

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.165/2025
(IA No.450/2025)

In the matter of:

MRS.G.V. MARRY

A Personal Guarantor to Brg Energy Ltd.
Address: Plot No.17, Free Zone Villa Greens,
Gandipet, Cbit Post, Hyderabad - 500 075.

... APPELLANT/PERSONAL GUARANTOR

V

UNION BANK OF INDIA

Stressed Assets Management Branch
Address: 3rd Floor, Andhra Bank Building,
Sultan Bazar, Koti
Hyderabad-500095, Telangana

...RESPONDENT NO. 1/FINANCIAL CREDITOR

SHRIRAM FINANCE LIMITED

Address: Sri Towers, Plot No 14-A, South Phase,
Industrial Estate, Guindy Chennai- 600032

...RESPONDENT NO. 2/FINANCIAL CREDITOR

SECURITIES AND EXCHANGE BOARD OF INDIA

Address: Southern Regional Office,
Overseas Tower 7th Floor 756-L Anna Salai,
Chennai-600002

...RESPONDENT NO. 3

Present :

For Appellant : Mr. M.L. Joseph, Advocate
For Respondent : Mr. Rahul Unnikrishnan, Advocate for R3

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

In the instant Appeal, the Appellant puts a challenge to the impugned order of Ld. NCLT Hyderabad on 23.01.2025 in Company Petition CP(IB)No. 214/122/HDB/2022, wherein Ld. Adjudicating Authority while admitting the applications of the Appellant preferred under Section 122(1) of the I & B Code, 2016, passed orders under Section 126 of the Code, declaring her as 'Bankrupt', and ordered for subsequent actions to be undertaken as per the Code, Subject to the observations that penalty imposed by SEBI, being pecuniary in nature, will come within the meaning of 'Fine' and will be treated as 'excluded debt' under Section 79(15)(a) of the I & B Code, 2016, and thus outside the scope of Bankruptcy proceedings. The Appellant has filed this appeal aggrieved by the above observation.

2. The Appellant in the instant Company Appeal claims her status as to be that of the Personal Guarantor to the financial assistance extended to BRG Energy Limited, being a company, which was incorporated in the year 2006 (25.07.2006) under the provisions of the Companies Act, 1956, with its registered office situated in Hyderabad. It is the case of the Appellant that she, in her capacity as a Personal Guarantor, had filed an application for bankruptcy under Section 122(1) of I & B Code, 2016, to be read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019, (here and after to be called as the Rules of 2019). The basis of filing of the petition under Section 122(1) of the I &

B Code, 2016, was on the ground of failure of the Personal insolvency process by virtue of an order of Ld. Adjudicating Authority dated 16.08.2023 under Section 114(1) of the Code. The brief facts are that the Appellant being the Personal Guarantor, had filed a company petition, being CP(IB)/328/94/HDB/2021, by invoking the provisions contained under Section 94(1) of the I & B Code, 2016, to be read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, seeking initiation of the Insolvency Resolution Process, for an amount of Rs. 1,26,39,01,667.50/- (including interest and penalty), due to Respondent No. 1 & 2, being the Financial Creditors in said Company Petition, that the Learned Adjudicating Authority, by an order dated 13.09.2020, appointed the Resolution Professional for the Personal Guarantor, and based on the report, filed under Section 99 of the Code, by the Resolution Professional on 21.10.2022, admitted the Petitioner and ordered initiation of Resolution Process on 13.12.2022, that the Personal Guarantor in consultation with the Resolution Professional prepared the repayment plan, thereby proposing to re-structure the debts as per the provisions of Section 105 of the I & B Code, 2016, and that the Resolution Professional prepared a report in terms of the provisions contained under Section 106 of the I & B Code, 2016, and submitted that same along with the said repayment plan, before the Ld. Adjudicating Authority by way of IA No. 258/HDB/2023. However, the Committee of Creditors in its 3rd meeting rejected the repayment plan with 100% voting rights

on 23.02.2023 and consequently, the Resolution Professional filed an application being IA No. 1318/2023, under Sections 113 & 114 of the I & B Code, 2016, seeking an order to draw the bankruptcy proceedings as against Personal Guarantor Appellant herein. On basis of the report of the meeting of CoC as filed by Resolution Professional under Section 112 of the Code, the Learned Adjudicating Authority, by an order of 16.08.2023, rejected the repayment plan and permitted the Financial Creditor to file an application for initiation of the bankruptcy process as per the provisions contained under the I & B Code, 2016.

3. Consequent to passing of the aforesaid order under Section 114(1) of the Code, the Appellant filed CP (IB) No. 214/122/HDB/2023, by invoking the provisions contained under Section 122 of the I & B Code, 2016, for initiation of the bankruptcy process. As the petition stipulated satisfied the terms and conditions which was required to be fulfilled therein, the Ld. Adjudicating Authority in the aforesaid proceeding of CP (IB) No. 214/122/HDB/2023 passed an order on 23.01.2025 whereby the Appellant's application under Section 122 of the I & B Code, 2016, was allowed and the proceedings of bankruptcy were directed to be carried. On the first reflection, since the application under Section 122 of the I & B Code, 2016, as preferred by the Appellant for initiation of the bankruptcy proceedings stood allowed, hence as a matter of fact, under law no appeal would lie as against an order passed in her favor. But the Ld. Counsel for

the Appellant has drawn a distinction while challenging part of the order as contained in para 16 of the order, which is extracted hereunder: -

“The penalty imposed by R3/SEBI, being pecuniary in nature, will come within the meaning of ‘fine’. This is to be treated as the “excluded debt” under Section 79(15)(a) of IBC and thus outside the scope of the bankruptcy proceedings.”

4. The grievance of the Appellant is against, the observation made in the order, which exempts the penalty as imposed by Respondent No. 3, i.e., the Securities and Exchange Board of India (SEBI) from the scope of bankruptcy proceedings, holding that it will fall to be within an ambit of the definition of ‘**fine**’, and hence, has to be excluded in the light of the provisions contained under Section 79(15)(a) of the I & B Code, 2016. It is this part of the impugned order, which has been challenged by the Appellant herein, in the instant company appeal. In order to better appreciate the argument extended by the Ld. Counsel for the Appellant, a reference to Section 79(15)(a) of the I & B Code, 2016, becomes inevitable to be referred to, in order to meet the argument as to “*whether the penalty could be treated as to be a fine? and whether such type of a penalty, if it is treated to be a fine, it could at all be excluded from being brought within the scope of the bankruptcy proceedings under Section 122 of the I & B Code, 2016*”.

5. Relevant part of Section 79(15)(a) of the I & B Code, 2016, extracted hereunder: -

“79. Definitions.- In this Part, unless the context otherwise requires,—

- (1)*
- (2)*
- (3)*
- (4)*
- (5)*
- (6)*
- (7)*
- (8)*
- (9)*
- (10)*
- (11)*
- (12)*
- (13)*
- (14) “excluded assets” for the purposes of this part includes—*

- (a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation;*
- (b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;*
- (c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;*
- (d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and*
- (e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed;*

(15) “excluded debt” means—

- (a) liability to pay fine imposed by a court or tribunal;*

- (b) *liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;*
- (c) *liability to pay maintenance to any person under any law for the time being in force;*
- (d) *liability in relation to a student loan; and*
- (e) *any other debt as may be prescribed;*

- (16)
- (17)
- (18)
- (19)
- (20)
- (21)
- (22)

6. Section 79 (15)(a) of the I & B Code, 2016, as extracted above defines an excluded debt to mean, “**Liability to pay fine imposed by a court or tribunal**”. Thus, the liability of payment of fine has been observed to be “**excluded**” to be brought within the ambit of the bankruptcy proceedings to be drawn under Section 122 of I & B Code, 2016.

7. However, it is being argued by the Ld. Counsel for the Appellant is that the term ‘fine’ as contemplated under Section 79 (15)(a) of the I & B Code, 2016, which provides for an exclusion, should not have been permitted to cover the penalty imposed by SEBI in the instant case because, it runs contrary to the decision taken by the Hon’ble High Court, of Telangana in a proceeding, which was drawn by way of **Writ Petition No. 34761/2021**. The proceedings of Writ Petition No. 34761/2021, were the proceedings drawn by as many as six petitioners as against the Security Exchange Board of India (SEBI), the Recovery

Officer and the Deputy General Manager of Security Exchange Board of India (SEBI). The said writ petition was preferred under Article 226 of the Constitution of India, seeking a direction by way of a writ of mandamus, in a nature of a declaration that, the action of the Respondents in issuing the impugned demand notice dated 23.11.2021 (as under consideration therein) on all the petitioners including late Mr. Anthony Reddy, was illegal, arbitrary and violative of law, and consequently quashing of the recovery proceedings was also sought for.

8. At this stage, we feel it apt to observe that the judgment rendered by the Ld. Single Judge of the Hon'ble High Court of Telangana on 19.09.2023, would be confined to be read in the context of a demand notice issued on 23.11.2021 under the provisions of the Securities and Exchange Board of India Act, 1992 and whatsoever finding that has been recorded therein by the Ld. Single Judge of the Hon'ble High Court, has to be confined to be read in context of the subject demand notice issued by SEBI which was under consideration before the Ld. Single Judge of the Hon'ble High Court of Telangana. The Ld. Single Judge had proceeded to decide the matter vide judgment dated 19.09.2023, and in accordance with the findings which were recorded therein, the Ld. Single Judge came to a conclusion that as to whether the I & B Code, 2016, will override the provisions of the Securities and Exchange Board of India Act, 1992, and the question as to what will be the impact of the moratorium that has been passed in respect of the petitioners therein. While dealing with the aforesaid question, it

was observed that as far as the implication of exclusion of debt under Section 79(15)(a) of the I & B Code, 2016, or a moratorium orders, if any, passed under the provisions of the I & B Code, 2016, they will have no application to the amount that is sought to be recovered under Section 28A of the Securities and Exchange Board of India Act, 1992. Meaning thereby the ratio determined was in the context of demand notice under Section 28A of Securities and Exchange Board of India (SEBI) Act, 1992, and it cannot be read beyond the subject which was under consideration before the Hon'ble Single Judge, of the Hon'ble High court.

9. Based upon the aforesaid analogy, Hon'ble Single Judge came to the conclusion that, in terms of Section 79(15)(a) of the I & B Code, 2016, the liability to pay a fine imposed by a Court or a Tribunal is included in the definition of the '**excluded debt**', and as such, the argument extended for exclusion, was not accepted by the Ld. Single Judge, in the light of the provisions contained under Section 238 of the I & B Code, 2016, which is extracted hereunder: -

“238. Provisions of this Code to override other laws.—
The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

10. Section 238 of the I & B Code, 2016, which prescribes for that the provisions of this Code, since being part and parcel of a special statute, having a

different statutory objective to be met, has been given an overriding effect over the general laws. And that too, in the context of the instant matter, where the writ petition was pertaining to, the recovery proceedings being carried under Section 28A of the Securities and Exchange Board of India Act, 1992, which will not at all cloud the proceedings under Section 122 of the I & B Code, 2016, for the purposes of initiation of the bankruptcy proceedings, if it is to be read in harmony with the provisions contained under Section 238 of the I & B Code, 2016.

11. Consequentially, the aforesaid view taken by the Ld. Single Judge was in context of the various authorities as referred to, in the judgment of the Ld. Single Judge as to, what implication would the provisions contained under Section 238 of the I & B Code, 2016, would have qua the proceedings which are being held under the Securities and Exchange Board of India Act, 1992. Ultimately, the Ld. Single Judge in his decision of 19.09.2023 observed that the “**penalty**” imposed and sought to be recovered from the petitioner, by issuing the recovery certificate under Section 28A of the Securities and Exchange Board of India Act, 1992, will fall to be within the definition of fine, and therefore it will be come under the category of ‘excluded debt’ under Section 79(15)(a) of the I & B Code, 2016, and therefore, the moratorium imposed under Section 96 of the I & B Code, 2016, will have no application. This judgment of the Ld. Single Judge, as rendered on 19.09.2023, was carried in a writ appeal, being **Writ Appeal No. 218/2024**, which was decided by the division bench of the Hon’ble High Court of Telangana,

whereby, the Division Bench vide its judgment, as rendered on 22.03.2024, the following observations were made: -

“The issue whether the impugned levy is a fine or a penalty is also not required to be decided in the facts and circumstances of the case and we keep the same open to be adjudicated in an appropriate proceedings.”

12. It is in the light of the observation made by the Division Bench, that the question was left open to be decided, whether the impugned levy of fine or a penalty in the light of the provisions contained under Section 28A of the Securities and Exchange Board of India Act, 1992, whether it will be falling, to be excluded under Section 79(15)(a) of the I & B Code, 2016? It was an issue which was left to be decided in an, ‘**appropriate proceedings**’. ‘Appropriate proceedings’ therein, was a very wide connotation as expressed by the Division Bench as to, in which proceedings the issue of levy being a fine or a penalty would be decided so as to, decide whether such levy will fall into the category of ‘excluded debt’ under Section 79(15)(a) of the I & B Code, 2016. In view of a clear mandate as prescribed by the statute itself, once a special statute creates a bar and does not include within itself the debts in the shape of a fine, it has to be excluded as a debt, the same cannot be read in other way than what was intended by the legislature. Thus the fines would be falling within the trapping of exclusion contemplated under Section 79 (15)(a) of the I & B Code, 2016.

13. In fact, during the course of the argument, the Ld. Counsel for the Appellant has concentrated his argument, qua the finding which were recorded in Para 16 of the impugned judgment, in the light of the application of Section 79(15)(a) of the I & B Code, 2016, because, the rest of the impugned order passed under Section 122 of the I & B Code, 2016, was on the request of the Appellant herself for initiation of the bankruptcy proceedings, which obviously was in her favor. In that eventuality, the modulation of relief of the Appellant ought to have been questioning only a part of the impugned order. However, the relief modulated in this company appeal, since it gives a challenge to the impugned judgment in its entirety, the appeal itself is misconceived, owing to the manner in which the relief has been modulated.

14. In view of the clear expression of law, and for the reasons above, we are of the view that, the part of the observation made in the impugned judgment, limited to the extent of the finding as recorded in para 16, treating the penalty levied by SEBI to be a fine which will then become an ‘excluded debt’ to be kept outside the scope of the bankruptcy proceedings, was well in consonance to the provisions of the statute itself, and it cannot be said to be arbitrary or contrary to the very intention of law. The Ld. Counsel for the Appellant, while putting a challenge to the finding recorded in para 16 of the impugned order dated 23.01.2025, has referred to a judgment as rendered by the Hon’ble Apex Court in **Civil Appeal No. 4048/2024, Saranga Anilkumar Aggarwal V. Bhavesh**

Dhirajlal Sheth and Others in its Para 32 of the said judgment is extracted hereunder: -

“32. The respondents have rightly contended that Section 94(3) of the IBC explicitly limits the scope of the moratorium by carving out exceptions for certain categories of debts. Section 79(15) of the IBC defines “excluded debts” to include liabilities arising from fines imposed by courts or tribunals, damages for negligence or breach of obligation, maintenance liabilities, student loans, and other prescribed debts. This classification is based on the nature of such obligations, which are either statutory, penal, or personal in nature, and therefore, they do not form part of the insolvency estate that can be discharged under the resolution process.”

15. First of all, this judgment will be of no recuse to the Appellant for the reason being that, it was emanating from the proceedings of a judgment rendered by the National Consumer Disputes Redressal Commission, wherein the penalties were imposed, and which was the subject matter of consideration in that appeal. Any observation which were made pertaining to the implication of Section 79(15)(a) of the I & B Code, 2016, particularly as referred to by the Ld. Counsel for the Appellant would be limited to be read in the context of the finding recorded in Para 32, which clearly states that Section 94(3) of the I & B Code, 2016, explicitly limits the scope of moratorium by carving out an exception for the categories of debt as detailed under Section 79(15) of the I & B Code, 2016. The ratio fully supports the decision taken by Ld. Adjudicating Authority in treating the penalty imposed by SEBI as ‘excluded debt’, and hence it will not come to the rescue of the Appellant. In fact, the Hon’ble Apex Court in the said

judgment has explicitly held that penalties imposed by the National Consumer Disputes Redressal Commission are regulatory in nature and arise due to non-compliance with Consumer Protection Laws, and hence the moratorium under Section 96 of the I & B Code, 2016, does not extend to them. The penalty imposed by SEBI will be similar, being of a regulatory nature, and hence will have to come within Section 79(15) of the Code. Since, the observation made in Para 16 of the impugned order was in the light of the statutory provisions contemplated under Section 79(15)(a) of the I & B Code, 2016, treatment of penalty imposed by SEBI as 'excluded debt' cannot be said to be illegal in any manner whatsoever.

16. Hence, this appeal lacks merit, and the same is accordingly, 'dismissed'. All 'Interlocutory Application' pending, if any, would hereby stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/04/2025
SN/MS