

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 227 of 2019

IN THE MATTER OF:

**Committee of Creditors of Bhushan Power and Steel Ltd.
Through Punjab National Bank
Vs.Appellant**

**Mahendra Kumar Khandelwal
Resolution Professional of Bhushan
Power & Steel Ltd. & Ors.Respondents**

Present :

**For Appellant: Mr. Ramji Srinivasan, Senior Advocate assisted by Mr.
Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Advocates
Ms. Sylona Mohapatra with Mr. Nikhil Ramdev,
Advocates**

**For Respondents: Mr. Abhinav Vashisht, Senior Advocate, Mr. Siddhant
Kant, Mr. Anoop Rawal, Mr. Samar Panda, Ms. Srishti
Khare, Mr. Shreyas, Advocates.
Ms. Manmeet Singh with Ms. Nishtha Chaturvedi,
Advocates for R-2
Mr. A.S. Chandhok, Senior Advocate, Ms. Shweta
Advocate for RP
Ms. Priya Agarwal, Ms. Aditi Mohapatra, Advocates
Mr. Arvind Kumar, Ms. Purti Marwaha, Ms. Henna
George, for Sanjay Singal & Aarti Singal**

O R D E R

08.03.2019 – After detailed deliberation, this Appellate Tribunal passed order on 4th February, 2019 in the appeal “*Tata Steel Limited Vs. Liberty House Group Pte. Ltd. and Others*” in *Company Appeal (AT)(Insolvency) No. 198/2018*” and finally remitted the matter to the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi for consideration of the Resolution Plan submitted by J.S.W Steel in accordance with law. The following observations and directions was made:-

The case is remitted to the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi, for passing appropriate order under Section 31. The ‘Resolution Professional’ will immediately place the ‘approved Resolution Plan’ before the Adjudicating Authority for its order.

*The Adjudicating Authority at the time of consideration of the approved ‘Resolution Plan’ of ‘JSW Steel’ will only ensure that all the stakeholders, particularly the ‘Operational Creditors’ are treated similarly. It should ensure that no discrimination is being made between the ‘Financial Creditors’ or the ‘Operational Creditors’ as held by this Appellate Tribunal in “**Binani Industries Limited**”.*

In case, the Adjudicating Authority is of the opinion that the discrimination has been made between the 'Financial Creditors' and the 'Operational Creditors', it may give opportunity to the 'JSW Steel' to improve its plan and thereby, by substituting the approved 'Resolution Plan' with such improvement.

Let the period of pendency of this appeal i.e. from 7th May, 2018 till date be excluded for the purpose of counting of the period of 270 days.

As we have noticed the rival contentions of the parties in this appeal, the parties cannot re-agitate such submission again before the Adjudicating Authority at the time of the approval of the 'Resolution Plan'.

2) It appears that Adjudicating Authority while considering the Resolution Plan submitted by the 'JSW Steel Limited' as approved by the Committee of Creditors for its order u/s 31 of the Insolvency & Bankruptcy Code (I&B Code) by impugned order dated 05.03.2019 adjourned the matter for 12th March, 2019 for deciding certain issues.

3) Today, it is informed that the Adjudicating Authority has passed another order on 7th March, 2019 which reads as follows:-

“It has been brought to our notice that Operational Creditors have not been given opportunity to file objection to the application. We grant the permission to all the Operational Creditor to file their reply. Let the copy of the application be served on the operational creditors who have already appeared before the Court in one form or the other.”

4) In the present case, we are not inclined to deliberate on any issue as has been raised, as no final decision has been taken by the Adjudicating Authority in terms of Section 31 of Insolvency & Bankruptcy Code (I&B Code) and the matter is pending. However, we make it clear that objection of all the ‘Operational Creditors’ cannot be considered at the stage of passing order u/s 31, as there may be more than one Operational Creditor.

5) Similar question fell for consideration before this Appellate Tribunal in *“Committee of Creditors of Essar Steel (India) through State Bank of India Vs. Satish Kumar Gupta & Others”* in IA No. 172/2019 in Company Appeal (AT)(Insolvency) No. 03/2019 wherein this Appellate Tribunal taking into consideration the similar plea observed and held as follows:-

“In the present without expressing any opinion on the issue raised before us, we are of the view that the Adjudicating Authority should pass appropriate order under Section 31 in accordance with the law taking into consideration our earlier order dated 23rd January, 2019 and IA No. 431 / 2018, on an early date. As per Section 24(3)(c) as one of the representative of the Operational Creditors is required to be present in the meeting of the ‘Committee of Creditors’, we are of the view that only the representative of the ‘Operational Creditors’ can be given opportunity to highlight objection, if any, with regard to the Resolution Plan. All the Creditors and Operational Creditors cannot be given day to day hearing for passing order under Section 31”.

6) Subsequently, in the case of *“Committee of Creditors of Essar Steel India Limited”* (Supra), this Appellate Tribunal passed order on 28.02.2019 relevant portion of which reads as follows:-

189

ANNEXURE - A/11

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 172 of 2019

IN

Company Appeal (AT) (Insolvency) No. 03 of 2019

IN THE MATTER OF:

Committee of Creditors of Essar Steel (India) Ltd.
Through State Bank of India

...Appellant

Vs.

Satish Kumar Gupta & Ors.

...Respondents

Present: For Appellant: - Mr. Arun Kathpalia, Senior Advocate
with Ms. Misha, Mr. Sapan Gupta and Mr. Siddhant Kant,
Advocates for CoC.

For Respondents: - Mr. Raunak Dhillon and Ms. Ananya
Dhar Choudhury, Advocates for R-1.

Ms. Anushree Kapadia, Advocate for R-2.

Dr. A.M. Singhvi and Mr. N.K. Kaul, Senior Advocates
with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Amit
Bhandari, Mr. Vishal, Mr. Akhil Anand, Mr. Deepak Joshi,
Mr. Utkarsh Maria, Mr. Naman Bagga, Ms. Misha Chandra,
Mr. Anupam Parkash and Mr. Abhishek Saroop,
Advocates for R-6.

O R D E R

28.02.2019- Earlier we made it clear that one 'Operational Creditor'
should be heard in a representative capacity and the dissenting 'Financial
Creditor' may also be heard.

On 12th February, 2019, it was informed that hearing of
(suspended) Board of Directors was continuing and therefore, we
expected that the final order under Section 31 of the Insolvency and
Bankruptcy Code, 2016 will be passed immediately thereafter. However,
it is informed that on each application separate order is being passed.

Contd/-.....

190

-2-

We are of the view that the Adjudicating Authority (National Company Law Tribunal) cannot entertain and hear all the applications filed by one or other 'Operational Creditors' or 'Financial Creditors' or each of the Directors and shareholders which will cause delay in passing order under Section 31, particularly in a case where the Hon'ble Supreme Court has passed order under Article 142 with certain directions. In the circumstances, we direct the Adjudicating Authority (National Company Law Tribunal) to pass final order under Section 31 by 8th March, 2019, failing which this Appellate Tribunal may call for all the records including the 'Resolution Plan' approved by the 'Committee of Creditors' for appropriate order under Section 31 of the 'I&B Code'. The Registry of the National Company Law Tribunal, Ahmedabad Bench, will inform the Registry NCLAT about the progress made by 11th March, 2019.

The Registrar, National Company Law Appellate Tribunal, will communicate this order to the Registrar of the National Company Law Tribunal, Ahmedabad Bench and each Member of the Bench (Adjudicating Authority) immediately.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk

I.A. No. 172 of 2019
IN
Company Appeal (AT) (Insolvency) No. 03 of 2019

7) Learned Counsel appearing on behalf of the Appellant brought to our notice that the order passed in “*Committee of Creditors of Essar Steel India Limited*” on 04.02.2019 was challenged by one Mr. Kamaljeet Singh Ahluwalia before the Hon’ble Supreme Court of India in Civil Appeal No. 4958/2019 and Civil Appeal Dy. No. 4940/2019 and 4766/2019 etc. The Hon’ble Supreme Court by its order dated 11.02.2019 refused to entertain the appeals and dismissed the appeals.

8) In the facts and circumstances, while we are not expressing any opinion for the present, as observed above, we expect that the Adjudicating Authority will follow the procedure as observed by this Appellate Tribunal while hearing the representatives of ‘Operational Creditor’, Promoters and dissenting ‘Financial Creditor(s)’, if any.

9) Liberty is given to the Adjudicating Authority to decide as to who should be heard in the representative capacity of the Operational Creditors and / or representative of the promoters or representative of the dissenting ‘Financial Creditor’, if any.

10) Mr. A.S. Chandhok, learned Senior Counsel appearing on behalf of the Respondents submits that the matter should be disposed of at an early date to ensure that the matter is finally decided before this financial year. We expect that the Adjudicating Authority will give day to day hearing to the representative of objectors aforesaid. Orders dated 5th and 7th March stands modified / clarified to the extent above.

The appeal stands disposed of with the aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

ss/gc