

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.159/2024
(IA No.426/2024)

In the matter of :

1) Excel Commosale Private Limited,

Having its Registered Office At: 159,
Rabindra Sarani, 4th Floor,
Kolkata, West Bengal - 700 007
Rep. by its Authorised Signatory:
Mr. Kaushik Chowdhury

2) Encord Trading Private Limited,

Having its Registered Office At: 159,
Rabindra Sarani, 4th Floor,
Kolkata, West Bengal - 700 007
Rep. by its Authorised Signatory:
Mr. Kaushik Chowdhury

3) Stanley Suppliers Private Limited,

161, Rabindra Sarani, Kolkata,
West Bengal - 700 007
Rep. by its Authorised Signatory:
Mr. Abhishek Pureka

... **Appellants /**
Members of CoC

V

1) Mr. Kurrapati Singarayya Chowdary,

Resolution Professional of
Circar Jute Mills Private Limited,
Reg No.: IBBI/ IPA-003/ IP N000149/ 2017-2018/ 11728,
NH5, BBapulapadu Mandalam,
Kodarpadu Village, Krishna District,
Andhra Pradesh - 521 110.

...**Respondent No. 1 /**
Resolution Professional

2) Mr. Gaurang Bhartia and Smt.Manju Bhartia,

R/o. X6A, 1st Floor, Hauz Khas,
New Delhi - 110 016

... **Respondent No. 2 /**
Resolution Applicant

Present:

For Appellants : Mr. Varun Ambati, Advocate

For Respondents : No Appearance

With

Company Appeal (AT) (CH) (Ins) No.160/2024
(IA Nos.427 & 428/2024)

In the matter of :

1) Mr. Gaurang Bhartia

R/o 2nd Floor B-76,
Greater Kailash-I
New Delhi-110048

2) Mrs. Manju Bhartia

R/o 2nd Floor, B-76,
Greater Kailash-I
New Delhi-110048

... Appellants

V

Mr. Kurapati Singarayya Chowdary

Resolution Professional for

M/s Circar Jute Mills Pvt. Ltd.

Reg No. IBBI/IPA-003/IP-N000149/2017-18/11728

Flat No. 104, Kavuri Supreme Enclave,

Kavuri Hills, Madhapur,

Hyderabad- 500033

... Respondent

Present:

For Appellants : Mr. Ramasamy Meyyappan, Advocate

For Respondent : No Appearance

ORDER
(Hybrid Mode)

02.12.2024:

A) Company Appeal (AT) (CH) (INS) No. 159 / 2024:

The Appellants were the member of the Committee of Creditors who puts a challenge to the Impugned Judgment of 03.04.2024 as it was passed on IA (IBC) No. 329 / 2023 in CP (IB) No. 78 / 7 / AMR / 2020.

The learned Adjudicating Authority while dismissing the Petition as against the Resolution Plan of 11.02.2023, left it open that, a fresh CIRP proceedings will be resorted to by invitation of Form G, and the same was directed to be proceeded with on merits as per law.

The learned counsel for the Appellants informs this Tribunal, that subsequent thereto, the process has been resorted to in pursuance to the direction issued by the Impugned Judgment under challenge, which has already been carried and the fresh Resolution Plan has been invited and later on, it stood approved too. Consequent to which, for all practical purposes, his Appeal has been rendered infructuous.

The learned counsel for the Appellants has expressed his apprehension owing to the finding, which has been recorded in Para 35, pertaining to the mode of functioning of the Committee of Creditors.

As far as the apprehension expressed qua the finding recorded in Para 35 of the Impugned Judgment, we are of the view that, since the said finding would be confined to the Impugned Judgment, which is under challenge in the instant Appeal, and it is not to be carried forward, when the second Resolution Plan is to be considered on its merits. Hence, any observation regards to observations made in Para 35 is not required to be made by us, in relation to the finding recorded in Para 35.

It is clarified that the proceedings in pursuance to the acceptance of the fresh Resolution Plan, would be carried independent to the observations made in

the Impugned Judgment. As stated by the learned counsel for the Appellants, since the factum of acceptance of the second Resolution Plan has already been brought on record before us, the instant **Company Appeal (AT) (CH) (INS) No. 159 / 2024** has been rendered infructuous and the same is accordingly dismissed having rendered infructuous. The connected pending Interlocutory Applications, if any, would stand closed.

B) Company Appeal (AT) (CH) (INS) No. 160 / 2024:

The Appellants who are the Successful Resolution Applicants in this Appeal questions the veracity of the Impugned Judgment of 03.04.2024, as it was rendered in IA (IBC) No. 329 / 2023 in CP (IB) No. 78 / 7 / AMR / 2020. By virtue of which the Resolution Plan of 11.02.2023, which stood approved by 100% voting of the CoC, has been rejected to be accepted by the learned Adjudicating Authority, and rather, a fresh Resolution Plan was left open to be invited and consequent to which, Form G was invited from the other Resolution Applicants, which has been submitted and the second Resolution Plan in compliance of the Judgment dated 03.04.2024 has already been approved.

The learned Counsel for the Appellants submit that despite of the fact that the second Resolution Plan, which has now been accepted and stood approved in pursuance to the Impugned Judgment, it will still not render the Appeal itself to be infructuous and the same deserves to be decided on merits.

But, ultimately after visualising the fact that, in the absence of their being a challenge given to the acceptance of the second Resolution Plan, in fact, no material benefit would be gained by the Appellants, in putting a challenge to the Impugned Order dated 03.04.2024, because for all practical purposes, the lis which was sought to be adjudicated by the Appellants in the instant Appeal has been rendered infructuous. The Appeal would stand dismissed as having rendered infructuous with the liberty left open for the Appellants put a challenge to the

acceptance of the second Resolution Plan as per law, which has been resorted to as a consequence of the Impugned Judgment of 03.04.2024 and if he is so advised, he may file an appropriate Appeal putting a challenge to the acceptance of the second Resolution Plan.

Accordingly, the **Company Appeal (AT) (CH) (INS) No. 160 / 2024**, has been rendered infructuous and the same is accordingly dismissed having rendered infructuous. The connected pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

SR/TM/MS