

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 253 of 2019
And I.A. No. 995 of 2019

IN THE MATTER OF:

Ilam Chand Kamboj

.....Appellant

Vs.

M/s ANG Industries Ltd.

.....Respondents

Present :

For Appellant:

RP in person

**Mr. Prashant Mehta, Mr. Gaurav Malik,
Mr. Joy Bajaj, Mr. Kanav Gaba, Advocates**

O R D E R

02.08.2019 - This appeal has been preferred by Appellant - 'Ilam Chand Kamboj' ('Resolution Professional') of 'ANG Industries Ltd.' ('Corporate Debtor') against part of the impugned order dated 4th February, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal'), New Delhi Bench, New Delhi in Company Petition no. (IB)-292(ND)/2017 wherein certain observations have been made giving rise to initiation of proceeding by 'Insolvency and Bankruptcy Board of India' (IBBI).

2. The grievance of the Appellant is against the following observations made by the Adjudicating Authority: -

“5.5. It is seen that the RP has not complied with the directions of this Tribunal as per para 10 of our order dated 15.10.2018.

“it is also noted that the valuation report of two valuers as submitted by the Resolution Professional during the course of proceedings to consider the resolution plan did not inspire confidence and therefore during the course of the proceedings it was considered expedient to get yet another valuation conducted by a valuer as approved and on the panel of the IBBI. In these circumstances, and also considering the fact that the Corporate Debtor is a public listed company where approximately 74% of the shareholding is held by the public at large it is directed that a fresh valuation may be done by a valuer approved by IBBI”.

The RP has not complied with these directions and no valuation as directed by the court has been done, ostensibly for the reason that the COC is not

able to foot the expense for yet another valuation. We are unable to see any merit in this argument and consequently do not agree with the RP.

7.4 It was stated by the RP that the resolution plan was submitted by a consortium of resolution applicants. It was noted that the resolution plan was not submitted by either a resolution applicant individually or jointly with any other person. The resolution plan was submitted by five different entities, each styled as Resolution Applicant. These resolution applicants had individually signed the proposals for the resolution plan. No agreement was filed along with the resolution plan in respect of the formation of such consortium. Thus, the resolution plan was not as per the definition u/s 5(26) of the Code, quoted above.

8.4 it is seen that while submitting the resolution plan, the Resolution Professional while praying for all kinds of relief and blanket exemptions from payment of dues, penalties etc., as well as withdrawal of all pending cases against the CD, did not even exclude

from the prayer, the relief regarding which he himself had a doubt. One such prayer is quoted below:-

“ Direct the financial creditors and operational creditors (who have filed cases recovery of their dues) to withdraw all suits/applications filed against the Corporate Debtor on approval of the Resolution Plan: (can we pray that on approval of this plan by the tribunal, all the existing litigations shall stand disposed off)”.

8.7 *In CA 858/C-II/ND/2018, the RP while seeking approval of this Tribunal for liquidation of the CD has also sought approval for private sale of the assets of two units, namely, Sitarganj Unit for Rs. 18.50 crores to M/s Mayur Industries Private Limited and Greater Noida unit for Rs. 15.50 crores to MM Forgings. While the offer of MM Forgings Limited for purchase of Greater Noida unit has been considered many times by this Tribunal (as mentioned in Para 5.2*

above), the offer of Mayur Industries Private Limited to buy the Sitarganj Unit has been mentioned for the first time in this application for liquidation. The proposal for private sale of Sitarganj Unit was also not raised before us in oral hearing of his application.

8.8 *In CA No. 858/C-II/ND/2018, the details of complete voting have not been filed as it was stated the representatives of SBI, Bank of Baroda expressed that though they agree with the proposal/Resolution but the formal approval shall be communicated by way of their vote through email shortly. Ballot papers regarding the COC meeting dated 19.11.2018 have been placed on record after the Court hearing and the same have not been accompanied by any affidavit.*

9. *we are of the opinion that the assets of the CD are not valued properly and hence they are required to be referred to an independent valuer for valuation. We are also persuaded that the RP had not submitted a resolution plan in compliance with the provisions of the Code. The Resolution Professional has also been avoiding carrying out orders of this*

*Tribunal, specifically, with reference to independent valuation of the assets of the CD. **Hence, the recommendation of the COC to appoint the present RP as liquidator is not approved. We are persuaded that, it would be appropriate to refer the matter to the IBBI, the body for regulating the functioning of the Resolution Professionals, to examine the actions of the Resolution Professional and taking suitable action. The IBBI is also requested to suggest the name of another approved Resolution Professional to act as Liquidator. The Liquidator appointed after recommendation of IBBI shall also get a fresh valuation done of the assets of the Corporate Debtor. The liquidator so appointed will also appoint a qualified CA to determine the claim of the Operational Creditor, SBIPL and consider the same as mentioned in Para 3.4.5 above.***

3. Normally, the Adjudicating Authority is not supposed to pass any adverse observations, even *prima facie*, against the 'Resolution Professional', without giving an opportunity to the 'Resolution Professional' as to why in view of certain Act, the matter be not referred to 'IBBI'.

4. However, as in the meantime, we find that the matter has been taken cognizance by the IBBI which has initiated the proceedings against the Appellant – ‘Resolution Professional’, we are not expressing any opinion on the merit of the observations.

5. However, the ‘IBBI’ cannot treat observations as made by the Adjudicating Authority, as referred to above, as final decision against the Appellant, as the observation made, without granting any opportunity to the Appellant. Therefore, the ‘IBBI’ will hear the proceedings and decide on merit after hearing the ‘Resolution Professional’ and taking into consideration reply as may be submitted by the Appellant, uninfluenced by the observations made by the Adjudicating Authority as referred to above. It is expected that IBBI will complete the enquiry on an early date preferably within three months.

The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc