

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 3052 of 2019

IN

Company Appeal (AT) (Insolvency) No. 350 of 2019

IN THE MATTER OF:

Armada Singapore Pte. Ltd.

...Appellant

Versus

Ashapura Minechem Ltd.

...Respondent

Present:

For Appellant : **Mr. Sandeep Sreekumar and Mr. Saswat Pattnaik,
Advocates**

For Respondents : **Dr. U.K. Choudhary, Senior Advocate
Mr. Rajesh Bohra and Mr. Dhruv Gupta, Advocates
For Promoters
Mr. Abhijit Sinha, Mr. Anuj Shah and Mr. Pawan
Sharma, Advocates for RP**

Company Appeal (AT) (Insolvency) No. 365 of 2019

IN THE MATTER OF:

J.P. Morgan Chase Bank N.A.

...Appellant

Versus

Ashapura Minechem Ltd. & Anr.

...Respondents

For Appellant : **Mr. Arun Kathpalia, Senior Advocate with
Mr. Shubhbrata Chakraborti, Mr. Ashish Mukhi and
Mr. Kamendra Singh, Advocates**

For Respondents : **Dr. U.K. Choudhary, Senior Advocate
Mr. Rajesh Bohra and Mr. Dhruv Gupta, Advocates
For Promoters**

**Mr. Abhijit Sinha, Mr. Anuj Shah and Mr. Pawan
Sharma, Advocates for RP**

Company Appeal (AT) (Insolvency) No. 439 of 2019

IN THE MATTER OF:

HDFC Bank Ltd.

...Appellant

Versus

Ashapura Minechem Ltd.

...Respondent

For Appellant : **Ms. Niti Jain and Ms. Richa, Advocates**

For Respondents : **Dr. U.K. Choudhary, Senior Advocate**
Mr. Rajesh Bohra and Mr. Dhruv Gupta, Advocates
For Promoters

Mr. Abhijit Sinha, Mr. Anuj Shah and Mr. Pawan Sharma, Advocates for RP

O R D E R

30.09.2019 ‘Ashapura Minechem Limited’ (Corporate Debtor / Corporate Applicant) filed an application under Section 10 of the ‘Insolvency and Bankruptcy Code, 2016 (for short, ‘the **I&B Code**’) along with petition under Section 31 of the ‘I&B Code’ for admitting the application and to approve the plan as filed by ‘Miscellaneous Application No. 303 of 2019’ on 23rd January, 2019 under Section 31 of the I&B Code. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 15th March, 2019 admitted the application filed under Section 10 and in view of the plan submitted by the Miscellaneous Application observed as follows and simultaneously issued order of moratorium :

“28. *However, this Bench is of the view that there is no requirement of publication to invite EoI. It can be said to*

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be a path-breaking view, but according to my understanding, it is the only recourse available because in this case that exercise had already been completed under SIC Act. There is no requirement for inviting Resolution Plans in this case. As far as the applicability of S. 30 is concerned, a resolution plan is to be submitted by a Resolution Applicant on the basis of the Information Memorandum. But the situation in this case is that a Resolution Plan is already in existence. Not only that the said resolution plan is in existence, but it was duly acted upon. The said resolution plan was already considered by the bankers during SARFAESI Proceedings. Those very bankers are now going to constitute CoC under Insolvency Code. This very 'Consortium' has already acknowledged and accepted the resolution plan, hence, the right recourse available is to consider that Resolution Plan as if a resolution plan U/s 30 of the Code. If we adopt this line of action obviously the procedure of Corporate Insolvency Resolution Process shall get simplified and certainly get finalised expeditiously. It is worth to supplement at this juncture that the time is the essence for implementation and finalisation of the process of the Insolvency."

2. The Appellants challenged the impugned order admitting the application filed under Section 10 of the 'I&B Code' in the manner in which it was passed,

taking into consideration the plan submitted by the applicant under Section 10 and on some other grounds.

3. This Appellate Tribunal issued notice on 8th April, 2019 when noticed no decision has been taken by the shareholder in its 'Annual General Meeting and 'Extra-Ordinary General Meeting'. Subsequently, on 8th July, 2019 when the matter was taken up, it was also ordered and the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, was prohibited from passing any order in the insolvency case. Learned counsel appearing on behalf of the 'Shareholders' of the 'Corporate Debtor' submits that the members now want to withdraw the application filed under Section 10 of the 'I&B Code'. Dr. U.K. Choudhary, learned Senior Counsel appearing on behalf of the 'Shareholders' submits that in view of the interim order passed on 8th July, 2019, the Adjudicating Authority is not in a position to pass order of withdrawal.

4. We have heard Mr. Sandeep Sreekumar along with Mr. Saswat Pattnaik, Advocates; Mr. Arun Kathpalia, learned Senior Counsel with S. Chakraborti, Advocate and Ms. Richa, Advocates for the Appellants and Dr. U.K. Choudhary, learned Senior Counsel appearing on behalf of the 'Shareholders' and Mr. Abhijit Sinha and Mr. Anuj Shah, learned counsel appearing on behalf of the RP.

5. We are of the opinion that the impugned order dated 15th March, 2019 is against the provision of law and cannot be sustained. It is not in dispute that the application filed under Section 10 is without approval of the 'Annual General Meeting' / 'Extra-Ordinary General Meeting'. Simultaneously a plan was submitted which is against the provision of Section 65 of the I&B Code as it appears that it is filed with malicious intent for any purpose other than for the

resolution of insolvency and liquidation. For this reason, we set aside the impugned order dated 15th March, 2019.

6. The petition under Section 10 of the I&B Code filed in 'Form 6' is dismissed. The Adjudicating Authority will close the proceedings.

7. In the result, in effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the 1st Respondent under Section 10 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

8. Taking into consideration the facts that the "Interim Resolution Professional" has worked for about 6 months, we assess the fee of 'Interim Resolution Professional' @ Rupees One Lakh per month i.e. total Rupees Six Lakhs and cost of publication of Rs. 24,000/- + Rs. 26,000/- for other expenses and Rs. 1.5 Lakhs for engaging a counsel for "Interim Resolution Professional" that means total 'Rupees Eight Lakhs'. It is also agreed by 'Mr. Arun Chadha, 'Interim Resolution Professional'.

9. Dr. U.K. Choudhary, learned Senior Counsel who appears on behalf of the 'Shareholders' (now 'Corporate Debtor) accepts that this fee and costs will be borne by the 'Corporate Debtor'. Therefore the 'Corporate Debtor' will pay the

total cost of 'Rupees Eight Lakhs' to the "Interim Resolution Professional' within three weeks.

All these appeals are allowed with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc