

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 229 of 2019

IN THE MATTER OF:

Bank of Baroda

...Appellant

Vs.

Mr. Bijay Mumuria & Ors.

...Respondents

Present: For Appellant: - Mr. Brijesh Kumar and Ms. Tanisha, Advocates.

For Respondents: - Ms. Pratiksha Sharma and Mr. Ankit Acharya, Advocates for R-1.

Mr. Arun Kathpalia, Senior Advocate with Mr. Mahesh Agarwal, Mr. Himanshu Satija and Mr. Arshit Anand, Advocates.

O R D E R

11.03.2019— The 'Bank of Baroda'- ('Financial Creditor') on initiation of 'Corporate Insolvency Resolution Process' filed a claim on the basis of which it was allowed voting shares by the 'Resolution Professional'. Subsequently, after more than 250 days, the 'Bank of Baroda' filed another application for enhancing the claim; which was not entertained by the 'Resolution Professional'. Against such decision, the Appellant- 'Bank of Baroda' moved before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, which by impugned order dated 26th February, 2019, rejected the application as the 'Resolution Plan' had already been approved under Section 31 which reads as follows:

Contd/-.....

“ORDER

Ld. Counsel for the financial creditor appears Ld. Counsel for the Resolution Applicant appears. CA(IB) No. 78 & 170/KB/2019 are filed by the Bank of Baroda, i.e. the Financial Creditor for revision of their claim which has not been considered by the RP and the CoC without any reason. These applications are not maintainable because plan has also been approved by CoC. Both the application in CA (IB) No. 78 & 170/KB/2019 stand rejected, though they are filed before approval of the plan. The Resolution Applicant to proceed with conducting the affairs of the Corporate Debtor.

Matter stands adjourned for further consideration on 26.04.2019.”

2. Learned counsel appearing on behalf of the Appellant submits that the revision of claim was based on record and the ‘Resolution Professional’ has failed to consider the same. However, it is accepted that the revision of claim was filed after about 250 days and much before the same ‘Information Memorandum’ was published and the ‘Resolution Plan’ was approved by the ‘Committee of Creditors’. Thereafter, the plan having approved by the Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority held that the application was not maintainable.

3. Learned counsel for the Appellant submitted that the 'Resolution professional' has no jurisdiction to reject the claim. Reliance has been placed on the decision of this Appellate Tribunal in **"Navneet Kumar Gupta v. Bharat Heavy Limited— Company Appeal (AT) (Insolvency) No. 743 of 2013"** disposed of on 26th February, 2019.

4. Similar issue fell for consideration before the Hon'ble Supreme Court in **"Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.", Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73)"** wherein also the Hon'ble Supreme Court held that the 'Resolution Professional' has no jurisdiction to decide the claim but the 'Liquidator' has a jurisdiction to decide such claim at the time of liquidation. However, such question is not required to be decided in the present appeal, the plan having approved. In fact, the decision of the 'Resolution Professional' does not amount to rejection of the claim, but determination of claim for constitution of the 'Committee of Creditors', which was constituted on the basis of original claim. Thereafter, the Appellant being member of the 'Committee of Creditors' not raised the issue immediately but after about 250 days. In the circumstances, no relief can be granted. However, we make it clear that the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the Appellant to move before appropriate forum for appropriate relief.

The appeal is dismissed with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g