

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 284 of 2017

IN THE MATTER OF:

K. S. Oils Ltd.

...Appellant

Vs

The State Trade Corporation of India Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Vivek Sibal, Ms. Pooja M. Saigal and Ms. Khyati Sharma, Advocates.

For Respondents: Ms. Sumati Anand, Advocate for STC.

O R D E R

30.01.2018: This appeal has been preferred by M/s K. S. Oils Ltd. (Corporate Debtor) through Mr. Kuldip Verma, Resolution Professional against order dated 6th October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench whereby and whereunder application preferred by the Resolution Professional on behalf of the Corporate Debtor against the order dated 3rd August, 2017 passed by the Indian Council of Arbitration, New Delhi, has been rejected on the ground that the application against said order is not maintainable.

2. Learned counsel for the Appellant submitted that after declaration of moratorium and appointment of the Resolution Professional, the arbitral proceeding between 'M/s K. S. Oils Ltd.' (Corporate Debtor) and 'The State Trade Corporation of India Ltd.', New Delhi (Financial Creditor) cannot proceed. Reliance has been placed on Section 14 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' in short).

3. By order dated 3rd August, 2017, the Indian Council of Arbitration decided to proceed with the arbitral proceeding irrespective of order of moratorium passed by the Adjudicating Authority.

4. Learned counsel for the respondent - The State Trade Corporation of India Ltd. submitted that the order of moratorium cannot affect the Arbitration Tribunal to adjudicate the dispute.

5. We have heard learned counsel for the parties and perused the record.

6. On hearing the parties we are of the view that the Adjudicating Authority rightly held that the Adjudicating Authority has no jurisdiction to set aside the order passed by the Indian Council of Arbitration i.e. order dated 3rd August, 2017.

7. So far as the question relating the continuation of arbitral proceeding is concerned, the issue stands decided by the Hon'ble Supreme Court in "*Alchemist Asset Reconstruction Company Ltd. Versus M/s Hotel Gaudavan Pvt. Ltd & Ors. in Civil Appel no. 16929 of 2017*". In the said case the Hon'ble Supreme Court by judgement dated 23rd October, 2017 observed:-

"5) The mandate of the new Insolvency code is that the moment an insolvency petition is admitted the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors.

6) This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law."

8. The aforesaid principle will also be applicable to the pending arbitral proceeding.

9. The next question will arise as to where the party will move in respect to the claim as has been preferred before the Arbitral Tribunal? In this respect we may observe that after initiation of Corporate Insolvency Resolution Process, all creditors are required to file claim before the Resolution Professional pursuant to declaration of moratorium and public announcement under Section 13. It is the duty of the Interim Resolution Professional to receive and collect all the claims submitted by the creditors pursuant to Section 15. This is apparent from Sub-section (a) of Section 18 of I&B Code. Pursuant to public announcement of initiation of Corporate Insolvency Resolution Process calling for submission of the claim under Section 15, the Adjudicating Authority is required to collect the claims as stipulated under Sub-section 1 (b) of Section 13 and reads as follows:

“13. Declaration of moratorium and public announcement. – (1) *The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by order –*

- (a) declare a moratorium for the purposes referred to in section 14;*
- (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*
- (c) appoint an interim resolution professional in the manner as laid down in section 16.*

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.”

10. Section 15 stipulate public announcement in the manner as prescribed giving all the information as required under Sub-Section (1) of Section 15. Thereafter, the Interim Resolution Professional is required to receive and collect all the claims submitted by the creditors to him, pursuant to public

announcement made under Section 13 and 15 as evident from Section (1) (b) of Section 18 and quoted below:

“18. Duties of interim resolution professional. –

(1) The interim resolution professional shall perform the following duties, namely:-

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;”

11. The Interim Resolution Professional, thereafter on collection of all the claim received against the Corporate Debtor is required to constitute Committee of Creditors under Section 21, which in its term is required to notice the claim for the purpose of preparation of Information Memorandum under Section 29.

12. As per Section 238, the I&B Code override other laws, as quoted below:

“238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Thereby, the I&B Code will prevail over the Arbitration and Conciliation Act, 1996.

13. In view of the provisions as referred to the above and the decision of the Hon'ble Supreme Court in "*Alchemist Asset Reconstruction Company Ltd. Versus M/s Hotel Gaudavan Pvt. Ltd & Ors.*" we hold that the arbitral proceeding pending between 'M/s K. S. Oil Ltd.' (Corporate Debtor) and 'The State Trade Corporation of India Ltd.' (Financial Creditor) before the Indian Council of Arbitration cannot proceed during the moratorium period.

14. For the reasons recorded above while we are not inclined to interfere with the part of the impugned order whereby the Adjudicating Authority refused to set aside the order passed by the Indian Council of Arbitration, declare that the Arbitration Tribunal/ Indian council of Arbitration cannot proceed with the arbitral proceeding pending between the parties. Both the parties are directed not to pursue arbitral proceeding before the Arbitration Tribunal/ Indian Council of Arbitration till final order is passed by the Adjudication Authority on the resolution plan and completion of the moratorium period. However, it will open to both of them to file their respective claim and counter claim, if any, before the Resolution Professional. The appeal stands disposed of with the aforesaid observations and directions. No Costs.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

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