

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1194 of 2022

(Arising out of Order dated 09th September, 2022 passed by National Company Law Tribunal, Mumbai Bench in CP (IB) No. 4578/MB/C-I/2018)

IN THE MATTER OF:

SECURITIES & EXCHANGE BOARD OF INDIA,

Plot No. C4A, G Block,
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.
Through its Manager

...Appellant

Versus

1. RAJESH SURESHCHANDRA SHETH,

Deloitte India Insolvency Professionals
LLP, One International Centre, Tower 3,
27th Floor, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai – 400013
Interim Resolution Professional

2. PANCARD CLUBS LIMITED,

111-113, Kaliandas Udyog Bhavan,
Century Bazaar, Prabhadevi,
Mumbai – 400025
Through IRP – Respondent No. 1

3. Nitin Suresh Satghare & 99 Ors.

.....Respondents

Appellant: Ms. Surekha Raman, Advocate

Respondent: Mr. Krishnendu Datta, Sr. Advocate, Mr. S.Santanam Swaminadhan, Mr. Kartik Malhotra, Mr. Darsh Bansal, Mr. Palash Singhai, Advocates for R-3 to 102.

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Ankita Bajpai,
Mr. Shaurya Shyam, Advocates for R-1/RP.

J U D G M E N T

ASHOK BHUSHAN, J:

This Appeal has been filed against the Order dated 09.09.2022 passed by the National Company Law Tribunal, Mumbai Bench, Court I, (hereinafter referred to as **“The Adjudicating Authority”**) admitting Section 7 Application of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“The Code”**) filed by Mr. Nitin Suresh Satghare and 99 Ors.-Financial Creditors. The Section 7 Application was filed against the Corporate Debtor-Pancard Clubs Limited. The Appellant before us i.e. Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) who had filed I.A. No. 1894 of 2019 praying for dismissal of the Company Petition.

2. Brief facts of the case necessary to be noted for deciding this Appeal are:-

- i. The SEBI received various complaints against Pancard Clubs Limited alleging fraudulent fund mobilisation across the Country. After certain proceedings, the SEBI passed an Order dated 29th February, 2016 in exercise of power under SEBI Act, 1992 directing Pancard Clubs Limited and its directors to refund the amounts collected from investors under an unregistered Collective Investment Schemes along with returns or not to carry out any collective investment schemes. The Pan Card Clubs Limited was further directed to wind up existing collective investment schemes and refund through Bank Demand Draft or pay order, the money collected by the said company under the schemes. It was further directed that in event Pancard Clubs

Limited not complied with the directions, SEBI shall initiate attachment and recovery proceedings under SEBI Act, Rules and Regulations framed thereunder.

- ii. Recovery Officer of the SEBI vide its Certificate Number 1020/2016 initiated recovery proceedings against the Pancard Clubs Limited and its directors for having failed to repay sum of Rs. 7035,00,01.000/- along with returns to investors. SEBI attached the Bank Accounts of the Corporate Debtor as well as of movable and immovable properties of the Defaulters. Security Appellate Tribunal vide Order dated 12.05.2017 upheld the Order dated 29.02.2016 in furtherance of recovery initiated against the defaulters. E-auction notices were issued for sale of various properties. Some of the investors filed a Writ Petition No. 12998 of 2018 before the High Court of Judicature at Bombay challenging the e-auction notices alleging that Appellant is conducting e-auction of the properties. Allegations in the Writ Petition were made that properties of the Corporate Debtor as well as directors and the associate companies are being sold at grossly undervalued prices. The Hon'ble High Court passed an Interim Order dated 09.01.2019 directing the 15 auctions which have already been completed, Successful Auction Purchaser are permitted to complete the transactions and take possession which shall be subject to further orders of the Court. With respect to remaining 53 properties SEBI was permitted to take necessary

steps and actual auction was not to be conducted until further orders.

- iii. Respondent Nos. 3 to 102 to this Appeal has filed Section 7 Application i.e. CP(IB) No. 4578/MB/2018 in which, intervention application was filed by SEBI.
- iv. Another proceedings was initiated before the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (Hereinafter referred to as **“MPID Act”**) Court in Special Case No. 98 of 2017. The Government of Maharashtra under MPID Act attached the properties of the Corporate Debtor. The SEBI filed an Application before the MPID Court in Special Case No. 98. Of 2017 submitting that since MPID Court is seized of the matter, proceedings may be continued by MPID Court and SEBI will not proceed independently but would assist the MPID Court as and when directed.
- v. Section 7 Application was heard by the Ld. Adjudicating Authority. Appellant also appeared before the Adjudicating Authority who has already filed an Application for Intervention and Impleadment. The Adjudicating Authority after hearing the parties by the Impugned Order dated 09.09.2022 admitted Section 7 Application filed by the Respondent Nos. 3 to 102. The Appellant aggrieved by the Order dated 09.09.2022, has come up in this Appeal.

3. We have heard Ms. Surekha Raman, Advocate appearing for the Appellant, Mr. Krishnendu Datta, Sr. Advocate appearing for Respondent Nos. 3 to 102 and Mr. Sumesh Dhawan, Advocate appearing for Respondent No. 1-RP.

4. Learned Counsel for the Appellant challenging the Order passed by the Adjudicating Authority submits that the Appellant has already taken appropriate steps for getting the amount refunded to the investors, properties were attached of the Corporate Debtor and 15 properties have already been auctioned collecting total amount of Rs. 104 Crores, due to interim order passed by the High Court, further auction could not take place. It is submitted that the properties has been attached under MPID Court where proceedings are pending in Special Case No. 98 of 2017. It is submitted that the Application under Section 7 filed by the Investors ought not to have been admitted and the Adjudicating Authority ought not to have proceeded with the Insolvency Resolution Process since the Special Court of MPID is already seized of the matter where Appellant has already filed an Application to render all assistance to the Special Court under MPID Act. It is submitted that Bombay High Court having already passed an Interim Order that further auctions could only be taken in pursuance of the Order of Bombay High Court the Appellant has already appeared in the Bombay High Court and has requested for constitution of committee to supervise the auction of the properties of the Corporate Debtor. Learned Counsel for the Appellant submits that in view of the Judgment of the Hon'ble Supreme Court in Vidarbha Industries Power Limited Vs. Axis Bank Limited, (2022) 8 SCC 352, Adjudicating Authority ought to have exercised its discretion in not admitting

Section 7 Application there being good reasons for not admitting the Application. Learned Counsel for the Appellant submits that similar issues have been pending consideration before the Hon'ble Supreme Court in Civil Appeal No. 5089 of 2019, where on the Appeal filed by the SEBI, Interim Order has been passed by the Hon'ble Supreme Court staying the order of NCLT by which direction was issued to hand over title to the Resolution Professional. Learned Counsel for the Appellant has referred to Order passed by Hon'ble Supreme Court on 17.06.2019 as well as 20.11.2022 in the aforesaid Civil Appeal.

5. Learned Sr. Counsel appearing for the Respondent No. 3 to 102 who are investors and has filed Section 7 Application before the Adjudicating Authority on the ground that Respondent has defaulted in repayment of the monies to the tune of Rs. 1,55,12,880 invested by the Applicants submits that the Case of the Respondent in the Application was, investment made by Applicant in collective investment schemes operated by Corporate Debtor who refused to repay in spite of direction to refund monies to the tune of Rs. 7035 Crores of the Investor, amounts have not been refunded, the corporate Debtor in spite of service chose not to appear or defend the proceeding. It is submitted that debt and default have been proved, the Adjudicating Authority has rightly admitted Section 7 Application. It is submitted that proceedings under IBC shall have overriding effect on all proceedings after initiation of Section 7 Application. It is submitted that SEBI cannot now auction the property of the Corporate Debtor. Writ Petition in the Bombay High Court was filed by some of the Investors at point of time when SEBI was auctioning the properties at grossly undervalued prices. It is submitted that Judgement of Vidarbha

Industries Power Limited relied by Learned Counsel for the Appellant has no application in the present case. Investors who are waiting for refund of their money for last several years had no option except to initiate Insolvency Resolution Process under which process all assets of the Corporate Debtor are required to be handed over to the Resolution Professional and used for payment of the Creditors.

6. Learned Counsel for the Resolution Professional submits that the Adjudicating Authority has rightly admitted Section 7 Application. The Resolution Professional has issued publication and invited claims after initiation of Corporate Insolvency Resolution Process (CIRP in short). Resolution Professional has requested the Appellant to submit its claim and to hand over all assets, properties, records and data of the Corporate Debtor to the IRP. Resolution Professional has also appeared in the Writ Petition No. 12998 of 2018 filed in the Bombay High Court and informed the High Court about initiation of CIRP. High Court has granted leave to amend the proceedings bringing on record the RP of the Corporate Debtor. Committee of Creditors has been constituted comprising of Financial Creditors in a class. IRP also filed an application before the Special Court of MPID Act seeking for cancellation of properties attached by the Government of Maharashtra through EoW which application is pending consideration. The Appellant having filed an application before the Special Court of MPID Act they shall not be proceeding with the auction of the properties and they shall assist the Special Court there is no occasion for Appellant to object the proceedings under Section 7 initiated against the Corporate Debtor.

7. We have considered the submissions of Learned Counsel for the parties and have perused the record.

8. Section 7 Application has been filed by Respondent Nos 3 to 102 who are investors in the Corporate Debtor who have not been refunded their money in spite of Order dated 29.02.2016 passed by SEBI. The sequence of events as noted above indicates that Appellant-SEBI after the Order dated 29.02.2016, has issued a recovery certificate and has attached the properties of the Corporate Debtor, its directors, its associate Companies and has also conducted auction of 15 properties by which amount of Rs. 104 Crores have been received. With regard to E-auction notice issued by the Appellant for auction of properties, Writ Petition No. 12998 of 2018 was filed by some of the Investors of the Corporate Debtor. Bombay High Court has passed an Interim Order dated 09.01.2019 by which interim order, following was directed in Paragraph 9 to 14:-

“9. The above 53 properties are still to be auctioned, we direct Respondent No. 1 and 2 to permit representative of petitioners along with their advocate to inspect the valuation papers in relation to those properties. We also direct that such inspection in relation to 15 properties, which are already auctioned shall also be given.

10. This exercise shall be completed within 2 weeks from today subject to representative and petitioners giving an undertaking to this Court that data inspected by them shall be kept confidential.

11. As 15 auctions have already been completed, we permit successful auction purchasers to complete the

transaction and to take possession. However, same shall be subject to further orders of this Court in the matter.

12. The purchasers entering possession shall not create third party interest until further orders in the matter.

13. In relation to remaining 53 properties though respondent Nos. 1 and 2 may take necessary preparatory steps, actual auction shall not be conducted until further orders.”

9. In the Writ Petition, Resolution Professional has also appeared and brought before the Court factum of initiation of CIRP against the Corporate Debtor. The Writ Petitioner themselves sought relief to amend the petition to bring the Resolution Professional of Corporate Debtor on record. Following was passed by the High Court on 20th September, 2022 which is to the following effect:

“1. Learned Counsel for petitioners seeks leave to amend and bring the Resolution Professional of respondent no. 3 on record.

2. Leave to amend granted.

3. At the request of learned counsel for petitioners place the matter on 6th December, 2022.”

10. We also need to notice the Application filed by the Appellant dated 25th March, 2022 before the MPID Court, Mumbai. In the Application filed by the Appellant, the Appellant has referred to steps taken by the Appellant towards details of recovery certificate. The Application was filed by the Appellant as Intervener in paragraph 14 of the Application, following has been stated:

“14. In view of the same, the following is submitted by the Intervener/Applicant:

(i) Since this Hon'ble Court is seized of the matter, SEBI shall not proceed independently in this matter under the SEBI Act/SCRA/Depositories Act (whichever applicable) and would assist this Hon'ble Court as and when directed in this regard;

(ii) SEBI shall handover the amount recovered after adjusting the cost/expenses incurred in SEBI recovery proceedings as noted at para 10 above, to this Hon'ble Court or to any other appropriate agency as may be directed by this Hon'ble Court."

11. The application clearly mentioned about the decision taken by the SEBI quo stating that MPID Court is seized of the matter, SEBI shall not proceed independently in the matter however SEBI stated that it shall assist the MPID Court to protect the interest of the Corporate Debtor.

12. The Order which has been challenged in this Appeal admitting Section 7 Application filed by some of the Investors of the Corporate Debtor i.e. Respondent Nos. 3 to 102 and the question which has to be answered is as to whether the Adjudicating Authority committed error in admitting Section 7 Application, warranting any interference by this Court in the Appeal filed by SEBI-Appellant.

13. It is well settled that proceedings by Financial Creditors under Section 7 can be initiated despite pendency of any other proceedings relating to the Corporate Debtor. Right given to a Financial Creditor under IBC can be invoked by Financial Creditor despite any proceeding pending with regard to Corporate Debtor in any other forum.

14. The Respondent No.1 in his Reply has brought on record an Order passed by this Tribunal dated 04th December, 2017 in C.A. (AT) Ins. No. 162 of 2017 in the matter of Sobha Limited Vs. Pancard Clubs Limited. The Appeal arose out of proceeding under Section 9 of the Code which was filed against the Pancard Clubs Limited which was rejected on the ground of existence of dispute. This Tribunal in said judgment has held that initiation of Corporate Insolvency Resolution Process under IBC cannot be nullified by any order passed by SEBI. The Order passed by SEBI dated 29th February, 2016 was referred to in the Judgement of this Tribunal. In paragraph 9 and 11, this Tribunal held following:

“9. Learned Counsel appearing on behalf of the Appellant- ‘Operational Creditor’ submitted that the ‘Corporate Debtor’ having failed to pay the dues for the work carried out, the Adjudicating Authority cannot reject the application referring to an order dated 29th February, 2016 passed by SEBI. It was submitted that SEBI has passed an order, inter alia, directing the ‘Corporate Debtor’ not to alienate, dispose or sell any of the assets of the Company except for the purpose of making refunds to its investors and the Ministry of Corporate Affairs and to initiate the process of winding up of the Respondent.

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11. Having heard learned counsel for the appellant, while we agree that initiation of ‘Corporate Insolvency Resolution Process’ under ‘I&B Code’ cannot be nullified by any order passed by SEBI nor can be a ground to reject an application under Section 9 of the ‘I&B Code’ but as there is an ‘existence of dispute’ with regard to the invoices raised by the Appellant-‘Operational Creditor’, we hold that the

application under Section 9 of the 'I&B Code' was not maintainable."

15. This Tribunal thus has clearly held that initiation of proceeding under IBC can not be nullified by any order passed by SEBI. Thus, the proceedings initiated by SEBI by order dated 29.02.2016 and the Recovery Certificate issued thereunder and steps taken by the SEBI can not be a ground to oppose the initiation of proceedings under Section 7 of IBC.

16. The present is a case where Creditors of the Corporate Debtor have initiated Section 7 Application since the amount invested by them was not being refunded by the Corporate Debtor in spite of order passed by the SEBI Dated 29.02.2016. The Hon'ble Supreme Court in 2020 8 SCC 516, Indian Overseas Bank Vs. RCM Infrastructure Limited have categorically held that after moratorium under Section 14(1)(c) comes into operation, no proceeding to recover against the Corporate Debtor can be continued. Hon'ble Supreme Court has referred to provision of Section 238 of IBC. Hon'ble Supreme Court in paragraph 26, 27 and 35 laid down following:

"26. It could thus be seen that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

27. It has been consistently held by this Court that the IBC is a complete Code in itself and in view of the provisions of Section 238 of the IBC, the provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. A reference in this respect could be placed on the judgments

of this Court in the cases of Innoventive Industries Limited v. ICICI Bank, Commissioner of Income Tax v. Monnet Ispat and Energy Limited and Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited.

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35. In view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the [SARFAESI Act](#) is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the [SARFAESI Act](#) once the CIRP was initiated and the moratorium was ordered.”

17. Law is well settled that when moratorium comes into operation, no other proceedings for recovery against the Corporate Debtor can be continued. The Resolution Professional has also appeared before the High Court in the Writ Petition where Interim Order was passed on 09.01.2019 before the initiation of proceedings under Section 7. Learned Counsel for the RP submits that Resolution Professional has appeared before the High Court and brought relevant facts into the notice of the High Court. We have no doubt that RP shall obtain necessary clarification and modification from the High Court to proceed further in the CIRP Process before finalisation of CIRP Process.

18. We are further of the view that pendency of Special Case no. 98/2017 under MPID Act also can not be ground to not initiate proceedings under Section 7 of the Code. Attachment by Government of Maharashtra to protect the interest of the Investors under Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 was also with object to

protect the interest of the Investors. Resolution Professional as well as Appellant has already appeared before the Court in Special Case No. 98 of 2017. We are however of the opinion that pendency of such proceedings in no manner preclude initiation of Section 7 Application under IBC by Respondent Nos. 3 to 102 before the Adjudicating Authority.

19. Learned Counsel for the Appellant has also submitted that multiple proceedings for recovering the dues of the Corporate Debtor are not warranted and the High Court having entertained the Writ Petition on behalf of some of the Investors and passed an Interim Order it was not appropriate for Adjudicating Authority to admit Section 7 Application and to relegate the Financial Creditors to seek their remedy before the High Court. It is noted that writ petition in the High Court was by some of the Investors with the allegation that Appellant is auctioning the assets of the Corporate Debtor under grossly undervalued consideration. The Writ Petition was also to protect the interest of the Investors. Initiation of CIRP against the Corporate Debtor is independent and separate proceeding which can not be precluded by pendency of writ petition in the High Court.

20. We thus are of the view that neither the pendency of writ petition in the High Court at the instance of some of the investors filed and pendency of proceeding in MPID Court in Special Case No. 98 of 2017 can operate any restrictions or impediment in initiation of insolvency proceedings against the Corporate Debtor. Insolvency Proceedings under IBC has been given overriding effect with priorities and object. When Insolvency Proceedings was initiated, all creditors have to be taken care of.

21. We thus are satisfied that no grounds have been made out in this Appeal to interfere with the Impugned Order passed by the Adjudicating Authority admitting Section 7 Application. Present is a case where debt and default has been admitted and does not even a case of the Appellant that there is no debt and default at the instance of the corporate debtor. Appellant itself has initiated proceeding against the Corporate Debtor for recovery. Resolution Professional has also appeared in Writ Petition where appropriate clarification/modification has been sought for.

22. In view of the foregoing discussions and conclusion, we do not find any error in the order of the Adjudicating Authority warranting any interference in this Appeal, there is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
04th July, 2023

Basant B.