

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 568 of 2018

IN THE MATTER OF:

R.G.G. Vyapaar Pvt. Ltd.

....Appellant

Vs.

Arun Kumar Gupta & Anr.

....Respondents

Present:

For Appellant: Mr. Abhijit Sinha, Mr. Arjun Asthana, Ms. Sreenita Ghosh, Mr. Saikat Sarkar and Mr. Shivam, Advocates.

For Respondents: Mr. Sandeep Bisht and Mr. Anuj Tiwari, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' of 'M/s. Divya Jyoti Sponge Iron Private Limited'- ('Corporate Debtor'), the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata by impugned order dated 13th March, 2018 approved the 'Resolution Plan' of 'C.P. Ispat Private Limited'.

2. According to counsel for the Appellant, the claim submitted by the Appellant was wrongly rejected by the 'Resolution Professional' on

the ground of delay. This was brought to the notice of the Adjudicating Authority by filing application under sub-section (5) of Section 60 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short), but only after the decision of the approval of the 'Resolution Plan'. The same has been rejected by subsequent order dated 11th July, 2018.

3. On the other hand, according to Respondents, the claim was filed after long delay in spite of the knowledge of the Appellant.

4. The 'Corporate Insolvency Resolution Process' commenced against 'M/s. Divya Jyoti Sponge Iron Private Limited'- ('Corporate Debtor') on 23rd August, 2017. Public notice was issued by the 'Interim Resolution Professional' on 25th August, 2017 calling for claims by 6th September, 2017.

5. Admittedly, the Appellant had not filed any claim by 6th September, 2017 and after about 130 days i.e. after 4 ½ months filed a claim on 15th January, 2018. The claim was also incomplete, therefore, the 'Resolution Professional' sought for certain clarification from the Appellant on 15th January, 2018. It was noticed that the Appellant is a related party to the 'Corporate Debtor'.

6. By the time claim was filed, the 'Corporate Insolvency Resolution Process' had also reached its finality and the 'Resolution Plan' was also

under consideration before the 'Committee of Creditors'. The 'Resolution Plan' was approved by the 'Committee of Creditors' on 14th February, 2018. The application under Section 31 of the 'I&B Code' was filed by the 'Resolution Professional' before the Adjudicating Authority for approval of the 'Resolution Plan' on 19th February, 2018. After the approval of the plan by the 'Committee of Creditors', clarification was given by the Appellant to the 'Resolution Professional's e-mail dated 15th January, 2018 on 6th March, 2018. By impugned order dated 13th March, 2018, the Adjudicating Authority approved the 'Resolution Plan'.

7. It is only thereafter the application under sub-section (5) of Section 60 was filed by the Appellant on 10th April, 2018, which was dismissed on 11th July, 2018 by the Adjudicating Authority.

8. The Appellant thereafter preferred an appeal before this Appellate Tribunal against the order of rejection by the Adjudicating Authority in Company Appeal (AT) (Insolvency) No. 509 of 2018 on 31st August, 2018, which stood dismissed. The Appellant after more than 4 months filed the present appeal on 8th September, 2018 for the same cause of action.

9. Learned counsel for the Appellant submitted that the appeal is not barred by limitation as it had applied for certified copy of the impugned order on 31st August, 2018 and received on the same date.

The Appellant has not given explanation as to why it has not applied for certified copy when the final order was passed by the Adjudicating Authority on 13th March, 2018 approving the 'Resolution Plan' of the 2nd Respondent.

10. Admittedly, the Appellant is a related party to the 'Corporate Debtor' and had knowledge of the impugned order dated 13th March, 2018. This will be evident from the plea made by the Appellant wherein it has pleaded that in or around April, 2018, the Appellant came to know the same (at page 9). Even otherwise the impugned order was communicated to the Appellant on 27th April, 2018.

11. We find that the Appellant in its application dated 10th April, 2018 moved before the Adjudicating Authority for modification of the impugned order. Thus, it makes clear that the Appellant had knowledge of the impugned order dated 13th March, 2018 which it received prior to 10th April, 2018 but had not challenged the said order before this Appellate Tribunal.

12. On merit also, we find no ground made out to set aside the impugned order dated 13th March, 2018 passed by the Adjudicating Authority approving the 'Resolution Plan'.

13. In view of the aforesaid position, we dismiss the appeal both on the ground of limitation and on merit. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
25th November, 2019

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