

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 507 of 2018

IN THE MATTER OF:

**Vandana Garg, RP of
Jyoti Structures Ltd.**

...Appellant

Vs

State Bank of India

...Respondent

Present:

**For Appellant: Ms. Shivani Sinha, Ms. Ashly Cherin and
Mr. Sumesh Dhawan, Advocates.**

**For Respondent: Mr. Bishwajit Dubey, Mr. Shatrajit Banerji and
Mr. Aditya Marwah, Advocates for SBI.
Mr. Rajeev Mehra, Sr. Advocate with Mr. Ashish
Mukhi and Mr. Kamendra Singh, Advocates for
DBS Bank.**

ORDER

26.10.2018: This appeal has been preferred by Ms. Vandana Garg, Resolution Professional against part of order dated 25th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in M.A. No.491/2018, M.A. 341/2018, M.A. 515/2018, M.A. 410/2018, M.A. 91/2018, I.A. 35/2018 & I.A.30/2018 in CP (IB) 1137(MB)/2017 so far it relates to certain observations made against her (Resolution Professional).

2. On hearing the parties, we find that the Committee of Creditors initially by 62.66% voting share while supported the Resolution Plan, 23.12% votes were cast against the said resolution plan. However, the Resolution Professional subsequent to the conclusion of voting and pronouncement of the same, on the request of the Financial Creditors, namely, IDBI Trusteeship Services Ltd. accepted its assenting vote of 0.42% for it could not vote on 26/27 March, 2018 owing to technical reasons, likewise Indian Bank on 28th March, 2018 sent an email to the Resolution Professional indicating its desire to put affirmative vote of 6.31% to the purported resolution plan, though maximum 270 days for CIRP was going to complete on 31st March, 2018.

3. Learned counsel appearing on behalf of the Appellant submits that the Resolution Professional on the basis of bonafide belief accepted the request of the Financial Creditor, who had the voting right and could not vote for one or other reason or changed their mind as otherwise in absence of any other Resolution Plan the Corporate Debtor would have gone for liquidation. In this background, in absence of any deliberate inaction and intention of the Resolution Professional, no observation should have been made against the Resolution Professional.

4. We have heard learned counsel appearing on behalf of the parties. Mr. Rajeev Mehra, learned senior counsel appearing on behalf of DBS Bank submits that though in other appeals they are respondent against the same very impugned order, do not want to make any observation on conduct of the Resolution Professional as it is for this Appellate Tribunal to decide. However, any observation of this Hon'ble Appellate Tribunal should not affect the merit of the main impugned order dated 25th July, 2018, which is under challenge in other three appeals.

5. Taking into consideration the fact that the Resolution Professional acted in bonafide on the request of the Financial Creditors, who are the members of the Committee of Creditors and allowed their voting share to ensure that Corporate Debtor do not go for liquidation, we are of the view that there was no occasion for the Adjudicating Authority to pass any observation against the Resolution Professional, which will affect her career in future.

6. We are also of the view that before making any observation against the Resolution Professional individual notice should have been given to the Resolution Professional asking him/her to state as to why observations be not made against him/her for alleged act of omission or commission. It is only after hearing the Resolution Professional any observation should have been made by the Adjudicating Authority.

7. For the reasons aforesaid we expunge the remarks made against the Resolution Professional and set aside the part of the order dated 25th July, 2018 so far it relates to imposing costs on her. The impugned order may not come in the way of the Appellant - Ms. Vandana Garg (Resolution Professional) for her engagement in any other cases. However, we make it clear that we have not gone in the merit of the substantive part of the order dated 25th July, 2018, which will be decided in Company Appeal (AT) (Insolvency) No. 461 of 2018, Company Appeal (AT) (Insolvency) No. 464 of 2018 & Company Appeal (AT) (Insolvency) No. 548 of 2018.

8. The appeal is allowed to the extent above. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk