

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 675 of 2019

IN THE MATTER OF:

Mr. Sankararaman Vaidyanathan

...Appellant

Versus

M/s. Val-Met Engineering Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant :

**Mr. Nikhil Nayyar, Senior Advocate with
Mr. Anil Kaushik, Mr. Anand Sashidharan and
Mr. Abhishek Mishra, Advocates**

For 1st Respondent:

**Mr. Arun Kathpalia, Senior Advocate with
Mr. Ravi Raghunath and Ms. Aakashi Lodha,
Advocates**

For 2nd Respondent :

**Ms. Bhavana Duhoon, Advocate for Interim
Resolution Professional**

O R D E R

06.12.2019 'M/s. Val-Met Engineering Private Limited' moved an application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the I&B Code') for initiation of 'Corporate Insolvency Resolution Process' against 'M/s. Trusted Aerospace Engineering Private Limited'. The Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai by impugned order dated 21st June, 2019 admitted the application.

2. On 4th July, 2019 learned counsel appearing on behalf of the Appellant – 'Mr. Sankaraman Viadyanathan, Promoter of 'M/s. Trusted Aerospace Engineering Private Limited' (Corporate Debtor) initially submitted that the Respondent cannot be treated as 'Financial Creditor' as earlier it had issued

Demand Notice under Section 8(1) of the 'I&B Code' and claimed as an 'Operational Creditor'. Notices were issued and 1st Respondent had already appeared and in view of the stand taken, the constitution of the 'Committee of Creditors' was stayed. However, the 'Interim Resolution Professional' was allowed to ensure that the 'Corporate Debtor' remains a going concern.

3. Subsequently on 6th August, 2019, when the matter was taken up, learned counsel for the Appellant and the Respondent submitted that the parties are negotiating for amicable settlement. On their request the appeal was adjourned and we allowed the Respondent to file reply-affidavit along with 'Terms of Settlement'.

4. On 19th September, 2019, learned counsel for the Appellant submitted that no settlement has been reached between the parties. However, on behalf of the Appellant it was submitted that the Appellant was ready to deposit the total claim amount of Rs. 2.13 crores for settlement. He requested to keep that amount with the Registrar, NCLAT and on the said date, the following order was passed :

"It is informed that the Appellant has not settled the matter with the Respondents.

Learned Counsel for the Appellant submits that the Appellant is ready to deposit the total amount of Rs.2.13 crores as claimed by Respondent - Val-Met Engineering Private Limited in the account of the Registrar, NCLAT. We are not inclined to accept such oral offer. The Appellant may give such offer to the Val-Met

Engineering Private Limited ('Financial Creditor') and may deposit the amount with them, who may keep it in a separate 'Interest Bearing' account. If the amount is deposited within 10 days, we will look into the matter whether to allow the Val-Met Engineering Private Limited to withdraw the application under Section 7.

Post the case 'for orders' on **17th October, 2019** at 02:00 P.M.

In the meantime, the 'Interim Resolution Professional' will ensure that the Company remains a going concern and will take assistance of the (suspended) Board of Directors, paid Director and the employees. The person who is authorised to sign the bank cheques may issue cheques only after authorization of the 'Interim Resolution Professional'. The bank accounts of the Corporate Debtor be allowed to be operated for day-to-day functioning of the Company such as for payment of current bills of the suppliers, salaries and wages of the paid Director, the employees'/workmen electricity bills etc.

The 'Interim Resolution Professional' will not constitute the 'Committee of Creditors' till 30th September, 2019 to enable the Appellant to

deposit the amount with the Respondent as ordered above, failing which, the 'Interim Resolution Professional' will constitute the 'Committee of Creditors' w.e.f. 1st October, 2019."

5. Learned counsel for the Appellant informed that a sum of Rs. 2.13 crores has already been deposited with the Respondent – 'M/s. Val-Met Engineering Pvt. Ltd.'. It is also accepted by the learned counsel appearing on behalf of the Respondent - 'M/s. Val-Met Engineering Pvt. Ltd.'. Learned counsel for the Respondent further informs that the Respondent intends to withdraw the application filed under Section 7 of the 'I&B Code'.

6. At this stage the learned counsel for the Appellant wanted to argue on merit that the claim is barred by limitation. However, we are not inclined to decide the issue in the present case in view of the stand taken by the parties that they intend to settle the matter and claim amount have already been paid.

7. From the earlier orders, it is evident that the Appellant intended to settle the matter with the Respondent. Finally, on 19th September, 2019 when we noticed that the matter has not been settled, it is the Appellant who was ready to deposit the total amount of Rs. 2.13 Crores as claimed by Respondent - 'M/s. Val-Met Engineering Pvt. Ltd.', we allowed "*to give such offer to 'M/s. Val-Met Engineering Pvt. Ltd.' (Financial Creditor) and may deposit with them*". However, we directed the Respondent to keep the same in a separate 'interest bearing account'. It was also made clear that if the amount is deposited within 10 days, then this Appellate Tribunal will decide whether to allow the 'M/s. Val-Met Engineering Pvt. Ltd.' to withdraw the application under Section 7 of the 'I&B

Code'. Today, Respondent having agreed to withdraw the application filed under Section 7, we are not inclined to accept such plea taken by the Appellant.

8. In the circumstances, following the decision of the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.- '2019 SCC Online SC 73'** to ensure that the 'Corporate Debtor' – 'M/s. Trusted Aerospace Engineering Private Limited' does not go through the rigour of the 'Corporate Insolvency Resolution Process', the claim amount having already settled, we exercise power under Rule 11 of the NCLAT Rules, 2016, set aside the impugned order dated 21st June, 2016 and allow the Respondent - 'M/s. Val-Met Engineering Pvt. Ltd.' to withdraw the application under Section 7 of the I&B Code. The amount of Rs. 2.13 crores paid to the Respondent - 'M/s. Val-Met Engineering Pvt. Ltd.' should be treated as full and final payment. The application under Section 7 filed by 'M/s. Val-Met Engineering Pvt. Ltd.' stands withdrawn. The Company Petition No. CP/922/IB/2018 is closed. The Adjudicating Authority will now close the process.

9. Mr. V. Senthil Kumar, 'Interim Resolution Professional'/'Resolution Professional' had continued for a period of five months approximately and incurred expenditure. We assess the fee and cost payable to the Interim Resolution Professional/Resolution Professional totalling Rs. Six Lakhs. The Respondent - 'M/s. Val-Met Engineering Pvt. Ltd.' is directed to pay after adjusting the amount of Rupees Three Lakhs having already paid by the 'M/s. Val-Met Engineering Pvt. Ltd.' to the 'Interim Resolution Professional/Resolution Professional. The said 'Financial Creditor' will pay the rest of the amount i.e. Rs. Three Lakhs to him within 15 days. The 'Interim Resolution Professional'

will hand over the assets and the record of the 'Corporate Debtor' to the Board of Directors/Promoters immediately.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

/ns/gc