

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.134/2023
(IA Nos. 449/2023, 446/2023, 447/2023, 448/2023, 450/2023,
889/2023, 161/2024, 999/2024 & 1134/2024)

In the matter of:

Sathya Moorthy Sai Prasad,
Suspended Director of M/s. Ozone Projects Pvt. Ltd. ... Appellant
V
Shapoorji Pallonji and Company Pvt. Ltd. & Anr. ...Respondents

Present :

For Appellant : Mr. Chandramouli Prabhakar, Advocate
For Respondents : Ms. Anusha Peri, Advocate for R1
Ms. Elamathi, Advocate for R2
Ms. Revathi Manivannan, Advocate
for Proposed Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.197/2023
IA No. 1087/2024

In the matter of:

Kunnel Engineers & Contractors Pvt. Ltd. ... Appellant
V
Ozone Projects Pvt. Ltd. ...Respondent

Present :

For Appellant : Mr. Jerin Asher Sojan, Advocate
For Respondent : Mr. SK Harinarayanan, Advocate

ORDER
(Hybrid Mode)

20.11.2024:

This Company Appeal, is listed on various pending interlocutory applications.

So far as, the application being **IA No. 449/2023**, being an application for advanced hearing, is concerned, the same would stand ‘disposed of’, owing to the fact that, the appeal itself is being taken up.

As far as, **IA Nos. 446 & 447/2023** is concerned, where the applicant has prayed for the grant of the Interim Order, as there already operates a stay order dated 10.05.2023. The said applications would be treated to be ‘disposed of’.

IA No. 161/2024 and 448/2023, are for seeking certain directions for the purposes of maintaining a status quo and, more importantly, the relief to keep the Corporate Debtor as an ongoing concern. The Respondent vehemently opposes these applications. In that eventuality, the Respondents are granted two weeks to file an objection to **IA No. 161/2024**.

As far as exemption application **IA No. 450/2023** is concerned, since the exemption sought is from filing the true and clean copy of the documents, the same would be considered at the stage when the appeal itself is argued on merits.

IA No. 889/2023, has been preferred by M/s. RDC Concrete India Private Limited, thereby praying for, to be impleaded as a party to the appeal. Primarily, the ground which has been pleaded by the applicant, to implead itself as a party to the appeal is that, there had been earlier a similar application filed by

Respondent No.2 against Respondent No. 3, in C.P.(IB)05/CHE/2023 before NCLT, Chennai. And, on 17.04.2023, the orders were reserved in both the applications. But, however, the applications were closed by an order dated 01.05.2023, on the ground that, since the corporate insolvency resolution process has already been initiated, the matters were closed.

The initiation of the CIRP proceedings has been as a consequence of, the application preferred by Respondent No. 3, as a consequence of which CIRP has commenced and the Interim Resolution Professional (IRP) has already been appointed. The reason for impleadment, which has been mentioned in the application is that, during the course of business of the Corporate Debtor, there have been various business transactions, which were carried with the Operational Creditors including him for purchase of the readymix concrete for the projects which are being undertaken by the Corporate Debtor, namely 'Metro Zone' and pursuant to it the Operational Creditor, had also supplied some readymix concrete to the Corporate Debtor, as per the requirement and the order placed by the Corporate Debtor, which can apparently be verified from the invoices. The said business transaction was carried out between the period from 11.05.2019 to 13.10.2021, where an amount of Rs. 4,48,30,421 was said to be due to be paid to him.

It is contended by the counsel for the applicant seeking impleadment that in fact, the appellant has been playing fraud with the Operational Creditors

because first he is defaulting in payment of the dues to the Operational Creditors like him and once they initiate proceedings to recover the dues, the appellant has been entering into a settlement and getting the proceedings dropped and thereafter he had been reneging himself from the terms of such settlements. That is why he wants to implead himself in this appeal to protect his interest.

The applicant has further submitted that, since his claim and interest are involved in the instant appeal, he is a necessary party to be impleaded in the present appeal. To show the necessity to be impleaded, he has detailed the proceedings of the company petition, which was carried out for seeking CIRP proceedings against the Corporate Debtor i.e. M/s. Ozone Projects Private Limited, the appellant herein and the results thereof, which has been brought out in Para 14 of the impleadment application. He has further stated that he too, had preferred a Company Petition (IB) No. 48/2022, as against the Corporate Debtor for initiation of CIRP proceedings, but since the CIRP proceeding against the Corporate Debtor stood initiated in CP (IB)/131/(CHE)/2021 by an Order dated 08.03.2022, he was directed to file his claim before the Interim Resolution Professional (IRP) and his company petition, being Company Petition (IB)/48/(CHE)/2022 stood dismissed, on 22.03.2022.

He finally states that owing to the fact that his claim against the Corporate Debtor is part of the subject matter in the proceedings drawn against the Corporate Debtor, in order to safeguard his interest, he should be considered, to

be a necessary party to the proceedings of the instant appeal and should be impleaded as a party because he is bound to be affected, if any orders are passed in this instant company appeal, adverse to his interest, which he has already agitated before the Ld. Adjudicating Authority. The said impleadment application is vehemently opposed by the appellant, contending thereof that since in the instant company appeal, the challenge is given to the impugned order dated 01.05.2023, passed in CP (IB)5/CHE/2023, which was filed by Respondent No. 1 i.e., M/s. Shapoorji Pallonji and Company Limited, the matter is between him and Respondent No. 1 only and the applicant M/s. RDC Concrete India Private Limited need not be impleaded as a necessary party to the appeal, as there will be many other such parties who will then seek impleadment and delay the proceedings in the instant appeal.

The counsel for the applicant, in support of his contention to justify the impleadment referred to various authorities pertaining to the principles which are to be followed, at the stage of considering an application, as principally envisaged, under Order I Rule 10, that impleading a party is discretion of the Court, which the Tribunal or the Court has to visualize, depending upon the facts and circumstances of each of the case and has to decide whether for the purposes of an effective adjudication or for the purposes of protecting a right involved in a litigation, a party may be permitted to be impleaded. To support his contentions, he has made reference to, the judgments rendered by this Tribunal in Company

Appeal (AT) (CH) INS No. 269/2022, V. Venkat Sivakumar Versus IDBI Bank Limited & 2 Ors, and in **Transfer Appeal in TA (AT) No. 258/2021, Inkel Limited versus Shaji Mathew & 1 Other** and has, particularly referred to Para 21 of the said judgment as to what would be the scope, for considering an application for impleadment in a proceeding.

Owing to the fact as also apparent from the pleading, since the applicant himself had been an applicant to the CIRP proceedings against the present Corporate Debtor which was closed because CIRP was initiated on another application (the subject matter of the instant appeal) and where he has been asked to file his claims, he becomes a necessary party to be impleaded for an effective adjudication of the appeal.

Thus, **IA No. 889/2023**, would hereby stand ‘allowed’. The applicant is directed to make the necessary amendment in the cause title of appeal, by impleading M/s. RDC Concrete India Private Limited, as one of the Respondents to the appeal, the necessary amendment to be carried within 48 hours.

During the intervening period, the applicant may file an objection to **IA No. 161/2024**, as filed by the Respondent seeking modification/clarification of the Interim Order dated 10.05.2023.

List this appeal itself for consideration on **24.12.2024**.

Till the next date of ‘Hearing’, the ‘Interim Order’, if any, passed by this ‘Tribunal’, shall ‘Continue’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SN/TM/MS