

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 907 of 2019

IN THE MATTER OF:

XL Energy Ltd.

...Appellant

Versus

**Khandoba Prasanna Sakhar
Karkhana Ltd. & Ors.**

...Respondents

Present:

**For Appellant : Mr. Abhijit Mittal and Ms. Nandini Aishwarya,
Advocates**

For Respondents : Mr. Anandh K., Advocate for Karad Urban Bank

O R D E R

11.09.2019 In the ‘Corporate Insolvency Resolution Process’ against ‘Khandoba Prasanna Sakhar Karkhana Ltd.’ (Corporate Debtor) when the ‘resolution plan’ approved by the ‘Committee of Creditors’ was under consideration, the Appellant, who claimed to be an ‘Operational Creditor’, stated to have filed a Miscellaneous Application No. 2802 of 2019 under Section 60 of ‘the Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’), a copy of which has been enclosed at page 137. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench while considered the resolution plan, passed the impugned order dated 1st August, 2019 approving the plan and disposed of the number of Miscellaneous Applications.

The grievance of the Appellant is that the Miscellaneous Application preferred by the Appellant has not been considered by the Adjudicating Authority while approving the plan.

Learned counsel appearing on behalf of the Appellant has enclosed a 'Miscellaneous Application' at page 137 but there is no number shown therein. However, it is orally stated that the Miscellaneous Application was numbered by the Adjudicating Authority as 'Miscellaneous Application No. 2802 of 2019'. Thus we find that the Miscellaneous Application received by the National Company law Tribunal, Mumbai Bench, Mumbai on 26th July, 2019 photocopy of which has been enclosed and notarised by one 'Mohd. Hameed Khan' but no person has verified the said application and we may say that for the said reason, the matter was not placed before the National Company Law Tribunal.

Without going into those technical aspects, we have also noticed the prayer made therein and the plea taken by the learned counsel for the Appellant. The Appellant has taken the plea that machinery were leased by the Appellant in favour of the 'Corporate Debtor' by Agreements dated 8th February, 2007 and on 8th February, 2009. The aforesaid fact has not been considered as no claim was filed by the Appellant before the 'Resolution Professional'. However, after approval of the plan by the 'Committee of Creditors', when the matter was placed before the Adjudicating Authority for its approval, the application was filed.

Mr. K. Anand, Advocate appearing for 'Caveator - Karad Urban Co-operative Bank Ltd.' (Financial Creditor) having 98% voting share. He submits that no claim was filed by the Appellant, before the approval of the 'resolution plan'.

Having heard the learned counsel for the Appellant and the learned counsel appearing on behalf of the Caveator (Financial Creditor), we are of the view that the Appellant having not filed any claim as creditor before the 'Resolution Professional' or before the approval of the 'Resolution Plan' by

‘Committee of Creditors’, there is no occasion to move the application at the fag end after approval of resolution plan under Section 31 of the ‘I&B Code’. Further as it appears that the Miscellaneous Application was incomplete, as per our record, though it do not bears the signature of the Notary, we hold that the Miscellaneous Application has rightly not considered by the Adjudicating Authority. The appeal is accordingly dismissed. No costs.

However, this order will not come in the way of the Appellant to move application before appropriate Forum for appropriate relief.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

/ns/gc