

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1175 of 2019

IN THE MATTER OF:

Beacon Trusteeship and Anr.

...Appellants

Vs

Earthcon Infracon Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellants: Mr. Shikhil Suri and Ms. Nikita Thapar, Advocates

For Respondents: S Sharma, Advocate for IRP

O R D E R

08.11.2019 Heard Advocate Mr. Shikhil Suri appearing on behalf of the Appellants and Advocate S. Sharma appearing on behalf of IRP. In this matter, against the order of dated 23.08.2019 (page 67) NCLT admitting application under Section 9 of Insolvency and Bankruptcy Code, 2016 (In short 'IBC') in the matter of M/s Emperos Infrastructure Private Ltd. Vs. M/s Earthcon Infracon Private Limited, it is stated that the Appellant had moved Hon'ble Supreme Court of India in Civil Appeal No. 7641 of 2019 and Hon'ble Supreme Court passed the following order:

“UPON hearing the Counsel the Court made the following

O R D E R

Issue notice, returnable in three weeks.

Steps for service of notice be taken within three days. In case the steps are not taken within the stipulated time, the civil appeal shall stand dismissed.

The proceedings in terms of NCLT Order dated 23.08.2019 shall remain stayed till the next date of hearing.”

2. It is stated that before the Hon'ble Supreme Court's order dated 30.09.2019 was passed, Committee of Creditors had taken a decision on 23.09.2019 to replace the Interim Resolution Professional by another person to be appointed as Resolution Professional and application C.A. 384/ND/2019 (Annexure-4) had already been filed before the Adjudicating Authority on 27.09.2019 on behalf of Committee of Creditors.

3. It appears now that the Adjudicating Authority has passed the following order on 09.10.2019(Annexure-A1) which reads as follows:

“ORDER

“CA No. 384/ND/2019 is an application filed by two applicant's M/s Beacon Trusteeship Limited and M/s Nisli Finance and Investment Managers LLP. From the list of creditors, it is seen that in respect of M/s Beacon Trusteeship Limited, no amount is admitted and no voting in the voting sheet is reflected. In view of the same, the application is defective. Over and above, the learned counsel appearing for the IRP places the order of Hon'ble Supreme Court dated 30.09.2019 staying all the proceedings in terms of Hon'ble NCLT order dated 23.08.2019 till the next date of hearing. The learned Counsel appearing for the applicant's states that the next date of hearing before the Hon'ble Supreme Court after three weeks from the date of last order i.e. 30.09.2019.

The application does not reflected the correct picture of applicants.

In views of the same, application is dismissed.”

4. Learned Counsel for the Appellant submits that the observations made by the Adjudicating Authority against the Appellants were uncalled for.

5. The order passed by the Hon’ble Supreme Court, stayed the proceedings in terms of the NCLT Order dated 23.08.2019. As such, till the order passed by Hon’ble Supreme Court is in operation, Adjudicating Authority should not have passed the Impugned Order.

6. In the present appeal arising out of impugned order dated 09.10.2019, we refrain to analyse the Impugned Order on merits keeping in views orders passed by the Hon’ble Supreme Court dated 30.09.2019 and ignore the Impugned Order.

7. We dispose of the present appeal with liberty to the Appellants to move before the Adjudicating Authority for appropriate relief regarding replacement of I.R.P. after the Hon’ble Supreme Court takes decision in the appeal which is stated to be pending before the Hon’ble Supreme Court.

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

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc/Gc