

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 222 of 2019

IN THE MATTER OF:

Deccan Value Investors L. P. & Anr.

...Appellants

Vs

Dinkar Venkatasubramanian & Anr.

...Respondents

Present:

For Appellants: Mr. Amit Singh Chadha, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Rajeev Kumar, Ms. Swati Sinha, Ms. Srishti Govil and Ms. Nikita Mishra, Advocates.

For Respondents: Mr. Abhinav Vashisth, Sr. Advocate with Ms. Anannya Ghosh, Advocate for R-1.

Mr. Siddhant Kaul, Mr. Anoop Rawal and Mr. Samar Panda, Advocates for CoC.

Ms. Srishti Khare and Mr. Shreyas Gupta, Advocates.

ORDER

08.03.2019: This appeal has been preferred by 'Deccan Value Investors L. P.' and 'DVI PE (Mauritius) Ltd.' (Resolution Applicants) against order dated 27th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, by which, the Miscellaneous Application No.1462/2018 preferred by the Successful Resolution Applicants (Appellants herein) seeking direction against Resolution Professional for making available forensic audit report and other records, has been rejected.

2. Before the Adjudicating Authority, the Appellant, Resolution Applicant made the following prayer:

“1. The Resolution Applicants DECCAN VALUE INVESTORS L.L.P. and D.V.I. PE (Mauritius) Ltd. have filed this Miscellaneous Application No. 1462/2018 seeking direction against the Resolution Professional that the transaction and forensic audit report of the Corporate Debtor be undertaken and the requests made for appointing a reputed independent expert for this purpose. The Applicant has further sought direction against the Resolution Professional and the Committee of Creditors to furnish to the Applicants among other things the following documents that have come to light from the minutes of the Committee of Creditors viz:

- i) The final transaction audit report and the final forensic audit report reported by M/s S. P. Chopra;
- ii) Cost audit report of the company for the financial years 2012-2013, 2013-14, 2014-15, 2015-16, 2016-17 and after that up to 15th December, 2017;
- iii) Historical production data relied upon by Mott McDonald India in their reports dated 30th September, 2016 and 19th June, 2018, including the number of units produced and the line-wise declared capacity.
- iv) Historical production data relied on indicating the maximum production achieved by the Original

Respondent Company / Corporate Debtor before the commencement of the Corporate Insolvency Resolution Process; and

v) Any other material information that may have come to light to the Resolution Professional and would affect the outcome of the CIRP;

2. Applicant has further requested that pending the hearing and disposal of the CIRP in MA 956 be stayed.”

3. Learned senior counsel appearing on behalf of the Appellant submitted that the Resolution Professional on the instruction of Committee of Creditors had made final transaction audit report; final forensic audit report and cost audit report of the Corporate Debtor for financial years 2012-13 to 2016-17 and thereafter upto 15th December, 2017. The aforesaid reports were not brought to the notice of the Resolution Applicants before submission of the resolution plan. According to the Appellants, they are important documents which are required to be taken into consideration to decide whether the Resolution Applicants at this stage should proceed further for getting their plan approved or to withdraw the plan. It is submitted that the Appellants (Resolution Applicants) to be on the safe side have also filed application for withdrawal of their resolution plan but no order has been passed by the Adjudicating Authority in view of objection of the Committee of Creditors.

4. Learned counsel appearing on behalf of the Resolution Professional submitted that no forensic audit was conducted by any person on the direction of the Committee of Creditors. There is no separate cost and audit report of the Company which was provided to the Resolution Professional or was available in the office of the Corporate Debtor. The Resolution Professional has denied existence of any such reports and records. It is informed that a forensic audit report was made by erstwhile lenders of the Corporate Debtor and not by the Committee of Creditors. It is also submitted that after issuance of the Expression of Interest and Information Memorandum, the Resolution Applicants (Appellants herein) submitted their resolution plan. The same has been considered in the meeting of Committee of Creditors in which Resolution Applicants were also present but they never asked for such report.

5. Learned senior counsel appearing on behalf of the Appellants submits that they had no knowledge about the forensic audit report which was considered in the meeting of Committee of Creditors held on 13th July, 2018.

6. In the present case we find that the Committee of Creditors have already approved the resolution plan submitted by 'Deccan Value Investors L. P.' alongwith 'DVI PE (Mauritius) Ltd.' (Appellant herein). The matter is pending consideration before the Adjudicating Authority for passing appropriate order under Section 31. It is informed that 270 days have already crossed and the

resolution plan was submitted prior to it. It is now pending consideration before the Adjudicating Authority under Section 31 of the I&B Code.

7. In the case of *'Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.'* in Civil Appeal Nos.9402-9405 of 2018, (2019) 2 SCC 1, Hon'ble Supreme Court observed:-

"79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the adjudicating authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster."

"82. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors

*does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time-limits specified where no other resolution plan is available with him. **It is clear that at this stage again no application before the adjudicating authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.***”

8. In the view of decision aforesaid, as the Appellants have not accrued any right, we are not inclined to interfere with the impugned order. The question as to whether any audit report and other documents was available with the Resolution Professional or Committee of Creditors and whether forensic audit report or any other documents are relevant or not cannot be decided in this appeal. However, if Appellants have filed any application for withdrawal of the

resolution plan, in such case, the Adjudicating Authority may decide the application before passing appropriate order under Section 31 of the I&B Code. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

am/gc