

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) No. 411 of 2023)

AUTHUM INVESTMENT AND
INFRASTRUCTURE LIMITED ...APPELLANT(S)

VERSUS

R.K. MOHATTA FAMILY TRUST
AND OTHERS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) No. 1078 of 2023)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. These appeals challenge the order of the High Court of Judicature at Bombay, dated 16th December 2022, vide which the High Court dismissed the Interim Application (L) No. 33514 of 2022 in Commercial Suit (L) No. 162 of 2022 filed by Reliance Home Finance Limited (hereinafter referred to as 'RHFL'), respondent No. 2 herein, under Section 151 of

the Civil Procedure Code, 1908 (for short, “CPC”), seeking approval of the Resolution Plan (for short, “RP”) pertaining to its dissolution, in light of the judgment of this Court in the case of *Securities and Exchange Board of India v. Rajkumar Nagpal and Others*¹. The appeal arising out of SLP(C) No. 1078 of 2023 is filed by RHFL and appeal arising out of SLP(C) No. 411 of 2023 is filed by Authum Investment and Infrastructure Limited (hereinafter referred to as “AIIL”), a non-banking financial corporation, which had originally proposed the RP for RHFL.

3. The facts herein are taken from the appeal arising out of SLP(C) No. 411 of 2023 filed by AIIL, which, in brief, are as follows:

3.1 RHFL executed a number of Debenture Trust Deeds, of which nine were executed with the IDBI Trusteeship Services Limited, respondent No. 3 herein, for issuance of debentures on a private placement basis, having face value of Rs. 5 lakhs. These debentures were issued on 30th August 2018. It is pertinent to note that RHFL had, previously, taken

1 2022 SCC Online SC 1119

upon itself substantial debt through loans from several banks and financial institutions.

3.2 In May 2019, RHFL defaulted on its loan obligations to various lenders. The outstanding debt was quantified to around Rs. 11,540 crore. It is important to note that its sister concern, Reliance Commercial Finance Limited (hereinafter referred to as 'RCFL'), had previously defaulted on its loan obligations in March 2019.

3.3 On 6th July 2019, a consortium of lenders led by the lead bank, i.e., Bank of Baroda, respondent No. 4 herein, entered into an Inter-Creditor Agreement (hereinafter referred to as 'ICA') in terms of clause 10 of the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 (hereinafter referred to as 'RBI Circular'). As per clause 10 of the RBI Circular, the lenders may enter into an ICA for implementation of a RP.

3.4 On 26th August 2019, RHFL committed default in relation to the Debenture Trust Deeds issued as well.

3.5 In January 2020, IDBI Trusteeship Services Ltd., respondent No. 3 herein, filed a company petition bearing No.

138 of 2020 before National Company Law Tribunal, Mumbai (NCLT) under Section 71 (10) of the Companies Act, 2013 against RHFL and its holding company Reliance Capital Ltd., to make payment of Rs. 2,850 crore with interest due and payable to the debenture holders of RHFL, which includes the appellant herein.

3.6 During the pendency of the aforesaid petition, a RP for RHFL was submitted by AIIL on 19th June 2021, which, thereafter, was approved by the consortium of lenders who had entered into an ICA. Pertinently, 96% of the ICA lenders approved the RP. On 21st June 2021, a press note to that effect was published. On the same date, the NCLT, in the aforementioned company petition, directed RHFL to repay the debt owed to the debenture holders within five months. An appeal being Company Appeal (AT) No. 73 of 2021 against this order is pending before the National Company Law Appellate Tribunal, New Delhi (NCLAT).

3.7 It is pertinent to note that the RHFL RP, as submitted by AIIL and approved by the ICA lenders, provided that 19,353 small debenture holders, comprising of

individuals and HUFs having an exposure up to Rs. 5 lakhs, would get 100% of their principal dues under the RP.

3.8 Since the RBI Circular only regulated the debts owed to Banks/Financial Institutions, the consent of the debenture holders had to be taken as per a SEBI Circular dated 13th October, 2020, titled 'Standardisation of procedure to be followed by Debenture Trustee(s) in case of 'Default' by Issuers of listed debt securities'.

3.9 The SEBI Circular prescribes that the voting by the debenture holders, before entering into an ICA, shall mean an approval of not less than 75% of investors by value and 60% by number at ISIN level. An ISIN is a 12-digit alphanumeric code that uniquely identifies a specific security. The numbers are allocated by a country's respective national numbering agency, which, in India, is the NSDL.

3.10 In pursuance of the requirement prescribed by the SEBI Circular, a commercial suit bearing No. 162 of 2022 was originally filed by R.K. Mohatta Family Trust, respondent No.1 herein and one of the debenture holders of RHFL, before the High Court of Bombay in 2021, seeking voting by the

debenture holders on the RP. The High Court, vide its order dated 31st March 2022, directed for a meeting of the debenture holders to be convened to allow the debenture holders to vote on the RP. Vide another order dated 12th May 2022, the High Court further directed that the results of the voting would be placed in a sealed envelope before the High Court.

3.11 The voting on the RHFL RP took place on 13th May 2022, and the results thereof were submitted before the High Court on 10th August 2022.

3.12 Thereafter, an Interim Application being IA No. 3928 of 2022 in Commercial Suit (L) No. 27568 of 2021 was filed by RHFL seeking disclosure of the voting result, which was allowed by the High Court vide order dated 28th September 2022, in order to assist the Court as to whether the requisite majority, as prescribed by the SEBI Circular, had been achieved or not.

3.13 A perusal of the result would reveal that 869 of the 919 debenture holders who had participated in the meeting voted in favour of the RP, i.e., 94.55%.

3.14 While the above proceedings in relation to RHFL continued, a RP for the sister concern RCFL was also submitted by AILL, which too was approved by the consortium of lenders who had entered into an ICA. The two RPs are substantially similar in so far that the debenture holders of both entities, up to a certain exposure threshold, would get 100% of their principal dues.

3.15 For RCFL too, the High Court, in separate proceedings, had ordered for a meeting of debenture holders to be convened. SEBI, respondent No. 5 herein, filed an appeal before the Division Bench of the High Court against convening of the meeting on the ground that voting procedure was not as per the SEBI Circular but as per the process provided under the Debenture Trust Deeds entered into by the parties therein. The appeal was dismissed, with the Division Bench noting that the SEBI Circular could not be applied retrospectively and that the voting process would be governed by the Debenture Trust Deed. Aggrieved thereby, SEBI preferred an appeal before this Court.

3.16 A Bench of three Judges of this Court, in the case of *Rajkumar Nagpal* (supra), allowed the appeal, insofar as it held that the SEBI Circular would have retrospective application. However, this Court noted that the RCFL RP was extremely beneficial to debenture holders in as much that, for those with exposure upto Rs. 10 lakhs would receive 100% of their principal amount, whereas those with exposure of more than Rs. 10 lakhs would receive 29.96% of the principal amount, which is greater than the amount of recovery made by secured lenders, who would receive 24.96% of the principal amount.

3.17 This Court, therefore, in exercise of its power under Article 142 of the Constitution of India, approved the RCFL RP with the caveat that the dissenting debenture holders would be provided an option to either accept the plan or stand outside the plan and pursue other legal means to recover their entitled dues.

3.18 In light of the decision in the case of *Rajkumar Nagpal* (supra), RHFL filed an Interim Application being Interim Application (L) No. 33514 of 2022 in Commercial Suit

No. 162 of 2022, under Section 151 of the CPC, seeking approval of the RP pertaining to it on the same terms as ordered by this Court in respect of RCFL in *Rajkumar Nagpal* (supra), for the two cases were nearly identical and any unscrambling of the RHFL RP would prove time consuming and inimical to the interests of the debenture holders.

3.19 The High Court, vide the impugned order, dismissed the Interim Application, holding that the power to mould relief and approve the RP, as had been done by this Court under Article 142 of the Constitution of India in the case of *Rajkumar Nagpal* (supra) could not be done by the High Court in exercise of its inherent powers under Section 151 of the CPC. Hence, these appeals.

4. We have heard Shri K.K. Venugopal and Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of both the appellants, Shri K.V. Viswanathan, learned Senior Counsel appearing on behalf of Bank of Baroda and Canara Bank, and Shri Venkatraman, learned Additional Solicitor General (ASG) appearing on behalf of SEBI.

5. Shri Venugopal and Shri Mehta submitted that the High Court itself has observed that this Court had found that the RP in the case of RCFL was beneficial to the debenture holders upto the exposure threshold of Rs. 10 lakhs. It is submitted that if the RP in the case of RHFL, which is a sister concern of RCFL, is accepted, 19,353 debenture holders out of 20,843 debenture holders, having an exposure of upto Rs.5 lakhs, would receive 100% of the principal amount. It is submitted that, even as per Bank of Baroda, which is the lead bank in the ICA, the total percentage of ICA lenders who have accepted the RP is 96%. It is further submitted that if the RP is not accepted, RHFL would be driven into liquidation. In such a situation, 19,353 debenture holders, who are getting 100% of the principal amount under the RP, would not, in any case, get that amount. In such a situation, it is difficult to ascertain as to when and to what extent, the secured and unsecured creditors would recover their portion of the amounts indicated in the RP.

6. Shri Viswanathan has also submitted that they have no objection if the RP is accepted, provided that the amount should be paid prior to the end of the Financial Year 2022-23, i.e., 31st March 2023.

7. Shri Venkatraman, on the contrary, submitted that there are three types of debenture holders. The first are those who have accepted the RP, the second are the ones who have dissented against the RP, and the third are the ones who have abstained from voting on the RP or were present but had not voted. He submitted that the option of opting out of RP, which has been given by this Court in the case of *Rajkumar Nagpal* (supra), should be given to both the dissenting as well as the debenture holders who have abstained or were present but not voted, i.e., types 2 and 3 of debenture holders. The learned ASG submitted that the claims of many of the debenture holders are pending before the NCLAT. In the event that the RP is accepted, it will prejudicially affect the rights of such debenture holders. He submitted that the SEBI Circular, particularly in paragraphs 6.2 and 6.6 thereof, specifically requires that there has to be

a negative consent or positive consent. He further submitted that as per the said SEBI Circular, the consent of majority of investors would mean an approval of not less than 75% of investors by value of outstanding debt and 60% of investors by number at ISIN level. He submitted that the condition with regard to approval of 60% of investors by ISIN level is not satisfied in the present case. He submitted that, undisputedly, this requirement is not satisfied and as such, if the RP is to be accepted, the option should be given to type 2 and 3 debenture holders to either accept the RP or for a right to stand outside and pursue other legal means to recover their entitled dues.

8. In this respect, we may gainfully refer to paragraphs 108 and 109 of the judgment in the case of *Rajkumar Nagpal* (supra), which read thus:

“108. The above table highlights that small investors, especially those whose exposure is up to INR 10 lakhs, are benefiting to the extent of 100% of their principal amount. Even debenture holders whose exposure is more than 10 lakhs are receiving 29.96% of their principal amount. In comparison, the secured ICA lenders would receive 24.96% of their principal amount, which is lower than the recovery made by the debenture

holders. It is also important to highlight that none of the debenture holders have raised any grievance with regard to the proposed compromise. In such a situation, application of the SEBI Circular, though right in law, may lead to unjust outcomes for the retail debenture holders if this court were to reverse the entire course of action which has occurred in the present case.

109. The different voting mechanism proposed under the SEBI Circular will further delay the resolution process and potentially disrupt the efforts undertaken by the stakeholders, including the retail debenture holders. Such unscrambling of the resolution process will not only prove time-consuming, but may also adversely affect the agreed realized gains to the retail debenture holders, who have already consented to the negotiated settlement before the High Court.”

9. In the present case also, small investors, whose exposure is up to Rs. 5 lakhs, are benefiting to the extent of 100% of their principal amount. Even debenture holders whose exposure is more than Rs. 5 lakhs are receiving 23.24% of their principal amount, similar to the case of *Rajkumar Nagpal* (supra).

10. We find that the facts in the present case are identical to the facts in the case of *Rajkumar Nagpal* (supra). In the present case also, we find that a different voting mechanism proposed under the SEBI Circular will

further delay the resolution process and potentially disrupt the efforts undertaken by the stakeholders, including the retail debenture holders. In the present case also, such unscrambling of the resolution process will not only prove time consuming but may also adversely affect the agreed realized gains to the retail debenture holders, who have already consented to the negotiated settlement before the High Court. We find that in the present case also, we should extend the benefit under Article 142 of the Constitution of India to the retail debenture holders. We are inclined to issue such directions to mould the relief in view of the particular facts and circumstances in the present case, which are similar to that in the case of *Rajkumar Nagpal* (supra). In any case, we also propose to protect the rights of the dissenting debenture holders who stand outside the proposed RP framed under the lender's ICA and seek to pursue other legal remedies.

11. We, therefore, in exercise of the powers under Article 142 of the Constitution of India, allow the RP preferred by

AIIL qua the debenture holders, except the dissenting debenture holders.

12. On the same lines as in the case of *Rajkumar Nagpal* (supra), we direct that the dissenting debenture holders should be provided an option to accept the terms of the RP. Alternatively, the dissenting debenture holders will have a right to stand outside the proposed RP framed under the lender's ICA and pursue other legal remedies to recover their entitled dues.

13. In the result, the appeals stand disposed of in the above terms. Pending application(s), if any, shall stand disposed of.

14. The AIIL is directed to make the payments prior to 31st March 2023.

.....J.
[B.R. GAVAI]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
MARCH 03, 2023.