

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1119 of 2020

[Arising out of Order dated 29th September, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.487 of 2020 in CP(IB) No.172 of 2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Kotak Mahindra
Bank Limited
27BKC, C27,
G Block,
Bandra Kurla
Complex,
Bandra (East)
Mumbai 400051

Applicant

Appellant

Branch Office at
Zone 2, 4th Floor,
Infinity Park,
Off. General A.K.
Vaidya Marg,
Malad (East),
Mumbai 400 097

Vs.

1. Committee of
Creditors
of Jai Hind Projects
Limited, 3rd Floor,
Venus Atlantis,
Nr. Reliance
Petrol Pump,
Mr. Prahladnagar
Garden,
Anandnagar Road,
Vejalpur,
Ahmedabad,
Gujarat 380015

Respondents 1 to 4

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2. Shri Parthiv
Parikh,

Resolution Professional,
 Jai Hind Projects Ltd.
 3rd Floor,
 Venus Atlantis,
 Nr. Reliance
 Petrol Pump,
 Mr. Prahladnagar
 Garden,
 Anandnagar Road,
 Vejalpur,
 Ahmedabad,
 Gujarat 380015

3. Mr. Premnaaryan
 Ramanand
 Tripathi,
 Interim Resolution
 Professional
 1449/1, 1st Floor,
 RMG Floor,
 Mithakali Gam,
 Navrangpura,
 Ahmedabad,
 Gujarat – 380006

4. Parixit Irrigation
 Limited
 214/1-214/2,
 Virpura Bus Stop,
 P/O Iyava Taluka
 Sanand
 Ahmedabad
 Gujarat – 382170

For Appellant: Shri Gulshan Kr. Sachdev, Advocate

For Respondents: None

ORDER
(Virtual Mode)

23.12.2020 1. Heard Counsel for the Appellant. The Appellant claims to be Secured Creditor/Financial Creditor of L&T Finance under deed

of assignment which was dated 29th March, 2019. The Appellant claims that the Appellant has to recover dues from the Corporate Debtor – Jai Hind Projects Ltd. The learned Counsel referred to Page – 271 of the Appeal stating that e-mail dated 18th April, 2020 was sent on behalf of the Appellant to the Interim Resolution Professional (IRP) – Mr. Premnarayan. This was the first mail written. The Counsel submits that IRP was informed that CIRP has been initiated and L&T Finance Ltd. is one of the Financial Creditors. It was informed that L&T Finance Ltd. has assigned the loan pertaining to the Corporate Debtor – Jai Hind Projects Ltd. in favour of the Appellant. The IRP was asked to confirm details of claim, if any, filed by L&T Finance against Jai Hind Project Ltd.

2. In response, it is stated that the IRP informed by e-mail dated 18th April, 2020 to the Counsel for Appellant that Mr. Parthiv Parikh –Insolvency Professional has taken over the charge of Resolution Professional with effect from 23rd January, 2019 and the Appellant may contact the Resolution Professional. It is stated that then an e-mail was sent on 19th April, 2020 (Page 269 and 270) to Mr. Parthiv Parikh informing that L&T has assigned loan to the Appellant and to confirm details of claim, if any, filed by L&T Finance against the Corporate Debtor in the insolvency proceedings. Counsel states that in response, the RP sent e-mail on 22nd April, 2020 which reads as under:-

“On Wed, Apr 22, 2020 at 11:25 AM Parthiv Parikh

<parthiv.parikh@rbsa-advisors.com> wrote:

Dear Sir,

With reference to your trailing mail, we have to inform you that as per our information “L & T Finance Ltd” not in the list of admitted financial claims and thus is not part of CoC of M/s Jaihind Projects Ltd which is under CIRP.

Please note that the resolution plan has already been orally approved but the written orders are awaited.

Right now we are under lockdown and all our team members are working from home and as a result we don't have access to the complete records with respect to the CIRP of the said corporate debtor including filing of any claim by “L & T Finance Ltd”

With regards,

Parthiv Parikh

RP – Jaihind Projects Ltd”

3. The learned Counsel submits that in this e-mail, it was informed by the RP that the Resolution Plan has already been orally approved but written Orders are awaited. It is stated that the record, however, shows that Resolution Plan was already approved on 19th March, 2020 which is clear from document at Page – 111 (Annexure A-4 - Order in I.A. No.593 of 2019 in CP(IB) No.172 of 2018). Counsel states that this shows the conduct of the Resolution Professional. The Counsel further submits that the Hon'ble High Court of Judicature at Bombay had passed Orders on 4th June 2018 in Chamber Summons No.827 of 2017 in Execution Application No.52 of 2018 “L&T Finance Vs. Jaihind Projects” against the Corporate Debtor that they will not further alienate, part with possession or create third party rights on their properties. Counsel states that this Order was suppressed by Resolution

Professional from the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Court 2).

4. Counsel submits that the Appellant filed claim of the Appellant before the RP on 15th June, 2020 which can be seen at Annexure A-14 (Pg. 240).

5. It is stated that the Appellant filed IA No.487 of 2020 before the Adjudicating Authority to review the Order dated 19th March, 2020 by which Resolution Plan was approved but by the Impugned Order, the Adjudicating Authority has rejected the Application.

6. The learned Counsel for the Appellant submits that the RP has not been fair in communication as the RP did not inform that the Resolution Plan was already approved. Counsel refers to another Order passed in I.A. 562 of 2020 in IA 782 of 2019 in CP(IB)172/NCLT/AHM/2018 filed at Annexure – C dated 09.09.2020 (Volume – 2 Page – 275) to submit that the RP in another incident had entered into settlement agreement when Resolution Plan was pending which has been criticised in that Order. It is stated that the said I.A. is still pending before Adjudicating Authority.

7. Considering the fact that the Resolution Plan was already approved on 19th March, 2020 and the Appellant filed claim on 15th June, 2020, keeping in view provisions of IBC (Insolvency and Bankruptcy Code, 2016), we do not think that it is a matter where things can be undone. The proceedings for CIRP are proceedings which are initiated with Public Notice and Resolution Plan takes its own time to get passed. The claims are to be filed in response to Public Notice which RP/IRP issued. In such contingency, after the

Resolution Plan has already been approved in March, 2020, fresh claim cannot be entertained in June, 2020. As regards the Orders passed by the Hon'ble High Court in June, 2018 when Section 7 Application was admitted on 2nd November, 2018, as per the provisions of Section 14 moratorium would get invoked. The party aggrieved is required to follow the procedure under the provisions of IBC. The Appellant appears to have filed claim after much delay and we do not find that the Appellant can be granted the relief as is being sought.

8. There is no merit in the Appeal. The Appeal is dismissed without admitting the same.

[Justice A.I.S. Cheema]
Member (Judicial)

[V.P. Singh]
Member (Technical)

rs/md