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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DINESH MAHESHWARI; J., SANJAY KUMAR; J.
CIVIL APPEAL NO. 1925 OF 2023; MAY 11, 2023
INDIABULLS ASSET RECONSTRUCTION COMPANY LIMITED *versus* **RAM KISHORE ARORA & ORS.**

Insolvency and Bankruptcy Code, 2016 - The Supreme Court has declined to grant any interim relief in respect of order passed by the National Company Law Appellate Tribunal ("NCLAT") directing 'project wise insolvency resolution process' of Supertech Ltd.'s Eco Village-II project. The Bench has observed that constituting Committee of Creditors (CoC) for all the projects of Supertech Limited would affect the ongoing projects and cause hardship to the homebuyers. The Bench has directed that during the pendency of the appeal, any process beyond voting on the Resolution Plan should not be undertaken without specific orders of the Supreme Court in respect to the Corporate Insolvency Resolution Process (CIRP) of Eco Village-II project.

WITH CIVIL APPEAL NO. 5941 OF 2022 CIVIL APPEAL NO. 1975 OF 2023

For Appellant(s) Mr. Mahesh Agarwal, Adv. Mr. Ankur Saigal, Adv. Mr. Shashwat Singh, Adv. Ms. Geetika Sharma, Adv. Mr. Sumesh Dhawan, Adv. Mr. E. C. Agrawala, AOR Mr. Balaji Srinivasan, AOR Mr. Angad Varma, Adv. Mr. Toyesh Tiwari, Adv. Mr. Nikhil Mehndiratta, Adv. M/s. Dua Associates, AOR

For Respondent(s) Mr. Siddharth Bhatli, Adv. Mr. Dinesh Kumar Garg, AOR Mr. Abhishek Garg, Adv. Mr. Dhananjay Garg, Adv. Ms. Khyati Jain, Adv. Mr. Ishaan Tiwari, Adv. Mr. Nakul Dewan, Sr. Adv. Mr. R. Gopalakrishnan, AOR Mr. Somdutta Bhattacharyya, Adv. Ms. Niharika Sharma, Adv. Ms. Kiran Sharma, Adv. Mr. Sathvik Chandrasekar, Adv. Mr. R Sudhinder, Adv. Mr. R Gopalakrishnan, Adv. Mr. Viplan Acharya, Adv. Mr. N. B. V. Srinivasa Reddy, Adv. Mr. Akshat Srivastava, AOR Mr. Divyesh Pratap Singh, AOR Mr. Himanshu Shekhar, AOR Mr. M. L. Lahoty, Adv. Mr. Paban Kumar Sharma, Adv. Mr. Anchit Sripat, Adv. Mr. Pranab Kumar Nayak, Adv. Mr. Arvind Kumar, Adv. Mr. Nishant Verma, AOR Ms. Shisba Chawla, Adv. Mr. Sourav Singh, Adv. Mr. Ravi Prakash Mehrotra, Sr. Adv. Mr. Apoorv Srivastava, Adv. Mr. Jogy Scaria, AOR Mr. Somesh Dhawan, Sr. Adv. Mr. Mahesh Agarwal, Adv. Mr. Rishi Agrawala, Adv. Mr. Ankur Saigal, Adv. Ms. Geetika Sharma, Adv. Mr. Shivam Shukla, Adv. Mr. E. C. Agrawala, AOR

O R D E R

Civil Appeal No. 5941 of 2022 and Civil Appeal No. 1925 of 2023

1. These two appeals (Civil Appeal Nos. 5941 of 2022 and 1925 of 2023) filed by the Union Bank of India and Indiabulls Asset Reconstruction Company Ltd. respectively, being the financial creditors of the corporate debtor – Supertech Ltd., are directed against the order dated 10.06.2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi[1], in Company Appeal (AT) (Ins.) No. 406 of 2022. By the order impugned, the Appellate Tribunal, while dealing with an appeal against the order dated 25.03.2022 passed by the National Company Law Tribunal, New Delhi – Court VI[2], in admitting an application under Section 7 of the Insolvency and Bankruptcy Code, 2016[3], has issued a slew of directions which practically have the effect of converting the corporate insolvency resolution process[4] in question into a "project-wise insolvency resolution process" inasmuch as the constitution of committee of creditors[5] has been restricted only

[1] Hereinafter referred to as 'the Appellate Tribunal' or 'NCLAT.'
[2] 2 Hereinafter referred to as 'the Tribunal' or 'NCLT'.
[3] Hereinafter referred to as 'IBC' or 'the Code'.
[4] For short, 'CIRP'.
[5] For short, 'CoC'.

to one project named “Eco Village-II” of the corporate debtor, who is dealing in real estate and has several ongoing projects.

2. The other appeal, being Civil Appeal No. 1975 of 2023, is preferred by Assets and Care Reconstruction Ltd., a beneficiary of corporate guarantee, challenging the order dated 10.01.2023 whereby, the Appellate Tribunal directed the interim resolution professional[6] to call a meeting of only those financial institutions who have lent money to the corporate debtor before finalisation of the term sheet.

3. Having regard to myriad issues involved and the fact that final disposal of the appeals is likely to take time, we have heard the learned counsel for the parties as regards interim relief and/or interim arrangement, particularly after taking note of the fact that in terms of the direction of NCLAT, certain offers were received from the prospective resolution applicants. Those offers were directed to be placed before NCLAT and we requested the NCLAT to keep further proceedings in abeyance and await further orders of this Court. Thereafter, we heard the learned counsel for the parties at substantial length as regards the propositions towards interim relief/interim arrangement in view of the typical issues involved in these matters.

4. A brief reference to the relevant background aspects shall be apposite.

4.1. The corporate debtor is a real estate company engaged in construction of various projects, mostly in the National Capital Region, which received credit facilities from Union Bank of India by way of sanction letter dated 19.10.2013/16.12.2013, in the sum of Rs. 150 crore, for the development of the “Eco Village-II Project.” Subsequently, Union Bank of India and Bank of Baroda entered into an agreement, extending second credit facilities in the sum of Rs. 200 crore, with Union Bank of India’s total exposure being Rs. 100 crore, as sanctioned by letter dated 21.11.2015.

4.2. The credit facilities provided by Union Bank of India to the corporate debtor were secured through a mortgage, corporate guarantees, and personal guarantees. As a result of the corporate debtor’s default on the loan repayment, the account was declared as a ‘Non-Performing Asset’ on 20.06.2018.

4.3. Union Bank of India filed an application under Section 7 of the Code on 20.03.2021, claiming a total amount of Rs. 431,92,53,302 as on 31.01.2021, along with accrued interest. The NCLT, by its order dated 25.03.2022, admitted the Section 7 application and directed for initiation of CIRP for the corporate debtor. Following this, Mr. Hitesh Goel – respondent No. 3 was appointed as the IRP.

4.4. Aggrieved by this order so passed by NCLT, respondent No. 1 – promoter/suspended director of corporate debtor filed an appeal before NCLAT. On 12.04.2022, an interim order was passed by NCLAT, directing that CoC shall not be constituted until the next date. The said order continued until passing of the impugned order dated 10.06.2022.

4.5. In the impugned order dated 10.06.2022, the Appellate Tribunal partly modified its order dated 12.04.2022 and issued interim directions, including constitution of CoC for Eco Village Project-II only; the said project to be completed with assistance of ex-management whereas other projects, apart from Eco Village-II, were ordered to be continued as ongoing projects. The interim directions in the impugned order dated 10.06.2022 read as follows: -

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[6] For short, ‘IRP’.

"i. The Interim Order dated 12th April, 2022 continuing as on date is modified to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.

ii. After constitution of CoC of Eco Village II Project, the IRP shall proceed to complete the construction of the project with the assistance of the ex-management, its employees and workmen.

iii. With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form –G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.

iv. All receivables with regard to the Eco Village II Project, shall be kept in the separate account, earmarked account and detail accounts of inflow and outflow shall be maintained by the IRP.

v. That all other projects of the Corporate Debtor apart from Eco Village II Project shall be kept as ongoing project. The Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.

vi. The promoter shall infuse the funds as arranged by it in different projects which shall be treated as Interim Finance regarding which detail account shall be maintained by the IRP.

vii. No account of Corporate Debtor shall be operated without the counter signature of the IRP. All expenses and payments in different projects, shall be only with the approval of the IRP. All receivables in different projects shall be deposited in the account as per 'RERA' Guidelines and 70% of the amount shall be utilized for the construction purpose only. With regard to the disbursement of rest of the 30 %, appropriate direction shall be issued subsequently after receiving the status report and after hearing all concerns.

viii. The IRP shall obtain approval of the CoC which is directed to be constituted for Eco Village II Project and incur all the expenses regarding the said projects and further incur the expenses accordingly.

ix. With regard to the expenses to other projects for which no CoC has been constituted, IRP is at liberty to submit a proposal for payment of various expenses including 'CIRP' expenses to this Tribunal.

x. The Promoters of the Corporate Debtor shall be at liberty to bear any expenses as requested by the IRP without in any manner utilizing any of the funds of the Corporate Debtor.

xi. Let the IRP submit a further Status Report within six weeks from today regarding Eco Village II Project and all other projects. xii. The Parties are at liberty to file an I.A. for any direction/clarification in the above regard. xiii. List this Appeal on **27th July, 2022.**"

5. Dissatisfied with the interim directions so issued by the Appellate Tribunal, the appellants, financial creditors of corporate debtor, have filed appeals before this Court, essentially challenging the adoption of reverse CIRP by the Appellate Tribunal and limiting the CIRP and constitution of CoC to only one project of corporate debtor, i.e., Eco Village-II.

6. It has been contended on behalf of the appellants that the Appellate Tribunal does not have power under IBC to allow project-wise CIRP and does not have power to accept a resolution plan presented by the promoter without giving opportunity to the CoC to study the commercial viability of the plan. It has also been contended that there is no concept of projectwise resolution under IBC and the order impugned was passed by the Appellate Tribunal without notice to the appellants, who are the financial creditors having substantial stakes in the matter.

7. As regards interim relief/interim arrangement, the contesting parties have put forward different propositions which could be summarised as *infra*.

7.1. It has been submitted on behalf of the appellant - Union Bank of India that the financial institutions, including appellant, have funded the corporate debtor as a single corporate entity irrespective of the fact that the funds are being utilised for a single project or multiple projects. Therefore, the credit facility extended by the appellant does not get converted to 'project finance' allowing resolution through 'project based insolvency' mechanism; and the scheme of IBC envisages CIRP of whole corporate entity that is to be carried out only through CoC mandated to be constituted for the corporate debtor as a whole instead of only one of its projects. Moreover, any procedure that allows the erstwhile management, the cause of suspension of the projects, to participate as a resolution applicant or in any other form or to receive funds from a third party for the corporate debtor will defeat the purpose of the Code, as it is in violation of Section 29-A of the Code as well as various judgments of this Court; and there are serious delinquencies dimension against the ex-management. It is submitted that the appellant is in favour of the investment being made by any third party on the primary condition that the ex-management is not included for resolution of the corporate debtor.

7.2. It has been submitted on behalf of the appellant – Indiabulls Asset and Reconstruction Company Ltd. that the impugned order restricting constitution of CoC only to Eco Village-II is required to be modified to constitute CoC for entire company; promoter/erstwhile management of the corporate debtor should have no involvement in CIRP and must maintain the *status quo* concerning the assets of the corporate debtor.

7.3. It has been submitted on behalf of promotor-respondent No.1 that interim direction No. (i) and (ii) issued by the Appellate Tribunal be modified to include Eco Village-II project also within the interim arrangement. Additionally, the ex-management of the corporate debtor may be allowed to carry out the execution of the interim funding and settlement plan under the supervision of IRP, which could be monitored by a Monitoring Committee designated by this Court. Further, the IRP, ex-management, and the Monitoring Committee be required to submit quarterly progress reports to NCLAT, or alternatively, to this Court. It has also been submitted that no coercive action be taken against assets of corporate debtor, its promoters, directors and management which otherwise would delay completion of projects.

7.4. It has been submitted on behalf of IRP that interim directions issued by the Appellate Tribunal, by way of the impugned order, deserve not to be interfered with; the construction can be monitored by a steering committee which can file reports every quarter; and directions may be issued to initiate efforts to procure interim financing for all of the corporate debtor's projects, which would include both Eco Village-II and Non-Eco Village II projects.

7.5. It has been submitted on behalf of home buyers of Eco Village-II that the direction be issued to complete the construction of the said project in a similar manner as envisaged for other home buyers for whom no CoC has been constituted and construction deserves to be completed under supervision of IRP with assistance of ex-management.

7.6. It has been submitted on behalf of other home buyers that the impugned order deserves not to be interfered with and direction may be issued to NCLAT to complete the process of approval and infusion of funds from proposed investor; a Monitoring Committee may be formed in regard to interim arrangement and settlement plan and due diligence report may be circulated for their opinion; and no coercive action to be taken against assets of the corporate debtor.

8. We have given anxious consideration to the submissions made by the learned counsel for the parties, who have assigned various reasons in support of their respective propositions. As aforesaid, in this order, we are only dealing with the question of interim relief/interim arrangement during the pendency of these appeals.

9. As noticed, the present appeals (Civil Appeal No. 5941 of 2022 and Civil Appeal No. 1925 of 2023) are directed against an interim order of the Appellate Tribunal. However, the said interim order, *prima facie*, gives rise to several questions worth consideration, including the fundamental one as to the tenability of the proposition of "project-wise resolution" as adopted by the Appellate Tribunal. The question, at present, is as to what should be the interim relief/interim arrangement until disposal of these appeals. In regard to this question, we may take note of the relevant principles in relation to the matter concerning grant of interim relief which have been reemphasized by this Court in the case of ***Union of India and Ors. v. M/s Raj Grow Impex LLP and Ors*.: 2021 SCC OnLine SC 429** as follows:-

"**194.** In addition to the general principles for exercise of discretion, as discussed hereinbefore, a few features specific to the matters of interim relief need special mention. It is rather elementary that in the matters of grant of interim relief, satisfaction of the Court only about existence of *prima facie* case in favour of the suitor is not enough. The other elements i.e., balance of convenience and likelihood of irreparable injury, are not of empty formality and carry their own relevance; and while exercising its discretion in the matter of interim relief and adopting a particular course, the Court needs to weigh the risk of injustice, if ultimately the decision of main matter runs counter to the course being adopted at the time of granting or refusing the interim relief. We may usefully refer to the relevant principle stated in the decision of Chancery Division in *Films Rover International Ltd.* v. *Cannon Film Sales Ltd.* : (1986) 3 All ER 772 as under:—

"….The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the "wrong" decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. **A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been "wrong**" in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle."

(emphasis in bold supplied)

195. While referring to various expositions in the said decision, this Court, in the case of *Dorab Cawasji Warden* v. *Coomi Sorab Warden* : (1990) 2 SCC 117 observed as under:—

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. **But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines**. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

(emphasis in bold supplied)

196. In keeping with the principles aforesaid, one of the simple questions to be adverted to at the threshold stage in the present cases was, as to whether the importers (writ petitioners) were likely to suffer irreparable injury in case the interim relief was denied and they were to ultimately succeed in the writ petitions. A direct answer to this question would have made it clear that their injury, if at all, would have been of some amount of loss of profit, which could always be measured in monetary terms and, usually, cannot be regarded as an irreparable one. Another simple but pertinent question would have been concerning the element of balance of convenience; and a simple answer to the same would have further shown that the inconvenience which the importers were going to suffer because of the notifications in question was far lesser than the inconvenience which the appellants were going to suffer (with ultimate impact on national interest) in case operation of the notifications was stayed and thereby, the markets of India were allowed to be flooded with excessive quantity of the said imported peas/pulses."

10. In the light of the principles aforesaid, in our view, as at present, we should adopt the course which appears to carry lower risk of injustice, even if ultimately in the appeals, this Court may find otherwise or choose any other course. In that regard, the element of balance of convenience shall have its own significance. On one hand is the position that the Appellate Tribunal has adopted a particular course (which it had adopted in another matter too) while observing that the project-wise resolution may be started as a test to find out the success of such resolution. The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, CoC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of CoC in relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II.

11. In relation to Eco Village-II project, since CoC was ordered to be constituted by the Appellate Tribunal in the impugned order dated 10.06.2022, we are not interfering with those directions too but, in our view, any process beyond voting on the resolution plan should not be undertaken without specific orders of this Court.

12. The other propositions, including that of constituting monitoring committee, are kept open, to be examined later, if necessary.

13. For what has been discussed hereinabove, the impugned order dated 10.06.2022 is allowed to operate subject to the final orders to be passed in these appeals and subject, of course, to the modification in respect of Eco Village-II project that the process beyond voting on resolution plan shall await further orders of this Court.

14. The interim direction dated 27.01.2023 by this Court in these matters is modified in the manner that the NCLAT may deal with the offers said to have been received and pass an appropriate order thereupon but, the entire process shall remain subject to the orders to be passed in these appeals.

15. These appeals may be listed for final hearing at the admission stage in the second week of July, 2023.

Civil Appeal No. 1975 of 2023

16. As regards Civil Appeal No. 1975 of 2023, no interim relief or interim arrangement is considered requisite at the present stage. The question of maintainability of this appeal is also kept open, to be examined at the appropriate stage. This appeal also be listed along with Civil Appeal No. 5941 of 2022.

Regarding interlocutory applications

17. In the interest of justice, it is made clear that other pending interlocutory applications in these matters are also left open to be examined at appropriate stage with liberty to the parties to mention, if so advised and necessary.