

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 914 of 2019

IN THE MATTER OF:

Arunava Sikdar

.....Appellant

Vs.

Sanjeev Saxena & Ors.

.....Respondents

Present :

For Appellant: Mr. Ashu Kansal, Mr. Milan Singh Negi, Mr. Karan Kohli, Advocates

With

Company Appeal (AT) (Insolvency)No. 915 of 2019

IN THE MATTER OF:

Alchemist Asset Reconstruction Company Ltd. (AARC)

.....Appellant

Vs.

Sanjeev Saxena & Ors.

.....Respondents

Present :

For Appellant: Ms. Varsha Banerjee, Mr. Kunal , Ms. Stuti, Advocates

O R D E R

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Company Appeal (AT) (Insolvency)No. 914 of 2019

The Appellant filed a petition before the Adjudicating Authority ('National Company Law Tribunal'), Jaipur Bench, seeking direction against Respondent – 'State of Rajasthan' to hand over the possession, assets, records, management and affairs of the 'Corporate Debtor' which was with the State of Rajasthan.

2. The Adjudicating Authority by impugned order dated 7th August, 2019 noticed the stand taken by the State of Rajasthan and it was brought to the notice of the Adjudicating Authority that the Hon'ble High Court of Rajasthan has passed order in Civil Writ Petition No. 19134/2017 on 14th November, 2017 and the 'State of Rajasthan' has been restrained from transferring the property of the 'Corporate Debtor' in question of the 'Corporate Debtor'.

3. Learned Additional Advocate General who appeared on behalf of the Rajasthan informed Adjudicating Authority that the said order of the Hon'ble High Court is still pending and in view of the same, the possession of the Assets cannot be handed over to the 'Resolution Professional'. However, on behalf of the 'State of Rajasthan' it was agreed to cooperate with the 'Resolution Professional' (the Appellant herein) who has been allowed to visit the premises of the 'Corporate Debtor' and to take appropriate steps for the purpose of preparing the list of the assets, liabilities etc. in terms of provisions of the 'I&B' Code.

4. Impugned order recorded the aforesaid stand taken on behalf of the 'State of Rajasthan' that the State Government was making all endeavour efforts to settle the matter and that it will be desirable that the amicable settlement be made out for preparing of the 'Resolution Plan' in consultation.

5. Learned counsel appearing on behalf of the Appellant ('Resolution Professional') submits that the assets of the 'Corporate Debtor' including the premises being with the State Government, the 'State of Rajasthan' – the 'Resolution Professional' is not in a position to keep the 'Corporate Debtor' as a going concern. Further, according to him, in terms of Section 18, the 'Interim Resolution Professional' is bound to take custody of the assets and said provision will override all other provisions of existing section and in view of Section 238 of the 'I&B' Code.

6. It is stated that the order passed in Writ Petition fell for consideration before the Hon'ble Supreme Court in Civil Appeal No. 12023/2018 wherein the order of the Hon'ble High Court of Judicature dated 1st June, 2018 refusing to transfer the winding up proceedings and the order setting aside order of NCLT dated 13th April, 2018 both were set aside. The Hon'ble Supreme Court while vacated the earlier interim order of stay of Insolvency proceedings made following observations on 12th December, 2018 in Civil Appeal No. 12023 of 2018 in **Jaipur Metals & Electricals Vs. Jaipur Metals & Electricals Ltd.** as quoted below: -

“On this score, therefore, the High Court Judgement has to be set aside. The NCLT proceedings will not continue from the stage at which they have been left off. Obviously, the company petition pending before the High Court

cannot be proceeded with further in view of Section 238 of the Code. The writ petitions that are pending before the High Court have also to be disposed of in light of the fact that proceedings under the Code must run their entire course. We, therefore, allow the appeal and set aside the High Court's judgement."

7. In view of the aforesaid fact, we are of the view that the 'Resolution Professional' must move an application before the Hon'ble High Court of Judicature at Rajasthan and bring the matter to the notice of Hon'ble Chief Justice with the request to expedite the matter as under the provisions of the 'I&B' Code, the matter is to be completed within 330 days after admission of the application, and the matter is pending since 13th April, 2018.

8. It is expected that Hon'ble Chief Justice of Hon'ble High Court of Judicature of Rajasthan will place the matter before the Appropriate Bench for orders in terms of observations and directions made by the Hon'ble Supreme Court as referred above.

9. Though the 'State of Rajasthan' has not been heard at this stage, we make it clear that the proceedings under the provisions of the 'I&B' Code is binding on all the Stakeholders / Central Government / State Government and the Local Authorities and the State Government cannot change the Board of Directors as it stands suspended in terms of Section 17 of the 'I&B' Code.

The appeal stands disposed of with the aforesaid observation.

Company Appeal (AT) (Insolvency)No. 915 of 2019

This appeal has been preferred by the 'Financial Creditor' against the same very impugned order passed by the Adjudicating Authority ('National Company Law Tribunal') Jaipur Bench. The case of the Appellant being covered in the connected appeal.

This appeal stands disposed of with the aforesaid observation.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc