

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 443 of 2021

IN THE MATTER OF:

Prudential International Insurance Holdings Ltd.

Having its Registered Office at
1209 Orange Street, Wilmington,
DE, USA, 19801,

And its Principal place of business at
751 Broad Street, Newark,
NJ, USA, 07102.

...Appellant

Versus

**The Administrator,
Dewan Housing Finance Corporation Ltd.**

Having his office at
6th Floor, HDIL Towers, Anant Kanekar Marg,
Station Road, Bandra (East)
Mumbai – 400051.

Also at
Warden House, Second Floor, Sir P M Raod,
Fort, Mumbai, Maharashtra, - 400 001.

...Respondent No. 1

Piramal Capital & Housing Finance Ltd.

(Formerly known as Piramal Housing Finance Ltd.)

Having its registered office at
4th Floor, Piramal Tower, Peninsula Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai, Maharashtra – 400 013.

...Respondent No. 2

**Committee of Creditors of Dewan Housing Finance
Corporation Ltd. through State Bank of India**

Having its office at
State Bank Bhavan,
Madame Cama Raod, Nariman Point,
Mumbai, Maharashtra – 400 021.

...Respondent No. 3

Cont'd...../

For Appellant: Mr. Amit Sibal, Sr. Advocate with Ms. Misha, Mr. Siddhant Kant and Ms. Moulshree Shukla, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Ms. Liz Mathew, Ms. Sonali Jain and Mr. Rohan Rajadhyaksha, Advocates for R-1.

Dr. Abhishek Manu Singhvi and Mr. Ashish Dholakia, Sr. Advocates with Mr. Avishkar Singhvi, Mr. Ketan Gaur, Mr. Ashish Bhan, Ms. Chitra Rentala, Mr. Aayush Mitruka, Ms. Samriddhi Shukla, Advocates for R-2 (SRA).

Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Mr. Aditya Marwah, Mr. Animesh Bisht, Ms. Richa Roy, Ms. Saloni Kapadia, Advocates for R-3 (CoC).

ORDER
(Virtual Mode)

28.06.2021: The Appellant – ‘Prudential International Insurance Holdings Ltd.’ has filed this appeal against impugned order and judgment dated 7th June, 2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in I.A. No. 449/2021 in CP (IB) No. 4258/MB/2019 vide which impugned order the Adjudicating Authority approved the Resolution Plan dated

22nd December, 2020 submitted by Respondent No. 2 – Successful Resolution Applicant.

2. We have heard Mr. Amit Sibal, Learned Counsel for the Appellant. The Appellant is admittedly a third party unconnected with the CIRP of the Corporate Debtor. Learned Senior Counsel accepts Appellant is neither Financial Creditor nor Operational Creditor of Corporate Debtor.

3. Appellant claims that it has certain pre-existing and continuing contractual arrangements with the Corporate Debtor and is 49% shareholder of the Joint Venture Company, 'Pramerica Life Insurance Limited', in which the Corporate Debtor was shareholder till 31st March, 2017. According to the Appellant, the Corporate Debtor continues to be bound by obligations of its shareholding under the Shareholders' Agreement dated 25th July, 2013 and as per the Articles of the Joint Venture Company mentioned above. It is argued that the Resolution Applicant sought certain reliefs and waivers under the Resolution Plan and it is claimed that the same impacts rights of the Appellant. According to the Appellant, the relief sought by the Resolution Applicant would impact future and uncrystallised liabilities arising from the rights claimed including those arising from certain put option rights in the SHA which would be extinguished. It is argued and mentioned in the appeal that the Appellant is aggrieved with the impugned order as follows:

"The Appellant is aggrieved to the extent that the Impugned Order:

(a) allows the application for approval of resolution plan being I.A. 449/2021, which admittedly had three separate reliefs including a specific relief seeking grant of reliefs and concessions sought by the Resolution Applicant, without an express reference to the reliefs and concessions sought thereunder against the Appellant or any reference to I.A. 929 of 2021 ("Appellant's Application"), wherein the Appellant has

inter-alia placed its objections to any term of the Resolution Plan that seeks to unilaterally modify or terminate the SHA, the Articles or any continuing agreements between the Corporate Debtor and the Appellant, well before the approval of the Resolution Plan, and which is still sub judice before the Ld. Adjudicating Authority.

(b) Holds that the Resolution Plan is compliant with law, without stating expressly whether this observation applies to the reliefs and concessions sought against the Appellant, despite the fact that such reliefs are specifically challenged, under the Appellant's Application, as rendering the plan in 'contravention of law' and the said question also remained sub-judice before the Ld. Adjudicating Authority.

(c) Requires that applications for waiver of any statutory obligations/liabilities or waivers sought from any Authority (that cannot be construed to have been given on account of approval of the Resolution Plan, and would have to be sought from such an Authority) would have to be considered in light of the decision of Hon'ble Supreme Court in the matter of Ghanshaym Mishra and sons v. Edelweiss Asset Reconstruction Company Limited., (2021 SCC OnLine SC 213) ("Ghanshyam Mishra"). Consequently, these observations of the Ld. Adjudicating Authority applied to the reliefs sought

against the Appellant and would amount to pre-deciding the Appellant's Application on merits, without considering if Ghanshyam Mishra would be applicable to the facts of the case.

(d) The Impugned Order, to the extent it has the effect of granting reliefs against the Appellant, does so without giving the Appellant a right of hearing, and without a just or proper adjudication of the Appellant's Application on merits, and without even applying its mind to the facts or prayers of the Appellant's Application opposing such reliefs which is sub-judice before the Ld. Adjudicating Authority. In fact, it is in contravention of the assurance given by the Ld. Adjudicating Authority itself during the hearing of Appellant's Application on 02 June 2021, that the reliefs sought against the Appellant as part of the Plan Approval Application would not be granted till the Appellant's Application is heard and disposed off. Thus, the Impugned Order impacts the rights of the Appellant without giving it a proper and effective hearing while its Application is still sub-judice.

(e) The Impugned Order, to the extent it has the effect of granting 'reliefs and concessions' sought against the Appellant, does so without considering that such reliefs and concessions cannot be granted by the Ld. Adjudicating Authority, and

granting of such reliefs would render the Resolution Plan non-compliant with Section 30(2) of the Code and in contravention of law to the extent of such reliefs.”

4. It is argued that Appellant filed application to protect itself. Copy of I.A. No. 929 of 2021 said to have been filed by the Appellant is at Annexure A-10 (page 454) and inter alia prayers (b) to (d) read as under:

“(b) pass an order directing the Respondent No.1 and Respondent No. 2 to give an undertaking confirming that the Resolution Plan does not alter/amend/adversely modify or extinguish the rights of the Applicant and obligations and liabilities of the Corporate Debtor under the SHA, Distribution Agreement and Articles, in whatsoever manner, whether directly or indirectly; and/or

(c) Pass an order rejecting the Resolution Plan, if and to the extent that it unilaterally alters/ amends/modifies the mutually agreed terms of the SHA, Distribution Agreement and Articles or affects or extinguishes the rights of the Applicant and obligations and liabilities of the Corporate Debtor under the SHA, Distribution Agreement and Articles, in whatsoever manner, whether directly or indirectly, and/or

(d) Pass an order directing the Respondents to modify the Resolution Plan, if and to extent that it unilaterally alters/ amends/ modifies the mutually agreed terms of the SHA. Distribution

Agreement and Articles or affects or extinguishes the rights of the Applicant and obligations and liabilities of the Corporate Debtor under the SHA, Distribution Agreement and Articles, in whatsoever manner, whether directly or indirectly; and/or”

5. It is argued that when the I.A. had come before the Adjudicating Authority on 12th May, 2021 order as at Annexure A-11 was passed and time to file reply was given. It is argued that the Application I.A. No. 929 of 2021 is yet not decided by the Adjudicating Authority and would be coming up before the Adjudicating Authority on 30th June, 2021. The Learned Senior Counsel submitted that without deciding the application of the Appellant the present impugned order approving the Resolution Plan has been passed.

6. Senior Advocate Shri Arun Kathpalia appears for Respondent No. 1 opposing the admission of the appeal and submits that the Resolution Plan as was submitted had been approved and the Administrator, when presented the Resolution Plan to Adjudicating Authority had submitted and sought following reliefs:

“a) To consider and approve the Resolution Plan (including the Scheme or Arrangement specified in Schedule VIII of the Resolution Plan) submitted by the Successful Resolution Applicant (i.e. Piramal Capital & Housing Finance Limited) which was placed before the CoC in its eighteenth meeting dated December 24, 2020 and was approved by the requisite majority vote of the CoC during

the voting window pursuant to the CoC which remained open from December 30, 2020 to January 15, 2021.

b) To declare that the Resolution Plan, upon its approval by this Hon'ble Tribunal, shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan;

c) Grant such reliefs as specifically sought by Respondent No. 2 (the Successful Resolution Applicant) under the Resolution Plan, including as set out in Part C of the Resolution Plan.”

7. The Learned Senior Counsel submitted that the concern of the Administrator regarding Resolution Plan was with regard to prayer (a) and (b) and that prayer (c) was left for the Successful Resolution Applicant to convince the Adjudicating Authority. It is stated that the Resolution Plan which has been approved, is as was produced and which was approved by the CoC.

8. The Learned Senior Counsel for the CoC, Mr. Ramji Srinivasan submitted that the plan which has been approved is not conditional and could not be interfered with at the instance of a third party like the Appellant. The Learned Counsel submitted that the Appellant had filed claim of Rs.4100 Crore on count of losses which was rejected by the Resolution Professional and the same was not

challenged. The Learned Counsel submitted that issue in such context, the Adjudicating Authority would deal when I.A. No. 929 of 2021 is taken up.

9. The Learned Senior Counsel, Dr. Abhishek Manu Singhvi appeared on behalf of the Successful Resolution Applicant and submitted that the Appellant delayed filing of the Application before the Adjudicating Authority so as to prolong the matter before the Adjudicating Authority. Learned Counsel submitted that once the Resolution Plan has been approved, such Applications like I.A. No. 929* of 2021 would have been deemed to be rejected. Referring to para 107 of Judgment in the matter of *“Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors.”* (2020) 8 SCC 531, it is stated that after grant of approval to Resolution Plan, such claims like that of Appellant cannot be entertained. However, Learned Senior Counsel for Appellant is relying Judgment in the matter of *“Jaypee Kensington Boulevard Apartments Welfare Association & Ors vs. NBCC (India) Ltd. & Ors.”* 2021 SCC Online SC 253 to state that in that matter it was held that modification in Concession Agreement without approval of concerned authority, that is, YEIDA, established by State Government could not have been done in Resolution Plan.

10. Counsel for the parties are raising such and various issues with regard to the rights claimed by the Appellant and whether or not the Appellant has right to question the Resolution Plan. We are not elaborating or commenting on the same for the reason that I.A. No. 929* of 2021 is admittedly stated to be coming up before the Adjudicating Authority on 30th June, 2021. Without rights claimed by

Appellant being adjudicated before Adjudicating Authority, Appellant cannot maintain challenge to approval of Resolution Plan by way of Appeal. Keeping in view the prayers in I.A. No. 929 of 2021, we are not making any comments on the merits of rival claims. Suffice it to state that the Appellant – third party is trying to maintain this appeal challenging the Resolution Plan approved, without getting decided I.A. No. 929 of 2021, one way or other. We decline to entertain the appeal.

11. The appeal is disposed of as premature with liberty to the Appellant to raise admissible issues as the Appellant may want to raise after decision of I.A. No. 929 of 2021.



**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Archana/gc.

* See Speaking to Minutes Order dated 29.06.2021. Corrected accordingly.