

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 07/2023

(IA No. 45/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**Arising out of the Impugned Order dated 02/11/2022 in IA/676/2022 in
IBA/374/2020, passed by the ‘Adjudicating Authority’, National
Company Law Tribunal, Chennai Bench)**

In the matter of:

**M/s. Mayuras Industrial Services
No. 25, Crescent Road, Shenoy Nagar West,
Chennai – 600 030.**

...Appellant

V

1. S R Shriraam Shekher

**Resolution Professional in the matter of
M/s. Prodeb Brewery Technology Belgium Pvt. Ltd.
Flat No. 11, Prayag Apartments, 1st Floor,
8/15, Gandhi Nagar, First Main Road,
Adyar, Chennai,
Tamilnadu – 600 020.**

**2. Mr. ChorimuthuSathishkumar,
Suspended Director,**

**M/s. Prodeb Brewery Technology Belgium Pvt. Ltd.
No. 7/1B, Errikarai, Sennerkuppam,
Poonamalee,
Chennai – 600 077.**

...Respondents

Present :

For Appellant : Mr. A.G. Sathyanarayana, Advocate

For Respondents : Mr. Vishranth, Advocate

Mr. Gautam S. Raman, Advocate, For R2

J U D G E M E N T
(Virtual Mode)

Justice M. Venugopal

Preface

The Appellant / M/s. Mayuras Industrial Services, Chennai/Operational Creditor has preferred the instant Comp. App.(CH) (AT)(Ins.) 07/2023 as an aggrieved person, in respect of the impugned order dated 02.11.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Division Bench II in IA 676/2022 in IBA/374/2020 (filed by the 1st Respondent).

2. Earlier, the Adjudicating Authority/Tribunal while passing the impugned order dated 02.11.2022 in IA 676/2022 in IBA/374/2020 had observed among other things that “taking into consideration” the averments in the application by RP as withdrawal has been approved in the CoC meeting held on 06.06.2022, the Application u/s 12A was allowed.

Appellant’s Submissions

3. According to the Learned Counsel for the Appellant, the Adjudicating Authority/Tribunal had wrongly allowed the IA/676/2022 in IBA/374/2020

filed by the 1st Respondent, without properly considering the 'legal points and facts' and passed the 'order', in a mechanical manner.

4. The Learned Counsel for the Appellant points out that the 1st Respondent cannot accept any claim without getting it condoned by the Adjudicating Authority/Tribunal, as mandated under Regulation 12 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016.

5. Advancing argument, the Learned Counsel for the Appellant submits that without receipt of any consent viz. Form –FA from the Appellant, who initiated 'CIRP' the 1st Respondent/Interim Resolution Professional should not have passed a 'Resolution' for withdrawal of the 'CIRP'.

6. Added further, the Interim Resolution Professional/1st Respondent, ought not to have filed the application under Section 12A of the Code for 'withdrawal of CIRP' and the Adjudicating Authority should have called for the records of the 'Constitution of the Committee of Creditors' which is assailed by the Appellant (including consent of Form-FA).

7. Expatiating his submission, the Learned Counsel for the Appellant projects an argument that the 1st Respondent had not taken over the 'Corporate Debtor' whereas the civil suit filed by the 'Corporate Debtor' against the Appellant after filing of the CIRP petition, by the Appellant is still continuing by the Corporate Debtor themselves, for the same claim made in the 'CIRP' by the Appellant, fraudulently, with a 'malafide intention' which was not stalled / withdrawn, rather suppressed the CIRP order to the Civil Court in OS/129/2020, and the matter was transferred to 'Commercial Court'

on 23.04.2020. Moreover, the 'first hearing', of the 'Commercial Court' in COS/326/2022 was fixed on 06.07.2022 and the same was adjourned to 28.06.2022, 11.10.2022 and 04.11.2022, 15.11.2022, 13.12.2022 and 27.03.2023 respectively.

8. The Learned Counsel for the Appellant vehemently takes a plea that the 'Principles of Natural Justice' were not adhered to by the 'Adjudicating Authority' /Tribunal and without furnishing any detailed recording of the objections, projected by the Appellant, the 'impugned order' came to be passed in a mechanical manner.

9. The Learned Counsel for the Appellant adverts to the Judgement of this Tribunal in CA(AT)(CH)(Ins.)61/2023 wherein at paragraph 4 and 5 it is observed as under:-

“4. Taking into Consideration, the submissions of both the Parties as well as the facts of the case on hand, this ‘Tribunal’ is of the considered view that in the interest of Justice, an opportunity may be accorded to the ‘Appellant’, herein to be heard on merits, before the ‘Adjudicating Authority’ and therefore, we find it a fit case to remand the matter to the ‘Adjudicating Authority’ and the ‘Adjudicating Authority’ shall decide the ‘Application’ within a period of ‘four

weeks' from the date of this Order. It is made clear that this Tribunal has not commenced on the merits of the matter and the 'Adjudicating Authority' shall proceed in accordance with Law, uninfluenced by any observations in this Order.

5. For the afore noted reasons, this 'Appeal' is allowed and the Order of the Adjudicating Authority in IA No. 693/2020 is set aside and the matter is remanded back to the Adjudicating Authority for fresh adjudication on merits. All parties shall appear before the 'Adjudicating Authority' on 15/06/2023. No Costs. The Connected Pending Interlocutory Application, if any, are closed.'

and comes out with an argument that the 'impugned order', was passed without providing 'any objections of the Appellant' being recorded thereto.

10. According to the Appellant after 50 days of delay from the 'Last date of submission of claims', as per the public announcement M/s. SS Metal Co and M/s. Amsa Agencies & Services had made their claim and the same was admitted by the Resolution Professional and voting rights were revised

accordingly, with SS Metal Co. with 84% voting rights and the Appellant and M/s. Amsa Agencies & Services with a voting right of 8% each.

11. It comes to be known that the 1st Respondent had filed an application u/s 19(2) of the Code for non-cooperation of the suspended Board of Directors of the Corporate Debtor because of complete non-cooperation of the Corporate Debtor in IA/594/2022 dated 18.05.2022. Also that in the second CoC meeting that took place on 02.06.2022 it was resolved by the Committee of Creditors with 90% voting rights to approach the Adjudicating Authority / Tribunal Chennai Bench with appropriate 'withdrawal application', even though, the Appellant had objected to the same.

12. It is brought to the fore, that in the '3rd CoC meeting', held on 06.06.2022, a 'settlement agreement' by the said 'two operational creditors' were signed, and it was further resolved, to withdraw the 'CIRP', against the Corporate Debtor admitted by the Adjudicating Authority/Tribunal, Chennai Bench through IBA/374/2020 dated 16.03.2022 with an approval of 92% CoC and pursuant to the same, 'an application', was filed with the Adjudicating Authority/Tribunal in IA 676/2022. Moreover, the Appellant had filed a complaint against the Resolution Professional to IBBI, through mail dated 01.08.2022.

13. The Learned Counsel for the Appellant, brings to the notice of this Tribunal that without appreciating the fact that the Adjudicating Authority / Tribunal has no equity jurisdiction to pass such suo moto orders without following 'Due Process of Law' as prescribed under the I&B Code.

14. The other line of argument projected on the side of the Appellant is that the Adjudicating Authority/Tribunal had failed to call the parties, to file their 'Form-FA' as required, to pass 'withdrawal of CIRP'.

15. According to the Applicant/Committee of Creditors represented by Shri S.R. Shriram Shekher, Resolution Professional of M/s Prodeb Brewery Technology Belgium Pvt. Ltd. In IA 676/2022 in Company Petition No. IBA/374/2020(filed under Section 60(5)) read with Section 12A of the I&B Code in the third CoC meeting, which was convened by the Resolution Professional with due notice to the Applicant, as well as the Operational Creditors, on 06.06.2022, Mr. C.Satish Kumar one of the Suspended Directors, on behalf of himself and other Directors of Corporate Debtor submitted 'an affidavit' and an application for the 'withdrawal of CIRP' in Form-FA, for consideration by the Committee etc.

16. In this connection, it is not out of place for this Tribunal, to make a pertinent mention that in the third meeting of Committee of Creditors' that took place on 06.06.2022, the offer of settlement', effected by the Former Directors of the Corporate Debtor and the settlement agreement was placed and in terms of the order dated 16.03.2022, the amount payable to the said Operational Creditor was Rs. 1,86,389/- and the said Operational Creditor admitted that the entire sum of Rs. 1,86,389/- was received by the Applicant in IA(IBC)/676(CHE)/2022.

17. It cannot be forgotten that in the instant case on hand, is confined only to the 'Corporate Debtor' viz. M/s. Prodeb Brewery Technology Belgium Pvt. Ltd., and that apart, the 'Resolution Professional', had explained to the

‘Committee’ that the claims in respect of ‘all other Companies’ cannot be entertained.

18. To put it precisely, and succinctly, the ‘Resolution’ in the third meeting of ‘Committee of Creditors’ was approved with 92% of votes in its favour and with 8% against it. As a matter of fact, the 1st Respondent in IA 676/2022 in Company Petition No. IBA/374/2020 viz. M/s Mayura’s Industrial Services (with 8% of voting share) had not voted in favour of the aforesaid Resolution Plan. In such a situation, the application in IA 676/2022 in Company Petition No. IBA/374/2020 was projected, considering the fact the Resolution for ‘withdrawal of the application’ was passed with more than 90% of votes and accordingly u/s 12A of the Code the application in IA 676/2022 was submitted for withdrawal of application u/s 12A of the I&B Code, 2016.

19. The Learned Counsel for the Appellant refers to the Judgement of this Tribunal in Company Appeal (AT)(CH)(Ins.) 61/2023 dated 08.06.2023 wherein the ‘opportunity’ was directed to be accorded to the Appellant, to be ‘Heard on Merits’, before the Adjudicating Authority/Tribunal etc., and the matter was remanded back to the Adjudicating Authority / Tribunal, for deciding the IA/693/IB/2020 in CP 1006/IB/2018, uninfluenced by any of the observations made in the Appeal.

Evaluation

20. Before the Adjudicating Authority/Tribunal, the IA(IBC)/676(CHE)/2022 in IBA/374/2020 by the Petitioner/Committee of Creditors, rep. by Shri SR Shriram Shekher, Resolution Professional seeking for an order of withdrawal of CIRP initiated by the Petitioner by an order

dated 16.03.2022 in main Company Petition IBA/374/2020 on the file of 'National Company Law Tribunal' Division Bench II, Chennai (filed u/s 9 of the Code), resting upon 'Resolution' passed by CoC, in the third meeting that took place on 06.06.2022, for accepting the 'offer of settlement', submitted by the Corporate Debtor and for withdrawal of CIRP as per Section 12A (r/w Section 60(5) of the Code).

21. At this juncture, this 'Tribunal', amply points out that an Adjudicating Authority / Tribunal may allow withdrawal of Section 7 Application, even after admission of an 'application', made by an Applicant, with an approval of 90% voting shares of Committee of Creditors.

22. It is to be remembered that in terms of Rule 8 of the Insolvency & Bankruptcy, (Application to Adjudicating Authority Rules), 2016, an Adjudicating Authority/Tribunal may allow withdrawal of an application at the request of the Applicant. Also that an application seeking 'withdrawal' can be allowed only if the Creditors, with 90% voting share along with a Bank Guarantee voted for the same.

23. It transpires that the 'Interim Resolution Professional', had filed IA/594/2022 in main Company Petition in IBA/374/2020 filed u/s 19(2) r/w Section 60(5) and 70(1) of the I&B Code wherein, a direction was sought in passing an order, in respect of R1-R4 therein (Suspended Board of Directors) and the 'Statutory Auditor' (6th Respondent of the Corporate Debtor) to cooperate with the Resolution Professional/Applicant by providing all the Books of Accounts till the date of commencement of CIRP, by the Adjudicating Authority viz. 16.03.2022 etc.

24. In so far as the second Respondent / Suspended Director of M/s. Prodeb Brewery Technology Belgium Pvt. Ltd., Chennai, it is pointed out in their 'Reply', to the main instant 'Company Appeal', that in view of the fact the 'Operational Debt' was settled and 'all the Creditors', of the Company, were settled, there will be no purpose served in keeping the Company under 'CIRP'. Further, the 'Appellant', was only 'aggrieved', in respect of the meagre amount of an operational debt amounting to Rs. 1,86,389/-.

25. One cannot remain in oblivion of the fact that the 'mandate of the Code' is for 'Resolution' and 'Revival' of Companies. Furthermore, the Appellant is an affected person, because they want more money than what is owed to them by the 'Corporate Debtor'.

26. According to the second Respondent, the instant Appeal is an 'motivated' and also an 'abuse of process of law'.

27. It must be borne in mind that the jurisdiction of an Adjudicating Authority/Tribunal u/s 12 of the Code is very much limited. In reality, where 'CoC', had approved with more than 90% of voting share, it is not open to an Adjudicating Authority/Tribunal in law to reject the 'Application'.

28. In ***Rajakumar V Nagarajan & Ors.(vide judgement in Civil Appeal 1792/2021) the Hon'ble Supreme Court*** had observed that a 'Company Director', is entitled to seek withdrawal of an application initiating 'CIRP', if, is able to establish that he would be settling the dues of Creditors.

29. In the instant case on hand, the Corporate Debtor had already settled the dues of two Operational Creditors (i) SS Metal & Amsa Agencies and

Services to their satisfaction and made a 'draft' already in favour of M/s. Mayura's Industrial Services.

30. In the judgement dated 03.06.2022 of the **Hon'ble Supreme Court in Vallal RCK V M/s. Siva Industries and Holdings, the Hon'ble Supreme Court** has observed that 'Tribunals' should not interfere with the Commercial wisdom of the Committee of Creditors, agreeing to the settlement Plan submitted by the Corporate Debtor, once it got the approval of 'Committee of Creditors', with more than 90% voting in its favour.

31. Be that as it may, in the light of detailed foregoing and this Tribunal bearing in mind of a primordial fact that the Operational Creditor had admitted that entire sum of Rs. 1,86,389/- was received by the Petitioner and added further the averments made in the Petition by the 'Resolution Professional' as withdrawal was approved by the CoC meeting that took place on 06.06.2022 (third meeting), the IA 676(CHE)/2022 filed by the Resolution Professional in the main IBA/374/2020 on the file of the Adjudicating Authority/NCLT, Division Bench II, (filed under section 12A of the Code) was rightly allowed by the Adjudicating Authority/NCLT, Division Bench II, Chennai. Suffice it for this Tribunal, to make a pertinent mention that the conclusion arrived at by the Adjudicating Authority/Tribunal in allowing the IA(IBC)/676(CHE)/2022 in IBA/374/2020 is free from 'Legal Infirmities'. Accordingly, the instant Appeal fails.

Disposition

In fine, the instant ***Company Appeal (AT)(CH)(Ins.) 07/2023*** is ***dismissed*** for the reasons assigned by this Tribunal in this Appeal. No costs.

The connected IA 45/2023 (for stay) is closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

Dated: 13/09/2023

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