

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4799/2021

SAMEER SINGH

.....

APPELLANT(S)

VERSUS

BANK OF INDIA & ORS.

.....

RESPONDENT(S)

O R D E R

1. The present appeal, preferred by a suspended Director of the corporate debtor, Sameer Singh, impugns the judgment dated 22.05.2020 passed by the National Company Law Appellate Tribunal,¹ New Delhi, on the question/factum of default.
2. On relevant consideration, we do not find any good ground and reason to interfere with the impugned judgment.
3. However, certain developments have occurred since then:
⇒ On 03.04.2021, the Committee of Creditors² approved a resolution plan filed by Mr. S.M. Kamal Pasha, proprietor of M/s. Golden Hatcheries, in consortium with Mr. Syed Fahad, proprietor of M/s. Standard Farms, in terms of Section 30(4) to the Insolvency and Bankruptcy Code, 2016³.

¹ For short, "NCLAT".

² For short, "CoC".

³ For short, "the Code".

- ⇒ On 10.05.2021, a Letter of Intent was issued in favour of Mr. S.M. Kamal Pasha and Mr. Syed Fahad.
 - ⇒ On 16.06.2021, per Mr. S.M. Kamal Pasha and Mr. Syed Fahad, a bank guarantee of ₹8.62 cores was executed by them as a security deposit.
 - ⇒ By order dated 03.01.2022, this Court directed a stay on further proceedings before the adjudicating authority, including on the application filed by respondent No. 4, S. Rajendran, the Resolution Professional, for approval of the resolution plan submitted by Mr. S.M. Kamal Pasha and Mr. Syed Fahad.
 - ⇒ Accordingly, the resolution plan was kept in abeyance and was not put up before the adjudicating authority for approval.
 - ⇒ A subsequent order dated 14.03.2022 clarified that the Resolution Professional cannot continue conciliation proceedings with the National Highways Authority of India⁴ till further orders.
4. During the pendency of proceedings, the holding company of the corporate debtor and the erstwhile director(s), who had

earlier moved an application for a One Time Settlement⁵, gave a further proposal. This was accepted by the CoC, including the lead Bank, Canara Bank, subject to certain conditions, including payment of ₹225 crores.

5. At present, a payment of about ₹95 crores has been made. The balance amount of about ₹130 crores is yet to be paid.
6. Fixed Deposit(s)⁶ with a maturity value of about ₹130.24 crores were available with Canara Bank. From them, an amount of about ₹31 crores has been paid by Canara Bank to M/s. EKK Infrastructure Ltd., who was awarded the contract for overlaying the toll road. This work awarded to M/s EKK Infrastructure Ltd. is critical as the contract between the corporate debtor and NHAI mandates overlaying. The Resolution Professional justified the payment as a contractual obligation essential to safeguard the asset and prevent litigation with NHAI. Failure to carry out the overlaying would have led to the cancellation of the contract, thereby depleting and jeopardizing the primary assets of the corporate debtor.
7. In view of the aforesaid factual position, we passed an order dated 14.11.2024, modifying the earlier interim order(s) to permit the CoC meeting to proceed with specific direction that if the CoC approves the payment due to M/s. EKK Infrastructure Ltd., the approved amount will be paid from the FDs held with Canara Bank.

⁵ For short, "OTS".

⁶ For short, "FD".

8. Subsequently, the CoC approved a payment of ₹31 crores, which has since been disbursed to M/s. EKK Infrastructure Ltd.
9. Our order dated 14.11.2024 further allowed the members of the CoC to consider any alternative resolution. However, any resolution passed by the CoC would remain subject to the orders of this Court.
10. Lastly, the order dated 14.11.2024 records the Resolution Professional's submission that ₹10 crores would be required to meet his day-to-day expenses. It was directed that the CoC would take this aspect into consideration.
11. We are informed that, in the future, about ₹40 crores would have to be paid towards overlaying to M/s. EKK Infrastructure Ltd, though the exact amount may vary. This aspect is noted but does not require examination at this stage. We only note that payments may have to be made to M/s. EKK Infrastructure Ltd subsequently.
12. We are also conscious that there is/are operational creditor(s) who are owed ₹5.24 crores approximately. Furthermore, the resolution plan submitted by Mr. Kamal Pasha and Mr. Syed Fahad remains pending, supported by their bank guarantee of ₹8.62 crores.
13. During the hearing, our attention was drawn to Sections 12A, 24, 25A(4), 30 and 31 of the Code, as well as Regulation Nos.

30A and 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. We are not reproducing the said sections or regulations given the order we are inclined to pass. However, we refer to the judgment of this Court in *Glas Trust Company LLC v. Byju Raveendran and Others*.⁷ In paragraph 63 of the judgment, this Court had observed that, even if an application under Section 7, 9, or 10 of the Code is admitted, the CoC can form an opinion post the expression of interest. We need not elaborate further on this aspect.

14. Given the legal position and regulations, it is clear to us that, all issues which are required to be adjudicated, including the facts, have to be raised and decided before the adjudicating authority, that is, the National Company Law Tribunal⁸.
15. In light of the above, we dismiss the present appeal. However, we give liberty to the parties, including Mr. Kamal Pasha, Mr. Syed Fahad, and the holding company, to raise all pleas and contentions before the NCLT, who will examine the same in accordance with the law.
16. We clarify that the observations made in this order are for the purpose of disposal of the present appeal. They would not be treated as an expression of opinion, either way, on the merits of the case.

⁷ 2024 SCC OnLine 3032.

⁸ For short, "NCLT".

17. Lastly, despite the earlier order(s) explicitly stating that any resolution passed by the CoC (except payment to M/s. EKK Infrastructure Ltd.) from the FDs, would be subject to this Court's directions, the lead bank, Canara Bank, appropriated the FD proceeds and distributed them to the CoC members. This action, which should not have been taken, was objected to by the Resolution Professional, as reflected in the application filed.
18. It is stated on behalf of Canara Bank that they had given an undertaking that all the members of the CoC would refund the said amount, if necessary. Accordingly, we direct that the banks/financial institutions, who are the members of the CoC, will forthwith refund the monies received, which will then be converted into interest-bearing FDs with auto-renewal clause(s).
19. It is submitted that the holding company has made an additional payment of ₹24 crores towards the OTS.
20. Recording the aforesaid, the appeal is dismissed in the above terms.
21. Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
DECEMBER 09, 2024.

ITEM NO.5

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 4799/2021

SAMEER SINGH

Appellant(s)

VERSUS

BANK OF INDIA & ORS.

Respondent(s)

(IA No. 231712/2024 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 239076/2024 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 09-12-2024 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Appellant(s)	Mr. Nikhil Nayar, Sr. Adv. Mr. Mahesh Agarwal, Adv. Mr. Ankur Saigal, Adv. Mr. Sbhusham Kulshreshtha, Adv. Mr. Abhinabh Garg, Adv. Mr. Kaustubh Singh, Adv. Ms. Abha Saigal, Adv. Mr. E. C. Agrawala, AOR
For Respondent(s)	Mr. I P S Oberoi, Adv. Mr. R K Srivastava, Adv. Mr. Maibam Nabaghanashyam Singh, AOR Mr. Himrit Singh Wadhwa, Adv. Ms. Pooja Dhar, AOR Mr. Anuj Bhandari, AOR Mrs. Anjoo Jain, Adv. Mr. Hitesh Sachaar, Adv. Mr. Anuj Bhandari, Adv. Ms. Jasmine Damkewala, AOR Mr. Nikhil Goel, Sr. Adv. Mr. Roy Abraham, Adv. Ms. Reena Roy, Adv. Mr. Adithya Koshy Roy, Adv. Mr. Yaduinder Lal, Adv. Ms. Rajni Ohri Lal, Adv. Ms. Siddhi Gupta, Adv.

Mr. Himinder Lal, AOR

Mr. Nidhesh Gupta, Sr. Adv.

Ms. Sakshi Kakkar, AOR

Mr. Shakti Singh, Adv.

Ms. Vriti Gujral, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)