

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 143 of 2018

IN THE MATTER OF:

Vijender Kumar Singla

...Appellant

Vs.

Oriental Bank of Commerce & Anr.

...Respondents

Present: For Respondent: - Mr. S.K.Sharma, Advocate

ORDER

24.07.2018— The respondent – Oriental Bank of Commerce (Financial Creditor) filed application under Section 7 of Insolvency and Bankruptcy Code, 2016 (for short 'I & B Code' 2016) which was admitted vide impugned order dated 23rd February 2018 by the Adjudicating Authority (National Company Law Appellate Tribunal), Mumbai Bench giving rise to this appeal.

2. When the matter was earlier taken up, learned counsel for the appellant submitted that because of traffic congestion the 'Corporate Debtor' could not reached the Adjudicated Authority and in his absence the application was admitted, otherwise the 'Corporate Debtor' would have settle the dues with the 'financial creditor'.

3. On 3rd July 2018, learned counsel appearing on behalf of the 'Financial Creditor' (Oriental Bank of Commerce) submitted that the proposal has been given by the appellant to the 'Financial Creditor' wherein the appellant has

agreed to pay the total outstanding dues without any haircut and the 'Financial Creditor' is considering the proposal.

4. Today it is informed by the learned counsel for the 'Financial Creditor' that subsequently another proposal was sought for from the Directors of the 'Corporate Debtor', which has been approved in principal, which reads as follows: -

"You shall make upfront payment of Rs. 2.68 Crore to be kept in no lien account till approval of restructuring plan.

1. Approval of proposed resolution plan shall be subject to the analysis of the following: -

a. Cash credit limit shall be based on Drawing power arrived on fresh stock audit report.

b. TEV shall be got done from a bank approved consultant to ensure viability of the proposed repayment.

c. Audited Balance sheet of the company as on 31.03.2018.

2. In case of non-compliance of terms and conditions/schedule of payment provided by you, bank shall file fresh application u/s 7 of IBC before NCLT."

5. Learned counsel appearing on behalf of the appellant submits that there is only one member in the 'Committee of Creditors' i.e. Oriental Bank of commerce, which is also accepted by learned counsel appearing on behalf of the bank.

6. By the Government of India Notification dated 6th June 2018, “Insolvency and bankruptcy Code 2016 (Amendment) Ordinance 2018 was promulgated whereby Section 12A was substituted in the principal Act, after Section 12, which reads as follows: -

“12A. The Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the Committee of creditors, in such manner as may be prescribed.”

7. In the present case, as the approval has been granted by 100% of the voting shares of the ‘Committee of Creditors’, learned counsel for the respondent submitted that the Bank may be allowed to withdraw the application under Section 7 in terms of Section 12-A.

8. In that view of such settlement we allow the Bank to withdraw the application under Section 7 which has already been admitted. The proceedings in C.P.No. 1700/IBC/NCLT/MB/MAH/2017 is closed.

9. Hence, we make it clear that the Resolution Plan agreed upon by the parties as noticed and recorded above will be bound on all the parties. The Adjudicating Authority is directed to decide the fee of the Resolution Professional which shall be paid by the ‘Corporate Debtor’ within 45 days.

10. In effect, order (s), passed by the Adjudicating Authority appointing any ‘Resolution Professional’, declaring moratorium, freezing of account, and

all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, taken by the 'Resolution Professional', including the advertisement, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 7 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

11. The Adjudicating Authority will fix the fee of 'Resolution Professional' and the 'Corporate Debtor' will pay the fees for the period he has functioned. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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