

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Ins.) No. 131 of 2019

IN THE MATTER OF:

Asset Reconstruction Company(India) Ltd.

...Appellant

Versus

**Unimark Remedies Ltd.
(Through Resolution Professional) & Anr.**

...Respondents

Present:

For Appellant : **Mr. Ravi Prakash, Mr. Satyender Kumar, Advocates**

For Respondents: **Ms. Pratiksha Sharma, Mr. Ankit Acharya,
Advocates for R-2
Ms. Mahima Singh, Advocate for RP**

O R D E R

23.10.2019 - The Appellant ‘Asset Reconstruction Company(India) Ltd.’ filed a ‘Resolution Plan’ which was approved by ‘Committee of Creditors’ and submitted that the matter was brought to the notice of Adjudicating Authority (‘National Company Law Tribunal’) Mumbai Bench which passed impugned order dated 4th February, 2019 which reads as follows:-

“The Counsel representing the Committee of Creditors, Resolution Professional and the Counsel representing the suspended Director of the company are present. All the stake holders are present. It has been submitted by the

Counsel representing the Corporation Bank that there is a lot of variations in both the plans and the actual market value of the assets of the Company, even in the recent past was about Rs. 630 Crores whereas the Resolution Applicants have come forward to infuse only to an extent of about Rs. 280 Crores.

Apart from that it is alleged, the said successful Resolution Applicant is actually not interested in running the company but to dispose of one particular unit of the Corporate Debtor more like a slum sale to another party, which cannot be accepted. Then this Bench had questioned the Counsel for the Corporation Bank, being the member of committee of creditors why did not they object to such a proposal at the meeting of Committee of Creditors and the answer was that even though the objection were put forth before Committee of Creditor & Resolution Professional the same was not considered. This bench after hearing from all the parties concerned is of the view that both the Resolution Applicants have to improve their offer and submit the same to this Bench at the

earliest point of time. Apart from that this Bench would like to know the exact value of the assets of the Company / Corporate Debtor in the open market at present and the consequences and prospects in proceeding with the approved Resolution Plan. We hereby direct all the Financial Creditors and the members of the Committee of Creditors may make their own analysis and submit a comprehensive report to enable this Bench to take appropriate decision. Our endeavour is to get the best value for the assets of the Company/Corporate Debtor. The Senior Counsel Representing the successful Resolution Applicant submitted that the time period prescribed under law is 270 days already expired and even though the intention on the part of the bench to get the best value is appreciated, the time lines prescribed under the Act are over and hence same cannot be gone into and the decision of this Committee of Creditors is required to be considered. We completely agree with the arguments advance by the learned Senior Counsel Mr. Doctor, but at the same time any effort on the part of this Bench to enhance the value of the

Corporate Debtor, in our sincere opinion be appreciated by the higher forums and just on the basis of timelines if the matter is proceeded with, there is a possibility that serious injustice can be caused to public sector Banks and the workers. We are also quite conscious that the suspended Board of Directors also have enough stakes in the Company and any decision strictly within the parameters of timelines and even if the same is not meritorious/unviable, would seriously hamper the object of the code. In view of the above, while we fully understand our responsibility to adjudicate the matter within the stipulated time, we hereby take a conscious decision in the best interest of the Company and direct the Resolution Applicants to improvise their offer to the best possible level in consultation with the Committee of Creditors and a final call will be taken only after the financial creditors submits their reports with regard to the merits of each plan. We also say that no financial creditor be discriminated against on the basis of securities provided. It is also important that the claim of the Operational Creditor be considered

before considering the Resolution Plan. Accordingly, the M.A. No. 191/2019 is allowed with a direction to the IRP to examine the claim of Manali Petrochemicals Limited.”

Learned counsel appearing on behalf of ‘Resolution Professional’ submits that with regard to ‘Corporate Insolvency Resolution Process’ of ‘Unimark Remedies Ltd.’ (‘Corporate Debtor’) in respect of valuation there being a split verdict of Adjudicating Authority, the matter was referred to 3rd Hon’ble Member. This Appellate Tribunal in Company Appeal (AT)(Ins.) No. 1078 of 2019 – Amit Gupta – ‘Resolution Professional’ of ‘Unimark Remedies Ltd.’ Vs. ‘Corporate Bank and another’ by order dated 17th October, 2019 did not consider the adverse remarks as were made against the ‘Resolution Professional’. Parties were asked to bring the aforesaid facts to the notice of ‘National Company Law Tribunal’ which has to pass the appropriate order to place the matter before the 3rd Hon’ble Member.

It is stated that thereafter no decision has been taken by 3rd Hon’ble Member. It appears that the matter has not been placed before the Hon’ble President ‘National Company Law Tribunal’. Earlier, this Appellate Tribunal asked the Adjudicating Authority to pass final order under Section 31 of the ‘I&B’ Code, however, we find that because of the difference of opinion between two Hon’ble Members of the Adjudicating Authority relating to valuation of the assets of the Company, no final order has been passed yet. The Appellant merely being

a 'Resolution Applicant' has no right to assail the final order which is yet to be passed.

In the circumstances, we are not inclined to deliberate on the issue as raised in this appeal. If the 'Resolution Plan' submitted by the Appellant is not approved or is rejected by the Adjudicating Authority, it will be open to the Appellant to raise the issue at that stage.

The appeal stands disposed of with aforesaid observation.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

ss/gc