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NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 251/2023
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 12/05/2023 in IA No. 361/IB/2020 in CP/(IB)/540(CHE)/2017, passed by the 'Adjudicating Authority', (National Company Law Tribunal, Division Bench – II, Chennai)

In the matter of:

KOTAK MAHINDRA BANK
Reg Office:
No.27- BKC, C-27, G Block
Bandra Kurla Complex, Bandra (E)
Mumbai -400 052
And a Branch at No. 39, I Floor,
Ceebros Centre, Montieth Road,
Egmore, Chennai – 600 008. **….Appellant**

Versus

ORCHID PHARMA LIMITED
Through its RP – Mr. S.V. Ramkumar
H. No. 303, Block 15,
Hill Ridge Springs, Gachibowli
Hyderabad – 500 032. **….Respondent**

Present :

For Appellant	:	Mr. K. Chindan, Advocate For Mr. K. Manoj Menon, Advocate
For Respondent	:	Mr. Pradeep Joy, Advocate

J U D G M E N T

(Virtual Mode)

10/08/2023 :

Background :

The 'Appellant'/ 'Petitioner' has preferred the instant Company Appeal (AT) (CH) (Ins) No. 251/2023, before this 'Tribunal', as an 'Aggrieved Person', in respect of the 'Impugned Order', dated 12/05/2023

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in IA/361/IB/2020 in C.P.(IB)/540(CHE)/2017, (being the correct number of main Company Petition, before the 'Adjudicating Authority' and not CP/889/(CHE)/2019, mentioned in the 'Order' assailed before this 'Tribunal') passed by the 'Adjudicating Authority' / 'National Company Law Tribunal, Division Bench – II, Chennai'.

Earlier, the 'Adjudicating Authority' / 'National Company Law Tribunal, Division Bench – II, Chennai', while passing the Impugned Order in IA/361/IB/2020 in C.P.(IB)/540(CHE)/2017, dated 12/05/2023 (filed by the 'Appellant'/ 'Petitioner' under Section 60(5) of the I&B Code, 2016) at Paragraphs Nos. 11-13 had observed the following:

> *"11. Given the factual matrix, it is to be noted that the applicant who is aggrieved by its categorization as an 'Unsecured Creditor' had sufficient opportunity to challenge the same during the consideration of the Resolution Plan before its approval by this Tribunal. This was not done by the applicant. The applicant had filed an application seeking intervention when the matter was taken in appeal before the Hon'ble Supreme Court. However, the application/petition was withdrawn by the applicant.*
>
> *12. The scope of this Tribunal after approval of a Resolution Plan is very limited and is only to the extent of the implementation of an approved Resolution Plan. Any relief which could potentially change the terms of a Resolution Plan cannot be entertained.*
>
> *13. Be that as it may, record says that no charge over the receivables of the Corporate Debtor in the bills tendered to the purchases for the payment to the applicant bank was registered as per the Register of Charge maintained by the Corporate Debtor which is mandatory as provided under Section 77(3) of the Companies Act, 2013. It was held in the case of '**ONGC v. Official Liquidator of Ambica Mills Company Limited and Ors. (2015) 5 300** that unless charge become void against Liquidator and any creditor of the Company. The said order was confirmed by the Hon'ble Supreme Court in the case of **'Kerala State***

> ***Financial Enterprises Ltd. V. Official Liquidator High Court of Kerala (2006) 10 SCC 709.*** *We may also mention that in one of the Mas dated 03.07.2019 filed before this Tribunal, the applicant had admitted its position as Unsecured Financial Creditor."*

and ultimately, had not entertained the said 'Application' and 'dismissed' the same, but 'without Costs'.

<u>Prelude</u> :

At the outset, the Learned Counsel for the 'Appellant', fairly points out, before this 'Tribunal', that the 'Correct Number of Company Petition', is C.P.(IB)/540/(CHE)/2017, on the file of the 'Adjudicating Authority'/ 'National Company Law Tribunal, Division Bench – II, Chennai' and the C.P.(IB)/IB/889/(CHE)/2019, mentioned in the Impugned Order is not a Correct one for which the Learned Counsel for the Appellant had given a 'letter' to the 'Adjudicating Authority'/ 'Tribunal', dated 06/06/2023, to rectify the creeping in of error, which is an inadvertent one. Hence, the Impugned Order dated 12/05/2023, is arising out of IA/361/IB/2020 in CP(IB)/540(CHE)/2017, and the 'Company Petition number', mentioned in the 'Appeal' as CP(IB)/889/(CHE)/2019 is an incorrect one, and the said fact is hereby recorded by this 'Tribunal'.

<u>Appellant's Pleas</u>:

Assailing the 'validity', 'legality', 'propriety' of the Impugned Order, dated 12/05/2023 in IA/361/IB/2020 in CP/IB/540(CHE)/2017, (being the correct Company Petition Number), passed by the 'Adjudicating Authority'/ 'Tribunal', the Learned representing Counsel for the 'Appellant' submits that the 'Appellant'/ 'Petitioner'/ 'Bank' had filed the instant IA/361/IB/2020, before the 'Adjudicating Authority', seeking a relief of declaration that the 'Appellant'/ 'Petitioner' as being a 'Secured Creditor' of the 'Corporate Debtor' and also that the 'Appellant' had sought for passing of an 'Order' in directing that any allocation of funds, under any Resolution Plan, and / or from other amounts of 'Corporate Debtor' be made, recognising its status as being a 'Secured Financial Creditor' and that the said 'Application' which was dismissed by the 'Adjudicating Authority'/ 'Tribunal' has no infirmity with the requirement of 'Law', because of the fact that it suffers from serious 'legal infirmities'.

Respondent's stance:

It is represented on behalf of the 'Appellant' / 'Petitioner' that in the 'Corporate Insolvency Resolution Process' (CIRP), the 'Appellant'/ 'Financial Creditor' was categorised as an 'Unsecured Financial Creditor', although a combined reading of the definitions in Section 3(27) (30) & (31), read with Sections 5(7) and 5(8) of the 'I&B Code, 2016', the 'Appellant'/ 'Petitioner' is demonstrably and undoubtedly a 'Secured Financial Creditor'

It is brought to the fore on behalf of the 'Respondent' by the Learned Counsel for the 'Respondent', Mr. Pradeep Joy that in the instant case, the 'Committee of Creditors' had approved the 'Resolution Plan' on 11/06/2019, and that the 'Adjudicating Authority' / 'Tribunal' had approved the Resolution Plan on 27/06/2019 and that the Resolution Plan got implemented on 31/03/2020 and by virtue of the Plan being implemented and before that when the 'Resolution Plan' came to be approved, there had occasioned a complete change in 'control' and 'ownership' of the 'Corporate Debtor'. As such, the Impugned Order of the 'Adjudicating Authority'/ 'Tribunal', in not entertaining the IA/361/IB/2020 in CP/IB/540/CHE/2017 is free from any 'legal infirmities'.

Pros & Cons:

It must be borne in mind that the ambit of the 'Adjudicating Authority' / 'Tribunal', subsequent to the 'Approval of Resolution Plan', is 'limited in character'. That apart, any relief sought, which can 'alter', the 'Terms Of a Resolution Plan', cannot be acceded to, as opined by this 'Tribunal' However, if any relief, as prayed for by the 'Appellant'/ 'Petitioner', as projected in IA/361/IB/2020 in CP(IB)540/CHE/2017 (being the Correct Company Petition Number, according to the 'Appellant', instead of C.P.(IB)/889(CHE)/2019), is granted by the 'Adjudicating Authority'/ 'Tribunal' or this 'Appellate Tribunal', for that matter, then, the same will not satisfy the requirement of 'Law'.

Added further, on going through the Impugned Order in IA/361/IB/2020 in C.P.(IB)540/CHE/2017, passed by the 'Adjudicating Authority' / 'Tribunal, this 'Tribunal', pertinently points out that even the Hon'ble Supreme Court had 'Approved' the 'Resolution Plan', through, its Order dated 28/02/2020, (which is not in dispute), and the same is accepted by the Learned Counsels appearing for the respective Parties. Suffice it for this 'Tribunal', to succinctly point out, that in one of the 'Miscellaneous Applications', dated 03/07/2019 filed before the 'Adjudicating Authority' / 'Tribunal', the 'Appellant'/ 'Petitioner' had tacitly 'admitted', its position as an 'Unsecured Financial Creditor'.

Be that as it may, in the light of foregoing discussions, this 'Tribunal' bearing in mind the attendant facts and circumstances of the instant case in a 'conspectus' and 'holistic' manner, comes to a consequent conclusion that the Impugned Order dated 12/05/2023 in IA/361/IB/2020 in CP(IB)540/CHE/2017, does not suffer from any 'material irregularity' or 'patent illegality', in the eye of 'Law'. Accordingly, the 'Appeal' 'sans' merits.

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Result :

In fine, the instant Company Appeal (AT) (CH) (Ins) No. 251/2023 is dismissed. 'No Costs'.

[Justice M. Venugopal]
Member (Judicial)

[Alok Srivastava]
Member (Technical)

SPR/TM