

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1042 of 2019

IN THE MATTER OF:

Jindal Stainless Ltd.

O.P. Jindal Marg
Hisar- 125 005
Haryana

...Appellant

Vs

1. Cosmic Ferro Alloys Ltd.

Sikkim Commercial House,
4/1, Middleton Street,
4th Floor,
Kolkata- 700 071

....Respondents

Also through:

Mr. Anis Niranjan Nanavati,
Resolution Professional,
Deloitte Touch Tohomatsu India LLP,
Indiabulls Finance Center, Tower-3,
27th Floor, Senapati Bapat Marg,
Elphinstone Road(West),
Mumbai-400 013.

2. United Tradeco FZC & QVC

Exports Private Limited
E-100F-35,
Hamriya Free Zone
Sharjah, UAE

Present:

For Appellants: Mr. Abhishek K. Rao, Mr. Shailesh Suman, Ms. Tushita Ghosh & Ms. Bhavya Bharti, Advocates

For Respondents: Mr. Yashvardhan, Mr. Piyush Singh & Ms. Bhavya Bhatia, Advocates for Respondent No. 1- 2.

ORDER

10.02.2020 Heard, Mr. Abhishek K. Rao from the Appellant and the Advocate Ms. Bhavya Bhatia as Respondent No. 1. An application under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') was admitted against 'Cosmic Ferro Alloys Ltd' and the Corporate Insolvency Resolution Process (In

short '**CIRP**') has been completed and Resolution Plan of the Respondent No. 2 came to be accepted and they have taken over the Corporate Debtor.

2. The Appellant who had submitted a claim Form-B (Annexure-A4, Page-43) to the Interim Resolution Professional/Resolution Professional when the CIRP was pending moved before the Adjudicating Authority referring to the Resolution Plan and various contentions regarding the same being unfair and discriminatory. When the matter had come up before the Adjudicating Authority, learned Counsel for the Appellant says that the request was limited to the fact that "Form-H" was not issued by the Corporate Debtor, because of which there was additional claim against the Corporate Debtor and this should have been considered.

3. The Adjudicating Authority passed Impugned Order, but did not give any relief to the Appellant.

4. It is claimed in the Appeal and the learned Counsel for the Appellant is referring to the Form- B submitted (Annexure-A4, page-43) and is pointing out that in particulars Column-4, the Appellant had referred to the claim pending of Rs. 3,18.82,894/- including the interest and statutory liability of Form-C under Value Added Tax of 2003 (in short **VAT**). The copies of statements were enclosed. Learned Counsel then referred to page-63 of the Paper Book as the amount which was outstanding "Outstanding Summary of Jindal Stainless Ltd. as on 15.01.2018". It is stated principle and interest as on 15th January, 2018 amounted to Rs. 2,54,42,448/-. Reference is then made to page- 72 "C-Form

Summary as on 15.01.2018”, pointing out that the liability arising due to non-giving of Form-C by the Corporate Debtor was of Rs. 64,40,446/-.

5. Learned Counsel for the Appellant is then referring to Annexure-A5, page-145 the “List of Creditors” which the Resolution Professional had verified and put up before the Committee of Creditors (in short **CoC**) and in it Page-150 where claim verified of the Appellant was shown as of Rs. 2,66,98,711. Learned Counsel is trying to show us calculation to submit that this amount, which was verified by CoC on 13th August, 2018, had added interest to the principle amount and the amount of Form C was not calculated. It is argued that the Appellant had moved the Respondent No.-1 after the new management took over, but they have replied vide Annexure- A11 Page-232 as under:

...

“Sir,

Further to our earlier communications, pl note that as per NCLT order dated 11th Oct, 2018 the company has been waived from all sales tax/VAT liability, which is evident from page 33 [Ref: Operational Creditors- Statutory Dues] and page 44 under the paragraph” Liabilities accrued / due under statutory dues” as mentioned in the enclosed Resolution Plan, duly approved by NCLT.

You should take a stance with the sales tax authorities in view of above order of NCLT and take the benefit of “C” Form. We would request you to furnish the attach

docs to the sales tax department to claim the benefit of waiver of liability which may accrued to you for non-submission of “C” Form.”

...

6. The Counsel is submitting that, the new management is relying on Resolution Plan which has been approved. A copy of this is at Annexure- 8 (Page-160) and it shows at Page-209 that the liabilities toward sales tax/VAT etc., which has been approved is nil and there is a “Waiver” of the liability towards such taxes as regards Corporate Debtor.

7. The Counsels submits that the Respondent No. 1 can easily issue C Form and may be directed accordingly.

8. We find Appellant had calculated dues based on the principle amount plus interest plus dues arising due to non-supply of C Form. The same was processed by the Resolution Professional and placed before CoC and CoC has passed the Resolution Plan. It would not be possible for us to modify anything which has been approved and accepted in the Resolution Plan without illegality being pointed out to us. We cannot enter into aspects of Commercial Wisdom of CoC. We cannot go into such fresh calculations to give directions as are sought. The Resolution Professional has, in reply (“Diary No. 16131”) in paragraph no. 17, stated as follows.

...

“17. Without prejudice to the above submissions, it is pertinent to note that against an admitted claim of Rs. 2,66,98,711/- (which includes their claim based on

Form C as well), the Appellant had admittedly recovered an amount of Rs. 1,00,00,000/- under the resolution plan in full and final settlement of their dues.

The relevant clause is extracted hereunder:

*“Liabilities claimed under Operational Creditors – Waiver approval by NCLT for all Other Liabilities claimed by the Operational/Other Creditors as on the Date of Approval of the Resolution Plan by NCLT to be treated as **Fully and Finally settled with Value as stated in the Resolution Plan** and No Due remains to be paid over ever after the waiver.”*

In view of the above, the present appeal may kindly be dismissed.”

.....

9. The Learned Counsel for the Appellant is trying to raise the dispute that the figure of Rs. 2,66,98,711/- did not include the dues towards C Form. However, we will not go into these aspects. The fact remains that dues were claimed on the basis of C Form and the Resolution Professional admitted claim to a certain extent which was clearly more than what was calculated as principle and interest. Matter had gone before CoC and Resolution Plan has been approved in which now exception is sought only to the extent that new Management can issue C-Form.

10. We do not find any substance in the Appeal. The appeal is dismissed. It will be open for the Appellant to put, whatever case the Appellant wants to put before concerned Authorities regarding C-Form which they may deal as per law.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn