

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 408 of 2018

IN THE MATTER OF:

Jya Finance and Investment Company Ltd.

...Appellant

Vs

J. R. Agro Industries Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellant: Mr. Arijit Mazumdar, Mr. Shambo Nandy, Mr. Akshay Chandra, Advocates. Mr. Amit Gupta, PCS. Mr. Vikram Bajaj, Resolution Professional.

For Respondents: Mr. Arvind Kumar Gupta, Ms. Purti Marwaha Gupta and Ms. Henna George, Advocates.

ORDER

04.12.2018: The Appellant ‘Jya Finance and Investment Company Ltd.’, one of the Financial Creditor has challenged judgment dated 24th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench whereby and whereunder the resolution plan submitted by the 3rd Respondent – ‘Rajasthan Liquor Ltd.’ has not been accepted by the Adjudicating Authority with following observations:-

“By approving the Resolution Plan, we cannot allow exemption of any liability arising in respect of income tax. By approved resolution plan, the corporate debtor SOPL is merging with RLL. Therefore, any statutory liabilities of the transferor company shall be liability of the transferee company. Since income tax department is not party at this stage, therefore without hearing the department on this point, we cannot approve such resolution for granting exemption in respect of income tax liability that may crystalize in future. Thus clause 7.5 of the approved resolution plan cannot be accepted.

*In the circumstances, to give justice to operational creditors, we think it appropriate to direct the Resolution Professional to modify the resolution plan in the light of observation given in the body of the judgement. We further direct that **“the unsecured debt of related party which is intragroup debt will be treated as an equity contribution rather than as an intragroup loan, with the consequence that the intragroup obligation will rank lower in priority than the same obligation between unrelated parties”**.*

Thus the intra group debt given by Jya Finance & Investment Co. Ltd, a related company of the corporate debtor be classified at par with other equity shareholder and partners as provided in water fall mechanism provided in Sec 53(1)(h) of the Code. It is further directed that all the operational creditor should be treated equally without being also classified by their ageing, i.e., without any discrimination of period of their outstanding dues.

We further direct that resolution plan may be modified in the light of our directions given above and after getting a confirmation/ approval of the COC, it may again be submitted for approval by 31st July, 2018, failing which we shall be bound to initiate liquidation proceedings.

Copy of this order may be provided to the Resolution Professional, Corporate Debtor i.e. SOPL, the Resolution Applicant i.e. RLL immediately after compliance of requisite

*formalities, further order may also be communicated to them by email. It is further directed to the Designated Registrar to send the copy of this order to the IBBI and the Secretary, Ministry of Corporate Affairs & Central Government through Regional Director by email for consideration on the issues which have been pointed out by us in the body of this order, **so that the related party of the corporate debtor cannot misuse the provisions of Sec 53 of the Insolvency and Bankruptcy Code, 2016 to defraud their creditors.***

List the matter on 31st July, 2018 for further consideration.”

2. The appeal was preferred by the Appellant on the ground that the Adjudicating Authority has failed to consider that the 3rd Respondent met all the requirements of Section 30(2) of I&B Code r/w Regulation 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. However, such submission was not accepted by the Appellate Tribunal when the matter was earlier heard.

3. In ‘*Binani Industries Limited Vs Bank of Baroda & Anr. and other appeals*’ in *Company Appeal (AT) (Insolvency) No. 82 of 2018, etc.* this Appellate Tribunal held that no discrimination can be made against same set of creditors on one or other ground.

4. For the reason aforesaid, the 3rd Respondent – ‘Rajasthan Liquor Ltd.’ sought time to submit modified resolution plan and by our order dated 20th September, 2018 we allowed the 3rd Respondent to modify the same.

5. The Resolution Professional has filed a report enclosing a copy of the modified resolution plan submitted by the 3rd Respondent. It is informed that

all the Financial Creditors have been treated equally. Similarly, all the Operational Creditors have also been treated equally. No discrimination has been made between one or other Financial Creditor. Similarly, No discrimination has been made between one or other Operational Creditor.

6. In the facts and circumstances, we allow the Resolution Professional to place the modified resolution plan of the 3rd Respondent before the Committee of Creditors for its approval within fifteen days and Committee of Creditors in its turn will consider the viability, feasibility and financial matrix of the modified resolution plan submitted by the 3rd Respondent – ‘Rajasthan Liquor Ltd’ and vote accordingly. While exercising voting share, the Committee of Creditors shall keep in mind that the earlier resolution plan was approved by them.

7. Resolution Professional thereafter will place the matter before the Adjudicating Authority for order under Section 31 of the I&B Code. This total exercise to be completed by 15th January, 2019.

8. The period of the pendency of the case from 26th July, 2018 till today (i.e. 4th December, 2018) is excluded for counting period of 270 days. The appeal stands disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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