NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 215 of 2023

in

Company Appeal (AT) (CH) (INS) No. 58 of 2023

(Arising out of an `Order' dated 03.02.2023 in IA (IBC)/288(CHE)/2022 in CA/1/IB/2017, passed by the `Adjudicating Authority' (`National Company Law Tribunal', Division Bench – I, Chennai)

In the matter of:

M.K. Rajagopalan
Balaji Villa
No. 30A, Beach Road,
Kapaleeswarar Nagar,
Neelangarai,
Chennai – 600 115 **….. Petitioner / Appellant**

v.

1) S. Rajendran,
Resolution Professional
Vasan Health Care Pvt. Ltd. (VHCPL)
No. 71/1, Mc Nichols Road,
Hari Krupa, 2nd Floor,
Chetpet, Chennai – 600 031 **….. 1st Respondent**

2) ASG Hospital Private Ltd.
Rep. by its Director
Priyanka Singhvi
Having its Registered Office at
Plot No. 1, Shyam Nagar Pal Link Road,
Jodhpur, Rajasthan – 342 001 **….. 2nd Respondent**

Present:

For Petitioner / Appellant : Mr. P.H. Arvindh Pandian, Senior Advocate
For Mr. K. Chandramohan, Advocate

For Respondent No.1 : Mr. Krishnan Venugopal, Senior Advocate
For Ms. Elamathi, Advocate
Mr. S. Rajendiran, Erstwhile RP

For Respondent No.2 : Mr. Kaushik Ramaswamy, Advocate

ORDER
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023:

Background:

The Petitioner / Appellant, has preferred the instant IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, seeking `Permission', from this `Tribunal', to permit `him' / `Third Party' to the Proceedings, to prefer the instant Comp. App (AT) (CH) (INS.) No. 58 of 2023.

Petitioner / Appellant's Submissions:

2. According to the Petitioner / Appellant, the present Comp. App (AT) (CH) (INS.) No. 58 of 2023, was filed by him, in respect of the `Impugned Order', dated 03.02.2023 in `IA(IBC)/288(CHE)/2022 in CA/1/IB/20107', passed by the `Adjudicating Authority' (`National Company Law Tribunal', Division Bench – I, Chennai), in `Approving', the `Resolution Plan', submitted by the `2nd Respondent'.

3. The Learned Senior Counsel for the Petitioner / Appellant submit that the `Petitioner / Appellant', is a `Third Party', to the `impugned order' dated 03.02.2023, passed by the `Adjudicating Authority' (`Tribunal'), and further, he is one of the `Prospective Resolution Applicants', who had suffered, due to the `Resolution Process'. In fact, the `Petitioner / Appellant', has a `vested interest' in pursuing the present `Appeal'.

4. The Learned Counsel for the Petitioner / Appellant points out that the `Petitioner / Appellant', had objected to the `Resolution Plan', and filed IA No. 507 of 2022, which was `dismissed', by the `Adjudicating Authority' (`Tribunal'), and the said `Order', is assailed in Comp. App (AT) (INS.) No. 435 of 2023, and therefore, prays for `Granting of Leave', to the `Petitioner / Appellant', to prefer the instant `Appeal'. Also, if `Leave', is `not accorded', the `Petitioner / Appellant', will be put to `irreparable loss and hardship'. Hence, the `Petitioner / Appellant', prays for `allowing' IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023 (`Leave Application'), in the interest of Justice.

Petitioner / Appellant's Citations:

5. The Learned Counsel for the Petitioner / Appellant, relies on the Judgment of this `Tribunal', in Comp. App (AT) (CH) No. 11 of 2022

dated 24.02.2022, between the Registrar of Companies v. Bagyodayam Company and Ors., reported in MANU/NL/0134/2022, wherein at Paragraph 18, it is observed as under:

> *18. ``It must be borne in mind that in terms of Section 210 (2) and (3) of the Companies Act, 2013, the `Central Government' / `Competent Authority' is authorised to sanction to commence an investigation against the Companies and its Officers, who had committed Default. The Settled Law is that an `Adjudicating Authority' is not empowered to order an Investigation in a straightway manner, to be carried out by the `Serious Fraud Investigation Office'.''*

6. The Learned Counsel for the Petitioner / Appellant, refers to the Judgment of this `Tribunal' dated 22.07.2022, in Dolphin Wintrade Pvt. Ltd. v. Ashray Vyapaar Pvt. Ltd. & Ors. (vide Comp. App Ins. No. 320 of 2022), reported in MANU/NL/O469/2022), wherein at Paragraphs 20, 25 to 27, it is observed as under:

> *20. ``The learned Senior Counsel for the Appellant has further questioned the motives of Respondent No.1, which according to him is apparent from the fact that for a debt of Rs.50 crores, Respondent No.1 obtained assignments for the consideration of Rs.9 crores and in the Application under Section 7, he is claiming a debt of Rs. 24,864,480,162.85/-, which itself indicate the greed of Respondent No.1 and mala-fide attempt to take the entire assets of the Corporate Debtor in the name of his being assignee of debts of creditors of the Company.*

25. The date of default on which the debt fell due is mentioned in the Application as 19.12.2019. 19.12.2019 is the date when Company Petition No.355 of 1997 was dismissed for non-prosecution, which order was subsequently recalled on 28.02.2020. How the dismissal of Company Petition No.355 of 1997 in default on 19.12.2019 can give cause of action to file an Application under Section 7 by Respondent No.1 has not been explained. The assignment deeds on the basis of which Respondent No.1 has claimed assignment of debts by creditors, itself mentions the details of proceedings initiated for recovery of the dues by the Banks. To take an example, the Allahabad Bank has filed a Suit No. 78 of 1993 against the Company, which was subsequently numbered as T.A. No. 64 of 1994 and recovery certificate for an amount of Rs.26,20,41,281/- was issued. On the basis of which, Recovery Proceeding No. 42 of 1996 was initiated. We may notice averments in paragraph 3, 4 and 5 of the deed of assignment dated 05.11.2008 by which Allahabad bank has assigned its debts to Ashray:

> *"3. The Assignor had in the ordinary course of its business, at the request of Gourepore Company Limited (now in liquidation) lent and advanced to the said Company certain sums of money against executing various documents by the said Company in favour of the Assignor, whereby the Company had hypothecated/mortgaged its various assets lying at its factory situated at Post Office Gerifa & Police Station Naihati, District 24 parganos (North), (hereinafter referred to as 'the said assets') more fully and particularly described in Schedule 'A' and 'B'.*
>
> *4. Subsequently, the said Company defaulted in making payment and thereafter went into liquidation on 26.11.1997 by an order passed by the Hon'ble High Court at Calcutta in CP No.355 of 1997 and CA No.597 of 1997.*
>
> *5. On or about 1993, the Assignor filed a suit being No.78 of 1993 against M/s Gourepore Company Limited (In*

Liquidation) and guarantors for recovery of its dues together with interest thereon, which subsequently was transferred to the Debt Recovery Tribunal, 1, Kolkata being T.A. No. 64/1994 and the same has been decreed and necessary certificate of Rs.26,20,41,281.18p was issued and recovery proceedings being R.P. No.42/1996 was initiated."

26. Further, in Indenture dated 14.09.2015, which was got registered by Allahabad Bank, it has made the assignment in favour of Ashray, with effect from 06.11.2008, whereafter noticing the aforesaid Recovery Certificate, the Allahabad Bank has withdrawn the recovery proceedings pending before DRT Kolkata. In paragraph 7 (ii), following has been stated:

7(ii) The Assignor doth hereby conform that in so far as the Company (now in liquidation) is concerned, the Assignor has withdrawn the recovery proceedings initiated by it and pending before the Ld. DRT Kolkata being T.A. No.64/1994 and R.P. No.42/1996."

27. When the Recovery Certificate was issued to the Allahabad bank in 1996, it gave a fresh cause of action to file application within a period of three years, in view of the law laid down by the Hon'ble Supreme Court in Dena Bank vs. C. Shivakumar Reddy and Anr. – MANU/SC/0502/2021 : (2021) 10 SCC 330. The limitation for filing any application for recovery for defaulted amount came to an end three years thereafter.''

Pleas of 1st Respondent :

7. The Learned Senior Counsel for the 1st Respondent submits that the Petitioner / Appellant, being an `Unsuccessful Resolution Applicant', has `No Locus Standi', to question the `Approval', granted by the `Adjudicating Authority' (`Tribunal') on 03.02.2023 of the `Resolution

Plan' of the `2nd Respondent / Successful Resolution Applicant'. Also that, the `Petitioner Appellant', is not a `Stakeholder', within the meaning of Section 31 (1) of the I & B Code, 2016, and hence, he is not an `Aggrieved Party', in respect of the `impugned order', in approving the `Resolution Plan' of the `2nd Respondent'.

8. Advancing his argument, it is the plea of the 1st Respondent that an `Unsuccessful Resolution Applicant', cannot be considered as a `Stakeholder', pertaining to the `Corporate Debtor', and in reality, the `Petitioner / Appellant', is not a `Person Aggrieved', within the meaning of Section 61 of the `Code'.

9. Furthermore, the `Resolution Plan', was already implemented and that the `2nd Respondent / Successful Resolution Applicant', had infused funds, amounting to Rs.400/- Crores, to be distributed among the `Stakeholders', under the `Approved Resolution Plan'. Besides this, the `implementation of the Resolution Plan', is `complete', to the extent the funds were transferred to all the `Stakeholders', in accordance with the `Resolution Plan', with the exception of `disputed EPFO Dues', which remains in `No Lien' Account, the Management and control of `Corporate Debtor', was already transferred to the `2nd Respondent / Successful Resolution Applicant', by `Reconstituting' the `Board of Directors'.

10. The other stand taken on behalf of the 1st Respondent is that, the `Petitioner / Appellant', has not `impleaded' the `Corporate Debtor' / Vasan Health Care Pvt. Ltd., being a `necessary Party', to the instant `Appeal', and on that ground, the `Appeal', is `incompetent' and `not maintainable'.

11. The Learned Counsel for the 1st Respondent points out that the `Petitioner / Appellant' is not a `Privy', to the `Resolution Plan', and he cannot be an `Aggrieved Person', so as to prefer the instant `Appeal', before this `Tribunal'.

12. The Learned Counsel for the 1st Respondent submits that the `Adjudicating Authority' (`Tribunal), had opined that there was no `Violation' of the `Code' or `Regulations', in the `Resolution Plan', submitted by the `2nd Respondent'.

1st Respondent's Decisions:

13. The Learned Counsel for the 1st Respondent, relies on the Judgment of this `Tribunal', dated 17.11.2020, between Hindustan Oil Exploration Company v. Erstwhile Committee Creditors JEKPL Pvt. Ltd. and Ors., (vide Comp. App. (AT) INS. 969 of 2020), reported in 2020 SCC Online

NCLAT 1106, wherein at paragraphs 1 and 2, it is observed and held as under:

> *1. ``Appellant is the 'Unsuccessful Resolution Applicant' whose Resolution Plan was rejected by the Committee of Creditors. It has assailed impugned order dated 9th September, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in I.A. No. 208/2020 in CA No. 188/2019 in CP No. (IB) 24/ALD/2017 by virtue whereof the Adjudicating Authority while declining to accede to the prayer for reversal of money to the Successful Resolution Applicant in the event of dismissal order from the Hon'ble Apex Court, directed implementation of the approved Resolution Plan on or before the extended date i.e. 30th September, 2020. The impugned order has been assailed on the ground that the erstwhile Committee of Creditors of the Corporate Debtor, in connivance with the Successful Resolution Applicant, accepted a re-negotiated fresh Resolution Plan and the application of the Committee of Creditors under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed before the Adjudicating Authority was not maintainable and should not have been entertained by the Adjudicating Authority for the Committee of Creditors had become functus officio after approval of the Resolution Plan. It is submitted that the Adjudicating Authority had approved the Resolution Plan on 04.02.2020 and in terms of the approved Resolution Plan the Successful Resolution Applicant had to bring in Rs.123 Cr. for Resolution within 30 days of approval of the plan which expired on 05.03.2020. However, the Successful Resolution Applicant did not implement the Resolution Plan and the erstwhile Committee of Creditors of the Corporate Debtor, in connivance with the Successful Resolution Applicant, accepted a fresh resolution plan to the detriment of legal rights of the Appellant whose Resolution Plan was rejected on the ground that he could not provide for lump sum time bound payment within 30 days of the approval of its Resolution Plan.*

2. After hearing Mr. Abhijeet Sinha, Advocate for the Appellant, we are of the considered opinion that the Appellant has no locus to question the implementation of the approved Resolution Plan of the Successful Resolution Applicant. Admittedly, appeal preferred against approval of the Resolution Plan of the Successful Resolution Applicant stands dismissed by this Appellate Tribunal. Direction given in terms of the impugned order on the application filed under Section 60(5) of the 'I&B Code' to the Successful Resolution Applicant follows as a necessary corollary to the dismissal of appeal filed against approval of Resolution Plan of the Successful Resolution Applicant to implement the approved Resolution Plan on or before the extended date of 30th September, 2020. Once the Appellant is out of the fray, it has neither locus to call in question any action of any of the stakeholders qua implementation of the approved Resolution Plan nor can it claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan of Successful Resolution Applicant in regard to its implementation has affected its prospects of being a Successful Resolution Applicant. If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Appellant cannot be permitted to cry foul. It is not a case of alleged material irregularity in the Corporate Insolvency Resolution Process which is in final stages with the approved Resolution Plan being under implementation. Outbreak of COVID-19 pandemic has slowed down the economic activity and operations have been adversely impacted. Viewed in that context some necessary changes in the agreed terms and extension of time for implementation would not be uncalled for. Be that as it may, the Appellant has no locus to maintain that the change in terms of the approved Resolution Plan in regard to extension of time for induction of upfront amount as also

implementation of the Resolution Plan has jeopardized its legal rights qua consideration of its Resolution Plan which has been rejected.''

14. The Learned Counsel for the 1st Respondent, cites the decision of this `Tribunal', between Ajay Gupta v. Pramod Kumar Sharma, RP of M/s. B.B. Foods Pvt Ltd. (vide Comp. App (AT) (INS.) No. 35 of 2022), reported in 2022 SCC Online NCLAT 93, wherein, at paragraphs 3 to 5, it is observed and held as under:

3. ``The grievance of Mr. Abhishek Anand, Advocate is that, the modifications of the Applicant's plan were known to everyone hence no opportunity ought to have been given to others to modify their plan. We do not find any substance in the above submissions. The Adjudicating Authority has rightly observed that for not to disturb level playing field, the other resolution applicants were also permitted to give modifications of the resolution plan.

4. Mr. Abhijeet Sinha, Advocate appearing on behalf of Respondent submits that in pursuance of the Order dated 13.12.2021 the Applicant did submit plan on 15th December, 2021 which has been considered by Committee of Creditors on 21st December, 2021.

5. Learned Counsel for the Appellant submits that the Regulation 39(1A) as amended on 30th September, 2021 was not applicable and Resolution Professional has wrongly said that said Regulation is applicable. We see no justification to enter into the said issue and give any decision with regard to the above in the facts of the present case.''

and resultantly, dismissed the `Appeal'.

15. The Learned Counsel for the 1st Respondent, falls back upon the decision of the Hon'ble Supreme Court, in Ajay Gupta v. Pramod Kumar Sharma (vide Civil Appeal No.1385 of 2022 dated 25.02.2022), reported in 2022 6 SCC 86 at Spl. pgs. 90 & 91, wherein at paragraphs 13 to 17, it is observed as under:

> *13. ``We do not find the submissions aforesaid making out a case for interference. This is for the simple reason that on a perusal of the order dated 13.12.2021, this much is clear that certain key features/stipulations of the resolution plan were sought to be amended by the appellant. Whether it was done in response to the requirement of the CoC or otherwise, the fact of the matter remains that there was going to be modification of the relevant terms of the resolution plan of the appellant. When that was being permitted at the request of the appellant himself, we cannot find fault in the Adjudicating Authority having passed an order so as to balance the position of the respective parties and to provide level playing field by granting corresponding permission to the other resolution applicant to place its modification for consideration of CoC.*
>
> *14. So far as affidavit dated 17.11.2021 is concerned, though the appellant stated in paragraph 3 thereof that the payment of upfront amount under the resolution plan was in no way going to modify the plan but, that had only been an expression of the understanding of the appellant about the legal effect of the propositions put forward by him, which included the modification of the term of plan from 180 days to 90 days. Such a proposition could not have been treated as formal or innocuous or of no material bearing.*
>
> *15. So far as the factor relating to divulging of the contents of the plan is concerned, the same had been of the making of the appellant himself. If the appellant had chosen to divulge/disclose the terms of its resolution plan before the Adjudicating Authority,*

there had not been any fault on the part of the resolution professional or the CoC or the other resolution applicant.

16. Thus, the view taken by the Adjudicating Authority as also by the Appellate Tribunal appears to be reasonable and sound, calling for no interference.

17. Before concluding on the matter, we need to indicate two other relevant factors concerning this matter. One is that the other resolution applicant, whose resolution plan has been accepted by the Committee of Creditors, is not before us and has not been impleaded as a party respondent in this appeal. Hence, no order prejudicial to the interest of the successful resolution applicant could be passed in this appeal. Secondly, the matter would nevertheless require further processing before the Adjudicating Authority; and for that matter, we are informed that the approval of the Committee of Creditors has already been placed before the Adjudicating Authority.''

16. The Learned Counsel for the 1st Respondent, refers to the decision of the Hon'ble Supreme Court dated 18.01.2022, in Bank of Baroda and Anr. v. MDL Infrastructures Ltd. & Ors. (vide Civil Appeal No. 8411 of 2019), reported in (2022) 5 Supreme Court Cases 661, wherein at paragraph 63 to 65, it is observed as under:

63. ``Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18-4-2018, and as of now the Respondent No. 1 is an on-going concern. Though, the Respondent No.11 has taken up the plea that

its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent No.7. The Respondent No.7 and the Respondent No.11 did not choose to challenge the order of the Appellate Tribunal.

64. We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent No.1. Now, about Rs. 300 crores has also been approved by the shareholders to be raised by the Respondent No.1. It is stated that about Rs. 63 crores has been infused into the Respondent No.1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.

65. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No.1.''

17. The Learned Counsel for the 1st Respondent places, reliance on the Judgment of this `Tribunal' dated 14.02.2022, in Comp. App (AT) (INS.) No. 628 of 2020, between Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia, RP of Jet Airways (India) Ltd. and Ors., reported in MANU/NL/0126/2022, wherein at Para 36, it is observed as under:

36. ``In the above context we may refer to recent judgment of Hon'ble Supreme Court in Civil Appeal No.8411 of 2019 - Bank of Baroda and Anr. vs. MBL Infrastructure Limited & Ors. decided on 18th January, 2022. In the above case, Successful Resolution Applicant was held to be ineligible under Section 29A to submit a Resolution Plan. Hon'ble Supreme Court held that Plan submitted by Respondent No.3 ought to have been rejected, but noticing the fact that Plan has been approved and Successful Resolution Applicant has infused substantial money and all on-going projects were of the public importance, hence Hon'ble Supreme Court refused to disturb the Resolution Plan. Paragraph 61 to 64 of the judgment are to the following effect:

> *"61. Having held so, we would like to come to the last part of our order. Though the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.*
>
> *62. Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18.04.2018, and as of now the Respondent No. 1 is an on-going concern. Though, the Respondent No.11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent No.7. The Respondent No.7 and the Respondent No.11 did not choose to challenge the order of the appellate tribunal.*
>
> *63. We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent*

No.1. Now, about Rs. 300 crores has also been approved by the shareholders to be raised by the Respondent No.1. It is stated that about Rs. 63 crores has been infused into the Respondent No.1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.

64. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No.1."

2nd Respondent's Contentions:

18. According to the 2nd Respondent, he took over the control of the `Corporate Debtor', and the `New Board of Directors', was constituted, who took over the `Management' of the `Corporate Debtor', and the `1st Board Meeting' of the revived `Corporate Debtor', took place on 06.03.2023.

19. The Learned Counsel for the 2nd Respondent points out that there is `no vested right', conferred upon the `Petitioner / Appellant / Unsuccessful Resolution Applicant', to question the `Approval of the

Resolution Plan', by the `Adjudicating Authority', because of the simple fact that the `Petitioner / Appellant', had subjected himself to the very process of revision of the `Resolution Plan'.

20. The Learned Counsel for the 2nd Respondent, brings it to the notice of this `Tribunal' that the email sent by the `Petitioner / Appellant', to the 1st Respondent, in respect of the `2nd Revision of Resolution', will indicate that the `Petitioner / Appellant', had not raised any `protest', whatsoever, with the `Committee of Creditors' decision to revise the `Plan', for the second time, to ensure `Value Maximisation', and rather `elected to participate', in the process.

21. The Learned Counsel for the 2nd Respondent points out that the `Petitioner / Appellant', had the `Auction', to `Protest', as early as on 28.01.2022, and in fact, the Learned Counsel for the `2nd Respondent', adverts to the `Order' of this `Tribunal', dated 21.10.2022, between Bipin Textile Processing v. Shiva Dutt Bannanje & Ors. (vide IA No. 771 of 2022 in Comp. App (AT) (CH) (INS) No. 341 of 2022), wherein, it was held that the `Object of seeking Leave', is to prevent an `unreasonable plea', to be taken by a `Stakeholder' / `Litigant', who has `no tangible / substantial defence', in regard to the `implementation' of the `Resolution Plan'.

22. The Learned Counsel for the 2nd Respondent draws the attention of this `Tribunal', that the `1st Respondent' became `functus officio', in so far as being the `Resolution Professional' of the Corporate Debtor. That apart, the `Petitioner / Appellant', is endeavouring to turn the clock back and to `Vote' on his `Resolution Plan', again as on 04.01.2022.

23. The Learned Counsel for the 2nd Respondent contends that the `Petitioner / Appellant', has `no substantial defence', as regard the `implementation' of the `Resolution Plan', and hence, prays for the `Dismissal' of the IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, with `Exemplary' costs.

Appeal & Appellate Authority:

24. An `Appellant', before the `National Company Law Appellate Tribunal', under Section 61 of the I & B Code, 2016, is not to rely upon the ingredients of Section 421 of the Companies Act, 2013, as opined by this `Tribunal'.

Assessment:

25. The `Petitioner / Appellant / Third Party', to the `impugned order' dated 03.02.2023 in IA No. 288 of 2022 in CA/1/IB/2017, passed by the `Adjudicating Authority' (`National Company Law Tribunal', Division

Bench – I, Chennai), is one of the `Prospective Resolution Applicants', and according to him, he has a `vested interest', in prosecuting the instant Comp. App (AT) (CH) (INS.) No. 58 of 2023, before this `Tribunal', since he has suffered, due to the `Resolution Process'. Therefore, he prays for the `Grant of Leave', in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, to prefer the main `Appeal', in the interest of Justice.

26. On behalf of the 1st Respondent, a `legal plea', is taken to the effect that the `Petitioner / Appellant', is not a `Stakeholder', coming within the ambit of Section 31 (1) of the I & B Code, 2016, and further that an `Unsuccessful Resolution Applicant', cannot be considered a `Stakeholder', pertaining to the `Corporate Debtor'.

27. Furthermore, it is projected on the side of the 1st Respondent that the `Adjudicating Authority', passed an `impugned order', approving the `Resolution Plan', for the `Corporate Debtor', after it was approved by the `Committee of Creditors', in exercise of their `Commercial Wisdom'. In short, the `Petitioner / Appellant', is not a `Privy', to the `Resolution Plan', and hence, according to the `1st Respondent', he is `not an Aggrieved Person', in respect of the `impugned order', passed by the `Adjudicating Authority' (`Tribunal'). Therefore, the `Petitioner / Appellant', is not entitled to prefer the instant `Appeal'.

28. The 2nd Respondent contends that its `Resolution Plan', was approved by about 97% of `Vasan Health Care Private Ltd.' (`Corporate Debtor'), `Committee of Creditors' and the same was `Approved', by the `Adjudicating Authority'(`Tribunal), through its Order dated 03.02.2023 in IA No. 228 of 2022 in CA/1/IB/2017.

29. The other contention put forward by the 2nd Respondent is that, the `Petitioner / Appellant', had subjected himself to the very process of revision of the `Resolution Plan', and in fact, he had participated in the `Process', and later, it was not opened to him to take a `contra stand', to raise a `plea' that the `Process of Selection', was unfair. In short, according to the `2nd Respondent', the `Petitioner / Appellant', is precluded from `assailing the Selection'.

30. At this stage, this `Tribunal', relevantly points out that in the instant case, `Corporate Insolvency Resolution Process', came to an end on 10.03.2022 (inclusive of `extensions and exclusions'). Obviously, an endeavour is made on behalf of the `Petitioner / Appellant', to rewind the entire process and to `Vote' on its `Resolution Plan', again as of 04.01.2022, which is impermissible.

31. On a careful consideration of the respective contentions advanced on either side, this `Tribunal', keeping in mind of a vital fact that the `Petitioner / Appellant', being an `Unsuccessful Resolution Applicant', has no `Locus', to `assail' a `Resolution Plan' or its `implementation', coupled with a candid fact that he is not a `Stakeholder', as per Section 31 (1) of the I & B Code, 2016, in relation to the `Corporate Debtor', this `Tribunal', without any `haziness', holds that the `Petitioner / Appellant', is not an `Aggrieved Person', coming within the ambit of Section 61 (1) of the I & B Code, 2016, especially, when he is not a `Privy', to the `Resolution Plan'. Viewed in that perspective, the `Leave', sought for in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, sans merits.

Result:

In fine, IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, is dismissed. No costs.

Comp. App (AT) (CH) (INS.) No. 58 of 2023:

Consequent to the dismissal of the IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, the instant main Comp. App (AT) (CH) (INS.) No. 58 of 2023, is not `entertained', and the same is

`Rejected'. The connected pending IA Nos. 213 and 214 of 2023, are `Closed'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member Technical)

17/03/2023

SR / TM