

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 416 of 2018

IN THE MATTER OF:

Stressed Assets Stabilization Fund

...Appellant

Vs

Vistar Financiers Pvt. Ltd. & Ors.

....Respondents

Present:

**For Appellant: Mr. Raktim Gogoi and Mr. Kartikeya Singh,
Advocates.**

**For Respondents: Mr. Arijit Mazumdar and Mr. Akshay Chahdha,
Advocates**

ORDER

01.08.2018: This appeal has been preferred by 'M/s Stressed Assets Stabilization Fund', against impugned order dated 26th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata bench, Kolkata in C.A. 209 of 2018 in C.P.(IB) No.441/KB/2017. By the said order the application preferred by the Appellant was rejected.

2. In the present case it is not necessary to discuss all the facts except the relevant one.

3. The Corporate Insolvency Resolution Process was initiated against 'M/s Datre Corporation Ltd.' (Corporate Debtor), by order dated 20th September, 2017, order of moratorium was passed and Resolution Professional was appointed. Subsequently, Committee of Creditors was constituted but Appellant being related party to the Promoter of the 'Corporate Debtor' was kept out of the Committee of Creditors. The 180 days was to complete on 18th March, 2018 but just 11 days prior to such completion the Appellant preferred an Interlocutory Application on 7th March, 2018 with following prayer:

“5. *In this application, SASF made the following prayers:*

- i) To recall/vacate order dated 20.09.2017 whereby CIRP of Corporate Debtor is admitted.*
- ii) Pass interim order to stay CIRP,*
- iii) Direct RP to allow the Applicant to attend meeting of CoC,*
- iv) To pass order of liquidation of Corporate Debtor, and*
- v) Initiate action against RP and Corporate Debtor for procuring order dated 20.09.2017 suppressing material facts.”*

4. The Adjudicating Authority having noticed that 180 days period is expiring on 18th March, 2018 and thereafter it was extended for another 90 days under Section 12 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code'), and discussing the case on merit dismissed the application.

5. Learned counsel for the Appellant tried to impress that the Appellant was wrongly kept out of the Committee of Creditors and the application under Section 7 of I&B Code was wrongly admitted on 20th September, 2017 and for that application for recall was filed.

6. It is settled that no application for recall of any order of admission of application under Section 7 can be entertained by the Adjudicating Authority, it having no such jurisdiction. Even the party who has filed application cannot withdraw such application after the admission in view of regulation 8 of 'The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016'. The Appellant was not allowed to be a member of Committee of Credits but in spite of that the Appellant did not choose to challenge order date 20th September,

2017 before this Appellate Tribunal under Section 61, which is the only forum to challenge such order. Appellant did not move before this Appellate Tribunal as it was barred by limitation. After about six months i.e. when 180 days were going to complete the petition for recall of the order of admission was filed to stall the Corporate Insolvency Resolution Process, that too at a time when Resolution Plan is to be approved. The Appellant, who is a 'Financial Creditor', also cannot claim to be an aggrieved person, if an application under Section 7 is admitted pursuant to application filed by other Financial Creditor. Appellant being a related party to the Corporate Debtor was not made the member of the Committee of Creditors, which order was also not challenged.

6. The I. A. having been filed by the Appellant with a motive to delay the process and being frivolous it was fit case for Adjudicating Authority to impose cost upon him while passing the order. For the reasons aforesaid, we dismiss the appeal and impose a cost of Rs.1 Lakh (Rupees One Lakh Only) on the Appellant to be paid in favour of the 'Registrar, National Company Law Appellate Tribunal' within 30 days.

[Justice S. J. Mukhopadhyaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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