

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 406 of 2019

[Arising out of order(s) dated 6th March, 2019 passed by Adjudicating Authority, National Company Law Tribunal, Division Bench, Chennai in MA/182/2019 in CP/632/IB/2017]

IN THE MATTER OF:

Ajay Agarwal
Block I, 2nd Floor,
7/3, Madley Road,
T Nagar,
Chennai- 600 017

.. Appellant

Versus

- 1. Shantanu T. Ray**
Resolution Professional,
M/s AML Steel and Power Limited
E-10A, Kailash Colony,
New Delhi- 110 048
- 2. Edelweiss Asset Reconstruction Company Ltd.**
Edelweiss House,
Off. CST Road, Kalina,
Mumbai- 400 098
- 3. Asset Reconstruction Company (India) Ltd.**
10th Floor, The Ruby,
29, Tulsi Pipe Road, Dadar West,
Mumbai- 400 028
Maharashtra
- 4. DD International Pvt. Ltd.,**
C/o Tata Nagar Cold Storage Co. Pvt. Ltd.
N. Road East, Near Chunababa Mazar,
Bistupur, Jamshedpur
Purba Singhbhum
Jharkhand – 831 001

.. Respondents

Present:

For Appellants: Mr. Rajesh Bohra, Advocate.

For Respondent: Mr. Anant Merathia, Advocate for R.P.
Mr. Mansumyer Singh and Mr. Mansij Arya,
Advocates for successful Resolution
Applicant.

J U D G M E N T

25th October, 2019

A.I.S. Cheema, J:

The Appellant- Promoter and Director of suspended Board of M/s AML Steel & Power Ltd. has filed this appeal against the order passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench) Chennai on 6th March, 2019 rejecting the application asking direction to Respondent Nos. 2 & 3 to consider 'One Time Settlement' (in short '**OTS**') proposal. The Adjudicating Authority considered the application and found that 'Committee of Creditors' (in short '**CoC**') had already passed resolution approving the Resolution Plan of Respondent No. 4 – M/s DD International Pvt. Ltd. and the Resolution Plan had been filed before the Bench for approval.

2. The Appellant claims that Appellant had given OTS offer under heading of Section 12-A of Insolvency and Bankruptcy Code, 2016 (In short '**IBC**') on 28.02.2019 while Resolution Plan was approved on 01.03.2019 and so the Adjudication Authority wrongly held that CoC had already approved the Resolution Plan to reject the application of the Appellant. The Appellant claimed that even earlier he had given Resolution Plan which was not considered by the Respondent(s).

3. Respondent No. 1- Resolution Professional has submitted that the 'Corporate Insolvency Resolution Process' (in short '**CIRP**') started on 12.03.2018. On 02.01.2019 Resolution Plans received were placed before the CoC which included the plan of the Appellant. Other plans were

opened except the Resolution Plan of the Appellant as he was disqualified under Section 29-A of IBC. On 21.02.2019, Resolution Plans which were processed, were placed before the CoC including that of Respondent No. 4. On 26.02.2019 CoC found Respondent No. 4 successful bidder subject to submitting revised Resolution Plan including all changes mutually agreed. Respondent No. 4 submitted revised Resolution plan on 28.02.2019 and the same was adopted by CoC on 01.03.2019. The application of the Appellant was rejected by the Adjudicating Authority on 06.03.2019 (impugned order) and the Resolution Plan was accepted by the Adjudicating Authority on 27.06.2019 and the same has been implemented. The Resolution Professional has given all other particulars also with relevant dates.

4. Respondent Nos. 2 & 3, who formed the CoC and who were the assignees of the loan taken by the Corporate Debtor (M/s AML Steel & Power Ltd) have also appeared and opposed the appeal. They accepted and state that on 28.02.2019, the Appellant sent an e-mail which was only brief outlined OTS proposal and they were not inclined to consider the proposal as Appellant wanted personal and corporate guarantees released which were held by this Respondents by offering a few crores more than the amount of settlement offered by Resolution Plan. They refer to Note(s) at page 212 of Appeal to claim why the proposal was not acceptable. There were various other reasons also as stated by them in their Counter Affidavit.

5. Respondent No. 4, successful Resolution Applicant has also appeared and opposed the Appeal claiming that the OTS proposed was frivolous and incomplete and the Applicant/Appellant had not presented any actual proposal or Plan and it was only an effort to stall the process and send the Corporate Debtor into liquidation as the period of CIRP was expiring on 07.03.2019.

6. We have heard Counsel for both the sides. Various developments noticed in the CIRP have been given in detail by Respondent No. 1. Keeping in view the details as given by Respondent No. 1 in Written Submissions (diary No. 15034). It is apparent that the Appellant, had not put in the best efforts in time if really the Appellant wanted to settle with the creditors of the Corporate Debtor. Appellant sat on the hedge till the proposal of the Resolution Applicant was on the verge of being approved and CIRP was in its last stage as the permissible period to avoid liquidation was ending on 07.03.2019. The last minute rush by sending in an e-mail in the evening at 07:08 p.m. on 28.02.2019 cannot be said to be bonafide offer or bonafide effort to take the benefits of Section 12A of IBC. The offer which was sent with e-mail as at Annexure-11, is apparently and admittedly an incomplete proposal and even makes a note that the detailed proposal would be submitted after getting principal approval of the creditors. This document cannot be said to be in compliance with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 read with Form FA of the Regulations. When the CoC was to meet on 01.03.2019 to consider

revised Resolution Plan of Respondent No. 4 which was in compliance of the CoC proceeding dated 26.02.2019, sending of such e-mail as Annexure-A-11 at 7:08 p.m. on 28.02.2019 cannot be treated as a bonafide effort to take benefit of Section 12A of IBC. The Respondents are rightly arguing that it was only an effort to create obstruction in the process of Resolution so as to push the Corporate Debtor in process of liquidation. Again when Members of CoC are opposing such offer, sending back the matter to CoC will serve no useful purpose.

7. Looking into the facts of the matter and developments in the CIRP, we do not find any reason to interfere with the impugned order. When the Adjudicating Authority observed that CoC has already passed a resolution approving Resolution Plan, the Adjudicating Authority was merely taking note of further development when the matter came up before it. There is no error of fact recorded in the impugned order.

8. There is no substance in the appeal. The appeal is rejected with costs of Rs. 50,000/- to be paid by the Appellant to each of the four Respondents (Total Rs. 2,00,000).

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

(Kanthi Narahari)
Member(Technical)

AKC