

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 637 of 2018

IN THE MATTER OF:

Maharashtra Seamless Ltd.

...Appellant

Versus

K. K. Lakshminarayana & Ors.

...Respondents

Present:

For Appellant : **Mr. Abhinav Vashist, Senior Advocate assisted by
Mr. Venancio D' Costa, Ms. Astha, Ms. Priya Singh
and Ms. Akshita Sachdev, Advocates**

For Respondents: **Mr. Arun Kathpalia, Senior Advocate assisted by Mr.
Aditya Verma and Mr. Shrey Patnaik, Advocates for
R-2**

**Mr. Ramji Srinivasan, Senior Advocate assisted by
Ms. Sylona Mohapatra and Mr. Raghav Sabharwal,
Advocates for R-3**

Mr. T. N. Durga Prasad, Advocate for R-4

**Mr. G. Ramakrishna Prasad and Mr. B. Suyodhana,
Advocates**

ORDER

12.11.2018 This appeal was preferred by 'Maharashtra Seamless Ltd.' against the order dated 28th September, 2018 whereby the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad directed as follows:

“35. It is therefore necessary to re-determine the Liquidation Value before considering the Resolution Plan filed by MSL.

After re-determining the Liquidation Value as directed, the CoC has to examine the Resolution Plan of MSL. Hon'ble NCLAT has held in the Company Appeal (AT) (Insolvency) No.185 of 2018 dated 08.05.2018 (2018 SCC Online NCLAT 243) that if the facts and circumstances justify exclusion in unforeseen circumstances, Hon'ble NCLAT says some circumstances wherein the period involved can be excluded in computing the period of total 270 days.

- (i) If the Corporate Insolvency Resolution Process is stayed by a Court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
- (ii) If no 'Resolution Professional' is functioning for one or other reason during the Corporate Insolvency Resolution Process, such as removal.*
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the CIRP.*
- (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the CIRP.*
- (v) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored.*

(vi) Any other circumstances which justifies exclusion of certain period.

It is clear in ground No. (vi), the Adjudicating Authority can exclude certain period for the purpose of counting total period of CIRP is circumstances justify such exclusion. In this case, Resolution Plan of MSL is ordered to be placed before CoC for consideration after redetermination of Liquidation Value. Further, in view of re-determination of liquidation value and on the other grounds that Directors of the Suspended Board were not allowed to participate in the discussion in the 7th & 8th CoC meetings. Therefore, the Resolution Plans which were found to be qualified along with the Resolution Plan submitted by MSL to be placed before the CoC again for consideration and Directors (Suspended Board) be permitted at the time that time when Resolution Plans come up for discussion and they be allowed express their views and suggestions and the same to be recorded in the minutes along with views of CoC.”

The ‘Resolution Professional’ was ordered to convene the meeting of the ‘Committee of Creditors’ to comply with the directions. When the matter was taken up by the Appellate Tribunal on 22nd October, 2018, the following observations was made:

“Prima facie it appears that there was no occasion for the Adjudicating Authority to pass any order in the Interlocutory Application for redetermination of the

liquidation value while entertaining the application for approval of plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, substantive portion of which reads as follows:

“31. Approval of resolution plan. – (1) If the Adjudicating Authority satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

From the aforesaid provision it is clear that once the Committee of Creditors has approved the plan and the Resolution Professional produced the same before the

Adjudicating Authority, the Adjudicating Authority has to approve the same if it is in consonance with Section 30(2) or to reject it if it is in violation of Section 30(2). Prima facie there is no provision to direct the Resolution Professional at that stage to redetermine the liquidation value once the plan has been approved by the Committee of Creditors.

Let notice be issued on Respondents. Mr. Aditya Verma, Advocate alongwith Mr. Arun Kathpalia, Sr. Advocate accepts notice on behalf of 2nd Respondent (Resolution Professional). Mr. Raghav Sabharwal, Advocate alongwith Mr. Ramji Srinivasan, Sr. Advocate accepts notice on behalf of 3rd Respondent (Member of Committee of Creditors). No notice to be issued on them.

Let notice be issued on Respondent Nos. 1, 4 and 5 by speed post. Requisites alongwith process fee, if not already filed, be filed by tomorrow. If the Appellant provides email address of the Respondents, let notice be also issued through email.

Dasti service is permitted alongwith copy of this order.

*Post the case 'for admission (after notice)' on **12th November, 2018** on top of the list.*

In the meantime, it will be desirable for the Adjudicating Authority to pass order under Section 31 of the I&B Code if the Resolution Professional moves the application for approval of approved plan by the Committee of Creditors, uninfluenced by the impugned order, subject to the decision of this appeal.”

Learned counsel appearing on behalf of the member of the 'Committee of Creditors' submits that during the pendency of this appeal in compliance of the order of the Adjudicating Authority, revised liquidation value was taken into consideration by the 'Committee of Creditors' whereinafter the 'resolution plan of the appellant' – 'Maharashtra Seamless Ltd.' has been approved. It is also accepted by the learned counsel appearing on behalf of the 'Resolution Professional' and the learned counsel appearing on behalf of the appellant. In view of the aforesaid position, we are not inclined to deliberate on the question as raised in the present appeal, which may be answered in some other case. The Adjudicating Authority is now required to pass order under Section 31 of the I&B Code without granting unnecessary adjournments to any of the party uninfluenced by its earlier order, which is under challenge. The appeal is disposed of with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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