

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1120 of 2020

[Arising out of Order dated 19.11.2020 passed by National Company Law Tribunal, Mumbai Bench in I.A. 1141 of 2020 in CP(IB) No.197 of 2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Omkara Assets
Reconstruction Pvt. Ltd.
No.9, M.P. Nagar
First Street,
Kongu Nagar
Extension, Tirupur,
Coimbatore,
Tamil Nadu – 641607

...

Appellant

C/515, Kanakia
Zillion,
Junction of L.B.S.
Road & CST Road,
B.K.C Annexe
Near Equinox,
Kurla West,
Mumbai,
Maharashtra 400070

Versus

1. Mr. Amit Gupta
Resolution Professional
702, Janki Centre
Dattaji Salvi Road,
Off, Veera Desai Road
Andheri West,
Mumbai 400053

Applicant

Respondent 1 to 4

2. Unimark Remedies
Limited
501, E-Wing,
Skypark CHS Ltd.
Oshiwara Garden
Road, Next to
HEFC House,
Off. S.V. Road,
Goregaon (West)

Corporate Debtor

Mumbai – 400104

3. ICIC Bank Respondent
Near Chakli Circle,
Old Padra Road,
Vadodra,
Gujarat – 397007
4. Corporation Bank Respondent
Corporate Banking
Branch, 301-302
The Eagle's Flight,
Suren Road,
Andheri-Kurla Road,
Andheri (East),
Mumbai – 400093

For Appellant: Mr. Adarsh Ramunjan and Mr. Lzafeer Ahmed, Advocates

For Respondents: Ms. Pooja Mahajan, Mr. Avinash Amarnath, Ms. Mahima Singh and Ms. Avni Shrivastav, Advocates

ORDER
(Virtual Mode)

23.12.2020 Heard Counsel for the Appellant. This Appeal has been filed against Impugned Order dated 19th November, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in I.A. 1141 of 2020 in CP(IB) No.197 of 2018. It is argued that Section 7 Application was admitted against the Corporate Debtor – Unimark Remedies Ltd. on 3rd April, 2018. Thereafter, the Resolution Professional – Mr. Amit Gupta appointed two registered Valuers - No. 1) Delta and 2) R & C as per Regulation 27 of Insolvency and Bankruptcy Board of India (CIRP Regulations). It is stated that Corporation Bank having about 7% voting rights filed Application before the Adjudicating Authority disputing the valuation done. Thereafter Order (Annexure A-5 Page – 100) came to be passed. The

Applicant in that Application claimed (see Para – 3 of the Order at Page – 101) that against Balance Sheets, intangible assets were valued at Zero/Nil. It was pointed out by the Corporation Bank that the tangible assets have been valued much lower when compared to valuation shown in the last audited sheets. It is stated that disputes were raised with regard to the valuation of tangible and intangible assets. The learned Counsel is further adding that the Order was split verdict between the two Members. The Judicial Member passed following Order:-

“10. Accordingly, this Misc. Application is hereby allowed wherein we direct appointment of an independent valuer for a fresh valuation of the Corporate Debtor. Name of the Liquidator shall be released in due course after obtaining details from the market.”

2. The Member (Technical) held that no fresh valuation was required and dismissed MA 1406 of 2019.

3. The learned Counsel for Appellant submits that against this Order, Appeal was filed and the Order of this Tribunal in Company Appeal (AT) (Ins) No.1078 of 2019 (Annexure A-6 Page – 123) and this Tribunal did not enter into the merits and directed the President, National Company Law Tribunal, Mumbai Bench to pass Orders for placing the matter before third Member. It is stated that thereafter, the matter came up before third Hon'ble Member (Judicial) – Smt. Suchitra Kanuparthi and Orders (Annexure A-7 Page – 125) were passed on 28th January, 2020 and the Hon'ble Member in the operative part of the Order directed as under:-

Therefore, it is ordered that the Resolution Professional take steps to appoint a fresh Valuer with a limited

scope of valuing the Intangible asset considering the International standard of Valuation of a Pharmaceutical Company and submit his report within a period of two weeks of receipt of the order copy and the COC is directed to re-consider the valuation submitted by the third Valuer.”

4. It is argued that the third Member had gone beyond the issue which was referred.

5. However, it is noticed that the said Order was challenged in Appeal before this Tribunal (Annexure A-9 Page – 172) in Company Appeal (AT) (Ins) No.418 of 2020. This Tribunal did not interfere with the Impugned Order. This Court observed that the Adjudicating Authority would pass appropriate Orders under Section 31 in Application taking into consideration the valuation and Plan as approved by COC.

6. The learned Counsel for the Appellant submitted that thereafter the matter came up before the earlier Bench of Member (Judicial) – Shri Bhaskara Pantula Mohan and Member (Technical) – Shri V. Nallasenapathy. The Adjudicating Authority observed in Order dated 24.02.2020 (Annexure A-8 – Page 169) as under:-

Further, this bench is of the view that the bench shall appoint the valuer by itself and not by the Resolution Professional. Subsequent, to the passing of the above orders as the members of the Bench differed, on the orders dated 11.09.2019, the matter has been referred to the third member, who had more or less agreed with the contentions raised by the Corporation Bank and disposed off the application. But while saying so the Hon'ble Member had also expressed a view that a fresh valuer with a limited scope of valuation of the intangible assets considering international expert valuer for a Pharmaceutical Company be appointed by

the Resolution Professional and a report be submitted to the Committee of Creditors.”

With such and further observations, Adjudicating Authority set aside appointment of M/s G.A. Advisory LLP as Valuer who had been appointed by the RP after Orders of the third Member. The Regular Bench passed further Orders as under:-

“We will appoint a suitable expert valuer to value afresh both tangible and intangible assets, on the next date of hearing after obtaining necessary information from the market. We have requested Mr. Ram Ratan Kanoonago, a senior Chartered Accountant and also registered Resolution Professional to find someone by making enquiries and we also would request Mr. S. Raghunath & Co., Chartered Accountant and Resolution Professional to assist us for appointing a suitable valuer.”

7. It is stated that later the matter had come up before another Hon'ble Bench which has passed the Impugned Order dated 19th November, 2020. It is stated that the Adjudicating Authority in Impugned Order reviewed Order dated 24.02.2020 against which Order no Appeal had been filed.

8. The learned Counsel for Resolution Professional submits that when the Order dated 24th February, 2020 (Annexure A-8) was passed, the concerned MA No.1406 of 2020 was not listed before the Bench but it was taken up and after making oral enquiry from the Resolution Professional, Orders dated 24.02.2020 came to be passed. Subsequently, when the matter had come up for taking a decision, the present Impugned Order dated 19th November, 2020 (Annexure A-1) came to be passed. The learned Counsel for RP submits that after Impugned Order, the Report of M/s G.A. Advisory LLP had been placed

before the COC with regard to intangible assets. As regards the tangible assets, the earlier Report received from Delta and R&C were placed before the COC and COC has given further directions to the Resolution Professional to place matter before the Adjudicating Authority.

9. The Counsel for RP submits that the RP has moved Adjudicating Authority for approval of the Resolution Plan approved by the COC.

10. The Impugned Order in the finding reads as under:-

“FINDINGS

We have heard all the parties concerned and taken all the documents submitted by them into consideration. It is observed that the applicant who is the Resolution Professional as well as the CoC wants to continue with the same valuer i.e. GAA Advisory who is well aware of the facts of the case and has done valuation of the Corporate Debtor earlier. On the other hand, the Corporation Bank does not have faith on the CoC, the RP as well as the GAA Advisory and therefore, wants this Tribunal to appoint a fresh valuer for conducting the valuation process.

We are of the opinion that the Corporation Bank holds approximately only about 7% of the share in the CoC and has time and again raised objections which has resulted in delay in the process of CIRP. As mentioned by the Resolution Professional, the Corporate Debtor has already crossed 550 days of CIRP and is incurring huge expenditure.

We would like to consent to the order passed by the Special Bench comprised of Member (Judicial) Mrs. Suchitra Kanuparthi.

Therefore, with a view to expedite the process, as the GAA Advisors are already aware of the position of the Corporate Debtor, it is advisable to continue with the same valuer. Also, majority of the CoC, under its commercial wisdom has agreed for the appointment of GAA Advisory.

In view of the same and with the above observations, we allow this application and direct the IRP to continue with the valuation process.”

11. Going through the above Order, we find it justified in the facts of the matter. It appears to us that it was not appropriate to keep shuttling the matter on an issue on which the Resolution Professional has acted after the Orders were passed by the third Hon’ble Member. The Corporation Bank had objections with regard to the valuation done earlier and thereafter another Valuer has been appointed and it appears that Report has been filed. Still Appellant is objecting. When such developments have taken place, on technical issues, we do not intend to interfere with the Impugned Order.

12. For such reasons, we do not find merit in the Appeal and do not interfere with the Impugned Order. It would further prolong the delayed CIRP proceedings which would not be in the interest of the Corporate Debtor.

13. There is no merit in the Appeal. The Appeal is dismissed, without admitting the same.

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

[V.P. Singh]
Member (Technical)

rs/md