NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).1706 OF 2023

SREI MULTIPLE ASSET INVESTMENT TRUST VISION INDIA FUND ....APPELLANT(S)

VERSUS

DECCAN CHRONICLE MARKETEERS & OTHERS ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S).8323 OF 2022

AND

CIVIL APPEAL NO(S).8132 OF 2022

J U D G M E N T

Rastogi, J.

CIVIL APPEAL NO(S).1706 OF 2023

1. The instant appeal has been filed by the successful resolution applicant (for short "SRA") of the Corporate Debtor (Deccan Chronicle Holdings Ltd.) whose Resolution Plan was approved by

81.39% voting by the Committee of Creditors (CoC) and conditionally by the adjudicating authority/National Company Law Tribunal (for short "NCLT") by order dated 3rd June, 2019, subject to the outcome of I.A. No.155 of 2018 and that came to be decided by the adjudicating authority/NCLT, Hyderabad Bench by order dated 14th August, 2019 and that became the subject matter of challenge before the National Company Law Appellate Tribunal(for short "NCLAT") at the instance of the Corporate Debtor wherein it was stated that what has been observed by the adjudicating authority while disposing of I.A. No.155 of 2018 under its order dated 14th August, 2019, will amount to a modification/alternation of the approved Resolution Plan by the CoC which is impermissible in law.

2. The brief facts culled out from the record are that the appellant is the successful resolution applicant (SRA) of the Corporate Debtor – Deccan Chronicle Holdings Ltd. (DCHL), whose Resolution Plan was approved by the CoC of the Corporate Debtor with 81.39% voting share which was conditionally approved by the adjudicating authority (NCLT) by order dated 3rd June, 2019.

3. It has come on record that the Corporate Debtor/DCHL was incorporated on 16th December, 2002 under Certificate of Incorporation issued by the Registrar of Companies, Hyderabad and has been into the business of printing, publication and sale of daily newspapers under the trade names, “Deccan Chronicle” (English) and “Andhra Bhoomi” (Telugu) (hereinafter referred to as the “trademarks”).

4. The Corporate Insolvency Resolution Process (for short “CIRP”) was initiated under the Insolvency and Bankruptcy Code, 2016 (for short “IBC”) against DCHL by Canara Bank (Financial Creditor) before the adjudicating authority (NCLT). The petition filed by Canara Bank was admitted on 5th July, 2017 and the adjudicating authority imposed Moratorium under Section 14 of the IBC staying pending proceedings in all Courts against DCHL.

5. The Moratorium was extended for a further period of 90 days vide order of adjudicating authority dated 10th November, 2018.

6. The CIRP period of the Corporate Debtor ended on 15th February, 2019. Pursuant to initiation of Resolution Process, the Interim Resolution Professional (IRP) issued a public announcement

and invited claims from the creditors of the Corporate Debtor. On receiving the claims, the IRP collated the same and constituted a Committee of Creditors (CoC).

7. That the Expression of Interest (EoI) was published in the All-India edition of Business Standard dated 8th February, 2018 for a widespread coverage with the last date for receipt of the EoIs being 15th February, 2018 (6.00 p.m.) which was later extended upto 17th April, 2018 and after various rounds of meetings of the CoC, the Resolution Plan submitted by the appellant (SRA) was deliberated upon in the 20th meeting of the CoC held on 10th December, 2018 and finally the Resolution Plan of the appellant was approved by the CoC with 81.39% of voting rights.

8. On 11th December, 2018, as per the provisions of Section 30(4) of the IBC read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Plan of the appellant was found to be in compliance with the mandatory provisions of Section 30(2) of the IBC and the relevant Regulations, and it was later approved by the adjudicating authority by an order

dated 3rd June, 2019 and the same became binding on Corporate Debtor, its employees, members, creditors and all stakeholders involved in the Resolution Plan, but as regards the brand name of the Corporate Debtor, application I.A. No.155 of 2018 was pending seeking a declaration by the Corporate Debtor that it is the owner of the trademarks ("Deccan Chronicle" and "Andhra Bhoomi") and the said trademarks be treated as part of the assets of the Corporate Debtor.

9. After the Resolution Plan stood approved by the adjudicating authority under order dated 3rd June, 2019 subject to condition in reference to the rights over the brand name/trademarks of the Corporate Debtor, the adjudicating authority later decided the application I.A. No.155 of 2018 with a direction that the Resolution Professional has established that it is the Corporate Debtor/DCHL who has an exclusive right to use the trademarks "Deccan Chronicle" and "Andhra Bhoomi" and also made a declaration that the trademarks ("Deccan Chronicle" and "Andhra Bhoomi") belong to the Corporate Debtor/DCHL under its order dated 14th August, 2019.

10. The order passed in I.A. No.155 of 2018 by the NCLT dated 14th August, 2019 became the subject matter of challenge at the instance of the first respondent by way of an appeal before the NCLAT.

11. The NCLAT, after hearing the parties, arrived to a conclusion that the declaration made by the NCLT holding the ownership rights of the Corporate Debtor over the trademarks “Deccan Chronicle” and “Andhra Bhoomi” amount to a modification/alteration of the approved Resolution Plan by CoC, which is impermissible in law and held that the order of the adjudicating authority, in fact, has transgressed its jurisdiction and accordingly set aside the order dated 14th August, 2019 passed in I.A. No.155 of 2018 under the order impugned dated 2nd September, 2022, that became the subject matter of challenge in appeal before this Court at the instance of the appellant/SRA.

12. Mr. K.V. Viswanathan, learned senior counsel appearing for the appellant submits that NCLAT has misinterpreted Clause 4.3 and Clause 11.12 of the Resolution Plan which categorically state that the appellant holds unfettered and exclusive rights to the

trademarks without any financial implications and with these unforeseen commercial consequences if it only reserves the right to use the trademarks, the Resolution Plan is a non-starter. The NCLT under its order has approved the Resolution Plan by 81.39% of the voting of CoC and the finding recorded by the NCLAT that it amounts to alteration of the conditions of approved Resolution Plan is misconceived and needs to be interfered by this Court.

13. Learned counsel further submits that the NCLAT has erroneously recorded in I.A. No.155 of 2018 seeking declaration of ownership rights over the trademarks filed by the Resolution Professional on its own accord, while ignoring the material on record. Learned counsel has tried to take us to certain minutes of the CoC to justify that what being decided by the adjudicating authority while disposing of I.A. No.155 of 2018 is nothing but approving the Resolution Plan, which in no manner tantamount to alteration/modification of Clause 11.12 of the Plan and this being a manifest error committed by the NCLAT under the order impugned needs to be interfered by this Court.

14. Per contra, Mr. P. Chidambaram, learned senior counsel for the respondents, while supporting the findings returned by the NCLAT under order impugned submits that the Resolution Plan, particularly, with reference to the right to trademarks was only confined to the perpetual exclusive right to use the trademarks, namely, "Deccan Chronicle" and "Andhra Bhoomi" without any financial implications for the purpose of running its business, but while disposing of I.A. No.155 of 2018 by the adjudicating authority, it has altered/modified the Resolution Plan already approved, which was not within its jurisdiction and Section 60(5) or Section 238 of the Code do not permit the adjudicating authority to decide the issue in respect to ownership of trademarks and since declaration of ownership over the trademarks was approved by the adjudicating authority, it is impermissible in law and such a declaration could be claimed by the person aggrieved under Section 134 of the Trademarks Act, 1999. Placing reliance on the judgment of this Court in ***Embassy Property Developments Private Limited v. State of Karnataka and Others***[1], learned counsel submits that

1 (2020) 13 SCC 308

the finding returned by the NCLAT under the order impugned is duly supported by law and needs no interference.

15. We have heard learned counsel for the parties and with their assistance perused the material available on record.

16. Before we take note of the submissions made by counsel for the parties, it will be apposite to take note of the Resolution Plan of Corporate Debtor (Decan Chronicle Holdings Ltd. or DCHL) dated 11th December, 2018 and Clauses 4 (brands of the Corporate Debtor) and 11.12, in particular with which we are concerned in the instant proceedings, as extracted hereinbelow:-

"**4. BRANDS OF THE CORPORATE DEBTOR**

4.1 The Corporate Debtor as of now use the following brands/trademarks for running its business:

a. DECCAN CHRONICLE

b. ANDHRA BHOOMI

c. THE ASIAN AGE

d. FINANCIAL CHRONICLE

e. DECCAN CHARGERS; AND

f. ODYSSEY.

4.2 One or more of the above brands are charged in favour of one or more of Financial Creditors or any other creditors including without limitation the following Financial Creditors:

a. AXIS BANK LIMITED

b. CANARA BANK LIMITED

c. ICICI BANK LIMITED

d. IDBI BANK LIMITED

e. IDFC BANK LIMITED; and

f. KOTAK MAHINDRA BANK LIMITED

4.3 In order to keep the Corporate Debtor as a viable going concern, it is of utmost importance that all the 6 (six) brands as afore-stated, can be used freely by the Corporate Debtor without any hindrance, limitation, restrictions, impediments, demur and obstruction of any nature whatsoever. In order to achieve the same, the above Financial Creditors shall be deemed to have released their right under the relevant security documents with respect to the said brands in favour of the Resolution Applicant on and from the date the above Financial Creditors stand paid in terms of Clause 3 of this Resolution Plan, in consideration of the settlement arrived at by virtue of this Resolution Plan.

11. Prayer to the Adjudicating Authority

It is prayed to the Hon'ble Adjudicating Authority to sanction the Resolution Plan along with following prayers, reliefs, waivers and concessions:

11.1 The Adjudicating Authority to pass necessary orders/give appropriate directions to give effect to the reorganizations of shares capital of the Corporate Debtor as contemplated in Clause 1, including reduction, consolidation and cancellation, to the effect so that:

11.1.1 Upon approval of the Resolution Plan by the Hon'ble Adjudicating Authority, any increase in the Authorised Share Capital of the convertible debt into equity shares of the corporate debtor shall not require any further consent or approval from any shareholder, creditors or any other entity (including without limitation any regulatory and governmental authority) under the Applicable Laws;

11.1.2 At the time of capital reduction the requirement of adding "and reduced" in the name of the corporate debtor stands dispensed with;

11.1.3 The approval of this resolution plan by the adjudicating authority is to be deemed to have waived all the

procedural requirements in terms of Section 66 of the Companies Act, 2013, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016;

11.1.4 The approval of the CoC to the Resolution Plan is to be deemed to be the consent of the financial creditors to the capital reduction and that each of such financial creditors by the Adjudicating Authority under the Applicable Laws;

11.1.5 The cancellation of shares shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI;

11.1.6 The Adjudicating Authority approving the Resolution Plan shall constitute adequate approval for such cancellation of shares and accordingly, no further approval or consent shall be necessary from any other person/Government or Statutory Authority in relation to either or these actions under any agreement, the constitution documents of the Company or under any applicable law;

.....

11.12 **Adjudicating Authority to pass necessary order/give appropriate directions to give effect that the corporate debtor has the perpetual exclusive right to use the brands namely (i) DECCAN CHRONICLES; (ii) ANDHRA BHOOMI; (iii) THE ASIAN AGE; (iv) FINANCIAL CHRONICLE; (v) DECCAN CHARGERS; AND (vi) ODYSSEY without any financial implications for the purposes of running its business;**

....."

17. It may be relevant to note that the Resolution Plan referred to above was approved with majority of 81.39% voting rights of CoC which is in compliance of Section 30(2) and 30(4) of the IBC.

18. When the matter travelled for seeking approval by the adjudicating authority (NCLT), it was conditionally approved by an order dated 3rd June, 2019, subject to the result of I.A. No.155 of 2018 pending before the adjudicating authority in reference to the brand names/trademarks of the Corporate Debtor. It will be apposite to quote the extract of the order passed by the adjudicating authority (NCLT) while granting conditional approval, which is reproduced hereunder:

> "16. The Resolution Applicant has to obtain necessary approval if any required within one year as per Section 31(4) of the Code. The Resolution Applicant further prayed for order/direction to use brand name of the Corporate Debtor. However, an Application was filed claiming exclusive right over the brand name/trademarks of the Corporate Debtor. Subject to the result of the said Application, the Resolution Applicant is entitled to use the brand name/trademark of the Corporate Debtor as stated in Clause 11.12 of the Resolution Plan.
>
> ...
>
> 19. Thus, Resolution Plan dated 11.12.2018 submitted by Resolution Applicant M/s SREI Multiple Asset Investment Trust Vision India Fund, which is approved by members of CoC having 81.39% voting share stands approved subject to reliefs refereed to at paras 12, 13, 14, 15, 16 & 17 stated above as per Section 31(1) of the Code. In other words, I am satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30(4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016 and therefore, the Resolution Plan stands approved and the same is binding on Corporate Debtor, its employees, Members, Creditors, Guarantors and stakeholders involved in the Resolution Plan.
>
> 20. The moratorium order passed under Section 14 shall cease to have effect from today.

> 21. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
>
> 22. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law."

19. That after the conditional approval was granted by the NCLT under order dated 3rd June, 2019, I.A. No.155 of 2018 was later heard by the NCLT and that came to the decided by an order dated 14th August, 2019. While upholding the exclusive right to use the trademarks "Deccan Chronicle" and "Andhra Bhoomi" of the Corporate Debtor, a further declaration was made that the trademarks ("Deccan Chronicle" and "Andhra Bhoomi") belong to the Corporate Debtor/DCHL. Paras 37 and 38 of the order dated 14th August, 2019 passed by the NCLT disposing of I.A. No.155 of 2018, are reproduced hereinbelow:

> "37. Here, the question involved is who is using the Trademarks on the date when CIRP against Corporate Debtor started. The documents filed by Resolution Professional/Applicant herein coupled with subsequent conduct of Corporate Debtor would establish that it is the Corporate Debtor who has the right to use the Trademarks "Deccan Chronicle" and "Andhra Bhoomi" and they belong to Corporate Debtor.
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> 38. The Application is allowed declaring Trademarks "Deccan Chronicle" and "Andhra Bhoomi" belong to Corporate Debtor/DCHL."

20. It may be relevant to note that if we look into the Resolution Plan and particularly Clause 11.12 which has been referred to hereinabove, it is confined to the perpetual exclusive right to use the brands i.e. “Deccan Chronicle” and “Andhra Bhoomi”, etc. by the Corporate Debtor without any financial implications for the purpose of running its business and it was approved by the adjudicating authority under its order dated 3rd June, 2019, but since it was made subject to the result of pending I.A. No.155 of 2018, the adjudicating authority had approved so far as the exclusive rights of the Corporate Debtor to use trademarks namely “Deccan Chronicle” and “Andhra Bhoomi” under its order dated 14th August, 2019, but at the same time, a further declaration was made in para 38 holding that trademarks “Deccan Chronicle” and “Andhra Bhoomi” belong to the Corporate Debtor, which indeed does not reconcile with the Resolution Plan approved by the CoC and later by the adjudicating authority under its order dated 3rd June, 2019.

21. The NCLAT, after taking into consideration the material available on record and Clause 11.12 of the Resolution Plan, in

para 16 of the order of the adjudicating authority (NCLT) returned a finding that the ownership of the Corporate Debtor declared over the trademark after the approval of the Resolution Plan by the CoC, would amount to modification/alteration of the approved Resolution Plan by CoC which is impermissible in law and is not in terms of Section 60(5) of IBC.

22. It has not been disputed by learned counsel for the appellant that once the Resolution Plan stands approved, no alterations/modifications are permissible. It is either to be approved or disapproved, but any modification after approval of the Resolution Plan by the CoC, based on its commercial wisdom, is not open for judicial review unless it is found to be not in conformity with the mandate of the IBC Code.

23. It clearly manifests from the record that the Resolution Plan was approved by the CoC with 81.39% of voting and it complied with the requirement as contemplated under Section 30(2) and 30(4) of the IBC and so far as the exclusive right to use of brand names of “Deccan Chronicle” and “Andhra Bhoomi” is concerned, a

specific reference was made in the Resolution Plan, and to be more particular in Clause 11.12 of the Resolution Plan.

24. It clearly indicates that what was approved by the CoC with 81.39% of its voting is to the effect that the Corporate Debtor has a perpetual exclusive right to use the brands, namely, "Deccan Chronicle" and "Andhra Bhoomi" and it nowhere indicates regarding the right of ownership over the trademarks/brands, "Deccan Chronicle" and "Andhra Bhoomi" of the Corporate Debtor. But the adjudicating authority while adjudicating application I.A. No.155 of 2018, apart from upholding the exclusive right to use the trademarks, "Deccan Chronicle" and "Andhra Bhoomi", made a further declaration that trademarks belong to Corporate Debtor/DCHL under its order dated 14th August, 2019, which, in our view, was a modification/alteration in the approved Resolution Plan which indisputably is impermissible in law and this what the NCLAT in para 32 of its impugned order has observed as under:

> "32. In view of the law declared by Hon'ble Apex Court, applying the same to the present appeal, we have no hesitation to conclude that right or ownership, if any, claimed after approval of Resolution Plan by CoC is extinguished and if ownership of Corporate Debtor is declared over the Trademarks, it would amount to modification or alteration of approved Resolution Plan by CoC which is impermissible. Hence, the order of Adjudicating Authority to the

extent of declaring the ownership of Corporate Debtor over the Trademarks "Deccan Chronicle" and "Andhra Bhoomi" is illegal and the Adjudicating Authority transgressed the jurisdictional limits. Consequently, the order passed in I.A. No.155/2018 dated 14th August, 2019 is liable to be set aside."

25. This Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Another***[2], had held as under:

221. The residual powers of the adjudicating authority under IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12-A IBC and Regulation 30-A of the CIRP Regulations and in the situations recognised in those provisions. Enabling withdrawals or modifications of the resolution plan at the behest of the successful resolution applicant, once it has been submitted to the adjudicating authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days' outer limit of the CIRP under Section 12(3) IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the corporate debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the adjudicating authority, irrespective of the content of the terms envisaged by the resolution plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a downgraded resolution amount of the corporate debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of IBC.

2 (2022) 2 SCC 401

> 222. If the legislature in its wisdom, were to recognise the concept of withdrawals or modifications to a resolution plan after it has been submitted to the adjudicating authority, it must specifically provide for a tether under IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the corporate debtor may be sent into liquidation by the adjudicating authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy."
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> [emphasis supplied]

26. In other words, in terms of the approved Resolution Plan, it was the perpetual exclusive right to use the brands, namely, "Deccan Chronicle" and "Andhra Bhoomi", by the Corporate Debtor which were available to SRA i.e. the appellant herein and once it has been approved by the adjudicating authority, certainly the right to exclusive use of the trademarks belonging to the Corporate Debtor, on being approved by the adjudicating authority, is always available to the SRA i.e. the appellant, but not the ownership rights of the trademarks of the Corporate Debtor.

27. Consequently, the appeal is devoid of substance and accordingly dismissed. No costs.

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

<u>C.A. No.8323 of 2022</u> (Vision India Fund - SREI Multiple Asset Investment Trust v. IDBI Bank and Others)

29. Mr. K.V. Viswanathan, learned senior counsel, made a limited submission that since a finding has been recorded in para 28 of the judgment impugned dated 2nd September, 2022 that the Resolution Plan stands approved by the adjudicating authority and which is the subject matter of challenge at the instance of the appellant in the connected appeal that may affect his right and for this limited purpose, he has filed the instant appeal.

30. The apprehension shown by the appellant's counsel is misplaced.

31. In the light of the judgment passed by us today in Civil Appeal No.1706 of 2023, the present appeal has become infructuous.

32. The appeal is dismissed as having become infructuous.

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

<u>C.A. No.8132 of 2022</u> (IDBI Bank v. Mamta Binani & Others)

34. We have heard the counsel for the parties.

35. The appellant is a member of Committee of Creditors and a financial creditor of Deccan Chronicle Holdings (Corporate Debtor) having 6.71% of the total outstanding admitted financial debt against the Corporate Debtor and after compliance of Section 30(3), the Resolution Plan has been approved by the CoC by a majority of 81.39% votes.

36. It has come on record that the appellant admittedly did not challenge the approved Resolution Plan before the appellate authority and once the Resolution Plan was approved by the CoC and by the adjudicating authority (NCLT), that has rightly non-suited the claim of the appellant, as prayed for under the order impugned dated 2nd September, 2022.

37. We find no reason to interfere in the order impugned. The appeal is accordingly dismissed. No costs.

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

.....J.
(AJAY RASTOGI)
.....J.
(BELA M. TRIVEDI)

NEW DELHI;
MARCH 17, 2023.