

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 120/2023
(IA No. 409/2023)
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 22/03/2023 in
RST. APP (IB)/10(CHE)/2022 in CP/1454(CHE)/2018, passed by the
‘Adjudicating Authority’, National Company Law Tribunal, Division
Bench – II, Chennai)

In the matter of:

VR Rail Nirman Pvt. Ltd. **...Appellant**

V

Isuzu Motors India Pvt. Ltd. **...Respondent**

Present :

For Appellant : Mr. C.S. Kiran,
Mr. G. Gautham Ram Vittal, Advocates.
For Respondent : None.

(ORAL ORDER)
(Virtual Mode)

[Per: Justice Rakesh Kumar Jain (MJ)]

02/05/2023: This Appeal has been filed by the Corporate Debtor against the Order dated 22.03.2023, by which, the National Company Law Tribunal, Division Bench – II, Chennai, has allowed the RST. APP. (IB)/10(CHE)/2022 filed by the Operational Creditor and CP/1454/IB/2018 is revived.

2. In brief, the Operational Creditor filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, (in short ‘The IBC’) for initiation of Corporate Insolvency Resolution Process (‘CIRP’) against the

Corporate Debtor, in regard to the Operational Debt amounting to Rs.13,70,502/-. The said Application was dismissed by the Tribunal on 29.01.2019 on the ground that the name of the Corporate Debtor from the Register of the Registrar of Companies had already been struck off on 09.08.2018 and the Petition under Section 9 of the IBC would not have lied against the entity not in existence.

3. The Operational Creditor filed an Application under Section 252(3) of the Companies Act, 2013 (hereinafter referred to as 'The Act') bearing CA/952/2019 before the Tribunal against the Order of the Registrar of Companies ('RoC') for seeking Restoration of name of the Company (Corporate Debtor) to the Register maintained by the RoC. The said Application was allowed on 02.03.2021 and as such, the Corporate Debtor got the status of a Company having been active since 14.04.2021.

4. Thereafter, the Operational Creditor filed the present Application i.e., RST. APP. (IB)/10(CHE)/2022 for revival of the main Petition i.e., CP/1454/IB/2018 on 03.06.2021. The said Application was contested by the Appellant (Corporate Debtor), *inter alia*, on the ground that the Order dated 29.01.2019 should have been challenged by way of an Appeal and the Application for Restoration should have been filed after the Order was passed by this Tribunal in '**Elektrans Shipping Pte Ltd.' Vs. 'Pierre D' Silva'**', reported in **2019 SCC OnLine NCLAT 1169**, dated 06.09.2019. Both the contentions were repelled by the Learned Tribunal holding, *inter alia*,

that the Application for Restoration could have been filed immediately after the Order of the NCLAT dated 06.09.2019 but since the Application filed by the Operational Creditor under Section 252(3) of the Act was pending, therefore, it was justified for not filing the Application at that time. As regard the filing of the Appeal against the Order dated 29.01.2019 is concerned, the Operational Creditor filed the Application under Section 252(3) of the Act.

5. In this Appeal, Counsel for the Appellant has raised the same arguments of having not filed the Appeal against the Order dated 29.01.2019 and that the Application could have been filed after the Order dated 06.09.2019 was passed in the matter of '*Elektrans Shipping Pte Ltd.*' (*Supra*).

6. We have heard the Counsel for the Appellant and perused the record with his able assistance.

7. The issue involved in this case travels in a narrow compass. The Application under Section 9 was not maintainable and was dismissed on 29.01.2019, because it had been filed against the Corporate Debtor whose name was struck off by the RoC in terms of Section 248 of the Act on 09.08.2018 i.e., much before the Application under Section 9 was filed on 10.12.2018. Since, there was no Order passed on merits, therefore, the Appeal was not filed rather an Application under Section 252(3) was filed by the Operational Creditor for the Restoration of the name of the Corporate

Debtor Company to the Register maintained by the RoC and the said Application was allowed on 02.03.2021.

8. Thereafter, the Application has rightly been filed for the purpose of revival of the main Petition filed under Section 9 because the eclipse caused because of the fact that the name of the Corporate Debtor Company was struck off from the Register of RoC on 09.08.2018 was removed by Order dated 02.03.2021 and thus there was no hinderance in the way of the Operational Creditor to maintain and proceed with the Application filed under Section 9 to get a decision on it on merits.

9. In view thereof, we do not find any error in the well-considered Order of the Tribunal and the Appeal is thus hereby dismissed but without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mrs. Shreesha Merla]
Member (Technical)

HA / MD / TM