

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI

(APPELLATE JURISDICTION)

TA No.91/2021

Company Appeal (AT)(CH)(Ins) No.314/2020

(IA No.436/2021)

(Arising out of the 'Impugned Order' dated 30.12.2019 in
IA No.47/2019 in CP(IB) No.14/BB/2017, passed by
the 'Adjudicating Authority', (National Company Law Tribunal',
Bengaluru Bench)

In the matter of:

Mapletree Leather Goods Private Limited,
a company incorporated under the Companies Act,
1956, having its registered office at 166, Picnic
Garden Road, Kolkata – 700 039. Appellant

v.

Savan Godiawala,
C/o Deloitte Touche Tohmatsu India LLP,
Indiabulls Finance Centre, Tower 3,
27th Floor, Senapati Bapat Marg,
Elphinstone Road (West), Mumbai – 400 013. ... 1st Respondent

Edelweiss Asset Reconstruction Company Ltd.,
a company incorporated under the Companies Act,
1956, having its registered office at Edelweiss House,
Off CST Road, Kalima, Mumbai – 400 098. ... 2nd Respondent

Punjab National Bank, having its head office at 7,
Bhikaji Cama Place, New Delhi – 110 607,
and having a branch at Large Corporate Branch,
Centenary Building, No.28, M.G. Road,
Bangalore – 560 001. ... 3rd Respondent

State Bank of India, Industrial Finance Branch,
61, Residency Plaza, Residency Road,
Bangalore – 560 025. ... 4th Respondent

Oriental Bank of Commerce, No.123/C,
Dewan's Road, D. Devaraj Urs Road,
Mysore – 560 001. ... 5th Respondent

SBI Global Factories Limited,
a company incorporated under the Companies Act,
1956 and having its registered office at The
Metropolitan Building, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051. ... 6th Respondent

Almondz Finanz Limited, a company incorporated
under the companies Act, 1956 and having its
registered office at 2nd Floor, 3, Scindai House,
Janpath, New Delhi – 110 001. ... 7th Respondent

Shivadutt Bannanje,
Manipal Centre. S-709, South Block, 47,
Dickenson Road, Bangalore – 560 042. ... 8th Respondent

Present:

For Appellant : Mr. Thaker K, Advocate
For Respondent No.1 : Ms. Moulshree, Advocate
For Respondent No.8 : Mr. Sanyat Lodha, Advocate

WITH

Company Appeal (AT)(CH)(Ins) No. 329/2022
(IA Nos.706 & 707/2022)

(Arising out of the 'Impugned Order' dated 24.06.2022 in
IA/140/2022 in CP(IB) No.14/BB/2017, passed by
the 'Adjudicating Authority', (National Company Law Tribunal',
Bengaluru Bench)

In the matter of:

Mapletree Leather Goods Private Limited,
a company incorporated under the Companies Act,
1956, having its registered office at 166, Picnic
Garden Road, Kolkata – 700 039. Appellant
v.

Shivadutt Bannanje,
Liquidator of Falcon Tyres Ltd.,
Manipal Centre, S-709, South Block,
47, Dickenson Road, Bangalore – 560 042. ... 1st Respondent

Mr. Bachangada Nachappa Monnappa,
No.128, 3rd Main, 1st Block, RMV IIInd Stage,
Bangalore North, RMV Extension II Stage,
Bangalore – 560 094.

... 2nd Respondent

Mrs. Bachangada Monnappa Saraswathi,
No.128, 3rd Main, 1st Block, RMV IIInd Stage,
Bangalore North, RMV Extension II Stage,
Bangalore – 560 094.

... 3rd Respondent

Present :

For Appellant : Mr. Thaker K, Advocate

For Respondent No.1 : Mr. Raghuram Cadambi, Advocate

For Respondent No.2 : Mr. Abhijit Atur, Advocate

For Respondent No.3 : Mr. Abhijit Atur, Advocate

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

These are two Company Appeals preferred by the Appellant herein. In Comp App (AT) (CH) (Ins) No.314/2020, the Appellant seeks to challenge the Order of 30.12.2019, as passed by the National Company Law Tribunal, Bengaluru Bench in IA No.47/2019, as preferred in CP(IB) No.14/BB/2017, by virtue of which the Corporate Debtor has been directed to be put to liquidation.

On the other hand, in Comp App (AT) (CH) (Ins) No.329/2022, which is preferred by the Appellant, the Appellant puts a challenge to the Impugned Order dated 24.06.2022, which has passed by the National Company Law Tribunal, Bengaluru Bench in IA No.140/2022 in CP(IB) No.14/BB/2017,

wherein the prayer of the Appellant seeking for issue of an appropriate direction to the liquidator to put on hold the auction of the immovable asset of the Corporate Debtor, to consider his proposal to sell the Corporate Debtor as a going concern and accordingly to provide him a sale notice for the same in the interest of maximisation of the value of Corporate Debtor was negatived and IA No.140/2022 was dismissed.

Brief facts as involved in the Comp App (AT) (CH) (Ins) No.314/2020 are given below: -

The Appellant claims that he is engaged in the business of tanning and dressing of leather and manufacturing of luggage handbags, saddler and harness and he enjoys a vast reputation and credibility in the said field of business.

The Financial Creditor namely M/s. Edelweiss Asset Reconstruction Company, initiated Corporate Insolvency Resolution Process (CIRP) Proceeding on 01.05.2018 and one Mr. Vijaykumar Iyer was appointed as the Interim Resolution Professional (IRP). Thereafter an Application was filed to appoint Respondent No.1 as a Resolution Professional (RP), to conduct the CIRP and Learned NCLT by an Order of 19.07.2018, appointed Respondent No.1 as RP.

Expressions of Interest were invited by the Resolution Professional in Form G from Prospective Resolution Applicants (PRA) as per Regulation

36A(5) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional / Respondent No.1 had fixed 17.08.2018, as the last date for submission of the Resolution Plan. However, since he did not receive any Resolution Plan, the last date for submission of the said plan was extended as many as two times, the last such date being 12.10.2018. Even then only one Resolution Plan preferred by the Appellant was received which was rejected by CoC on 25.10.2018 and the CoC decided to go for the fresh invitation of EoI. Accordingly, a revised Form G was issued on 28.11.2018, fixing the last date of submission as 28.12.2018.

Despite such efforts by the Resolution Professional, only one Resolution Plan was received, that is, the one which has been filed by the Appellant herein. Committee of Creditors (CoC) found several deficiencies in the said Resolution Plan and accordingly the RP engaged in several rounds of communications / discussions with the Resolution Applicant / Appellant starting from 04.01.2019, advising the Resolution Applicant (RA)/Appellant herein to rectify the deficiencies. In response, the Appellant submitted five addendums to the Resolution Plan. The revised Resolution Plan was put to electronic voting on 24.01.2019 and was rejected by CoC. CoC while rejecting the Resolution Plan recommended for liquidation of Corporate Debtor. Accordingly, the Resolution Professional filed an application IA No.47/2019 praying for orders on liquidation of Corporate Debtor and the

Learned Adjudicating Authority passed orders on 30.12.2019 ordering liquidation of Corporate Debtor and appointing the liquidator to supervise the process.

It is the contention of the Appellant that his Resolution Plan was rejected without due diligence, that the Government of Karnataka too had shown its interest in the process of submission of the Resolution Plan, and in the revival of the Corporate Debtor, rather than proceeding with the Liquidation and that the Labour Unions of the Corporate Debtor too had also supported the Resolution Plan of the Appellant and they had also moved an application being IA No.49/2018, requesting for the approval of the Resolution Plan, which had been submitted by the Appellant.

He further contends that he has revised his Resolution Plan to suitably address the objections raised on the plan submitted by him and submitted 5 Addendums to make it more viable, that he sought to further revise the Resolution Plan by filing IA No.449/2019, that his intention was to take over the entire assets of the Corporate Debtor, as a going concern, and that on the revised Resolution Plan, the objections made by the Resolution Professional vide its email communication dated 10.01.2019 was merely hyper-technical in nature.

He has submitted that upon receipt of the email dated 18.01.2019, he had conducted a series of discussions with Respondent No.1, for the purpose

of clarifying the improvements made to the Resolution Plan as submitted on 18.01.2019 and the breakup of the settlement resolution amount, and after undertaking the aforesaid process, he had submitted the Consolidated Resolution Plan vide his letter dated 23.01.2019. He has contended that the Respondent No.1, vide its email dated 25.01.2019 had stated that the Revised Resolution Plan submitted by the Appellant meets the requirement of the Insolvency and Bankruptcy Code, 2016, and had placed the revised offer of the Appellant before the Committee of Creditors on 24.01.2019, for its consideration, and voting, but the CoC without taking any steps for entering into any further negotiation had abruptly proceeded to reject the plan and taken a decision to recommend for the Corporate Debtor to be put into liquidation.

The Resolution Professional / Respondent No.1 in his reply has submitted that the plan which stood submitted by the Applicant was rejected and informed vide email, which was received by the Appellant on 27.01.2019, that the Committee of Creditors in its 14th meeting had discussed in detail exploring various avenues and possibilities of the revival of the Corporate Debtor and had suggested the same to the Appellant / RA, but the same was not complied with by the RA / Appellant, that he did not agree to furnishing the Performance Bank Guarantee (PBG) and did not offer sufficient up front payment to support his commitment to the plan, that CIRP period permitted by Learned NCLT was ending on 26.01.2019 and hence

CoC decided to reject the plan and to recommend for liquidation based on which he filed the Application in IA 47/2019 before the Learned NCLT, and that Learned NCLT passed order in IA 47/2019, ordering liquidation of the Corporate Debtor. It is to be noted here that on consideration of an Application being IA 436/2021 preferred in the Comp App (AT) (CH) (Ins) No.314/2020, filed by the Appellant when it put a challenge to the Impugned Order dated 30.12.2019, this Tribunal had by an order dated 28.09.2021, declined to grant interim relief of stay and permitted the liquidation of Corporate Debtor vide order dated 13.12.2019 to be continued and rejected the said Interim Relief Application and consequently, permitted the process of e-auctioning of the property of the Corporate Debtor scheduled to be held on 29.09.2021 to be continued.

It has further been informed by the Learned Counsel for the Respondent, that the auction proceeding of the assets of the Corporate Debtor, has already been proceeded with and completed and the claim had already been settled in favour of the claimants and the assets have been handed over to the auction purchaser.

It is to be noted that the Challenge in the instant Company Appeal, as reflected from the relief clause, is limited to the extent of putting the challenge to the order passed in IA No.47/2019, which was filed by the Resolution Professional under section 33(1), to be read with section 60(5) of

the Insolvency and Bankruptcy Code, 2016. Seeking for setting aside of the said order and for consideration of his resolution plan instead. The Order passed in IA No.47/2019 preferred by the Resolution Professional by Learned NCLT is extracted hereunder:-

“In the result, IA No.47 of 2019 in CP(IB) No.14/BB/2017 is hereby disposed of with the following directions:

(1) We hereby ordered that M/s. Falcon Tyres Limited (Corporate Debtor herein), to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code;

(2) We hereby appointed Shri Shivadutt Bannanje, Insolvency Professional, bearing registration No.IBBI/IPA-002/IP-N00266/2017-18/10779 as Liquidator for the Corporate Debtor;

(3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation;

(4) The Registry is directed to communicate the order to the Registrar of Companies, Karnataka for information and necessary action.

(5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.

(6) Since the instant Application is kept pending due to various the reasons as stated supra, delay for passing for orders, including all actions taken by the Resolution Professional till date deemed to be condoned and actions protected.

(7) Consequently, IAs, if any pending, also stands disposed of. No order as to costs”.

During the course of arguments, it has come on record in the Counter Affidavit which was filed by the Respondent that as a matter of fact on the same day i.e., 30.12.2019, when orders were passed in IA 47/2019,

applications in IA No.48/2019 filed by the labour union and IA No.449/2019, filed by the Appellant offering an improved Resolution Plan and praying for its consideration came up for consideration by Learned NCLT and eventually stood rejected. Thus the rejection of Appellant's Resolution Plan stood affirmed by the order rejecting the two IAs preferred by the Appellant, the consequential effect of which would be that the Appellant stood ousted from the Resolution proceedings and also stood ousted from the liquidation proceedings as he has not put a challenge to the order dated 30.12.2019 rejecting the Applications seeking acceptance of the revised Resolution Plan. The relevant extract of the order dated 30.12.2019 qua IA Nos.48/2019 & 449/2019 is extracted hereunder.

"Parties/Counsels Present:

For the Resolution Applicant : Shri Bharath M.

*For the RP/Respondent : Shri Nischal Dev B.R with
Shri Ameya Gokhale,
Ms. Apeksha,*

For the Respondent No.2 : Shri Mohammed Afeef,

*For the EARC : Shri Vikram Trivedi, with
Shri Keerthi Hegde*

6. After verification of claims, 6 Financial Creditors EARCL (Rs.1,253 Cr. / 82.65%), SBI-GF (Rs.97.27 Cr./6.43%), PNB (Rs.67.66 Cr./4.47%), SBI (Rs.59.41 Cr./3.93%) OBC (Rs.25.02 Cr./1.65%) and Amondz Finanz Limited (9.91Cr/ 0.66%) alone entitled for total amount of Rs.1512.63 Cr. Apart from above Financial Creditors, Commercial tax dues are to the tune of Rs.379 Cr., apart several crores of rupees due to Operational Creditors, workers etc. And the operations of Company was

stated to have been suspended as early as April, 2015 due to various reasons. Therefore, various contentions raised by Applicant that its Resolution Plan is most viable, alternative to revive operations of the Company etc., are not all tenable and baseless and thus they are liable to be rejected. The COC has dispassionately considered the issue vis a vis the object of code, interest of all stake holders, and thus found that the Resolution Plan is question is not at all tenable and the same was view was almost unanimously approved by it. Therefore, there is no arbitrariness and any violations of provisions of Code and the rules made thereunder, in rejecting the case of Applicant.

7. The Adjudicating Authority, by separate order dated 30.12.2019 passed in IA No.47/2019, has ordered the Company (CD) to be liquidated in accordance with extant provision of Code and the rules made thereunder, by detailed order. Therefore, the present Application also became infructuous.

8. For the above reasons and circumstance of the case and the settled law on the issue, we are of considered opinion that the instant Application lacks merits, and Applications are liable to be dismissed”.

The implication of the Order of 30.12.2019 relating to IA No.48/2019 and IA No.449/2019, would be that as a matter of fact, no cause of action, as such now survives in the instant Appeal in Company Appeal (AT) (CH) (Ins) No.314/2020 for the Appellant to put a challenge to the order passed in IA No.47/2019 which was preferred by the Resolution Professional, for appointment of the liquidator. Furthermore, owing to the subsequent developments which has taken place and as it has been informed by the Respondent's counsel, that, after rejection of the prayer for interim stay by an order of 28.09.2021, the assets of the Corporate Debtor had already been auctioned and the proceeds therefrom, has now been settled with the

claimants, and that as such as of now, no cause of action survives for the Appellant in the instant Appeal, especially in the absence of any challenge given by him to the order of 30.12.2019 deciding IA No.48/2019 and IA No.449/2019. Thus, this Appeal lacks merit and the same is accordingly dismissed.

In the connected Appeal **Comp App (AT) (CH) (Ins) No.329/2022**, the Respondent Liquidator has filed a memo on 27.07.2023, giving the current status report of the Liquidation and the particulars of the statement of disbursement of the liquidation proceeds. This itself signifies the fact that the Liquidator who was thus appointed in pursuance to the IA No.47/2019, has concluded the proceedings, which is sought to be disputed by the claimant.

In this Appeal, the Appellant puts a challenge to the order passed in IA No.140/2022, in CP(IB) No.14/BB/2017, filed by him under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, to be read with Rule 11 of the NCLT Rules. In the said Application, the Appellant had prayed for staying the auction process of the Corporate Debtor's immovable assets, for directing the Liquidator to consider his proposal to sell the Corporate Debtor as a going concern and accordingly to provide him with the sale notice for the same in the interest of maximization of the value of the assets. The Relevant relief prayed for in the said application is extracted hereunder: -

“This Application has been filed by Mapletree Leather Goods Pvt. Ltd., U/S.60 (5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 against the Liquidator of M/s. Falcon Tyres Limited (Corporate Debtor) seeking the following reliefs:

- a. Stay on any further auction of the said immovable asset by the Liquidator;*
- b. Direction to the Liquidator to consider the Applicant’s proposal to sell the Corporate Debtor as a going concern and accordingly provide the Applicant a sale notice for the same in the interest of maximization of the value of the assets;*
- c. Pending the hearing and final disposal of the present application, an order restraining the Liquidator from alienating and/or selling the said immovable asset;*
- d. For ad interim reliefs in terms of prayer clause (a) to (c);*
- e. Such further and/or other order or orders be passed and/or direction or directions be given, as to this Hon’ble Court may deem fit and proper”.*

This Application came up for consideration before the Learned Adjudicating Authority and the Learned Adjudicating Authority after considering the text of the relief sought in IA No.140/2022, had dismissed by observing that it was on the same grounds / prayers the Appellant had already approached before the NCLAT by filing IA No.436/2021 in CA (AT) (CH) (Ins) No.314/2020 which has been rejected, that the relief as sought for in IA No.140/2022 has already been denied by the NCLAT while deciding IA No.436/2021, that, the Appellant has suppressed the material fact regarding the orders passed on IA No.436/2021 in CA (AT) (CH) (Ins)

No.314/2020, and therefore, the relief as it was sought for in IA No.140/2022 would not be tenable owing to the bar created by the decision taken on IA No.436/2021 preferred in CA (AT) (CH) (Ins) No.314/2020. Apart from the aforesaid reason, the Learned Adjudicating Authority has concluded that the relief sought for by the applicant by invoking the provisions contained under section 60(5) of the Insolvency and Bankruptcy Code, 2016 to be read with Rule 11 of the NCLT Rules cannot be granted to the Appellant for the following reasons.

- (1) The Resolution Plan which was submitted by the Appellant was already rejected.
- (2) The Application filed for modification of the Resolution Plan also stood rejected vide Order dated 30.12.2019.
- (3) More importantly, the two orders affirming the rejection of the Resolution Plan was not challenged by the Appellant by invoking the provisions contained under Section 61 of the Insolvency and Bankruptcy Code, 2016 and the same would attain finality, against the Appellant.
- (4) Once the rejection of the Resolution Plan submitted by the Appellant had attained finality no cause of action would survive qua the Appellant for filing this instant Appeal as against the order passed in IA No.140/2022.

Besides this, the relief itself as prayed for would be barred by the principle of Res judicata because the same already stood denied by the NCLAT vide its order dated 20.09.2021 passed in IA No.436/2021. In view of the above and primarily on the ground that in the absence of the challenge given to the order of rejection of the Resolution Plan submitted by him, the Appellant relinquishes his right to put a question to an order of appointment of liquidator, as well as, to seek for the relief he has sought in IA No.140/2022, which is the subject matter of Comp App (AT) (CH) (Ins) No.329/2022. For the aforesaid reasons, this Appeal too would stand dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

20.11.2024
VG/TM