

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 579 of 2020

In the matter of:

Bank of Baroda

**On behalf of Committee of Creditors of Veda Biofuel
Ltd.**

....Appellant

Vs.

Mr. Sisir Kumar Appikatla

Resolution Professional for Veda Biofuel Ltd. & Ors.

....Respondents

Present:

Appellant: Mr. Raunak Dhillon, Mr. Dhananjay Kumar and Ms. Isha Mali, Advocates.

Respondents: Mr. Srisatya Mohanty, Ms. Shraddha Gupta and Mr. Pawan Kumar, Advocates.

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

20.07.2020: Appellant is aggrieved of the rejection of the Resolution Plan submitted by Mr. Madhusudhan Raju Chintalapati, in respect whereof the Resolution Professional had filed I.A No. 64 of 2020 on 12th March, 2020 under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for approval of the Resolution Plan before the Adjudicating Authority (National Company Law Tribunal), Amaravati Bench, in C.P. (IB) No. 423/9/HDB/2018, and consequent declining of prayers in I.A No. 66 of 2020, I.A No. 67 of 2020 & I.A No. 68 of 2020 primarily on the ground that the Resolution Applicant was not disqualified under Section 29 of the 'I&B Code' to submit a Resolution Plan and the Committee of Creditors had approved the Resolution Plan with an overwhelming majority of 96.39% and the decision taken by the Committee of Creditors on the basis of its commercial wisdom could not be interdicted

by the Adjudicating Authority while sending the Corporate Debtor into liquidation.

2. After hearing learned counsel for the Appellant- 'Bank of Baroda' claiming to be representing Committee of Creditors of 'Veda Biofuel Ltd.' ('Corporate Debtor'), we find that the application under Section 9 of the 'I&B Code' against 'Veda Biofuel Ltd.' was filed by 'M/s. Priya Trading Company' as C.P. (IB) No. 423/9/HDB/2018 for triggering Corporate Insolvency Resolution Process. The Adjudicating Authority admitted the application vide order dated 12th February, 2019. Initially, Mr. Gonugunta Murali was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional. However, the Adjudicating Authority subsequently replaced him with Mr. Sisir Kumar Applikatla. Since the Corporate Insolvency Resolution Process was not concluded within the statutory period of 180 days, same was extended from time to time. The Resolution Professional invited Expression of Interest after the appeal preferred against the order of admission came to be rejected by this Appellate Tribunal. Two prospective Resolution Applicants namely- 'M/s. Orion Ferro Alloys Private Limited' and Mr. Madhusudhan Raju Chintalapati submitted Resolution Plans. Committee of Creditors authorised the Resolution Professional to negotiate with the prospective Resolution Applicants to improve upon their plans. One of the Resolution Applicants namely— Mr. Madhusudhan meanwhile entered into an agreement with P. Vijay Kumar (former Managing Director of the Corporate Debtor) undertaking to invest substantial amount and under the restructured shareholding pattern, Mr. Madhusudhan was allotted 50% shareholding and P. Vijay Kumar was allotted 30.81% shareholding, remaining percentage of shareholding going to four other minor shareholders. I.A. No. 15 of 2020 came to be filed before the Adjudicating Authority on 27th January, 2020 seeking direction to place the Restructuring Plan of Mr. Madhusudhan before the Committee of Creditors for consideration. The other Resolution Applicant, namely— 'M/s. Orion Ferro Alloys Private Limited' did not submit any revised

Resolution Plan. P. Vijay Kumar (ex-promoter of Corporate Debtor) and Mr. Madhusudhan entered into a settlement agreement dated 6th February 2020 with the Operational Creditor- 'M/s. Priya Trading Company' for withdrawal of the application which came to be placed before the Committee of Creditors under Section 12A of the 'I&B Code'. The Committee of Creditors after deliberating upon the materials placed before it approved the Resolution Plan in the nature of Restructuring Plan submitted by Mr. Madhusudhan and approved the same as successful Resolution Plan with 96.39% of voting share including all Financial Creditors. Subsequently, under directions from the Committee of Creditors, Resolution Professional filed I.A 64/2020 on 12th March, 2020 before the Adjudicating Authority seeking approval.

3. It emerges from the record that after the matter was reserved for orders by the Adjudicating Authority, there was outbreak of COVID-19 declared as pandemic resulting in Countrywide Lockdown. On 1st May, 2020, 'M/s. Orion Ferro Alloys Private Ltd.' filed I.A. No. 66 of 2020 seeking consideration before disposal of I.A. No. 64 of 2020. Thereafter, Mr. Madhusudhan filed I.A No. 67 of 2020 seeking impleadment in I.A. No. 64 of 2020. He also sought necessary modification to the Resolution Plan/ Restructuring Plan by filing I.A No. 68 of 2020. The Adjudicating Authority heard these I.As together as the same could impact the decision in I.A. No. 64 of 2020.

4. The Adjudicating Authority noticed the factum of the Corporate Debtor becoming insolvent and defaulting in repaying its debt obligations while being managed by P. Vijay Kumar. It observed that the erstwhile management which had mismanaged the affairs of the Corporate Debtor rendering it insolvent could not be allowed a role in the forward continuance of the Corporate Debtor. It noticed that the former Managing Director P. Vijay Kumar entered into an agreement with one of the Resolution Applicants lowering his stake in the Corporate Debtor from 45.32% to 30.81%. After taking into consideration the new shareholding patterns in terms of the agreement filed with I.A No. 15 of 2020 and the **Company Appeal (AT) (Insolvency) No. 579 of 2020**

Settlement Agreement dated 6th February, 2020 entered *inter se* the Resolution Applicants with the Operational Creditor for withdrawal of the Company Petition, Committee of Creditors did not consider the matter of withdrawal of the Company Petition and proceeded to approve the Restructuring Plan as the Resolution Plan. Obviously, the Restructuring Plan was based on an agreement between one of the Resolution Applicants and the erstwhile Promoter and Managing Director of the Corporate Debtor. Under the Restructuring Plan approved as the Resolution Plan by the Committee of Creditors, P. Vijay Kumar would continue to hold substantial stake in the new management under the Restructuring Plan though slightly less than before. It is in this context that the Adjudicating Authority viewed the Restructuring Plan as not being a Resolution Plan in terms of Section 30 of the 'I&B Code' though the same had been submitted by Mr. Madhusudhan. It was of the view that the former Managing Director was virtually seeking backdoor access under the Restructuring Plan masqueraded as a Resolution Plan by Mr. Madhusudhan. It declined to go into the issue of non-acceptance of the Resolution Plan submitted by 'M/s. Orion Ferro Alloys Private Limited' as the same would amount to interference with commercial wisdom of Committee of Creditors but held that the Resolution Plan approved by the Committee of Creditors did not meet the requirements of Section 30(2) of the 'I&B Code'. It accordingly declined to approve the Resolution Plan submitted by Mr. Madhusudhan and proceeded to pass the order of liquidation under Section 33(1) (b) of the 'I&B Code'.

5. We have given our anxious consideration to the submissions made by learned counsel for the Appellant. It is the settled law of land that the approval of the Resolution Plan depending upon various factors including feasibility, viability, financial matrix and distribution mechanism rests upon the business decision taken by the Committee of Creditors in its commercial wisdom which are not to be interfered with by the Adjudicating Authority or even by this Appellate Tribunal. But at the same time the Adjudicating Authority has to ensure that the Successful Resolution

Applicant(s) are not ineligible to submit Resolution Plan within the ambit of Section 29A and that the approved Resolution Plan complies with the mandate of Section 30(2) of the 'I&B Code'. While considering whether the Resolution Plan approved by the Committee of Creditors does not emanate from any ineligible person, does not contravene any of the provisions of the law in force and provides for management of affairs of the Corporate Debtor after approval of the Resolution Plan, the Adjudicating Authority has to keep in view the object of the legislation. Section 29A inserted by amending Act No.8 of 2018 declares certain persons ineligible to be Resolution Applicants. It cannot be disputed that the person who is promoter or in the management or in control of the Resolution Applicant or is promoter or in management or in control of the business of the Corporate Debtor during the implementation of the Resolution Plan falls within the expression 'connected person'. Persons who contributed to default of company with their misconduct have to be excluded from submitting a Resolution Plan or acquiring the assets of the Corporate Debtor when pushed into liquidation. An unscrupulous person associated with the management of the Company who pushes the Corporate Debtor into financial crisis leading to default in its repayment obligations towards creditors cannot be permitted to gain control of the management of the Corporate Debtor through backdoor viz by entering into an agreement with an investor in the form of a settlement and then submitting a Restructuring Plan masquerading as a Resolution Plan while retaining the majority shareholding and without divesting his effective control in the management. In this regard, it would be apposite to reproduce the dictum of Hon'ble Apex Court in "***Chitra Sharma vs. Union of India- (WP(Civil) No. 744 of 2017 decided on 09.08.2018)***":

"The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of

liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.” (emphasis supplied)

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Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of bidder companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. It was in this background that Section 29 A has now specified a list of persons who are not eligible to be resolution applicants.

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The Court must bear in mind that Section 29 A has been enacted in the larger public interest and to

facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a back-door entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29 A will not be considered by the CoC”

6. Admittedly, the Settlement Agreement entered between P. Vijay Kumar and Mr. Madhusudhan (one part) with the Operational Creditor- ‘M/s. Priya Trading Company’ (Second part) for withdrawal of the Company Petition was placed before the Committee of Creditors for consideration along with the Restructuring Plan but the Committee of Creditors did not consider the withdrawal of the Company Petition in terms of the provisions of Section 12A of the ‘I&B Code’ and instead approved the Restructuring Plan treating it as Resolution Plan which undoubtedly was based on an agreement between Resolution Applicant Mr. Madhusudhan and erstwhile promoter and Managing Director of the Corporate Debtor P. Vijay Kumar. It has been noticed that P. Vijay Kumar, under the new shareholding pattern would continue to hold substantial stake, its majority character being trimmed insignificantly. Viewed thus the Restructuring Plan projected as the Resolution Plan approved by the Committee of Creditors could not be termed as a Resolution Plan within the ambit of Section 30 of the ‘I&B Code’ and is unacceptable for not being in conformity with Section 30(2) of the ‘I&B Code’. The Adjudicating Authority has rightly declined to approve the Resolution Plan of Mr. Madhusudhan who was only used as a ploy to gain control of the Corporate Debtor by the very person who had pushed the Corporate Debtor into insolvency. The Committee of Creditors has overlooked the settlement offer and ignored the withdrawal plea without assigning any reason. This in itself raises eyebrows. This is further compounded by approval of the Restructuring Plan camouflaged as Resolution Plan

emanating from an ineligible person which renders the role of the Committee of Creditors questionable. Such circumstances justify raising of inference of complicity.

7. We find no reason to entertain this appeal. The impugned order is well reasoned and in consonance with the object of the Code. There is no legal infirmity in the impugned order. The appeal is dismissed in *limine*.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

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