

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insol.) No. 120 of 2017

IN THE MATTER OF:

PEC Ltd. Through Shri Indra Vikram Singh ...Appellant

Vs.

M/s. Sree Ramakrishna Alloys Ltd. ...Respondent

Along with Company Appeal (AT) (Insol.) No. 121 of 2017

PEC Ltd. Through Shri Indra Vikram Singh ...Appellant

Vs.

M/s. Sree Gangadhar Steels Ltd. ...Respondent

Present: For Appellants: - Mr. Rajesh Kumar Gautam, Mr. Bhumit Solanki and Ms. Khusboo Aggarwal, Advocates.

ORDER

04.08.2017- The appellant preferred two separate applications under Section 7 of the I & B Code for initiation of corporate insolvency resolution against two separate "Corporate Debtors". Learned Adjudicating Authority in both the cases passed similar orders both dated 29th July 2017 and adjourned the case for 29th August 2017, one of which reads as follows: -

“2. The Petition is filed by PEC, the Financial Creditor under Section 7 of IBC r/w Rule 4 of IBC (Application to Adjudicating Authority) by seeking to initiate a Corporate Insolvency Resolution Process in the matter of m/s Sree Ramakrishna Alloys Ltd. under IBC 2016. The Learned Counsel for the Petitioner submitted they have extended loan as Financial Creditor by way of ILC to the tune of Rs. 10,35,95,033/- being Principal amount plus interest Rs. 4,80,31,8754/- total amount is Rs. 15,16,26,907/-.

3. Shri V.K.Sajith, Learned Counsel for the Petitioner submits that the matter is adjourned from time to time at the request of the Learned Counsel for the Respondent on the ground that the issue was going to be resolved now. Hence, the Learned Counsel for the Petitioner insist to initiate Resolution process as the matter is pending for a long time and also the amount involved is huge amount for the Company.

4. Shri Rajesh Bohra, Learned Counsel for the Respondent submitted that he will file a memo stating the modalities of payment of

outstanding dues by serving a copy to the other side.

5. In view of the facts and circumstances of the case and because employment of several employees is at stake, we are not inclined to take a decision to admit the case at present and wanted to see the issue settled at the earliest possible time. The Learned Counsel for the respondent is directed to strictly adhere to the terms and conditions of his memo and ensure the issue is resolved well before the next date of hearing. Post the case on 29.08.2017.”

Learned Counsel for the appellant submits that Learned Adjudicating Authority, instead of giving time ought to have looked into the records to find out whether the records are complete or not and thereafter, the authority was required to pass appropriate order admitting the application or rejecting the same, as the case may be. However, he accepts that Learned Adjudicating Authority has only given one opportunity to ‘Corporate Debtors’, as to whether “Corporate Debtors” intends to satisfy the appellant, as otherwise admission of the case may affect a large number of employees.

As per Rule 7 of Insolvency and Bankruptcy (Adjudicating Authority) Rules 2016, an application filed under Section 7 or 9 can be withdrawn prior to admission of the case in effect application, which

means after admission of an application, an 'Operational Creditor' or "Financial Creditor" cannot withdraw the application.

In the aforesaid circumstances, the Adjudicating Authority, if granted some time to the "Corporate Debtor(s)", we are not inclined to interfere with the impugned order(s) both dated 29th June 2017, with liberty to appellant to approach the appropriate Forum in case the applications are not admitted or if the appellant is not satisfied. We hope and trust that Learned Adjudicating Authority, Hyderabad, will not grant further time to any of the parties and decide the case(s) either way, there being a time frame given for admission or rejection of an application.

Both the appeals stand disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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