

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6707 OF 2019

Committee of Creditors of Amtek Auto Limited ..Appellant
through Corporation Bank

Versus

Dinkar T. Venkatsubramanian and others ..Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.08.2019 passed by the National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as the 'Appellate Authority') in Company Appeal (AT) (Insolvency) No. 219 of 2019, the

Committee of Creditors of Amtek Auto Limited through Corporation Bank (hereinafter referred to as the 'COC') has preferred the present appeal.

2. The present appeal, as such, has a chequered history.

3. Pursuant to an application made under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'IBC'), the corporate insolvency resolution process was initiated against Amtek Auto Limited – Corporate Debtor on 24.07.2017. A resolution professional was appointed. An advertisement was published by the resolution professional inviting prospective resolution applicants to submit a Resolution Plan by 31.08.2017. The Resolution Plans submitted by respondent No.3 herein – Deccan Value Investor LP (hereinafter referred to as the 'DVI') and respondent no.2 herein – M/s Liberty House Group Private Limited (hereinafter referred to as the "Liberty") were considered by the COC. However, DVI withdrew its Resolution Plan and therefore the revised plan of Liberty was considered and approved by the COC on 2.4.2018. Subsequently, the Resolution Plan submitted by Liberty came to be approved by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the "Adjudicating Authority") vide order dated 25.07.2018. However, the successful resolution applicant – Liberty did not act as per the approved Resolution Plan. Thereafter, number of proceedings were initiated against the successful resolution applicant – Liberty.

3.1 An application under Section 60(5) read with Section 74(3) of the IBC was filed by the COC/financial creditors before the Adjudicating Authority informing that the successful resolution applicant – Liberty has failed to act as per the approved Resolution Plan and it was prayed to reinstate the COC and the resolution professional to ensure that the Corporate Debtor remain as a going concern. Further prayer was made to grant 90 days to the resolution professional to make another attempt for a fresh process rather than forcing the Corporate Debtor into liquidation on account of fraud committed by Liberty.

3.2 The Adjudicating Authority held that Liberty has defaulted in its obligation under the approved Resolution Plan and granted liberty to the COC and the resolution professional to approach the appropriate authority under the IBC for the determination of the wilful default. The Adjudicating Authority did not accede to the request for carrying out a fresh process by inviting the plans again but directed the reconstitution of the COC for re-consideration of the Resolution Plan submitted by DVI. The Adjudicating Authority disposed of the said application/appeal accordingly.

3.3 Feeling aggrieved and dissatisfied with the order passed by the adjudicating authority dated 13.02.2019, the COC filed an appeal before the appellate authority – NCLAT. That thereafter, the resolution

professional invited fresh applications from prospective resolution applicants and called upon them to submit their resolution plans. Over and above two other resolution applicants, an interest was also received from DVI on 31.05.2019. However, the same was rejected and DVI was declared as an ineligible resolution applicant. Against the said rejection, DVI filed an appeal before the appellate authority. Vide order dated 26.06.2019, the appellate authority held that in light of the earlier order dated 20.05.2019 the COC was required to consider all resolution plans subject to the pending appeal. The DVI submitted the revised resolution plan. However subsequently, the appellate authority by the impugned judgment and order disposed of the appeal filed by the COC and rejected the prayer for exclusion of time. Consequently, virtually ordered the liquidation of the Corporate Debtor.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.08.2019 passed by the appellate authority, the COC has preferred the present appeal contending inter alia that (a) the Corporate Debtor is financially viable entity and there is enough interest in the market for submission of a resolution plan for the Corporate Debtor; (b) Resolution of the financial affairs of a distressed company is primary aim of the Code and a failure/infirmity on the part of a resolution applicant ought not to undermine the primary mischief sought to be

resolved; (c) Maximisation of the value of the assets of the Corporate Debtor is imbedded in the Code and even forms the part of its Preamble and therefore, an opportunity ought to be granted to the Committee of Creditors to make an attempt at resolution specially keeping in view the availability of suitable resolution applicants in the market; and (d) Liberty, by its deliberate failure in implementing the Approved Resolution Plan, has defrauded the Adjudicating Authority, the Committee of Creditors and all the stakeholders of the Corporate Debtor, hence, the period extended in proceeding with the CIR Process with Liberty as a Resolution Applicant ought to be excluded to uphold the principles underlining the Code.

5. By order dated 6.9.2019, while issuing notice in the present appeal, this Court stayed the liquidation proceedings, until further orders.

5.1 When the appeal was taken up for further hearing on 24.09.2019, it was submitted on behalf of the COC that the resolution professional may be permitted to invite the fresh offers within a period of 21 days. This Court permitted the resolution professional to invite fresh offers within a period of 21 days. This Court further passed an order that within two weeks thereafter, the COC shall take a final call in the matter and the decision of the COC and the offers received be placed before this Court. DVI also submitted the fresh resolution plan which was approved

by the COC with 70% majority. By order dated 8.6.2020, this Court relegated the matter of IA No. 48906/2020 filed by the COC for appropriate directions/orders to the adjudicating authority to consider the same and pass appropriate orders, after hearing the parties. This Court also observed that the time spent before the adjudicating authority and before this Court be excluded for calculating long stop date. DVI tried to withdraw from resolution plan. The same came to be specifically rejected by this Court vide order dated 18.06.2020. This Court further observed that in case the DVI indulges in such kind of practice, it will be treated as contempt of this Court in view of the various orders passed by this Court at its instance.

5.2 That the resolution plan submitted by the DVI came to be approved by the adjudicating authority – NCLT in the month of July, 2020. Since the approved resolution plan submitted by the DVI was not acted upon by the DVI, the COC filed Contempt Petition No. 524/2020 before this Court. DVI also filed an application for rectification of the earlier order dated 18.06.2020 by which this Court rejected the prayer of the DVI for withdrawal of the offer and observed that in case the DVI indulges in such kind of practice, it will be treated as contempt of this Court. Both the contempt petition filed by the COC as well as the application for rectification filed by the DVI were heard together. By a

detailed order dated 23.02.2021, this Court dismissed the application for rectification filed by the DVI of the order of this Court dated 18.06.2020 instituted by the DVI.

5.3 While rejecting the said application, this Court specifically observed that DVI's application for rectification is an attempt to renege from the resolution plan which it submitted and to resile from its obligations. It was further observed that this is a devious attempt which must be disallowed. Simultaneously, this Court also dismissed the contempt petition. However, while dismissing the contempt petition, it is observed in para 38 as under:

“38 The issue which needs to be addressed is whether recourse to the contempt jurisdiction is valid and whether it should be exercised in the facts of this case. Undoubtedly, as we have noted earlier, the conduct of DVI has not been bona fide. The extension of time in the course of the judicial process before this Court enures to the benefit of DVI as a resolution applicant whose proposal was considered under the auspices of the directions of the Court. DVI attempted to resile from its obligations and a reading of its application which led to the passing of the order of this Court dated 18 June 2020 will leave no doubt about the fact that DVI was not just seeking an extension of time but a re-negotiation of its resolution plan after its approval by the CoC. Then again, despite the order of this Court dated 18 June 2020 rejecting the attempt of DVI, it continued to persist in raising the same pleas within and outside the proceedings before the NCLAT. The conduct of DVI is lacking in bona fides. The issue however is whether this conduct in raising the untenable plea and in failing to adhere to its obligations under the resolution plan can per se be regarded as a contempt of the order of this Court dated 18 June 2020. DVI was undoubtedly placed on notice of the order that should it proceed in such terms, it would invite the invocation of the contempt jurisdiction. Having said that, it is evident that the order of this Court dated 18 June 2020 rejected the IA moved by DVI and as a necessary consequence, the basis on which the reliefs in the IA were sought. Therefore correctly, it has been now stated on behalf of the DVI that it will not set-up a plea of force majeure in view of the dismissal of its IA on 18 June 2020. 29 However lacking in bona fides the conduct of DVI was, we must be circumspect about invoking the contempt jurisdiction as setting up an untenable plea

should not in and by itself invite the penal consequences which emanate from the exercise of the contempt jurisdiction. Likewise, the default of DVI in fulfilling the terms of the resolution plan may invite consequences as envisaged in law. On the balance, we are of the considered view that it would not be appropriate to exercise the contempt jurisdiction of this Court. During the course of the hearing, Dr Abhishek Manu Singhvi, learned Senior Counsel has relied on the affidavit filed in response to the contempt petition while seeking to urge that DVI will be within its rights to urge whether the conditions precedent to the enforcement of the resolution plan have been fulfilled. Since DVI is in appeal before the NCLAT, we express no opinion on the merits of the submission. The NCLAT will take a view on the tenability and merits of the submission of DVI that the conditions precedent under the resolution plan have not been fulfilled after hearing the parties. This is not an issue which arises before the Court in the present proceedings either upon the application for rectification moved by DVI or the contempt petition moved by the CoC.”

5.4 While dismissing the application for rectification and disposing of the contempt proceedings, this Court ultimately concluded and directed as under:

“39 For the above reasons, our conclusions and directions are that:

- (i) There is no merit in the application for rectification moved by DVI. IA No. 58156 of 2020 in Civil Appeal No 6707 of 2020 shall stand dismissed;
- (ii) It is not expedient in the interest of justice to pursue the contempt proceedings. The Contempt Petition (C) No. 524 of 2020 in Civil Appeal No. 6707 of 2019 shall accordingly stand dismissed, subject to (iii) below;
- (iii) In terms of the submission which has been made by DVI before this Court and even otherwise, as a consequence of the dismissal of its IA on 18 June 2020, it shall not set-up a plea for force majeure in the proceedings which are pending before the NCLAT in appeal against the order of the NCLT approving the resolution plan; and
- (iv) The appeal filed by DVI against the approval of the resolution plan by the NCLT shall peremptorily be heard and disposed of by the NCLAT not later than within a period of one month from the date of the present judgment.”

This Court also directed that the appeal filed by the DVI against the approval of the resolution plan shall peremptorily be heard and disposed of by the appellate authority within a period of one month from the date of the said judgment.

5.5 That thereafter, by a detailed judgment and order dated 16.04.2021, the appellate authority dismissed the appeal preferred by the DVI which was filed against the order passed by the adjudicating authority dated 9.7.2020 approving the resolution plan submitted by the DVI itself. Thus thereafter, the Resolution Plan submitted by the successful resolution applicant – DVI was to be implemented and acted upon by the DVI. However subsequently when the present appeal was taken up for further hearing, it was pointed out that the DVI – successful resolution applicant is not acting as per the approved resolution plan. However, it was pointed out that the implementation of the successful resolution plan has been commenced. Therefore, this Court directed the parties to submit the status report on implementation of the approved resolution plan submitted by DVI.

6. Status Report filed by DVI – successful resolution applicant was produced before this Court on 23.11.2021, when this Court passed the following order:

“We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the Appellant, Ms. Shikha Tandon, learned counsel appearing

on behalf of the DVI/successful resolution applicant and Shri Sanjay Bhatt, learned counsel appearing on behalf of the Resolution Professional.

It is not in dispute that the Resolution Plan submitted by the DVI has been approved by the NCLAT as far as back in July, 2020. Earlier, the attempts were made to resile from the Resolution plan which has not been accepted by this Court by detailed orders. Thereafter, the matter has been adjourned time and again so as to enable the DVI to act as per the Resolution Plan. Today, a status report has been filed on behalf of the respondent no.3 – DVI.

In paragraph 2, it is stated as under –

“At the outset, it is submitted that DVI has been committed towards implementation of DVI’s Resolution Plan and has been taking active steps towards its implementation. In furtherance of the same, DVI and/or its affiliate (“DVI Affiliate”) has already remitted amounts aggregating to INR 500 Crore, i.e., the upfront infusion amount (“Upfront Cash Amounts”) under DVI’s Resolution Plan to the Indian branch of Standard Chartered Bank (DVI Affiliate’s custodian bank) for settlement of debt under DVI’s Resolution Plan. DVI is currently awaiting details of Amtek’s designated accounts in which such Upfront Cash Amounts are to be remitted on the closing date, as may be agreed to between the members of the IMC for implementation of DVI’s Resolution Plan. It is further stated that DVI undertakes to disburse this money in accordance with the terms of DVI’s Resolution Plan, as and when such closing date is achieved.”

Under the Resolution Plan, the following steps are to be undertaken –

- a) Delisting of Amtek’s equity share capital from the stock exchanges – Completed.
- b) Increase of authorised share capital of Amtek and completion of necessary filings – Completed.
- c) DVI and/or its affiliate to subscribe to the equity shares of Amtek by infusing nominal amounts of INR 5,00,000 (“Nominal Infusion”) - Ongoing.
- d) Debt identified as unsustainable to be converted into equity and equity to be issued and allotted to the creditors (“Unsustainable Equity Allotment”) - Ongoing.
- e) Reduction in pre-CIRP shareholding of Amtek and equity held by way of Unsustainable Equity Allotment – This action is pending and can be undertaken only upon Nominal Infusion and Unsustainable Equity Allotment.
- f) Issuance and allotment of 90% of equity share capital to DVI and/or its affiliates – Ongoing.
- g) Issuance and allotment of 10% of equity share capital to financial creditors – Ongoing.

h) Issuance and allotment of non-convertible debentures to DVI Affiliate – Ongoing DVI vide its emails dated 18.11.2021 had informed the IMC members that:

(a) Upfront Cash Amounts have currently been remitted by DVI Affiliate to the Indian branch of the DVI Affiliate's custodian bank for settlement of debt under the Resolution Plan; and

(b) details of the designated accounts in which such amounts are to be deposited have not been provided to DVI.”

One of the steps to be undertaken by the DVI is to deposit Rs.500 crores “Upfront Cash Amounts”. As per the communication dated 18.11.2021 addressed by DVI a sum of Rs.500 crores is lying in a deposit account in India with their custodian Standard Chartered Bank and the money is ready for disbursement to lenders. The submission on behalf of the DVI is that unless and until the other steps are undertaken as per the Resolution Plan, the aforesaid amount of Rs.500 crores may not be transferred to Amtek Auto Limited. The aforesaid is just contrary to their own communication dated 18.11.2021. Therefore, when even according to the DVI a sum of Rs.500 cores is lying in a deposit account in India with their custodian and even as per the said communication the money is ready for disbursement to lenders, we direct that the aforesaid amount of Rs.500 crores to be transferred to the Bank Account of Amtek Auto Limited by 24.11.2021, the particulars of the Bank Account are as under –

Bank Name – State Bank of India A/c No. - 32985171467 IFSC - SBIN0004109 Beneficiary – Amtek Auto Limited Branch - 12th Floor, STC Building, 1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi

Put up on 25.11.2021.”

7. Today, when the present appeal is taken up for further hearing, Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the COC has submitted that an amount of Rs. 500 crores are transferred to the bank account of the Corporate Debtor – Amtek Auto Limited. It is to be noted that even in the status report the DVI has stated that DVI has been committed towards its approved resolution plan and has been taking active steps towards its implementation.

8. Under the approved resolution plan, both the parties have to fulfil their obligations. The Corporate Debtor has also to perform its obligations simultaneously so that the amount of Rs.500 crores be transferred to the financial creditors/lenders of the Corporate Debtor. It is the case on behalf of the respective parties that the aforesaid obligations are to be performed mutually and simultaneously. It is reported that Implementation and Monitoring Committee (IMC) has been constituted comprising of resolution professional, three identified lenders of the Corporate Debtor and nominee of DVI to supervise the implementation of the resolution plan.

9. The approved resolution plan has to be implemented at the earliest and that is the mandate under the IBC. As per Section 12 of the IBC, subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process, which can be extended by a further period of 180 days. As per proviso to Section 12 of the IBC, which has been inserted by Act 26 of 2019, the insolvency resolution process shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under Section 12 of the IBC and the time taken in legal proceedings in relation

to such resolution process of the Corporate Debtor. As per the third proviso to Section 12 of the IBC, which is also inserted by Act 26 of 2019, where the insolvency resolution process of a Corporate Debtor is pending and has not been completed within a period stated hereinabove, i.e., within a period of 330 days, such resolution process shall be completed within a period of 90 days from the date of commencement of the IBC amendment Act, 2019, i.e., 16.08.2019.

10. Thus, the entire resolution process has to be completed within the period stipulated under Section 12 of the IBC and any deviation would defeat the object and purpose of providing such time limit. However, by earlier order, the time limit has been condoned in view of the various litigations pending between the parties and in the peculiar facts and circumstances of the case. Therefore, any further delay in implementation of the approved resolution plan submitted by DVI which as such has been approved by the adjudicating authority in the month of July, 2020 and even the appeal against the same has been dismissed subsequently, any further delay would defeat the very object and purpose of providing specific time limit for completion of the insolvency resolution process, as mandated under Section 12 of the IBC. Therefore, we direct all the concerned parties to the approved resolution plan and/or connected with implementation of the approved resolution plan including

IMC to complete the implementation of the approved resolution plan, within a period of four weeks from today, without fail. It is further directed and it goes without saying that on implementation of the approved resolution plan and even as per the approved resolution plan, an amount of Rs. 500 crores now deposited by DVI-successful resolution applicant be transferred to the respective lenders/financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan with the time stipulated hereinabove shall be viewed very seriously.

11. With the above observations and directions, the present appeal stands disposed of. Pending applications, if any, also stand disposed of.

.....J.
[M.R. Shah]

New Delhi;
December 01, 2021.

.....J.
[Sanjiv Khanna]