavana Towers, Kapadia Lane,
Somajiguda, Hyderabad-82,
Telangana.

...Appellant

Vs

1. Committee of Creditors
Rep by State Bank of India
Stressed Assets Management Branch,
D. No. 5-9-76, 2nd Floor, Prabhat Towers,
Oppo. SBI, Amaravathi LHO, Chapel Road Gunfoundry,
Hyderabad - 500001
Mr. Dantu Indu Sekhar

Also at:

Stressed Asset Resolution Group,
21* Floor, Maker Tower E,
Cuffe Parade, Mumbai - 05.

... Financial Creditor/Respondent No.1

2. Mr. Dantu Indu Sekhar,
Chairman of the Monitoring Committee,
IBBITPA-003/IPA-ICA1-N-00233/2019-2020/12773,
29-1401/6/1 Plot No 253 Road No. 2,
West Deen Dayal Nagar,
Ramakrishna Puram,
Neredmet, Hyderabad,
Telangana – 500056

... Chairman of the Monitoring Committee/Respondent No. 2

Present :

For Appellant : Mr. Kumarpal R Chopra &
Mr. Chiron Singhi, Advocates

For Respondents : Mr. Pranava Charan, Advocate for R1

ORDER
(Hybrid Mode)

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

1. Heard Learned Counsels for the parties on the Appeal itself. Brief facts which engage our consideration are that the challenge in the instant Company Appeal, as given by the Appellant is to the Impugned Order dated 12.09.2024, on the ground that the order rendered in IA (IBC) No. 1862/2024, by the Learned Adjudicating Authority is without assigning any reasons and without considering the stand taken by the Appellant in the application which was preferred by him, before the Learned Adjudicating Authority.

2. If the controversy is taken into consideration, the facts which are revealed are that, the Corporate Debtor had entered into a term loan agreement, with a consortium of Banks, led by the State Bank of India, for the purpose of setting up a 5-Star Hotel, that the Corporate Debtor has admittedly signed operation-cum-management agreement, with the Intercontinental Hotel Group (Holiday Inn), for the proposed project in Tirupati, that he signed term loan agreement with the consortium of banks, led by SBI, as that credit to the tune of Rs. 113.70 Crore was made available to the Corporate Debtor, that later on, the Corporate Debtor's account was classified as a non-performing asset, and that, subsequently the Corporate Debtor was admitted into the CIRP proceedings by the NCLT,

Hyderabad, on the basis of an application filed under Section 7 of I & B Code, 2016.

3. The Appellant contends that he had initially, in the capacity of a Personal Guarantor submitted a One-Time-Settlement (OTS) proposal of Rs. 80 Crores to the Financial Creditor (FC) on 09.12.2022, which stood rejected. As against the rejection of the aforesaid OTS proposal on 09.12.2022, he submitted a revised OTS proposal of Rs. 89 Crores to the Financial Creditor on 30.01.2023, which once again stood rejected by the Financial Creditor on 07.02.2023. The Applicant once again submitted another OTS proposal being the 3rd OTS proposal with an offer of Rupees 81.10 Crores to the Financial Creditor on 27.07.2023. This was also rejected by the Financial Creditor on 03.08.2023. Meanwhile, the NCLT, Hyderabad on 07.12.2023, approved the Resolution Plan which was submitted by one M/s. Square Housing & Development Pvt. Ltd. and the approval thus granted has attained finality, as far as which could be borne from records.

4. The Appellant further submits that after the approval of the Resolution Plan, the SRA failed to implement the approved Resolution Plan and the Financial Creditor filed an application to re-start CIRP proceedings again. Against this backdrop, he submitted a fresh OTS proposal of Rs. 90 Crores, by filing an application in IA No. 1862/2024, thereby offering a better recovery than the Resolution Plan, which has already been approved on 07.12.2023.

5. The NCLT, Hyderabad, however, dismissed the said application preferred by the Appellant containing the offer of OTS of Rs. 90 Crores, by an order of

12.09.2024, observing thereof that since the Resolution Plan has already been approved, the application is not maintainable and accordingly, the said application is dismissed.

6. The Appellant contends that the Impugned Order as above is devoid of any analysis of the issues raised by him, that the Learned Adjudicating Authority failed to consider the changed circumstances and that, it failed to appreciate that his OTS offer stood to benefit the stakeholders more than the approved Resolution Plan.

7. It is to be kept in mind that the submission of the one-time settlement proposal as prayed for in the Interlocutory Application being IA (IBC) No. 1862/2024, could not be considered by the Learned Adjudicating Authority for the reason being that, on earlier three occasions, the OTS proposals had already stood rejected and also because of the fact that Resolution Plan as of now has already been approved on 07.12.2023. Therefore, with regard to the instant OTS proposal submitted on 03.09.2024, by virtue of IA No. 1862/2024, there was no scope open for the said proposal to be considered to be accepted and consequentially the Impugned Order that was passed thereon, holding that the OTS proposal as prayed for in IA (IBC) No. 1862/2024, could not be considered and is not maintainable as the Resolution Plan has already been approved, cannot be faulted.

8. The view expressed by the Learned Adjudicating Authority in the Impugned Order of 12.09.2024, holding OTS proposal to be not maintainable due

to the fact of the Resolution Plan already having been approved cannot be faulted of in any manner whatsoever, as new chapter cannot be permitted to be opened, when the Appellant himself has failed on three earlier occasions to get his OTS proposals approved and because of the fact that the Resolution Plan as of now has already been approved. In these circumstances, the application being IA (IBC) No. 1862/2024, could not have been considered by the Learned Adjudicating Authority and the same has been rightly rejected by the Impugned Order, which does not call for any interference in the exercise of the Appellate jurisdiction by this Appellate Tribunal under Section 61 of I & B Code, 2016. The Company Appeal (AT) (CH) (Ins) No. 454/2024, lacks merits and the same is accordingly dismissed.

The connected pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24/12/2024
RO/TM/MS