NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
APPELLATE JURISDICTION

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

Company Appeal (AT) (CH) (INS) No.59 of 2021

(Arising out of Order dated 08.04.2021 in I.A.No.1186/IB/2020 in IBA/243/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Chennai Bench, Chennai)

In the matter of:

R.V. Tyagarajan ....Appellants
Eldorado Building, 5th Floor,
No.112 Nungambakkam High Road,
Chennai – 600 034

V.

R. Raghavendran, ...Respondent
Resolution Professional
Of Thiru Arooran Sugars Ltd.
Flat No.3, Dr. Rajendraprasad Road,
Tatabad, Coimbatore – 641 012

Present:

For Appellant : Mr.Rahul Balaji, Advocate
For M/s.R. Parthasarathy,
Vishnu Mohan,
Advocates

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

1. According to the Learned Counsel for the Appellant, the Appellant was the Chairman and Managing Director of the Corporate Debtor viz. Thiru Arooran Sugars Ltd. (prior to suspension of the Board upon initiation of CIRP) and that the 'Corporate Debtor'/Thiru Arooran Sugars Ltd. was admitted into CIRP as per Order of the 'Adjudicating Authority' in IBA No.243/2019 and that the Respondent was appointed as an

'Interim Resolution Professional' and later confirmed as the 'Resolution Professional' by the 'Committee of Creditors'.

2. The Learned Counsel for the Appellant submits that the present Appeal is preferred by the 'Appellant' being aggrieved against the Order dated 08.04.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-II, Chennai Bench) in I.A.No.1186 of 2020 in IBA/243/2019 ('Liquidation Application'- filed by the Respondent /Applicant/Resolution Professional under Section 33 of the I & B Code, 2016) whereby and whereunder the 'Liquidation of the Corporate Debtor' was ordered resulting in the appointment of Mr.Ramakrishnan Sadasivan, as the 'Liquidator' of the 'Corporate Debtor' to carry out the Liquidation Process subject to the issuance of necessary directions therein.

3. Challenging the 'Impugned Order' dated 08.04.2021 in I.A.No.1186/2020 in IBA/243/2019 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench-II, Chennai) the Learned Counsel for the Appellant contends that the 'Impugned Order' dated 08.04.2021 is to be setaside by this 'Tribunal' because of the fact that the Respondent/'Resolution Professional' had failed to bring on record before the 'Adjudicating Authority' that during the CIRP, after three rounds of invitation between December 2019 and July 2020 for 'Expression of Interest' (EOI) and submission of 'Resolution Plans' by interested parties, only one Applicant in the final round projected a 'Resolution Plan' with a 'Final Plan Value' which was around 17% lower than the Resolution Professional's assessed 'Liquidation Value' of Rs.217 Crores.

4. It is represented on behalf of the 'Appellant' that after consideration of the 'Committee of Creditors' the 'Resolution Plan' was taken up for 'voting' and rejected on 07.12.2020. Further, in the meanwhile, the Promoters submitted offer for 'One Time Settlement' of dues to the 'Secured Creditors' dated 08.01.2020, in respect of which an upfront deposit of Rs.5.00 Crores was made in a 'No Lien Account' with State Bank of India as early as in December 2019, of which Rs.2.50 Crores

was appropriated by the State Bank of India towards 'One Time Settlement' of dues in Terra Energy Ltd. and later revised 'One Time Settlement' offer was furnished on 16.03.2020 by the 'Promoters' of the 'Corporate Debtor'.

5. The Learned Counsel for the Appellant takes a stand that on 27.09.2020, the 'Promoters' submitted a fresh offer for Compromise Settlement of dues to all Creditors, on a reduced scale, and without Provision for any additional upfront payment until after approval of the 'Adjudicating Authority' which facts were not stated before it.

6. It is the version of the Appellant that in the 'Committee of Creditors' Meetings, the Promoter was requested to improve the CS Offer, with an increase in upfront payment and with balance payment to be completed within three months of approval of the 'Tribunal'. As such, a revised 'Compromised Settlement Offer' was submitted on 23.11.2020, wherein the offer to the Banks was raised from 30% to 33% of the admitted claims and the aggregate upfront payment increased to not less than 10% of the amount due to the Banks.

7. The Learned Counsel for the 'Appellant' urges before this 'Tribunal' that the revised CS Offer of Rs.243 Crores for all Creditors is 12% higher than the Liquidation Value of Rs.217 Crores, and works out to 42.03% of the aggregate claims admitted by the 'Resolution Professional'. Apart from that, it is the plea of the 'Appellant' that the Secured Creditors will realize 38.85% of their outstanding as on the date of 'Non Performing Asset', while the Banks which had extended 'Harvest and Transportation Loans' to the farmers will realize 37.91% on their outstanding, as on the date of 'Non Performing Asset'. Besides this, the farmers and employees dues will be settled 100%, which is in the interest of all persons.

8. The other contention put forward on the side of the 'Appellant' is that due to the delay in receipt of investor funds, the additional upfront payment was not made and hence, the revised 'CS Offer' was not considered for approval by the 'Committee of Creditors'. Therefore, consequent to the 'Committee of Creditors' rejection of the 'Resolution Plan'

submitted by the 'Sole Resolution Appellant', the 'Resolution Professional' based on the 'Committee of Creditors' decision at its meeting on 09.12.2020 filed an Application for approval of Liquidation of the 'Corporate Debtor' viz. 'TASL' and the said Application is pending before the 'Adjudicating Authority'.

9. The real grievance of the 'Appellant' is that the 'Adjudicating Authority' had failed to consider the efforts at resolving the debt of the 'Corporate Debtor' in the teeth of the Insolvency and Bankruptcy Code, which provides for 'Liquidation' in the event of failure of 'CIRP' or non-receipt of any 'Resolution Plan' within the specified period.

10. The Learned Counsel for the 'Appellant' contends that the implications of 'Liquidation of the Corporate Debtor' will affect the farmers, who are 'Operational Creditors' of the 'Corporate Debtor'. Also that, the farmers will be classified as 'Operational Creditors' under the Insolvency and Bankruptcy Code, and rank in the lowest rung of priority for distribution of proceeds under 'Liquidation' as per waterfall mechanism of Section 53 of the Code.

11. The Learned Counsel for the 'Appellant' brings it to the notice of this 'Tribunal' that the prospect of 'Liquidation' 'TASL' has caused anxiety and consternation among the 13,431 farmers on the fate of their came price overdues (Rs.65.90 Crores) and their liability for the settlement of the Sugarcane Crop Loans availed from Banks and dues to harvest labor, both of them can be settled only if the cane price overdues are paid in full.

12. The Learned Counsel for the 'Appellant' points out that the concerned Banks are proceeding against the farmers for recovery of their loan and that the farmers have been included in the 'CIBIL List' and become ineligible for any further loans from the 'Banks'. Moreover, unless the matter is settled between the 'Banks' and the Company, the concerned farmers will not be released from their liability in respect of the loans.

13. The Learned Counsel for the 'Appellant' refers to the 'Proposal for Compromise Settlement' of dues to all 'Creditors' on 27.09.2020 by the

'Promoters' in Thiru Arooran Sugars Ltd. and submits that the said Proposal/Scheme is 100% settlement for the farmers and in fact, the 'Settlement Proposal' is in terms of the Reserve Bank of India guidelines and further that the 'Bankers' are bound by the RBI guidelines and the non-consideration of the 'Settlement Proposal' is a material irregularity from the point of view of the 'Appellant'.

14. The Learned Counsel for the 'Appellant' submits that unlike in the case of 'Liquidation', the Compromise Settlement (CS Offer) made by the 'Promoter' provides for payment of 100% of the admitted claims of Rs.65.90 Crores to the farmers, besides payment of 15% Statutory interest per annum thereon, till date of payment, taking the total payment to Rs.78.75 Crores as at the end of March 2021 and this amount will be adequate for the farmers to clear their 'Crop Loans' as well as dues to 'Harvest labor' in full.

15. It is a contention of the Appellant that if the H & T loans are settled with the Banks under the 'Compromise Settlement Offer', the farmers will be fully relieved of all their obligations under such loans and their names will be removed from the 'CIBIL List' making them eligible for fresh loans from the Banks.

16. The Learned Counsel for the Appellant submits that the growers of sugarcane are an essential stakeholders in the production of sugar, with the FRP of Sugarcane accounting for at least 75% of the realizations on sale of sugar and further that the sugarcane farmers will be relegated to the status of an 'unsecured creditor' in the normal 'Priority of Creditors' and under the Insolvency and Bankruptcy Code to the status of an 'Operational Creditor' would not apply in the instant case.

17. Lastly, it is the submission of the Learned Counsel for the Appellant that the 'Impugned Order' of the 'Adjudicating Authority' is to be set aside, as it was passed even when certain interlocutory/miscellaneous applications in regard to the Constitution of the CoC and the status of Creditors was questioned, were pending before the 'Adjudicating Authority'

which negates the sanctity of the 'Committee of Creditors' Resolution and the process being contrary to Law.

18. This 'Tribunal' has heard the Learned Counsel for the Appellant and noticed the contentions.

19. Before the 'Adjudicating Authority' the Respondent/Applicant/ (Resolution Professional of Thiru Arooran Sugars Ltd.) filed an IA/1186/IB/2020 in IBA/243/2019 [under Section 33(2) of the Insolvency and Bankruptcy Code, r/w Rule 11 and 32 of NCLT Rules, 2016] seeking an order of 'Liquidation of the Corporate Debtor' and it was informed that the 'Committee of Creditors' with 76.02% voting share, voted against the plan and as such, deemed to have voted for the 'Liquidation' of the 'Corporate Debtor' in terms of the 'Resolution' dated 30.11.2020.

20. In this connection, it is not out of place for this 'Tribunal' to make a pertinent mention that the Hon'ble Supreme Court in the Judgment dated 10.03.2021 in Kalpraj Dharamshi & Anr v Kotak Investment Advisors Ltd. & Anr. (Civil Appeal Nos.2943-2944 of 2020 with Civil Appeal Nos.3138-3139 of 2020, Civil Appeal Nos.2949-2950 of 2020, Civil Appeal Nos.847-848/2021 (D.No.24125 of 2020) at paragraph 155 to 157 had observed the following:

> 155. "It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I & B Code.
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> 156. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP. NCLAT was justified in view of the provisions of clause (ii) of Sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event be found, that the proposals received

by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, *albeit* before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted that the decision of CoC is taken by a thumping majority of 84.30%. The only creditor voted in favor of KIAL is Kotak Bank, which is a holding company of KIAl, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom'. NCLAT was not correct in law in interfering with the commercial decision taken by CoC bya thumping majority of 84.36%.

157. It is further to be noted, that after the resolution plan of Kalpraj was approved by NCLT on 28.11.2019, Kalpraj had begum implementing the resolution plan. NCLAT had heard the appeals on 27.02.2020 and reserved the same for orders. It is not in dispute, that there was no stay granted by NCLAT, while reserving the matters for orders. After a gap of five months and eight days, NCLAT passed the final order on 05.08.2020. It could thus be seen, that for a long period, there was no restraint on implementation of the resolution plan of Kalpraj, which was duly approved by NCLT. It is the case of Kalpraj, RP, CoC and Deutsche Bank, that during the said period, various steps have been taken by Kalpraj by spending a huge amount for implementation of the plan. No doubt, this is sought to be disputed by KIAL. However, we do not find it necessary to go into that aspect of the matter in light of our conclusion, that NCLAT acted in excess of jurisdiction in interfering with the conscious commercial decision of CoC."

21. As far as the present case is concerned, the claim of the 'Resolution Applicant' was rejected by 76.02% of voting share by the

'Financial Creditors', in the 23rd 'Committee of Creditors' meeting that took place on 30.11.2020, of course, after taking into account of the feasibility and viability, etc., as mentioned in CIRP Regulations. Moreover, e-voting was held from 05.12.2020 to 07.12.2020.

22. Be that as if may, this 'Tribunal' keeping in mind of a primordial fact that the decision of the 'Committee of Creditors' takes a pivotal seat based on 'Commercial Wisdom', taking note of the fact that the 'Committee of Creditors Members' with 76.02% voting share had voted against the 'Resolution Plan' and in the teeth of ingredients of 33(2) of the Insolvency and Bankruptcy Code, 2016, comes to a irresistible conclusion that the 'impugned order of Liquidation' in respect of the 'Corporate Debtor' passed by the 'Adjudicating Authority' in IA/1186/IB/2020 in IBA/243/2019 dated 08.04.2021 is free from legal infirmities. Resultantly, the Appeal fails.

23. In fine, the Instant Company Appeal (AT)(CH)(INS) No.59 of 2021 is dismissed. No costs. The connected IA No.132 to 134 of 2021 are closed.

[Justice Venugopal M]
Member (Judicial)

[V.P.Singh]
Member (Technical)

19.05.2021
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