(2021) 10 TEL CK 0062

In the Telangana High Court

Case No : Writ Petition No. 23455 Of 2021

Everest Organics Ltd. APPELLANT

Vs

Leesa Lifesciences Pvt. Ltd RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 7, 61, 62, 66

Citation : (2021) 10 TEL CK 0062

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

The petitioner, which is a company registered under the Companies Act, has filed the present writ petition being aggrieved by the order dated 16.09.2021 passed by the National Company Law Tribunal, Hyderabad.

The facts of the case reveal that one Dr S.K.Srihari Raju, Financial Creditor representing the Everest Organics Limited has filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC') against a Corporate Debtor M/s. Leesa Life Sciences Private Limited before the NCLT, Hyderabad Bench and the petition was admitted on 28.01.2020. Mr. Anjaneyulu Sadhu was initially appointed as an Interim Resolution Professional (for short, 'IRP') and he has issued an Invitation for Expression of Interest on 16.06.2020. The respondent No.3 in the present case, pursuant to the Invitation for Expression of Interest from the eligible Resolution Applicants issued by the former IRP, submitted a resolution proposal in the matter. The proposal was submitted by the petitioner company also and the Committee of Creditors has rejected the proposal submitted by the petitioner company.

The present petition, while the proceedings are going on before the National Company Law Tribunal, has challenged the order dated 16.09.2021 before this Court. The Order dated 16.09.2021 is reproduced as under:-

"IA 745/2020 is filed by RP under Section 66 of IBC. Learned counsel for Applicant appeared via video conference. Pleadings are completed.

IA 99/2021 is filed by RP for passing order of Liquidation of the Corporate Debtor. However, learned counsel for RP brought to our notice that Resolution Plan is approved by CoC and it is for consideration by this Authority. In this situation, IA becomes infructuous and stands disposed of.

IA 119/2021 is filed by the Unsuccessful Resolution Applicant. We heard learned counsel for Unsuccessful Resolution Applicant. Resolution Plan is approved by the CoC. We cannot enter into commercial wisdom of CoC who has approved the plan. This application is not maintainable and stands disposed of.

In view of disposal of IA 119/2021, IA 319/2021 becomes infructuous and stands disposed of.

IA 237/2021 is filed by RP for approval of the Resolution Plan. Heard. Orders Reserved.

IA 275/2021 is filed by the Suspended Management. In fact, CoC has already approved the plan which is under consideration. This application is not maintainable and stands disposed of.

In view of the above order, IA 323/2021 filed by SBI for impleadment in IA 275/2021 becomes infructuous and stands disposed of.

IA 280/2021 is filed by two Financial Creditors challenging admission of SBI as secured financial creditor. However, as seen SBI is not made proper and necessary party. In such situation, this cannot be considered this time. It is not maintainable for want of proper party. Accordingly, this IA 280/2021 stands disposed of.

In view of disposal of IA 280/2021, this IA 324/2021 filed for impleading the party in this becomes infructuous and stands disposed of.

IA 339/2021 is filed by Suspended Management for not taking any decision on the plan which is submitted by RP. The Resolution Plan is already approved by CoC. This application is not maintainable and stands disposed of.

IA 367/2021 - Since IA 237/2021 is already Reserved for Orders. This IA is also Reserved for Orders.

IA 400/2021 is filed by Suspended Management seeking direction to RP to pursue the pending cases filed by CD before DRT and Hon'ble High Court of Telangana. Since we have considered the plan, this application becomes infructuous. Successful Resolution Applicant may pursue the same once plan is approved by this authority. Moreover, we cannot issue such direction to the RP. RP knows his job under the law. Hence, this IA stands disposed of.

IA 1/21 is filed to implead the Applicant in IA 237/2021. Since IA 237/2021 is already Reserved for Orders. This IA is also Reserved for Orders.

IA 745/2020 - Matter to appear for further consideration on 11.11.2021."

This Court has carefully gone through the pleadings and the grounds raised by the petitioner. Undisputedly, the petitioner does have remedy of Appeal under Section 61 of the IBC. He does have a remedy of Second Appeal also before the Supreme Court under Section 62 of the IBC.

Section 61 of the IBC is reproduced as under:-

"61. Appeals and Appellate Authority

(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the Adjudicating Authority under this Part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

PROVIDED that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:-

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order."

The petitioner shall certainly be free to avail remedies before the Appellate Authority and therefore, this Court does not find any reason to interfere with the Order dated 16.09.2021 passed by the National Company Law Tribunal, Hyderabad, as it is an appealable Order.

Resultantly, the writ petition is dismissed. Miscellaneous petitions, pending if any, shall stand dismissed.