

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1352 of 2023

&
I.A. No. 4807 of 2023

IN THE MATTER OF:

Rakesh Ranjan

...Appellant

Versus

Fanendra Harakchand Munot & Anr.

...Respondents

Present:

For Appellant : Mr. Akshay Sapre, Mr. Tabrez Malawat, Rupali Jain,
Syed Hamza, Advocates

For Respondents : Mr. Rajat Sinha, Madhur Jhawar, Advocates for R-1
Mr. Nakul Mohta and Riya Dhingra, Advocates for R-2

O R D E R

(Hybrid Mode)

04.12.2023: Heard Learned Counsel for the parties.

2. This Appeal has been filed against the Order dated 18th July, 2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-V by which I.A. No. 2724 of 2022 filed by the Resolution Professional for approval of the Resolution Plan has been allowed and the Resolution Plan submitted by the Successful Resolution Applicant has been approved.

3. This Appeal has been filed by the Appellant who had also submitted a Resolution Plan which was not considered due to reason that he failed to submit the Bank Guarantee of Rs. 50 Lakhs as per RFRP.

4. Learned Counsel for the Appellant submits that the requirement of Rs. 50 Lakhs of Bank Guarantee was not in accordance with Regulation 36B, Sub-Regulation 4 and 4A of CIRP Regulations, 2016 since the said requirement was contrary to the Regulations and plan of the Resolution Applicant i.e. Appellant ought to have been considered.

5. Learned Counsel appearing for the Respondents refuting the submissions of Learned Counsel for the Appellant submits that RFRP specifically contains a condition for submission of Bank Guarantee of Rs. 50 Lakhs which was never challenged by the Appellant.

6. Learned Counsel for the Resolution Professional has pointed that even in effect the Appellant has written letter to the Canara Bank on 14th February, 2022 that it shall submit a Bank Guarantee along with the Resolution Plan and at no point of time the said clause of the RFRP was challenged by the Appellant and when the plan has not been considered he has come up in this Appeal. It is further submitted that Resolution Plan has been approved and has been fully implemented, the amount distributed and this Appeal has virtually become infructuous.

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

8. The Appellant itself has pointed out the minutes of 09th CoC Meeting held on 2nd March, 2022 where the Resolution Plan submitted by the Appellant was considered. Following is the consideration by the CoC of the Resolution Plan:

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“Discussion on Resolution plan submitted by Mr. Rakesh Ranjan:

Chairman requested authorised representatives of V Axis Structural Steels Pvt. Ltd. to log out from the meeting.

Chairman informed that as per the terms and conditions of the Request for Resolution Plan, the prospective resolution applicant was required to submit a Bank Guarantee of Rs. 50 Lakhs along with the resolution plan. However, Mr. Rakesh Ranjan has not submitted such Bank Guarantee. Since he has not complied with the terms stipulated in the Request for Resolution Plan, the resolution plan submitted by him cannot be considered.

Mr. Rakesh Ranjan requested the CoC to waive the requirement of bank guarantee and consider the resolution plan submitted by him. He stated that he will submit the bank guarantee after approval of the Resolution plan by the NCLT.

CoC stated that such requirement cannot be waived.

For the knowledge of Coe, the Chairman highlighted below mentioned points observed in the documents submitted by Mr. Rakesh Ranjan in respect of the sources of funds for implementation of the resolution plan:”

9. The submission which has been pressed by Learned Counsel for the Appellant is that the condition for requiring to submit Rs. 50 Lakhs Bank Guarantee was contrary to Regulation 36B (4) and (4A). Regulation 36-B (4) and (4A) of Regulations, 2016 is as follows:

“36-B. Request for resolution plans.

.....

(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

[(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under subsection (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation [schedule I].

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.]”

10. The copy of RFRP which has been handed over by the Appellant contains under the heading of “Other Conditions”, following two conditions are as follows:

“Bank Guarantee to be submitted along with the Resolution plan; Rs. 50 Lakhs

Performance Bank Guarantee to be submitted by the successful resolution applicant (whose plan has been approved by the CoC): 10% of total amount proposed under resolution plan.”

11. When we look into the Regulation 36-B (4) it only provides for request of resolution plan shall not require any non-refundable deposit. In RFRP there is no such clause which requires that Resolution Applicant has to submit any non-refundable deposit. With regard to Regulation 36B (4A), RFRP itself contains a condition as extracted above. Therefore, the RFRP was fully in compliance with Regulation 36B (4A). Learned Counsel for the Resolution Professional has rightly submitted that requirement of Bank Guarantee was only for the purpose to consider seriousness of the Resolution Applicants who are able to submit the Bank Guarantee of Rs. 50 Lakhs. Appellant has never complied the said and has not challenged the RFRP at any stage, cannot be allowed to contend that the said condition is not correct.

12. We have further noticed in 09th COC Meeting that Appellant has made a request to CoC to waive the requirement of Bank Guarantee which was not accepted by the CoC and Appellant having not complied with the terms of the RFRP in submitting the plan, we do not find any illegality in the decision of

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the CoC in not considering the Resolution Plan of the Appellant. Learned Counsel for the SRA submits that plan has already been implemented and distribution have been made.

In view of the above, we see no reason to entertain this Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Basant/nn