

MANAV INVESTMENT & TRADING COMPANY LIMITED V. SRF LIMITED

Manav Investment & Trading Company Limited
(shareholder of Birla Tyres Ltd.)

A company incorporated under
The Companies Act, 1956,
Having its registered office at
9/1, R.N. Mukherjee Road,
Kolkata – 700001.

Through Mr. Jit Roy Choudhury
Company Secretary of Manav
Investment & Trading Company Ltd.
E-mail : bbmanav@gmail.com

...Appellant

Versus

1. SRF Limited

A company incorporated under the Companies Act,
1956,

Having its registered office at
The Galleria, DLF Mayur Vihar,
Unit Nos. 236 and 237,
2nd Floor, Mayur Vihar
Phase – I Extn.,
New Deohi – 110091.

And its corporate office at
Block 'C', Sector – 45
Gurgaon 122003,
Haryana
Email: cs@srf.com

...Respondent No. 1

2. Seikh Abdul Salam,
Insolvency Resolution Professional
Of M/s. Birla Tyres Ltd.
Having registration No.
IBBI/IPA-003/IPA-ICAI-N-00250/2019-20/12966)
and having his office at
64J, Linton Street,
Beniapukur P.S.,

Kolkata – 700014
E-mail ID : ipsalanmkol2019@gmail.com;
Salam10695@gmail.com

...Respondent No. 2

Case No: CCOMPANY APPEAL (AT) (Insolvency) No. 692 of 2022

Date of Judgement: 17.11.2023

Judges:

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

For Appellants: Mr. Ankit Virmani & Ms. Ruchika Agarwala,
Advocates.

For Respondent: Mr. Abhijeet Sinha, Mr. Swankit Nand,
Mr. Saikat Sarkar, Mr. Anuj Tiwari, for RP.
Mr. Kunal Vajani, Mr. Kunal Mimani,
Mr. Kartikey Bhatt, Mr. Akshay Luthra,
Mr. Abhinav Jain, for R1.

Facts:

The present appeal has been filed against the order dated 05.05.2022 passed by NCLT Kolkata admitting an application filed by SRF Ltd (Respondent 1) under Section 9 of the IBC 2016 against Birla Tyres Ltd (Corporate Debtor) and initiating

corporate insolvency resolution process. Appellant Manav Investment and Trading Company Ltd is a shareholder of the Corporate Debtor holding 9.82% equity shares. The Corporate Debtor is engaged in manufacturing and trading of tyres but suffered losses in recent years due to economic slowdown and COVID-19 pandemic. As on 30.11.2021, it had outstanding debts of Rs. 1057.87 crores (fund based) and Rs. 10.25 crores (non-fund based). The Corporate Debtor proposed a scheme of arrangement and compromise with creditors and members under Sections 230-232 of Companies Act 2013 (CDR scheme) to restructure its business and overcome financial problems. It applied to stock exchanges for no objection letters as per SEBI LODR regulations. The Corporate Debtor's tyre factory is in Balasore, Odisha. It suffered losses in recent years due to economic slowdown, pandemic and labor unrest – about 2000 workers were obstructing factory premises demanding wages and benefits. This severely hampered business operations. The Corporate Debtor could not access records and file reply to Respondents' Section 9 application due to inability to access factory premises because of labor unrest. It requested adjournments from NCLT to file reply but they were declined and impugned order was passed admitting CIRP. The Corporate Debtor took steps to resolve creditor claims amicably but the impugned order stopped the process. Interests of the Corporate Debtor and investors including Appellant have been harmed.

Appellant's Arguments:

There was compelling circumstance of labor unrest and inability to access records which prevented filing reply to Section 9 application. There was no deliberate breach or disobedience by Corporate Debtor. NCLT failed to appreciate these compelling circumstances and passed impugned order harming interests of Corporate Debtor and investors like Appellant. Appeal should be allowed and impugned order set aside.

Respondent 1 and 2's Arguments:

Appellant's contentions are frivolous – appeal is to derail CIRP process. There was clear default which was not denied by Corporate Debtor. Corporate Debtor wanted to evade liabilities through proposed CDR scheme. Respondent 1 is engaged in business of tyre cord fabric. It supplied goods to Corporate Debtor against work orders and raised invoices which were accepted. Partial payments were made but 44 invoices for Rs. 10.18 crores remained unpaid. Despite follow ups, assurances and a payment plan given by Corporate Debtor, payments were not made. Demand notice under Section 8 was issued on 17.07.2021 but elicited no response. Hence Section 9 application was filed. Corporate Debtor did not raise any dispute to claim pre-CIRP. It was given ample opportunity to file reply before NCLT but failed to do so even when matter was reserved for order. Appellant has no locus standi to file appeal. Corporate Debtor had access to records and IT systems for filing reply – there was willful default. Impugned order is well reasoned after considering all facts and Code provisions. Appeal should be dismissed with costs.

Court's Observations and Opinions:

NCLT provided several opportunities to Corporate Debtor to file reply and explain reasons for non-filing. Reference to labor unrest in September 2021 to seek further adjournment seemed an attempt to prolong proceedings. Object of IBC is time-bound CIRP for maximization of assets. Repeated adjournments without basis cannot be permitted. Declining further extension of time to file reply was justified. No application/motion filed by Corporate Debtor seeking further time even when matter was reserved for order. No record shown that relevant records were lying at factory premises and same situation continued. Corporate Debtor failed to file reply despite 4 opportunities since October 2021. Seeking repeated adjournments casually is not permitted under IBC's time-bound processes. Notice under Section 8 was duly served but elicited no response from Corporate Debtor. Operational Creditor raised 44 unpaid invoices for 2018-2019 arising out of work order

dated 06.04.2018 totaling Rs. 10.18 crores. Email dated 03.06.2020 shows Corporate Debtor admitted this amount as due and payable. Further payment plan was given on 19.06.2020 but failed. No pre-existing dispute on record. Impugned order passed after analyzing facts and Code provisions. No error found.

Sections:

The appeal has been filed under Section 61 of IBC 2016 against the impugned NCLT order passed in CP (IB) No. 250/KB/2021 (under Section 9 of IBC). The Corporate Debtor proposed a CDR scheme under Sections 230-232 of Companies Act 2013. Demand notice was issued by Respondent 1 under Section 8 of IBC. SEBI LODR regulations pertaining to obtaining NOC from stock exchanges referred.

Cases Referred:

No specific judicial precedents cited.

Laws Relied Upon:

Insolvency and Bankruptcy Code 2016; Companies Act 2013; SEBI (Listing Obligations and Disclosure Requirements) Regulations

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Court

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Full Text of Judgment:

1. The present Appeal i.e., Company Appeal (AT) (Insolvency) No. 692 of 2022 has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against the order dated 05.05.2022 ("Impugned Order") passed by the National Company Law Tribunal, Kolkata Bench, Kolkata (in short 'Adjudicating Authority') in C.P (IB) No. 250/KB/2021.

2. An application was filed by the SRF Ltd. i.e., Respondent No. 1 as an operational creditor being C.P (IB) No.250/KB/2021 under Section 9 of the IBC, 2016 against the Corporate Debtor namely, Birla Tyres Ltd. (in short 'Corporate Debtor') which

was admitted by the Adjudicating Authority through Impugned Order dated 05.05.2022 and the Corporate Insolvency Resolution Process (in short "CIRP") was initiated. The respondent no. 2 has been appointed as the Interim Resolution Professional ("IRP") in respect of the affairs of the corporate debtor.

3. The Appellant herein is one of the shareholders of the corporate debtor and being aggrieved by the impugned order for initiating CIRP against the Corporate Debtor has filed the present appeal before this Appellate Tribunal.

4. Heard Counsel for the Parties and perusal the record made available.

5. The appellant is one of the shareholders of the corporate debtor. The appellant currently holds 1,40,00,063 number of equity shares in the Corporate Debtor which is equivalent to 9.82% of the paid-up equity share capital of the Corporate Debtor.

6. The Corporate Debtor has been, inter-alia, engaged in the business of manufacture and trading of tyres. However, due to economic slowdown arising out of covid, the Corporate Debtor suffered losses for few years. It is noted that as on 30.11.2021, the outstanding fund-based debt of the Corporate Debtor was approximately Rs.1057.87 crores and non-fund-based debt stood at Rs.10.25 crores. In addition, thereto there are several purported claims filed by some of the Unsecured Creditors of the Corporate Debtor.

7. It has been the case of the Appellant that the Corporate Debtor undertook the exercise of reconstruction of the business to overcome financial problems and proposed the Corporate Debt Restructuring (in short 'CDR') in accordance with the provisions of sections 230 to 232 of the Companies Act, 2013 for a Scheme of Arrangement and/or compromise with its creditors and members.

8. It has been brought out by the Appellant that the Corporate Debtor in terms of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (in short

“SEBI LODR”) had applied before the National Stock Exchange of India Ltd. and BSE Ltd. for obtaining necessary no objection letters from the Stock Exchanges. The Appellant stated that before the corporate debtor could receive no objection letters from the concerned stock exchanges, the Adjudicating Authority wrongly passed the Impugned Order admitting the corporate debtor into CIRP.

9. The appellant stated that the tyre manufacturing factory of the corporate debtor is situated at Balasore, Odisha and the corporate debtor was suffering losses for last few years because of general economic slow down and due to the pandemic. In addition, there was huge labour unrest in the vicinity of the factory of the corporate debtor in Balasore and about 2000 workers engaged in the factory of the corporate debtor in Balasore have been obstructing the factory premises of the Corporate Debtor by staging dharnas and protests. This hampered the business of the Corporate Debtor adversely.

10. The Appellant defended non-payment of dues to Respondent No. 1 by the Corporate Debtor as the Corporate Debtor was not in a position to have the access to its records for the purpose of enabling the corporate debtor to deal with the claims lodged by few creditors which includes the purported claim lodged by the Respondent No. 1 as an Operational Creditor. The Appellant submitted that non-access of factory premises prevented the Corporate Debtor to file its reply affidavit in the application filed by the Respondent under Section 9 of the Code. The corporate debtor was taking steps to the best of its ability and was trying to arrive at an amicable solution but Impugned Order stopped all such processes.

11. The Appellant applied to the Adjudicating Authority who failed to appreciate the compelling circumstances which had caused the corporate debtor not to submit its reply affidavit and that there was no deliberate breach or disobedience on the part of the corporate debtor to disobey the order of the Adjudicating Authority and passed the Impugned Order which harmed interest of the Corporate Debtor as well as several

investors including the Appellant.

12. The Appellant undertaking his pleadings, regulated to allow his appeal and set aside the Impugned Order.

13. Per Contra, the Respondents stated that all averments of the Appellants are baseless, mischievous and frivolous and appeal is only to derail the process of the CIRP.

14. The Respondents alleged that there was clear default on the part of the Corporate Debtor and it was not denied by the Corporate Debtor. The Respondents further alleged that in the guise of the CDR, the Corporate Debtor wanted to get away with all the liabilities at the cost of creditors like him.

15. Respondent No. 1 explained that he is engaged in the business of Tyre Cord Fabric. The Corporate Debtor approached Respondent No. 1 to purchase Tyre Cord Fabric ["Goods"]. The Respondent No. 1 agreed to supply Goods to the Corporate Debtor on the basis of the work orders to be issued by the Corporate Debtor.

16. It is the case of the Respondent No. 1 that he raised various invoices from time to time which were duly accepted by the Corporate Debtor without raising any objection whatsoever and few payments were also made. However, out of the these invoices, 44 invoices with respect to the supply of the Goods remained outstanding. Respondent No. 1 called upon the Corporate Debtor on several occasions to make payments of the sums due and payable to the Respondent No. 1. The Corporate Debtor had in turn from time to time not only acknowledged its liability to pay but also made repeated assurances that payments would be made to cure the defaults. Emails dated 11 April, 2020 and 30 June, 2020 are acknowledgments of debt and default by the Corporate Debtor.

17. The Respondent No. 1 submitted that the Corporate Debtor had also given a payment plan by its email dated 19.06.2020, however, the Corporate Debtor failed to fulfil the same and only of Rs.10,00,000/- was received by the Respondent No. 1 on 31.10.2020 from the Corporate Debtor. The same has been adjusted against the outstanding dues. It is the case of Respondent No. 1 that in the given circumstances, Respondent

No. 1 issued a demand notice under Section 8 of the Code on 17.07.2021 calling upon the Corporate Debtor to make payments of its dues within 10 days of receipt of the notice but no reply was received.

18. The Respondent No. 1 filed a petition under Section 9 of the Code being CP(IB) No. 250/KB/2021 on 16.08.2021 as there was no payment of the unpaid and admitted operational debts by the Corporate Debtor to Respondent No. 1.

19. It has been emphatically submitted by the Respondent No. 1 that there was no pre-existence of dispute in respect of the claim of Respondent No. 1 and this plea was never taken by the Corporate Debtor till date.

20. The Respondents submitted that the Corporate Debtor was given ample opportunities to file its reply affidavit. The Corporate Debtor chose to refrain from filing a reply affidavit or to bring on record the reasons for not filing the same. It is only after when the matter was heard and reserved for Orders by the Adjudicating Authority the Corporate Debtor decided to file a supplementary affidavit and the same was rightly not allowed by the Adjudicating Authority.

21. The Respondent No. 1 stated that the Appellant has no locus to prefer the instant appeal and therefore, the question of the Appellant being dissatisfied with the Impugned Order does not arise and on this ground alone, the appeal is to be dismissed.

22. The Respondents submitted that the Corporate Debtor was having all Information Technology back up including ERP System and all records were available at the Head Office of the Corporate Debtor and it was sheer wilful default of the Corporate Debtor that even Reply Affidavit was not filed despite several opportunities given to the Corporate Debtor by the Adjudicating Authority.

23. The Respondents stated that the Adjudicating Authority passed well reasoned speaking order and appeal deserves to be dismissed with cost.

24. At this stage, this Appellate Tribunal will like to look into the relevant portion of the Impugned Order about the issue of non-submission of the counter affidavit by the Corporate Debtor as alleged by the Corporate Debtor. This reads as under :-

“3. Before coming to merits of this CP it is relevant to record here;

a) When this matter came up for consideration on 20 October 2021, this Adjudicating Authority issued a notice to Corporate Debtor by speed post and e-mail. The notice was sent by the registry through speed post and e-mail. Next date was fixed for 22 December 2022.

b) As per the tracking report, the notice was received by the Corporate Debtor on 25 October, 2021 and by e-mail on 22 December 2021 along with the copy of Company Petition.

c) When the matter came up again for hearing on 22 December 2021, Counsel for the Corporate Debtor appeared and sought further three weeks' time to file reply affidavit.

d) It is evident as per the order dated 22 December 2021 passed by this Adjudicating Authority that a schedule for completion of pleadings was fixed on this date. Corporate Debtor was granted three weeks' time to file the reply affidavit and upon filing this affidavit the Operational Creditor was granted two weeks to file rejoinder, if any. The matter was directed to be listed on 28 February, 2022.

e) When the matter was taken for consideration on 28 February, 2022, Ld. Counsel appearing for the Corporate Debtor again sought further time to file its reply affidavit; Two weeks further time was granted to file the reply affidavit and the matter was directed to be listed on 5 April, 2022.

f) On 05 April, 2022 when the matter came up for consideration the Corporate Debtor sought further time to file the affidavit. The Ld. Counsel for the Corporate Debtor stated that there was some Dharna at factory premises from 03 January, 2021 to 12 March, 2021 by workers demanding payment of workers of wages and other financial benefits and the

proceedings were pending before the office of Divisional Labour Commissioner Balasore.

g) It was stated by Ld. Counsel for Corporate Debtor, that in view of this agitation by the workers, petition had been filed before SDM Balasore for promulgation of Section 144 of CRPC against the workers and their family members on 28 September, 2021. In view of these reasons the Corporate Debtor is unable to have access to the records in filing the reply affidavit in this application.

h) On 5 April, 2022, after considering the submissions of the Ld. Counsel for the Corporate Debtor for grant of further extension of time this Adjudicating Authority not satisfied with the reasons stated, declined to grant further time and the matter after hearing Counsel for operational creditor was reserved for orders.

i) No application/motion however has been filed before this Adjudicating Authority for seeking any further time.

j) There is nothing shown to us the relevant record for filling reply was/is lying in the factory premises and the same situation as in September 2021 continues in April 2022.

4. In view of the facts and circumstances based on record, we are of the considered opinion that it was a very casual attempt made by the Corporate Debtor to seek further adjournment for the 4th time consecutively since October, 2021 and reference to agitation by workers and families in September, 2021 was merely an attempt by the Corporate Debtor to prolong the proceedings. Keeping in view, this matter under Insolvency and Bankruptcy Code, 2016 wherein the very object of the Code is to finalize the Insolvency proceedings in a time bound manner for maximization of value of assets, granting adjournment

after another and that too without any basis cannot be permitted by this Adjudicating Authority and this Adjudicating Authority thus declined to further extend the time for filling reply affidavit by Corporate Debtor.

5. From the above fact on record, it is clear that the

Corporate Debtor was afforded reasonable opportunity to file its Affidavit-in-Reply, however, the Corporate Debtor has failed to file the Affidavit-in-Reply despite repeated opportunities.”

25. From above, it is clear that the Adjudicating Authority gave all possible opportunities to the Corporate Debtor to present his case but the Corporate Debtor miserably failed to do so. Therefore, the allegations on this account by the Appellant herein are not sustainable.

26. We observe that the notice under section 8 (1) of Code was duly served by the Respondent No. 1 upon Corporator Debtor on 23.07.2021 and the Corporate Debtor did not reply to the demand notice.

27. We also observe that the Operational Creditor raised 44 invoices for the supply of Tire Cord Fabric to the Corporate Debtor, during 2018-2019 arising out of work order dated 06.04.2018, which remained unpaid by the Corporate Debtor.

28. We note that through E-mail dated 03.06.2020, the Corporator Debtor admitted the sum of Rs.10.18 Crore due and payable to Respondent No. 1 and also that through an E-mail dated 19.06.2020, the Corporate Debtor gave payment plan to the Respondent No. 1 which also failed.

29. It is significant to observe that there is no record to show any pre- existing dispute.

30. In view of above, it is clear that there was established debts and defaults and the Adjudicating Authority passed the Impugned Order after analysing all facts and considering provisions of the Code and therefore we do not find any error in the Impugned Order.

31. The Appeal fails and stand dismissed. No Cost. Interlocutory Application(s), if any, are Closed.