

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 645 of 2024

IN THE MATTER OF:

Saturn Ventures & Advisors Pvt. Ltd.

...Appellant

Versus

S. Gopalkrishnan & Anr.

...Respondents

Present:

For Appellant : Mr. Devansh A. Mohta, Ms. Anne Mathew & Mr. Jai Govind, Advocates.

For Respondents : Mr. Gaurav Mitra, Mr. Ishan Roy Chowdhary , Ms. Pranati Bhatngar, Ms. Palak Johnson, for R-1/RP. Ms. Nivedita R Sarda, Ms. Sagrika Joshi & Mr. Ronak Sharma, for SRA.

With

Comp. App. (AT) (Ins) No. 839 of 2024

IN THE MATTER OF:

Satish Gopinath

...Appellant

Versus

S. Gopalkrishnan

...Respondent

Present:

For Appellant : Mr. Devansh A. Mohta, Ms. Anne Mathew & Mr. Jai Govind, Advocates.

For Respondent : Mr. Gaurav Mitra, Mr. Ishan Roy Chowdhary , Ms. Pranati Bhatngar, Ms. Palak Johnson, for R-1/RP. Ms. Nivedita R Sarda, Ms. Sagrika Joshi & Mr. Ronak Sharma, for SRA.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This order shall dispose of two appeals bearing CA (AT) (Ins) No. 645 of 2024 “Saturn Ventures & Advisors Pvt. Ltd. Vs. S. Gopal Krishan & Anr.” (Herein after referred to as ‘the first appeal’) whose intervention application no. 12 of 2023 filed in I.A No. 787 of 2023 by the RP for the CD, namely, Saturn Rings and Forgings Pvt. Ltd., has been dismissed. CA (AT) (Ins) No. 839 of 2024 “Satish Gopinath Vs. S. Gopal Krishnan” (hereinafter referred to as the second appeal) has been filed by Satish Gopinath, suspended director of the CD who is also aggrieved against the dismissal of the intervention application no. 12 of 2023 and against the approval of the resolution plan.

2. In brief, Bank of India Limited (Financial Creditor) filed an application bearing CP (IB) No. 408 of 2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) against the CD for the resolution of its debt which was admitted on 24.12.2021.

3. The RP of the CD filed an application bearing I.A No. 3478 of 2022 for approval of the resolution plan of Agrasen Engineering Industries Pvt. Ltd. (SRA). In this application, RP filed I.A No. 787 of 2023 against the suspended directors of the CD for seeking declaration of certain business / transactions conducted by them as fraudulent and a direction against them to make appropriate contribution of the assets of the CD.

4. It is pertinent to mention that at the same time the appellant filed I.A No. 12 of 2023 against the RP seeking declaration that machinery, namely, Wagner 630 line (hereinafter referred to as the ‘machinery’) allegedly owned

by it and not to include it in the Information Memorandum of the CD as it cannot form part of the resolution plan of the SRA.

5. The Tribunal before dealing with application bearing I.A No. 3478 of 2022 filed by the RP for approval of the resolution plan of the SRA, having been approved by the CoC, has dealt with both the applications bearing I.A No. 787 of 2023 and 12 of 2023 in order to resolve as to whether the machinery is owned by intervenor/appellant as alleged and can it form part of the IM and also the resolution plan. The Tribunal has dismissed I.A No. 12 of 2023 and allowed I.A No. 787 of 2023 vide its impugned order. It is categorically mentioned that in both these appeals filed by Saturn Ventures & Advisors Pvt. Ltd. (first appeal) and Satish Gopinath (second appeal) the issue is the same as to whether the machinery is the asset of the CD and can form part of the plan submitted by the SRA.

6. In the first appeal, Counsel for the Appellant has submitted that the machinery was purchased on 05.07.2012 vide invoice no. 0012040867 and 0012040868 from National Engineering Industries Limited (NEI) and has been declared as capital work in progress in the audited financial statement of the Appellant. The Intervenor also obtained a loan from IndusInd Bank on the security of the machinery.

7. According to the Appellant, he had entered into MOU with NEI on 05.07.2012 to purchase a used/second-hand Ring Rolling Plant comprising the machinery for sum of Rs. 2.5 Cr. The Appellant made payment to NEI in two instalments of Rs. 25 lakh on 10.09.2012 and Rs. 2.25 Cr. on 01.10.2012.

8. The case of the Appellant is that machinery was installed in the premises of the CD in February, 2013 after the CD was incorporated on 13.07.2012. It is alleged that the machinery was given on lease to the CD and since it was only a transfer of interest, therefore, it does not amount to transfer of ownership. It is therefore, submitted that as per explanation to Section 18 of the Code the assets shall not include the assets owned by a third party held under trust or under contractual arrangements including bailment.

9. On the other hand, Counsel appearing on behalf of the RP has submitted that the CD is a 99.99% subsidiary of Saturn Venture and Advisors Pvt. Ltd. (Appellant in the first appeal) which is now known as Sattvam India Pvt. Ltd. which is the corporate guarantor for the loan obtained by the CD from the Bank of India. It is further submitted that CD had executed a hypothecation cum loan agreement dated 06.06.2014 whereby it hypothecated the machineries. It is further alleged that when the RP started valuation of hypothecated assets, an objection was raised by the Appellant that the machinery belongs to the Appellant Company.

10. It is also submitted by the RP that the Financial Creditor appointed a CA firm for transaction audit report of the CD and it was during the exercise it came to the knowledge of the RP and the FC that in the financial year 2019 – 20, as per note 2.8 the net block of total tangible assets was Rs. 58.92 Cr. but as per balance sheet the total was Rs. 52.45 Cr., therefore, there was an impairment reversal of an amount of Rs. 6.48 Cr. The books of accounts of the CD as maintained by the CD in Tally was checked by the transaction

auditors as appointed by the FC and it was revealed that plant and machinery worth Rs. 6.48 Cr. was transferred to the Appellant and it was stated in the narration that “repossession of assets as per management decision dated 31.03.2020”. It is further submitted that present proceedings were filed on 04.02.2019 and the said decision of repossession of asset is taken after the filing of present proceedings with an intent to defraud the creditors. The RP also stated that the machinery has been recognised as fixed assets of the CD in balance sheet in the year 2017 and depreciation has been claimed on it.

11. The Tribunal has found that the dispute in the applications is pertaining to ownership of the machinery as it is the case of the Appellant that machinery was never sold to the CD rather it was given on lease for use of the CD whereas the case of the RP is that the machinery has been accounted for in the books of the CD and has been taken out of the fixed assets block of the CD by way of journal entry passed on 31.03.2020.

12. The Tribunal has found that Intervenor got this machine on 05.07.2012 from NEI and declared as part of capital work in progress in its audited balance statement.

13. It has also been found that the Appellant had obtained loan on the security of the machinery from the IndusInd Bank and that one of the officers of IndusInd Bank is the wife of Mr. Satish Gopinath, a common director of he CD as well as the Appellant. It was also noted that CD while obtaining term loan from the Bank of India declared that machinery has already been acquired by it and represented that the value of the machine shall form part of promoter’s contribution to the loan sanctioned by the FC and the

machinery was included in the list of machines in the hypothecation agreement with FC. It has been found that neither there is any lease deed of the machinery executed between the Appellant and the CD nor the lease amount has been shown in the books of the CD to substantiate the issue raised by the Appellant that the machinery was given on lease to the CD.

14. It has further been found that initially the machine was not included in the IM by the RP but it was later on included in the IM before the plan was submitted. Initially it was not included because of the journal entry of 31.03.2020 by which the machinery was taken out from the books of the CD but when it was realised that the journal entry dated 31.03.2020 was a fraudulent transaction because it has the effect of paying the intervenor in priority of other creditors and keeping the essential machine out of the reach of other creditors, the RP found that the machine forms integral part of the machine line and filed an application under Section 49 and 66 of the Code seeking annulment of this transaction.

15. The Tribunal has further found that the Appellant had failed to demonstrate during the course of hearing about the lease of the machinery in the audited financial statement in respect of which the Appellant has referred to accounting standard as well as the financial statement but failed to show the disclosure of information/accounting treatment as required under the said accounting standard. The Tribunal has also asked the Appellant to show as to how depreciation would be applicable under the Income Tax Law on the machinery which was taken by it on lease because it has been conceded by

the Appellant that the CD had taken the depreciation under the Income Tax law in its return all along for the machinery.

16. The Tribunal has held that the depreciation under the income tax law is allowed to the owner of the assets and not to the lessee and thus it was held that in the absence of any lease deed, rentals paid, depreciation claimed under the income tax act and that the machinery was hypothecated by the CD with FC at the time of availing loan, all along proves that the machinery belongs to the CD and not to the Appellant and in this background the journal entry dated 31.03.2020 was reversed, the application I.A No. 787 of 2023 is allowed and IVN. P No. 12 of 2023 was dismissed.

17. It is pertinent to mention that CD had already executed hypothecation cum loan agreement on 06.06.2014 with the FC whereby the machinery alongwith other machines were hypothecated. The FC had created charge over machinery much prior to the hypothecation in favour of IndusInd Bank by the Appellant which is otherwise not permissible much less without making intimation or taking approval from the FC because such hypothecation was clearly bad in law. It is also pertinent to note that application under Section 7 for initiation of CIRP had been filed by FC on 04.02.2019 and after its filing, the Appellant designedly included a journal entry dated 31.03.2020 on the basis of which the machinery was taken out from the books of the CD to avoid the asset going to the hands of the creditors of the CD and as soon as the RP came to know about it, the application bearing I.A No. 787 of 2023 was filed. It is also worthwhile to note that in the revised IM, the RP made the following note *“on the perusal of the documents related to the term loan financed by the*

bank-Bank of India, below mentioned crucial points were noticed by the RP. The TEV report of the bank states that the Wagner 630 machine was installed in the company and the machinery has been considered as a part of the machineries hypothecated with them. Further, the Wagner 630 machine has been provided as margin for the loan taken from the Bank of India. Thus, indicating to the bankers that the machinery belongs to the Corporate Debtor. Also, the process notes on the loan financed state that the Corporate Debtor has obtained the Wagner 630 machine from its own funds. This also taken into consideration for valuation conducted by the bankers. The Bank's Hypothecation cum Loan Agreement for Plant and Machinery, Stocks and Book Debts on 06.06.2014 states that Wagner 630 Machinery and Other equipment's have been hypothecated to the Bank."

18. The basic argument of the Appellant is that the machinery was leased out to the CD has to be established by way of a lease deed because it is a transaction between two companies and the lease amount has also to be mentioned but neither the lease deed nor the amount of lease has seen the light of the day rather the CD had hypothecated the machinery with the FC while securing the loan in terms of the loan agreement dated 06.06.2014 and in terms of clause 5(a)to(c) of the said hypothecation agreement, CD has created charge in respect of the machinery and a declaration has been made by the CD that the machinery has already been acquired and shall form part of prompters contribution to the loan sanctioned by FC.

19. The last but not the least, the CD had admittedly claimed depreciation on the machinery as an owner because a lessee cannot claim depreciation

and in this regard, reference may be had to a decision of the Hon'ble Supreme Court in the case of Mother Hospital Pvt. Ltd. Vs. Commissioner of Income Tax, Trichur, (2018) 13 SCC 92.

20. Thus, looking from any angle, we do not find any error in the impugned order which calls for any interference by this Court in this appeal. Hence, both the appeals are found to be devoid of merit and the same are hereby dismissed. No costs.

I.As, if any pending, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi

13th February, 2025.

Sheetal