

(2021) 09 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 1792, 2901 Of 2021

K.N. Rajakumar

APPELLANT

Vs

V. Nagarajan & Ors.

RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Companies Act, 2013 — Section 271(1)(a)
Insolvency And Bankruptcy Code, 2016 — Section 7, 8, 8(1), 9, 10, 12A, 24(6), 25(2)(e), 30(2)
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 16

Citation : (2021) 10 Scale 779 : (2022) 4 SCC 617

Hon'ble Judges : L. Nageswara Rao, J;B.R. Gavai, J;B.V. Nagarathna, J

Bench : Full Bench

Advocate : Balaji Srinivasan, Ritin Rai, S. Santanam Swaminadhan, Kartik Malhotra, Abhilasha Shrawat, Aarthi Rajan, KV Vishwanathan, Arvinth Pandian, Balaji Srinivasan, Garima Jain, Pallavi Sengupta, Aakriti Priya, Mohammed Shahrukh, Prateek Yadav, Lakshmi Rao, Sandeep Kumar Ambalavanan, Mohan Chevanan, P. S. Sudheer, Shruti Jose

Final Decision : Disposed Of

Judgement

B.R. Gavai, J

1. Both these appeals are being decided by this common judgment and order.
2. The appellant-D. Ramjee in Civil Appeal No.2901 of 2021, who is an ex-employee of M/s Aruna Hotels Ltd. (hereinafter referred to as 'the Corporate Debtor') has approached this Court being aggrieved by the resolution passed in the 8th Committee of Creditors (hereinafter referred to as 'CoC') meeting dated 25.5.2021; the order passed by the National Company Law Tribunal, Chennai (hereinafter referred to as 'NCLT' or 'the Adjudicating Authority') dated 4.6.2021 thereby permitting withdrawal of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') in respect of the Corporate Debtor; and the order passed by the Adjudicating Authority/NCLT dated 6.7.2021 thereby closing

the proceedings initiated by D. Ramjee.

3. Civil Appeal No. 1792 of 2021 is filed by K.N. Rajakumar, suspended Director of the Corporate Debtor (respondent No.1 in Civil Appeal No.2901 of 2021 filed by D. Ramjee) thereby challenging the order passed by the National Company Law Appellate Tribunal, Chennai Bench (hereinafter referred to as 'NCLAT') dated 30.4.2021 dismissing the appeal filed by K.N. Rajakumar challenging the order dated 22.4.2021 passed by NCLT vide which NCLT had directed the Resolution Professional (hereinafter referred to as 'RP') to convene a meeting of CoC consisting of the members who constituted CoC originally in the year 2017, soon after the order of admission of CIRP was passed by NCLT.

4. The facts giving rise to the present appeals have been taken from Civil Appeal No.2901 of 2021, and are as under:

The Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 on 9.9.1960. It had started various businesses like sugar, distillery, flour mill, chemical unit, finance company, a 4-star hotel etc. in Chennai, but as on date owns only a hotel in Chennai. The hotel business of the Corporate Debtor was shut down for more than 7 years.

D. Ramjee joined the Corporate Debtor as a Junior Assistant on 11.5.1964. Since D. Ramjee was not receiving salary regularly, he sought to get relieved from the services with effect from 30.9.2006 and sought for settlement of his salary dues. However, it is his case that as the Corporate Debtor requested him to continue in the service, he continued to do so on a salary which was much less than the one he was entitled to. On 31.5.2013, D. Ramjee officially retired after serving for 49 years.

In February, 2015, the Management of the Corporate Debtor was taken over by one Subasri Realty Limited, thereby acquiring the shareholding of the earlier promoters, M. Sivaram and his family. According to D. Ramjee, the new Management disowned itself from the admissions of previous management pertaining to settlement of arrears of salary.

On 27.2.2017, Ramjee issued a Demand Notice under Section 271(1)(a) of the Companies Act, 2013 read with Section 8(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the IBC') calling upon the Corporate Debtor to pay dues of outstanding salary amounting to Rs.2,60,68,883/- along with interest at the rate of 12%.

On failure of the Corporate Debtor to comply with the notice, D. Ramjee filed an application under Section 9 of the IBC, being C.P. No.478 of 2017 on 3.4.2017 before NCLT. Two other employees of the Corporate Debtor had also filed applications under Section 9 of the IBC. Vide order dated 13.6.2017, the Adjudicating Authority admitted D. Ramjee's application under Section 9 of the IBC and initiated CIRP against the Corporate Debtor. One P. Sriram was appointed as interim RP and moratorium was declared.

Being aggrieved by the order passed by NCLT dated 13.6.2017, the Corporate Debtor filed an appeal being Company Appeal (AT) (Insolvency) No.87 of 2017 before NCLAT. NCLAT vide order dated 2.8.2017 allowed the said appeal filed by the Corporate Debtor and set aside the order dated 13.6.2017 passed by NCLT. NCLAT had also recorded the assurance given by the Corporate Debtor that they will be paying three years' arrears of salary to the three employees including Ramjee, who had initiated CIRP proceedings against the Corporate Debtor.

In pursuance to the assurance given to NCLAT, the Corporate Debtor made payment vide two Demand Drafts dated 8.8.2017 for a sum of Rs.18,50,000/- to D. Ramjee along with a letter dated 22.8.2017.

In the meanwhile, one other ex-employee of the Corporate Debtor, N. Subramanian, who is respondent No.3 in both the appeals, also issued a Demand Notice dated 29.6.2017 under Section 8 of the IBC to the Corporate Debtor. On failure by the Corporate Debtor to comply with the Demand Notice, N. Subramanian also filed an application under Section 9 of the IBC being CP/597/(IB)/CB/2017 on 21.7.2017 before NCLT. NCLT admitted the said application under Section 9 of the IBC filed by N. Subramanian vide order dated 17.11.2017.

Being aggrieved by the initiation of CIRP, the Corporate Debtor filed an appeal being Company Appeal (AT)(Insolvency) No.290 of 2017 before NCLAT on 24.11.2017. Vide order dated 16.7.2018, NCLAT allowed the appeal of the Corporate Debtor and set aside the order dated 17.11.2017 passed by NCLT on the ground of 'existence of dispute' about arrears of salary and that N. Subramanian had not explained the delay from the year 1998 to 2016.

Being aggrieved by the order dated 16.7.2018 passed by NCLAT, N. Subramanian filed Civil Appeal No.187 of 2019 before this Court. This Court vide judgment and order dated 3.3.2021 set aside the order dated 16.7.2018 passed by NCLAT and restored the order dated 17.11.2017 passed by NCLT admitting the application under Section 9 of the IBC.

It is pertinent to note that D. Ramjee had also filed an application for permission to file an appeal being D. No.34836 of 2018, which came to be rejected by this Court by the same judgment and order dated 3.3.2021.

In the meantime, Subasri Realty Limited, a major shareholder of the Corporate Debtor filed a Miscellaneous Application No. 480 of 2021 in Civil Appeal No.187 of 2019 before this Court seeking to compromise with respondent No. 3. This Court vide order dated 19.3.2021 granted liberty to the said applicant to approach CoC for settlement under Section 12A of the IBC.

Vide order dated 22.4.2021, NCLT directed RP to convene a meeting of CoC consisting of the members, who constituted CoC originally in the year 2017.

Being aggrieved thereby, the erstwhile Director of the Corporate Debtor-K.N. Rajakumar, had preferred an appeal being Company Appeal (AT)(CH)(Ins) No. 48 of 2021 before NCLAT. The said appeal came to be dismissed by NCLAT vide

order dated 30.4.2021, which in turn has been challenged in Civil Appeal No. 1792 of 2021 and Civil Appeal No.2901 of 2021.

CoC vide its resolution dated 25.5.2021 passed in its 8th meeting, unanimously resolved to withdraw CIRP initiated in respect of the Corporate Debtor.

Vide order dated 4.6.2021, NCLT allowed the application filed by K.N. Rajakumar for withdrawal of CIRP in respect of the Corporate Debtor and directed RP to hand over the management of the Corporate Debtor to the Board of Directors. The application filed by D. Ramjee seeking to set aside the resolution dated 25.5.2021 passed in the 8th CoC meeting thereby approving the withdrawal of CIRP initiated against the Corporate Debtor was dismissed by NCLT vide order dated 6.7.2021, having been rendered infructuous.

Hence Civil Appeal No.2901 of 2021, filed by D. Ramjee before this Court being aggrieved as aforesaid.

5. In Civil Appeal No. 2901 of 2021, this Court on 23.7.2021 passed the following order:

"Permission to file appeal is granted.

Issue notice.

In the meantime, there shall be stay of operation and implementation of the impugned judgment and stay of further proceedings taken out in pursuance of the impugned order."

6. In Civil Appeal No.1792 of 2021 filed by K.N. Rajakumar, this Court vide the same order dated 23.7.2021 directed the said appeal to be listed along with Civil Appeal No.2901 of 2021 filed by D. Ramjee.

7. Subsequently, K.N. Rajakumar filed an application being I.A. No.87750 of 2021 in Civil Appeal No.2901 of 2021 seeking vacation of the stay granted by this Court vide order dated 23.7.2021. When the said I.A. was listed, we directed the appeals to be heard on merits. Accordingly, on 1.9.2021 the appeals were heard at considerable length.

8. We have heard Shri Ritin Rai, learned Senior Counsel appearing on behalf of D. Ramjee, Shri K.V. Viswanathan, learned Senior Counsel appearing on behalf of K.N. Rajakumar and Shri Mohan Chevanan, learned counsel appearing for HDFC Bank.

9. It is contended on behalf of D. Ramjee that the provisions of the IBC require the claims of all the creditors of the Corporate Debtor to be updated by RP from time to time.

Relying on Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (hereinafter referred to as '2016 Regulations'), it is submitted on behalf of D. Ramjee that since the matter was settled between the financial creditors and the

Corporate Debtor, CoC was required to be constituted only of the operational creditors.

Further relying on Section 25(2)(e) of the IBC, it is submitted that in recognition of the principle that a creditor must continue to have a valid claim to be a member of CoC, it is mandated that RP should maintain an updated list of claims. It is further submitted that Section 24(6) of the IBC provides that the voting share shall be based on the financial debts owed.

Relying on various provisions of the IBC and the 2016 Regulations, it is submitted that the composition of CoC must change on the basis of the updated claims of the creditors and whenever the claims of the creditors undergo any change, the composition of CoC must change accordingly. It is therefore submitted that since the Corporate Debtor does not have any financial creditors, CoC ought to have been constituted of operational creditors, wherein D. Ramjee would have a substantial voting right.

It is further submitted on behalf of D. Ramjee that the contention of K.N. Rajakumar that since the Corporate Debtor has taken finance from HDFC Bank (respondent No.2 in Civil Appeal No.1792 of 2021 and respondent No.4 in Civil Appeal No.2901 of 2021), CoC should consist only of HDFC Bank, is without merit, inasmuch as the finance taken from HDFC Bank was only an 'interim finance' and as such, HDFC Bank could not be termed as a financial creditor. It is submitted that the view taken by both NCLT and NCLAT that CoC should constitute only of financial creditors as on the date of initiation of CIRP proceedings is untenable.

10. Per contra, it is submitted on behalf of K.N. Rajakumar that the new Management of the Corporate Debtor has successfully revived the business by settling the claims of members of CoC, amounting to Rs.46,31,16,650/-.

It is submitted that order dated 13.6.2017 passed by NCLT admitting Section 9 application of D. Ramjee initiating CIRP proceedings was challenged by the Corporate Debtor before NCLAT. NCLAT vide order dated 2.8.2017 had allowed the appeal and set aside the said order dated 13.6.2017. It is submitted that D. Ramjee did not challenge the same and as such, said order dated 2.8.2017 had attained finality.

It is further submitted that D. Ramjee had received an amount of Rs.18,50,000/- as arrears of salary. Vide order dated 3.3.2021, this Court had rejected the application filed by D. Ramjee for permission to file an appeal. It is submitted that having not challenged the order dated 2.8.2017 passed by NCLAT allowing the appeal and setting aside the initiation of CIRP proceedings against the Corporate Debtor at the behest of D. Ramjee, he did not have any locus in the proceedings initiated by the Corporate Debtor for withdrawal of CIRP proceedings.

It is submitted that the new Management of the Corporate Debtor has taken a loan from HDFC Bank, which fact has also been acknowledged by NCLT in its

order dated 4.6.2021 while permitting withdrawal of CIRP proceedings under Section 12A of the IBC.

It is the contention of K.N. Rajakumar that as a matter of fact, NCLT and NCLAT ought to have held that CoC should consist only of HDFC Bank, which is now the sole financial creditor.

11. Though, various submissions have been advanced on behalf of the rival parties, we do not find it necessary to go into the said issues. It is a settled principle of law that the Court should not go into the academic issues and seek to interpret the provisions of law when it is not necessary for deciding the issues in the appeal(s). Reference in this regard could be made to the judgments of this Court in the cases of *Vidya Charan Shukla v. Purshottam Lal Kaushik* (1981) 2 SCC 84 and *K.I. Shephard and others v. Union of India and others* (1987) 4 SCC 431.

12. At this juncture, it would be relevant to refer to Section 12A of the IBC, which reads thus:

"12A. Withdrawal of application admitted under section 7, 9 or 10.-

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified."

13. It could thus be seen that the Adjudicating Authority is entitled to withdraw the application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of 90% voting share of the CoC.

14. It is not in dispute that the resolution of CoC approving withdrawal of CIRP proceedings was supported by the requisite voting majority. NCLT after considering the resolution passed by CoC in its 8th meeting held on 25.5.2021 has allowed the application filed by K.N. Rajakumar vide order dated 4.6.2021.

15. This Court in the case of *Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through The Director and Others* 2021 SCC OnLine SC 313 after considering the earlier pronouncements of law by this Court with regard to aims and objects of IBC has observed thus:

"86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the

basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."

16. It could thus be seen that one of the principal objects of the IBC is providing for revival of the Corporate Debtor and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort.

17. From the order of NCLT dated 4.6.2021, it could be seen that the Corporate Debtor has already settled the issue with the erstwhile financial creditors, who have resolved to withdraw the CIRP proceedings and by virtue of withdrawal of CIRP proceedings, the Corporate Debtor now is a going concern.

18. Insofar as the appeal filed by D. Ramjee is concerned, we have already observed that the order of NCLAT dated 2.8.2017 allowing the appeal filed by the Corporate Debtor and setting aside the order dated 13.6.2017 passed by NCLT in D. Ramjee's application under Section 9 of the IBC has admittedly not been challenged by D. Ramjee. In pursuance of the assurance given before NCLAT, an amount of Rs.18,50,000/- was also paid to D. Ramjee towards arrears of salary by the Corporate Debtor. The application for permission to file an appeal filed by D. Ramjee before this Court has been rejected by this Court vide judgment and order dated 3.3.2021.

19. In that view of the matter, we find that insofar as D. Ramjee is concerned, the issue has attained finality as on 2.8.2017 when the appeal filed by the Corporate Debtor came to be allowed by NCLAT. We find that NCLT vide order dated 6.7.2021, passed in the application (I.A.No.540/CHE/2021) filed by D.Ramjee, has rightly held that from the date of the order dated 4.6.2021, after the withdrawal of CIRP proceedings, the powers and management of the Corporate Debtor were handed over to the Directors of the Corporate Debtor and from that date RP and CoC in relation to the Corporate Debtor had become functus officio. NCLT has rightly disposed of the application filed by D.Ramjee having rendered infructuous.

20. In the result, we find no reason to interfere with the same. Civil Appeal No.2901 of 2021 filed by D. Ramjee is therefore dismissed.

21. Insofar as Civil Appeal No.1792 of 2021 filed by K.N. Rajakumar is concerned, in view of the subsequent development i.e. withdrawal of CIRP proceedings vide order dated 4.6.2021, the counsel for the appellant has circulated a letter dated 23.7.2021, thereby seeking withdrawal of the appeal leaving the questions of law open. The said appeal therefore stands disposed of as withdrawn.

22. The appeals are disposed of in the above terms. All pending applications in both the appeals shall also stand disposed of.