NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1501 of 2023

[Arising out of Order dated 19.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in IA (IB) No. 1599/KB/2023 in CP (IB) No. 250/KB/2021]

In the matter of:

Manav Investments and Trading Co. Ltd. **....Appellant**

Vs.

Pratim Bayal & Ors. **...Respondents**

For Appellant: Mr. Sabyasachi Choudhury, Mr. D. N. Sharma, Ms. Priyata Chakraborty, Advocates.

For Respondents: Mr. S. N. Mookherjee, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Shaunak Mitra, Mr. Avishek Guha, Mr. Soumya Dutta, Advocates with Mr. Pratim Bayal, RP in person for R-1.
Mr. Krishnendu Datta, Sr. Advocate with Mr. Shantanu Awasthi, Advocate for CoC.
Mr. Arun Kathpalia, Sr. Advocate with Ms. Astha Sharma, Mr. Piyush Agarwal, Ms. Shivalli Kajaria, Ms. Anju Thomas and Ms. Ripul Swati, Advocates for SRA.

Company Appeal (AT) (Insolvency) No. 1534 of 2023

[Arising out of Order dated 19.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in IA (IB) No. 1599/KB/2023, IA (IB) No.1648/KB/2023 and IA (IB) No.1069/KB/2022 in CP (IB) No. 250/KB/2021]

In the matter of:

Kesoram Industries Limited **....Appellant**

Vs.

Pratim Bayal & Ors. **...Respondents**

For Appellant: Mr. Mainak Bose, Mr. VVV Sastry, Mr. Debargha Basu, Ms. Priyata Chakraborty and Mr. Rahul Poddar, Advocates.

For Respondents: Mr. S. N. Mookherjee, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Shaunak Mitra, Mr. Avishek Guha, Mr. Soumya Dutta, Advocates with Mr. Pratim Bayal, RP in person for R-1.
Mr. Arun Kathpalia, Sr. Advocate with Ms. Astha Sharma, Mr. Piyush Agarwal, Ms. Shivalli Kajaria, Ms. Anju Thomas and Ms. Ripul Swati, Advocates for SRA.

JUDGMENT
(5th January, 2024)

Ashok Bhushan, J.

These two Appeals have been filed against the order dated 19.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal) Division Bench, Court No.II, Kolkata. In Company Appeal (AT) (Insolvency) No.1501 of 2023, challenge is the order dated 19.10.2023 passed in IA (IB) No.1599/KB/2023 which was filed by the Appellant- 'Manav Investment & Trading Company Limited'. By the impugned order, IA (IB) No.1599/KB/2023 was rejected, aggrieved by which order, Company Appeal (AT) (Insolvency) No.1501 of 2023 has been filed. In Company Appeal (AT) (Insolvency) No.1534 of 2023, Appellant prayed for setting aside the order dated 19.10.2023 passed by the Adjudicating Authority in IA (IB) No.1527/KB/2023 by which Adjudicating Authority has approved the Resolution Plan. However, the order which was annexed in the Appeal was

order passed by the Adjudicating Authority dated 19.10.2023 passed in IA (IB) No. 1599/KB/2023, IA (IB) No. 1648/KB/2023 and IA (IB) No. 1069/KB/2022 in Company Petition (IB) No. 250/KB/2021. Both the Appellants are related party of the Corporate Debtor.

2. Brief facts of the case are:

2.1. The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced on 05.05.2023. 'Manav Investments and Trading Co. Ltd.' one of the promoters of the Corporate Debtor has also filed an Appeal challenging the order dated 05.05.2023. In the CIRP of the Corporate Debtor, in September, 2023, the plan approval application being IA No.1527 of 2023 was heard and order was reserved and thereafter, order has been pronounced on 19.10.2023 approving the Resolution Plan. The Appellant promoter of the Corporate Debtor has filed the Appeal challenging the plan approval order.

2.2. Company Appeal (AT) (Insolvency) No.1534 of 2023 is filed by 'Kesoram Industries Limited' who in the CIRP of the Corporate Debtor has submitted a claim form on 16.05.2022 submitting a claim of Rs.518,28,91,356/-. The claim of the Appellant was admitted by earlier Resolution Professional but new Resolution Professional asked for certain documents from Appellant to prove his claim and ultimately vide e-mail dated 19.04.2023 rejected the claim of the Appellant and IA No. 957 of 2023 was filed by the Appellant- 'Kesoram Industries Limited' challenging the e-mail dated 19.04.2023 which was rejected on 18.10.2023. Against the order

dated 18.10.2023 rejecting IA No. 957 of 2023, 'Kesoram Industries Limited' has already filed an Company Appeal (AT) (Insolvency) No. 1467 of 2023.

3. We have heard Shri Sabyasachi Choudhury, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.1501 of 2023; Shri Mainak Bose, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.1534 of 2023, Shri S.N. Mookherjee, Learned Senior Counsel along with Shri Abhijeet Sinha, Learned Counsel for the Resolution Professional, Shri Krishnendu Datta, Learned Senior Counsel for the CoC and Shri Arun Kathpalia, Learned Senior Counsel for the SRA.

4. Shri Sabyasachi Choudhury, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No. 1501 of 2023 has submitted that the Resolution Plan providing for disbursement on the basis of security interest and not on the basis of vote shares of the Financial Creditor is contrary to Section 53. It is submitted that the Resolution Plan also clubs workers and employees into the same basket as Operational Creditors which is contrary to Section 30(2)(b) r/w Section 53 of the IBC. It is submitted that the transfer of tyre undertaking is in violation of Section 25FF of the Industrial Disputes Act, 1947. Resolution Plan is less than the liquidation value. Objection raised by the Appellant is that the Resolution Plan as was raised in IA No.1599/KB/2023 has been illegally rejected. It is submitted that there is discrimination in payments under the plan to related party and unrelated party whereas related party has not been proposed any payment which is discriminatory.

5. Shri Mainak Bose, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No. 1534 of 2023 has reiterated the submissions advanced by the Appellant in Company Appeal (AT) (Insolvency) No. 1501 of 2023 and submits that the Appellant has filed a claim in Form C which was illegally rejected which was challenged by the Appellant by means of IA No.957 of 2023 which IA was rejected illegally. Appellant was Financial Creditor of the Corporate Debtor and without Appellant being in the Committee of Creditors (CoC) approval of the plan is not in accordance with law.

6. Shri S.N. Mookherjee, Learned Senior Counsel appearing for the Resolution Professional in both the Appeals submits that in Company Appeal (AT) (Insolvency) No.1501 of 2023 only challenge is to the order passed in IA No.1599/KB/2023 and the Appeal was filed against the order rejecting IA No.1599/KB/2023 but the Appellant was also in its synopsis and grounds of Appeals sought to question the order approving the Resolution Plan by allowing IA No.1527 of 2023. It is submitted that the Appellant cannot challenge both the orders which were separate orders. The Appeal has to be treated against the order rejecting IA No.1599/KB/2023 alone. It is submitted that the rejection of IA No. 1599/KB/2023 is on valid ground. Appellant is related party of the Corporate Debtor and is not entitled to receive any amount. It is further submitted that the approved Resolution Plan has already been implemented by the Successful Resolution Applicant and full payments envisaged thereunder have been made. The

Appeal for all intents and purposes is infructuous and is liable to be dismissed. It is submitted that the Appellant is related party of the Corporate Debtor and at the instance of its promoter has filed the Appeal to delay and hinder the implementation of the plan. Appellant sought to raise issues pertaining to payment of workers and employees whereas no worker or employees is aggrieved by distribution under the plan nor any Appeal has been filed by workers and employees. The amount earmarked in the plan for payment of workers and employees is sufficient to clear the entire dues of workers and employees. Further the employees of the Corporate Debtor have been continued, hence, there is no occasion for applicability of Section 25 FF of the Industrial Disputes Act, 1947.

7. It is submitted that insofar as Appeal filed by 'Kesoram Industries Limited', it has already filed an Appeal challenging the order dated 18.10.2023 passed in IA No. 957 of 2023 which has been separately heard. 'Kesoram Industries Limited' being not a Financial Creditor nor stakeholder of the Corporate Debtor, cannot be allowed to question the approval of the Resolution Plan which approval of Resolution Plan is sought to be challenged in the Appeal whereas in the Appeal not even the order passed by the Adjudicating Authority approving the Resolution Plan has been annexed and the Appellant has only annexed the order of the Adjudicating Authority deciding IA No. 1599/KB/2023, IA No. 1648/KB/2023 and IA No. 1069/KB/2022.

8. We have considered the submissions of the Counsel for the parties and perused the record.

9. Both the Appellants who have filed these Appeals are related parties. Related parties cannot claim entitlement of any amount in the plan and cannot claim any discrimination with regard to payments to unrelated unsecured Financial Creditors. Shri S.N. Mookherjee, Learned Senior Counsel for the Respondent has rightly placed reliance on the judgment of the Hon'ble Supreme Court in ***"M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder and Anr.- 2023 SCC OnLine SC 574"*** where Hon'ble Supreme Court had occasion to consider the provisions of the IBC specially the payments to related parties and discrimination in the Resolution Plan. In relation to related party, it was held by the Hon'ble Supreme Court that there is no provision in the Code which mandates that related party should be paid in parity with unrelated party. From paragraphs 198 to 202, following has been held:-

> *"198. Another factor taken into consideration by the Appellate Tribunal has been in relation to the so-called discrimination in the resolution plan in relation to a related party of the corporate debtor.*
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> *199. Learned counsel for the appellant in Civil Appeal No. 1827 of 2022 has referred to several decided cases to submit that therein, even when certain dues of related parties were admitted, the resolution plans not providing for any payment to such related parties were upheld by this Court; and that the principles of*

non-discrimination would not be applicable to the decision of CoC. It has been argued on behalf of the resolution professional that none of the statutory requirements are of any mandate that a provision has to be made in the resolution plan for payment to the related parties. According to the learned counsel, the need is, essentially, to ensure that the plan provides for payment to financial creditors (including dissenting financial creditors) entitled to vote. Thus, the plan in question cannot be said to be standing in contravention of any mandatory requirements. Per contra, the learned counsel appearing for the related party would submit that even when related party is to be treated as a separate class in terms of the principles laid down by this Court in Phoenix ARC (supra), so as to be excluded from CoC, there is no reason that they be treated as separate class when it comes to payment of dues under the resolution plan. It is submitted that failure to provide for discharge of debt of the related party is in violation of Section 30(2)(b), (e) and (f) of the Code. The submissions made on behalf of the related party and the observations of the Appellate Tribunal are difficult to be accepted.

200. The lengthy discussion of Appellate Tribunal in regard to the related party (the parts whereof have been reproduced in paragraph 19.7 hereinabove) depict rather unsure and irreconcilable observations of the Appellate Tribunal.

201. After taking note of the fact that related party is prohibited to be a part of CoC and is further

prohibited to be a resolution applicant or an authorized representative etc., the Appellate Tribunal has rightly observed that involvement of a related party in CIRP in any capacity was seen as giving unfair benefit to the corporate debtor; and that the statutory recognition of related party as a different class would apply even to resolution plan when CoC would decide whether in its commercial wisdom it should pay to related party at all because that would mean paying to the same persons who are behind the corporate debtor. However, thereafter the Appellate Tribunal proceeded to observe that related party was required to be equated with the promoters as equity share-holders and then, further made certain observations about discrimination between related party unsecured financial creditor and other unsecured financial creditors as also between related party operational creditor and other operational creditors. Such far-stretched observations of the Appellate Tribunal are difficult to be reconciled with the operation of the statutory provisions.

202. It has rightly been argued on behalf of the appellants and had rightly been observed by the Adjudicating Authority (vide extraction in paragraph 15.4.1 hereinabove) that there was no provision in the Code which mandates that the related party should be paid in parity with the unrelated party. So long as the provisions of Code and CIRP Regulations are met, any proposition of differential payment to different class of creditors in the resolution plan is, ultimately, subject to the commercial wisdom of CoC and no fault

can be attached to the resolution plan merely for not making the provisions for related party."

10. Insofar as the submission made on behalf of the Appellant in Company Appeal (AT) (Insolvency) No. 1501 of 2023 that distribution is not in accordance with vote share which violates Section 53 r/w Section 32 (b) of the IBC, the said submission need no consideration since the Appellant being related party is not entitled for any distribution and no stakeholder who is entitled for distribution is aggrieved by the decision of the Committee of Creditors regarding mode and manner of distribution. On the submission that workers and employees put in the same basket contrary to Section 30(2)(b) and other submissions, the Adjudicating Authority has returned the finding that there is no violation of Section 30(2) of the IBC. In paragraphs 6.7 to 6.10, following has been held:-

"6.7. The allegation relating to the gratuity fund has been dealt at Page 5 of the Resolution Plan (Annexed at Page 46 to this I.A.) as under:

"Out of the Upfront payment to Financial Creditors, a sum equivalent to Gratuity Liability as on 31 March 2023 (INR 37.03 Crore) would be held back and such funds would be deposited in a special escrow account to be maintained with the Resolution Applicant, opened with Axis Bank, in the manner provided hereinafter in this Plan. Payment of Gratuity (either due as on Insolvency Commencement Date or the date on which it becomes payable) will be made in the first place from the gratuity asset (NR 37.05 Crore as per the Actuarial Valuation Report available in the VDR) being maintained with KICM Gratuity Fund or if

such fund is not available then from the funds maintained in such special escrow account in the manner detailed hereinafter in this Plan,"

6.8. Regarding allegation relating to Plan value being less than liquidation value, we find that on the face of it the plan value is INR 347.03 Crore as against the liquidation value of 335.10 Crore. It is only when discounting for future cash pay-out is applied, the value comes down to INR 306 Crore. We rely upon the judgment passed by the Hon'ble Apex Court in the case of Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors. (CIVIL APPEAL NO. 4242 OF 2019) reported in [2020] ibclaw.in 03 SC that:

26. Ne provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

(Emphasis Added)

6.9. On the allegation that the Resolution Plan clubs workers and employees into the same basket contrary to Section 30(2)(b) read with Section 53 of the Code, relying on the Honourable Supreme Court Judgement in the case of India Resurgence ARC,

we respectfully reproduce the following words of the Apex court in that order that Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and subclasses of creditors in accordance with the provisions of the Code and the Regulations made thereunder." to state that this allegation too does not survive.

6.10. We have gone through the Resolution plan submitted before us. We found that CoC in their commercial wisdom has approved the plan with a majority of 82.48% percentage of votes. We have examined whether the Plan contravenes Section 30(2) of I&B Code and other applicable Sections of the Code read with relevant regulations under the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016, in L.A. (IB) No. 1527/KB/2023, seeking approval of the Resolution Plan, and the application has been approved, after noting that the Plan does not contravene Section 30 or any other applicable sections of the I&B Code. Therefore, the issues raised in this instant application does not survive and are liable to be dismissed."

11. It is also relevant to notice that submission which is advanced by the Appellant is with regard to discrimination in payments to the workers and

employees. No workers and employees have any grievance nor any workers and employees is dissatisfied with the payments made under the plan to them nor have they come in Appeal. Plan has been approved with 82.40% vote shares of the CoC. We fully concur with a view of the Adjudicating Authority that there is no non-compliance of Section 30(2) of the IBC.

12. Coming to the Company Appeal (AT) (Insolvency) No. 1534 of 2023. The application being IA No. 957 of 2023 filed by the Appellant claiming to be Financial Creditor was rejected by the Adjudicating Authority against which order the Appellant has filed Company Appeal (AT) (Insolvency) No. 1467 of 2023. By our separate order passed today in Company Appeal (AT) (Insolvency) No. 1467 of 2023, we have already dismissed the Appeal filed by 'Kesoram Industries Limited'. Learned Counsel for the Appellant has also raised submission that the Resolution Plan is not in compliance with Section 30(2)(b) of the Code, which submissions we have already dealt while considering Company Appeal (AT) (Insolvency) No. 1501 of 2023. Company Appeal (AT) (Insolvency) No. 1467 of 2023 filed by 'Kesoram Industries Limited' having been dismissed, 'Kesoram Industries Limited' is no longer a stakeholder in the Corporate Debtor. 'Kesoram Industries Limited' being also related party to the Corporate Debtor, at the instance of the Appellant, we do not find any good ground to interfere with the order passed by the Adjudicating Authority rejecting IA No. 1599/KB/2023, IA No. 1648/KB/2023 and IA No. 1069/KB/2022 as well as orders approving the Resolution Plan.

13. In view of the foregoing discussions and our conclusions, we are of the view that no grounds have been made out to interfere with the impugned order which have been challenged in these Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali