

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 344 of 2018

(Arising out of Order dated 11th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, in I.A (I.B) No. 135 of 2018 and I.A. No. 136 of 2018 in C.P (I.B) No. 48/7/NCLT/AHM/2017)

IN THE MATTER OF:

SICOM Limited

...Appellant

Vs

Alok Employees Benefit and Welfare Trust & Ors.

....Respondents

Present:

For Appellant: Mr. Ankur Kashyap, Advocate.

For Respondents: Ms. Bani, Advocate for R-1.

Ms. Misha, Ms. Mrida, Ms. Nisha, Mr. Sapan Gupta and Ms. Mriba Lakhmari, Advocates for RP.

Mr. Sudipto Sarkar, Senior Advocate with Mr. Prateek Kumar and Ms. Sneha Janakiraman, Advocates for R-5.

Mr. Arun Kathpalia, Senior Advocate with Ms. Bali Brar, Advocate for R-2.

Dr. Abhishek Manu Singhvi and Mr. Ramji Srinivasan, Senior Advocates with Mr. V.P Singh, Ms. Roopali Singh, Ms. Jasmine Khakarnis, Mr. Avishkar Singhvi, Mr. Tushar Bhardwaj, Ms. Sayobani Basi and Mr. Naveen Hegde, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'SICOM Limited', one of the 'Financial Creditors', has preferred this appeal against order dated 11th June, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad

Bench, Ahmedabad, whereby and whereunder, the Interlocutory Application preferred by 'Alok Employees Benefit and Welfare Trust and Anr.' under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been allowed and the application preferred by the 'Resolution Professional' under Section 33(2) read with Section 60(5) of the 'I&B Code' has been disallowed with direction to the 'Resolution Professional' to present the 'Resolution Plan' of the 'Sole Resolution Applicant' before the 'Committee of Creditors' for a re-look and for proper consideration, in view of the amendment made in the statute, in the same parameter as it was earlier considered, without involving or considering any new issue which were not taken into account while considering the 'Resolution Plan' submitted by the 'Sole Resolution Applicant'.

2. The brief fact of the case is that the 'Corporate Insolvency Resolution Process' was initiated against 'Alok Employees Benefit and Welfare Trust'-'(Corporate Debtor)'.

3. Before completion of the resolution period, the 'Resolution Plan' submitted by 'JM Financial Asset Reconstruction Company Limited' along with 'Reliance Industries Limited' was placed before the 'Committee of Creditors' in its meeting held on 14th April, 2018 and it received 70.28% assenting voting shares of the 'Committee of Creditors'.

4. 'Alok Employees Benefit and Welfare Trust & Anr.' filed Interlocutory Application (I.B) No. 135 of 2018 seeking approval of the 'Resolution Plan'. The 'Resolution Professional' in his turn filed Interlocutory Application No. 136 of 2018 seeking liquidation of the 'Corporate Debtor'. The Adjudicating
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Authority on hearing the parties noticed the rival contention on 26th April, 2018 passed the following order:-

“ORDER

Reply filed by the Respondent/Alok employees.

Heard at length, Learned Senior Counsel for the Applicant and Learned Counsel for the Intervener, on the issue of interim direction to be issued by this court during the pendency of IAs No. 135/2018, 136/2018 and 145/2018, the Learned Counsel for the Applicant has contended that if such direction is not given in respect of IA 145/2018, then there would be legal hardship for continuance with the Management of the company during such transitional period and there can be a vacuum in Management of Corporate Debtor Company while RP's application for liquidation of Corporate Debtor company is still under consideration and is sub-judice before this Bench. We considered the peculiar circumstances of the case and in order to do justice the hearing of the present matter is preponed to 02.05.2018. Meanwhile the application is allowed as RP to continue with the interim arrangement and Management of the Corporate Debtor Company.”

5. While the matter was pending, sub-section (4) of Section 30 of the 'I&B Code' was amended and in place of the word “seventy-five” percentage

of voting shares, the word “sixty-six” of the voting shares of the ‘Financial Creditor’ was inserted for approval of the ‘Resolution Plan’, which came into force with effect from 6th June, 2018. In view of the aforesaid amendment, the Adjudicating Authority passed the impugned order dated 11th June, 2018.

6. The main plea taken by the Appellant is that the amended sub-section (4) of Section 30 has come into force from prospective date of 6th June, 2018, and, therefore, the said provision cannot be made applicable to the ‘Resolution Plan’ submitted prior to 6th June, 2018.

7. Learned Counsel for the Appellant submitted that the ‘Resolution Plan’ having been rejected by about 30% of the ‘Financial Creditors’ before amendment of sub-section (4) of Section 30, it cannot be approved. It was submitted that total dues is approximately Rs. 29,524 Crores, but the ‘Resolution Applicant’ proposed payment of Rs.5,052 Crores towards claims of the ‘Financial Creditors’.

8. Learned Senior Counsel appearing on behalf of the 1st Respondent, (‘Successful Resolution Applicant’) submitted that the amended sub-section (4) of Section 30 which has come into force from 6th June, 2018 will also be applicable to all cases which were pending for adjudication and where no order of liquidation under Section 33 has been passed.

9. We have heard learned counsel appearing on behalf of the parties and perused the records.

10. Amended sub-section (4) of Section 30 reads as follows:

“30. Submission of resolution plan. — (4) *The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:*

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.”

11. From bare perusal of amended sub-section (4) of Section 30 particularly proviso therein, it will be apparent that though amended sub-section (4) of Section 30 came into force from 6th June, 2018, it is applicable to all ‘Resolution Plans’ which were not approved by the ‘Committee of Creditors’ or by the Adjudicating Authority.

12. In the present case, as we find that the ‘Resolution Plan’ has not been approved by the Adjudicating Authority and with the assent of more than 72% of the voting shares, the ‘Committee of Creditors’ wanted to approve the plan, and in absence of any allegation that the sole ‘Resolution Applicant’ is ineligible under Section 29A of the ‘I&B Code’, we hold that the Adjudicating Authority rightly asked the ‘Resolution Professional’ to place the matter before the ‘Committee of Creditors’ in terms of amended sub-section (4) of Section 30 for its consideration in accordance with the said provision.

13. For the reasons aforesaid, we affirm the impugned order dated 11th June, 2018.

14. However, in the facts and circumstances of the case, we exclude the period of pendency of this appeal i.e. from 9th July, 2018 till the date of this judgment, apart from the exclusion of period already allowed by the Adjudicating Authority for the purpose of counting the period of 270 days.

15. The 'Committee of Creditors' are directed to consider the 'Resolution Plan' in question, whereinafter the 'Resolution Professional' will place the matter before the Adjudicating Authority for order under Section 31 of the 'I&B Code' on an early date. The appeal is dismissed but with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

29th November, 2018

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