

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 897 of 2019

IN THE MATTER OF:

Sarvadnya Industries Private Limited

65, Balupatlachi Wadi

Taluka Khandala

Satara – 415521

Through its Director Anand Narayan Kadam

...Appellant

Versus

1. M/s Khandoba Prasanna Sakhar Karkhana Limited

Through Resolution Professional

52/788, Lokmanya Nagar near Jogging Park

Pune, Maharashtra – 411030

2. M/s Sai Agro (India) Chemicals

Through Partners

Ghat No.892, Near Ingavale Mala Alate

Hatkanangale, Kolhapur

Maharashtra – 416109

...Respondents

Present:

For Appellant: Mr. Ajay K. Jain and Mr. Atanu Mukherjee, Advocates

For Respondent: Mr. Prashant S. Kenjale, Advocate

Mr. Swapan Pradhan, Advocate for R-2

Mr. Shikhil Suri, Shiv Kumar Suri, Ms. Shilpa Saini, Ms.

Nikita Thappar and Ms. Vinishma Kaul, Advocates for

RP.

ORDER

16.12.2019 This appeal is listed with Company Appeal (AT) (Insolvency) No. 943 of 2019 arising out of same Corporate Insolvency Resolution Process (CIRP). Advocates present agree that issue involved in this appeal is distinct and this appeal can be heard and decided separately.

2. We have heard the Learned Counsel for appellant M/s Sarvadnya Industries Pvt. Ltd. We have also heard the Resolution Professional Sh. Jitendra Palande who is present and the Advocate Sh. Swapan Pradhan for respondent No.2 the successful resolution applicant.

3. CIRP proceedings were initiated against the respondent No.1 Corporate Debtor on 1st January, 2018. It appears that in the process, the appellant filed claim with the Resolution Professional claiming to be Financial Creditor for the rent for pre – CIRP period relating to the machinery installed which is Ethanol Plant in the premises of the Corporate Debtor. The Resolution Professional states that the appellant was informed to file Form claiming operational debt, if the appellant wanted to file claim but the same was not filed. It is stated that even from before CIRP starting the Corporate Debtor was not functional or in operation and for such reasons when the resolution plan was approved, no amount towards rent of the machinery during period of CIRP was provided. It is also stated that no provision was made also because the appellant falls in the category of related party to the Corporate Debtor. The Learned Counsel for the appellant, states that the Corporate Debtor and appellant are both MSME however now the appellant is not pursuing matter regarding rent. The Learned Counsel states that the appellant only wants restoration of the machinery.

4. The respondent No.2 Successful Resolution applicant has in reply (Diary No.14749) stated in para 21 as under:

“21. The provision for rental income could not be made as the ethanol plant was in operation only for 5 months. Also, there is no question of

making a provision for plant and machinery of the appellant in the Resolution plan as the said assets is owned by the Appellant and the same is in the possession of the Janata Sahkari Bank Limited.”

5. Counsel for respondent No.2 accepts this as the stand of the respondent No.2. It is stated that in the Company Appeal (AT) (Ins) No. 943 of 2019 (which is above on Board today) in reply of respondent No.2 (Diary No.14998) in para 12, 13 it is stated that the plant is in possession of the Janata Sahkari Bank Limited and they have put it up for auction and that respondent No.2 has submitted bid in that process.

6. Learned Resolution Professional present also states that the machinery is owned by the appellant and it is stated that before CIRP proceedings started the machinery was attached by Janata Sahkari Bank Limited invoking “The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002” and thus, although the machinery is the owned by appellant it is in legal possession of the Janata Sahkari Bank Limited though physically machinery is in the premises of the Corporate Debtor.

7. Both sides agree that as per explanation below Section 18 of Insolvency and Bankruptcy Code, 2016, the plant is owned by appellant and thus does not belong to the Corporate Debtor, and is thus owned by third party, i.e. The Appellant.

8. As such we direct that the possession of the plant machinery shall be restored to the appellant through Janata Sahkari Bank Limited, Pune. The respondents will act accordingly. The appeal is accordingly disposed of. The claim of the Janata Sahkari Bank Limited with regard to the legal possession of

the plant is left open and not disturbed, for the bank to take appropriate action under the provisions of law.

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

[Kanthi Narahari]
Member (Technical)

PKS/SK