

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 843 of 2019

IN THE MATTER OF:

Shameek Breweries Pvt. Ltd.

...Appellant

Vs

Manoj Kumar Agarwal & Anr.

....Respondents

Present:

For Appellant: Mr. Aarif Akhtar, Advocate.

For Respondents: Mr. A. K. Mishra, Advocate for R-1.

Mr. Rajesh Rattan, Advocate for R-3.

O R D E R

17.01.2020: In the Corporate Insolvency Resolution Process against ‘Sterling SEZ & Infrastructure Ltd.’ (Corporate Debtor), the Promoters moved application under Section 12A. Resolution Professional placed the same before the Committee of Creditors, which approved the 12A proposal with 92% voting share by resolution dated 28th March, 2019. The application for withdrawal under Section 7 filed by ‘SREI Infrastructure Finance Ltd.’ was placed by the Resolution Professional before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai which was allowed by the Adjudicating Authority by order dated 10th April, 2019.

2. Subsequently, one M.A. No. 1245 of 2019 was filed by Ministry of Corporate Affairs saying that one Mr. Jasbeer Singh, authorised representative

of the Managing Director who is absconding, intimated that the Promoters are absconding and left India. The Enforcement Directorate has also initiated proceedings. Various allegations were levelled against the Promoters, which were noticed by the Adjudicating Authority who recalled the earlier order dated 10th April, 2019 by impugned order dated 26th April, 2019 and allowed the Corporate Insolvency Resolution Process to continue.

3. 270 days has crossed. This appeal has been preferred by 'Shameek Breweries Pvt. Ltd.', one of the Financial Creditor against the order dated 26th April, 2019. Mr. Rajesh Rattan, learned counsel appearing on behalf of the Committee of Creditors supported the case of the Appellant and referred to decision of this Appellate Tribunal in '**Andhra Bank' Vs. 'Sterling Biotech Limited & Ors.'**, Company Appeal (AT) (Insolvency) No. 612 of 2019 disposed of on 28th August, 2019 and further clarification by order dated 18th November, 2019. It is submitted that the Hon'ble Supreme Court has allowed the Promoter time till 31st March, 2020 to comply with the order. It is submitted that 'Sterling Biotech Limited' is Associate Company of 'Sterling SEZ & Infrastructure Ltd.' (Corporate Debtor) and the Promoters are common. They have absconded and left India but ready to provide clean money to the Bank and therefore, the appeal should be allowed.

4. In the present case, as we find that the Promoters have not challenged the impugned order dated 26th April, 2019 and are not aggrieved against order of recall, at the instance of the Financial Creditor/ Committee of Creditors, we are not inclined to direct Promoters to provide clean money.

5. For the said reason, we are not inclined to interfere with the impugned order dated 26th April, 2019 on an appeal preferred by the Financial Creditor, it is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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