

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 61/2023

(IA Nos. 225 & 226/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 13/01/2023 in IA/693/IB/2020 in

CP/1006/IB/2018, passed by the 'Adjudicating Authority', (National

Company Law Tribunal, Chennai Bench, Chennai)

In the matter of :

K. Narayanasamy

S/o Late Mr. Kandaswamy

Suspended Director of

GK Steel and Allied Industries Limited

12B, RK Enclave, SRKV Post

Coimbatore – 641 020.

E-mail – silversand2006@gmail.com

...Appellant

Versus

J. Karthiga

IBA/IPA-001/IP-P00752/2017-18/11284

Resolution Professional of

GK Steel and Allied Industries Limited

Sri Nivas, No. 1, Old No 1052

41st Street, Korattur,

Chennai – 600 080

E-mail – karthigasri@hotmail.com

...Respondent No. 1

2. State Bank of India

Represented by its Authorised Representative

Stressed Assets Management Branch

Raja Plaza, First Floor

No. 1112, Avinashi Road

Coimbatore – 641 037

E-mail – sbi.16454@sbi.co.in

...Respondent No. 2

3. IFCI Limited

Regional Office

Continental Chambers
2nd Floor, 142, MG Road
Numgambakkam

...Respondent No. 3

4. International Asset Reconstruction Company Private Limited

Represented by its Authorised Representative

Door No. 1, 9th Floor

Prashanth Real Gold Tower

D No. 39 North Usman Toad, T Nagar

Chennai – 600 017

E-mail – iarc@iarc.co.in

...Respondent No. 4

Present:

For Appellant : Mr. Mayan H Jain, Advocate

For Respondents : Mr. V.V. Sivakumar, Advocate, For R1

Mr. Ravi Rajagopalan, Advocate, For R4

J U D G M E N T
(Physical Mode)

[Per: ShreeshaMerla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 13/01/2023 passed in IA/693/IB/2020 in CP/1006/IB/2018 by National Company Law Tribunal, Chennai Bench, Chennai, K. Narayanaswamy, the Suspended Director of M/s GK Steel and Allied Industries Limited (the ‘Corporate Debtor’), has preferred this ‘Appeal’, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’).

2. The ‘Adjudicating Authority’ while dismissing IA No. 693/2020 observed as follows:

- i. *“Pass an order thereby directing the first Respondent Resolution Professional to exclude the amount of interest claimed by the Respondent 2 & 3 towards the outstanding dues of the Corporate Debtor for the period of 01.06.1999 to 30.12.2016 as the Corporate Debtor was a sick undertaking and proceedings were pending BIFR as the contract stood suspended under*

Section 22 of SICA and consequentially declare that the amount claimed by the Financial Creditors before the RP with usurious rate of interest is not valid;

- ii. Pass an order thereby directing the first Respondent Resolution Professional exclude claim of the fourth Respondent IARC from the list of the Financial Creditors of the Corporate Debtor and consequentially directing her to declare the fresh list of the Financial Creditor with their revised percent of voting rights in the CoC and for further other reliefs.*
- iii. Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper to grant to the Applicants such further relief in the circumstance of this case and in the interest of justice and thus render justice.*

The Prayer 1 is not pressed.

The case of the Applicant promoter director is that the RP should not admitted the claim of IARC on the ground that the assignment of the debt from ICICI bank to Standard Chartered Bank and thereafter to IARC is not valid in law to support that the Applicant relies upon the proceedings before the DRT and order of the DRAT dated 09.07.2018.

The Operative Portion order is as follows:

On careful perusal of leadigs of the parties submssions of the Counsel of parties, citations and record, it becomes clear that O.A. is still pending. R1, R2 and R3 Financial Institutions are looking for recovery of money since 1997-98. In the year 2012, Assignment Deed was registered in the State of Tamil Nadu. What would be the consequence of registration of the Assigment Deed of 2006 in Maharashtra has to be examined. In view of the facts and circumstances of this case, on this ground alone, O.A of R3 should not be and cannot be dismissed. Rather, merits of the case has to be examined. However, PO of DRT has directed examine

the legality of Assignment Deed of 2006 on merits according to law in final order to be passed in O.A after hearing all the parties.

In view of the above, Appeal stands dismissed. It Is made clear that this Tribunal has expressed no opinion on the legality of Assignment Deed at this stage. This point is kept open for PO of DRT.

Appeal is dismissed.

From this it is evident that on the issue raised by the Applicant no final order has been passed even by the DRAT or DRT.

Significantly, Prayer (ii) becomes irrelevant and not sustainable.

*Accordingly, IA/693/IB/2020 stands **dismissed**."*

3. It is the case of the Learned Counsel for the 'Appellant' that the Impugned Order is a non speaking Order which does not disclose the reasons for the dismissal of the IA No. 693/2020 and is contrary to the 'Principles of Natural Justice'. It is also submitted by the Counsel that it was wrongly recorded that they did not press for Prayer 1 in the Application, but the Order was passed, despite no such submissions having been made by the Counsel. The Learned Counsel for the 'Appellant' sought an opportunity to be heard before the 'Adjudicating Authority' on merits of the matter specifically on the ground that the 'Application' has raised repeated objections to the Constitution of the CoC. Be that as it may, the Learned Counsels appearing for the Respondents No. 1 & 4 submitted that they do not have any objection if the

matter is remanded to the ‘Adjudicating Authority’, for deciding the ‘Application’ on merits.

4. Taking into Consideration, the submissions of both the Parties as well as the facts of the case on hand, this ‘Tribunal’ is of the considered view that in the interest of Justice, an opportunity may be accorded to the ‘Appellant’, herein to be heard on merits, before the ‘Adjudicating Authority’ and therefore, we find it a fit case to remand the matter to the ‘Adjudicating Authority’ and the ‘Adjudicating Authority’ shall decide the ‘Application’ within a period of ‘four weeks’ from the date of this Order. It is made clear that this ‘Tribunal’ has not commented on the merits of the matter and the ‘Adjudicating Authority’ shall proceed in accordance with Law, uninfluenced by any observations in this Order.

5. For the aforementioned reasons, this ‘Appeal’ is allowed and the Order of the Adjudicating Authority in IA No. 693/2020 is set aside and the matter is remanded back to the Adjudicating Authority for fresh adjudication on merits. All parties shall appear before the ‘Adjudicating Authority’ on 15/06/2023. No Costs. The Connected pending Interlocutory Application, if any, are ‘closed’.

[Justice M. Venugopal]
Member (Judicial)

[Ms. ShreeshaMerla]
Member (Technical)

08/06/2023
SPR/TM