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08.06.2022

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IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT NO.II)

IA No. 830 / NCLT / AHM / 2021

CP(IB) No. 268 / NCLT / 09/ AHM / 2020

Under Section 7 of the IB Code

IN THE MATTER OF

Arrow Engineering Limited ... **Applicant / Financial Creditor**

Versus

Golden Tobacco Limited ... **Respondent/Corporate Debtor**

Order pronounced on : 07/06/2022

Coram:

Dr. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Arrow Engineering Limited
Having office at:
139, Kuber Complex
Andheri (West)
Mumbai - 4000058 **... Applicant / Financial Creditor**

Versus

Golden Tobacco Limited
Having Registered office at:
Darjipura,
Post: Amaliya,
Vadodara – 390022 **... Respondent / Corporate Debtor**

Present:

For the Applicant : Mr. Robin Jaisinghani, Adv. a/w. Adv. Mr. Arjun Sheth,

For the Respondent : Mr. Ashsih Makhija, Adv. a/w Adv. Mr. Deep Bist
Mr. Jaitegan Singh Khurana, Adv.
Mr. Yatin Oza, Sr. Adv. with Mr. M.K. Shah, Adv. for 25% shareholders of the Corporate Debtor.

ORDER

1. This application is filed by the original Financial Creditor Arrow Engineering Limited seeking following prayers:

   (i) Allow the present application;

   (ii) Commence the Corporate Insolvency Resolution Process of the Corporate Debtor in terms of order dated 02.12.2021 of the Hon'ble NCLAT, New Delhi Bench, in Company Appeal (AT) (Insolvency) No.183 of 2021 and pass consequential orders.

   (iii) Pass any further order(s) / direction(s) as may deem fit to this Hon'ble Tribunal.

2. While disposing of this application alongwith main insolvency application u /s 7 of the Code, the background of the matter is required to be delved into.

3. IB Application No.268/09/NCLT/AHM/2020 was filed by Arrow Engineering Limited, a Financial Creditor against the Golden Tobacco Limited (Corporate Debtor) for initiation of Corporate Insolvency Resolution Process. This Bench vide order dated 25.01.2021 dismissed the application on the ground of not being maintainable. The Financial Creditor impugned the said order before Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No.183 of 2021 and the Hon'ble NCLAT Principal Bench vide order dated 02.12.2021 allowed the appeal by setting aside the order dated 25.01.2021 with further directions to the Adjudicating Authority to admit the application filed u/s 7 of the IBC, 2016 and pass consequential orders. The relevant para of the order of the Hon'ble NCLAT is reproduced below:

> *"We, thus, are of the opinion that the Adjudicating Authority committed error in rejecting the Application filed by the Appellant under Section 7. The Appeal deserves to be allowed. The impugned judgement dated 25.01.2021 is set aside. We further direct the Adjudicating Authority to pass consequential orders including the order of Moratorium within one month from the date of copy of this order is produced before the Adjudicating Authority during which period it is always open to the parties to endeavour to enter into settlement. The appeal is allowed accordingly."*

4. The said order of Hon'ble NCLAT was impugned by the Corporate Debtor by way of Civil Appeal No. 7715 of 2021 and Hon'ble

Supreme Court vide order dated 05.05.2022 dismissed the appeal with following observations which are reproduced below:

"We have heard learned counsel for the parties at length and find no reason to interfere in the order impugned dated 02.12.2021 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No.183 of 2021.

5. In view of the order passed by the Hon'ble NCLAT and Hon'ble Supreme Court, the Financial Creditor present applicant has filed this application with above mentioned prayers.

6. The application was listed from time to time and on 13.05.2022, IA 830 of 2021 was argued before us for passing appropriate orders.

At this stage, Learned Sr. Counsel appearing for 25% shareholders of the Corporate Debtor sought indulgence stating that these shareholders are endeavouring to pay the debt of the applicant and settle the matter. The request was vehemently objected by the Financial Creditor relying on the judgment passed by the Hon'ble NCLAT, alongwith the appeal, with the specific direction to this Adjudicating Authority to admit the application and pass consequential orders including the order of moratorium within one month from the date of the order dated 02.12.2021 of Hon'ble NCLAT which has reached unambiguous finality on 05.05.2022 when the Hon'ble Supreme Court declined to interfere with the

order of Hon'ble NCLAT. Learned Counsel further stated that considerable time has lapsed and the order of Hon'ble NCLAT is to be complied.

7. Since the order of Hon'ble NCLAT was impugned before the Hon'ble Supreme Court by Corporate Debtor pending consideration, no orders were passed by this Bench. The Hon'ble Supreme Court on 05.05.2022 did not interfere with the order passed by the Hon'ble NCLAT thereby order of Hon'ble NCLAT reached finality which is now being complied.

8. Learned Counsel appearing for the Corporate Debtor stated that Hon'ble NCLAT in its order dated 02.12.2021 in the last para specifically directed the Adjudicating Authority to pass consequential orders within one month from the date on which copy of this order is produced before the Adjudicating Authority, and further mentioned that during this period, it is open to the parties to endeavour to enter into settlement. He further submitted that as per the Doctrine of Merger, order of Hon'ble NCLAT merged into the order of Hon'ble Supreme Court on 05.05.2022 and one month period mentioned in the order of Hon'ble NCLAT giving liberty to the parties to enter into settlement be considered from 06.05.2022.

9. We rely on Doctrine of Merger with observations of Hon'ble Supreme Court and Hon'ble High Court in various matters which are mentioned below:

a) In Gojer Bros (P) Limited. Vs. Ratan Lal Singh and further in A.V. Papayya Sastry Vs. Government of Andhra Pradesh reported in (2007) 4 SCC 221, 236. The relevant para is reproduced herein under:

"38.....All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order".

b) In CIT Vs. Amritlal Bhogilal & Company reported in (1959) SCR 713 further observed as follows:

"10 There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement....".

10. The Hon'ble Bombay High Court in CIT Vs. Tejaji Farasram Kharawala reported in (1953) SCC Online Bom 28 held that

" .... It is well established principle of law that when appeal is provided from the decision of Tribunal, Appellate Court after hearing the appeal passed an order, the order of original Court ceases to exist and is merged in the order of Appellate Court and although the Appellate Court may merely confirm the order of the Trial Court, the order that stands and is operative is not the order of the Trial Court but the order of the Appellate Court".

11. As a sequeal to above discussion and in compliance of the order dated 02.12.2021 passed by the Hon'ble NCLAT which is merged in the order passed by Hon'ble Supreme Court dated 05.05.2022, this application is admitted and moratorium as described under Section 14 of IBC, 2016 is triggered from the date of this order. The IRP as proposed by the Financial Creditor Mr. Vichitra Narayan Pathak having registration No. IBBI/IPA-001/IP-P01353/2018-2019/12063 is hereby appointed as IRP of the Corporate Debtor Golden Tobacco Limited whose consent in Form 2 is on record. IRP shall comply the provisions of the IBC, 2016 r/w rules and regulations framed thereunder.

12. We direct the Financial Creditor to deposit a sum of Rs.2.00 lacs (Rupees Two Lacs only) with the Interim Resolution Professional,

namely Mr. Mr. Vichitra Narayan Pathak to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

14. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.

15. We further clarify that since the Hon'ble NCLAT had directed to pass order within one month from the date when order is produced before NCLT, which was to be utilized by the parties to endeavour to settle the matter, the said one month shall be considered from the date of the receipt by NCLT of the order of the Hon'ble Supreme Court dated 05.05.2022. The said order of Hon'ble Supreme Court was first submitted by the applicant alongwith IA 426 of 2022 filed on 09.05.2022. It is directed that if parties settle the matter, they are at liberty to file appropriate proceedings.

16. Application is admitted in terms of above order and disposed of.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Prakash - Steno

Date
Signature
Prepared by

Prepared by Final
Signature
Date 08-6-2022

Certified to be True Copy of the Original
8.6.22
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

IA 830 OF 2021
IN
CP(IB) 268 OF 2020