

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.401 OF 2014

Symphony Limited)....Petitioner
V/s.

Chhaparia Industries Private Limited)....Respondent

Mr.Zal Andhyarujina a/w Ms.Bindi Dave, Mr.Ieshan Sinha and
Ms.Varada Balachandran I/by Wadia Ghandy and Co. for petitioner.

Ms.Shilpa Kapil for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 9.7.2018

P.C.:-

1. Petitioner is seeking winding up of the company Chhaparia Industries Pvt. Ltd. on the grounds that the company is unable to pay its debts, the company has lost its substratum and therefore, it is also just and equitable that the company be wound up.

2 It is the case of petitioner that they placed certain orders with the respondent company, paid advance and the respondent company failed and neglected to supply the goods which they were to supply. It is the case of petitioner that some of the goods were supplied, of which some were found defective and therefore, returned and therefore, the company was supposed to give credit for the payments made to those goods or substitute with fresh goods.

3 When the petition was pending for admission, the respondent company initially filed petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) which was admitted by the National Company Law Tribunal (NCLT) and moratorium was declared. NCLT appointed one Vikram Bajaj as the Interim Insolvency Resolution Professional and later confirmed Mr.Bajaj as Insolvency Resolution Professional. The committee of creditors passed a resolution under Section 30(4) of the IBC read with Regulation 39(3) of the Insolvency & Bankruptcy Board of India (CIRP) Regulation, 2016. The promoters of the respondent prepared a resolution plan on information provided by the Resolution Professional which was approved by the committee of creditors. Based on that, the Resolution Professional filed an application under Section 30(6) of IBC for submission of the resolution plan approved by the committee for creditors of the company under Section 30(4) of IBC for approval of the adjudicating authority to the resolution plan approved by the committee of creditors.

4 By an order dated 29.9.2017 NCLT, Mumbai bench gave an approval to the resolution plan filed by the Insolvency Resolution Professional (IRP). The IRP was thereafter discharged and the

moratorium already granted also came to be vacated.

5 Against this order of NCLT, petitioner herein filed an appeal before National Company Law Appellate Tribunal (NCLAT) New Delhi being Company Appeal (Appellate Tribunal) (Insolvency) No.328 of 2017. On 2.5.2018 by a detailed order, NCLAT was pleased to dismiss the appeal filed by petitioner herein and another appellant and by the said order, NCLAT refused to interfere with the order passed by NCLT. NCLAT also observed that in the absence of any discrimination or perverse decision, it is not open to the appellate Tribunal to modify the resolution plan. In effect NCLAT did not find anything perverse in the resolution plan. Petitioner herein has not carried that order in appeal to the Supreme Court of India and the order of NCLT as upheld by NCLAT has attained finality.

6 NCLT has approved the term of the resolution plan and its implementation schedule for payment as 25 months incorporating a cushion of 9 months to cover if any inadvertent delay.

7 NCLT having approved a resolution plan for the company less than a year ago and the resolution plan is in the process of implementation, I do not wish to trip the entire resolution plan by

admitting this petition. In the resolution plan all operational creditors have also been taken care of. Petitioner's challenge to the resolution plan, has been rejected. As a company court, this court also cannot sit in appeal against resolution plan approved by the NCLT and confirmed by NCALT.

8 In fact, this court had asked Mr.Andhyarujina whether the petitioner will be inclined to withdraw this petition and the court made it clear that it was not inclined to entertain the petition. Mr.Andhyarujina however, stated that he has no instructions to withdraw the petition and therefore, I had to hear the petition and pass orders.

9 Petition dismissed with no order as to costs.

(K.R.SHRIRAM,J)