NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 703 of 2020

IN THE MATTER OF:

M/s. Vistara ITCL (India) Ltd. &Ors. ...Appellants

Versus

Mr. DinkarVenkatasubramanian&Ors. ...Respondents

Present:
For Appellants : Mr. Gopal Jain, Senior Advocate with
Mr. V.P. Singh, Ms. Vatsala Rai and Mr. Raghav Chadha, Advocates

For Respondents : Mr. SumantBatra and Ms. Niharika Sharma, Advocates for IRP and
Mr. DinkarVenkatasubramanian, IRP (R-1)
Mr. Tushar Mehta, Solicitor General of India
Mr. AbhinavVasisht, Senior Advocate with
Ms. Misha, Ms. Priya Singh, Mr. Siddhant Kant, Ms. Charu Bansal, Advocates for Respondent No. 2
Mr. SumeshDhawan and Ms. VatsalaKak, Advocates for suspended Board of Directors

O R D E R
(Through Virtual Mode)

24.08.2020 Appellants – 'M/s. Vistara (ITCL) Ltd. and Ors.'are aggrieved of dismissal of their I.A. 62 of 2020 in CP (IB) No. 42/Chd./Hry./2017 at the hands of Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh. The application in question had been filed against the Resolution Professional and the Committee of Creditors of the Corporate Debtor – 'M/s. Amtek Auto Limited' under Section 60(5) of the I&B Code on 11th February, 2020 praying for a direction in the name of Resolution

Professional to include the Appellant No. 1 in the Committee of Creditors as a secured financial creditor and extend all benefits of a secured financial creditor to it. On consideration of the matter, the Adjudicating Authority, while approving the resolution plan of resolution applicant – 'Duccan Value Investor' (**DVI**), dismissed I.A. No. 62 of 2020 in terms of the same order which has been impugned in this appeal.

2. A glance at the impugned order would bring it to for that I.A. No. 62 of 2020 came to be dismissed as the Adjudicating Authority was of the opinion that the Appellants have not lent any money to the Corporate Debtor and they cannot be treated as the Financial Creditor of the Corporate Debtor. The Adjudicating Authority noted that the claim of the Appellants as secured financial creditor was rejected by the Resolution Professional in 2017 which had not been challenged. It also noticed the Appellants contention that the decision in regard to rejection of Appellant's claim as Financial Creditor had not been challenged by the Appellants under the conception that their interests would be protected under LHG resolution plan. Such contention, being repugnant to reason, has been overruled.

3. Appellants feel aggrieved, as according to them, they had represented to the Resolution Professional to preserve the pledge of shares in favour of Appellant No. 1. It is submitted that the resolution plan submitted by 'Liberty House Group' (**LHG**for short) in the year 2017 protected and preserved the pledge created in favour of Appellant

No. 1 by the Corporate Debtor. Subsequently, the resolution plan recognizing Appellant No.1's security came to be approved by the Committee of Creditors with overwhelming majority and the Committee of Creditors acknowledged the pledge in favour of the Appellant No. 1 while voting in favour of LHG's resolution plan. However, LHG did not fulfil its commitment. Committee of Creditors came to be reconstituted under orders of Adjudicating Authority, for consideration of the DVI's plan. Subsequently, Committee of Creditors filed an appeal before this Appellate Tribunal assailing the order of the Adjudicating Authority rejecting prayer of Resolution Professional to issue fresh invitation for resolution plans. Liquidation order came to be passed by this Appellate Tribunal which was assailed before the Hon'ble Apex Court. On 2nd December, 2019 Hon'ble Apex Court directed the Resolution Professional to invite fresh bids within 30 days. According to the Appellants, the Appellant No. 1 made the representation to Resolution Professional to preserve the pledge which was reiterated on 10th January, 2020. Since the pledge in favour Appellant No. 1 was not mentioned in the information-memorandum as conveyed by the Resolution Professional, Appellants filed I.A. No. 62 of 2020 which came to be rejected along with approval of the resolution plan of DVI in terms of the common order impugned in this appeal to the extent of rejection of I.A. No. 62 of 2020.

4. After hearing learned counsel for the parties, we find that Appellant No. 1's claim in purported capacity of 'Secured Financial Creditor' has

been rejected way back in the year 2017 and decision in this regard has not been called in question. It is not open to Appellants to raise the same issue in 2020 by filing I.A. No. 62 of 2020. The queer explanation emanating from the Appellants that rejection of its claim as Financial Creditor went un-assailed under the bona fide belief that the interest of Appellant's would be taken care of under the 'Liberty House Group' Resolution Plan is repugnant to reason and cannot provide a lawful excuse for filing of I.A. No. 62 of 2020 under Section 60(5) of the 'I&B Code' after a lapse of about three years. Such explanation deserves to be noticed only for being rejecting. This is apart from the fact that the Appellants have not lent any money directly to the Corporate Debtor and the Corporate Debtor did not owe any financial debt to the Appellants except that the pledge of shares was to be executed. There can be no dispute with the preposition of law that creation of pledge of shares by the Corporate Debtor does not tantamount to a guarantee or indemnity. The creation of pledge of shares by the Corporate Debtor is said to be in regard to the money lent to WLD and BRASSCO. The Appellants not having advanced any money to the Corporate Debtor as a financial debt would not be coming within the purview of financial creditor of the Corporate Debtor. The debt along with interest disbursed against time value of money constitute the basic ingredients of the financial debt as defined in I&B Code and since the same is lacking as regards any transaction between the Appellant and the Corporate Debtor, pledge of

shares would not fall within the concept of guarantee and indemnity so as to bring it within the meaning of financial debt.

We find no merit in this appeal which is dismissed at the very threshold stage.

[JusticeBansi Lal Bhat]
Acting Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

/ns/gc/