

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 456 of 2018

IN THE MATTER OF:

Krishna Kumar Mintri

...Appellant

Vs

Kamlesh Kumar Sighania & Anr.

....Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Anna Malhotra, Mr. Sansar Kumar and Ms. Sylona Mohapatra, Advocates.

For Respondents: Mr. Rajesh Kr. Gautam and Ms. Khushbo Aggarwal, Advocates for PNB.

Mr. K. K. Singhanian, Resolution Professional.

Ms. Vivya Nagpal and Mr. Umesh Pratap Singh, Advocates.

O R D E R

27.02.2019: The Punjab National Bank (Financial Creditor) filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'Mintri Tea Company Pvt. Ltd.'. The application was admitted and single member Committee of Creditors comprising of 'Punjab National Bank' was constituted in absence of any other financial creditor. The Appellant – 'Krishna Kumar Mintri', shareholder of 'Mintri Tea Company Pvt. Ltd.' (Corporate Debtor) negotiated with Punjab National Bank (the sole member of Committee of Creditors) and other claimants, who claim to be the creditors and settled the claims in full.

2. In the aforesaid background, the Punjab National Bank (Applicant under Section 7) filed application under Section 12A of the I&B Code for withdrawal of the application the total amount having paid in full and final and having voted

by Committee of Creditors with 100% voting share. The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 3rd August, 2018 rejected the application of withdrawal by detailed order discussing various provisions of the law and regulations. It held that Section 12A will not be applicable having application under Section 7 filed earlier.

3. In view of the impugned order dated 3rd August, 2018, Resolution Professional has no other option but to call for resolution plans. Ms. Vivya Nagapal, learned counsel appearing on behalf of the sole Resolution Applicant submitted that the Application under Section 12A of the I&B Code could not have been entertained, the application under Section 7 having filed earlier than the provision under Section 12A was introduced.

4. By another impugned order dated 19th November, 2018 and 11th January, 2019, the Adjudicating Authority directed the Punjab National Bank to pay the fee and cost of resolution to Mr. Kamlesh Kumar Singhania, Resolution Professional. The grievance of the Punjab National Bank is that Mr. Krishna Kumar Mintri, the shareholder, while settled the claim with the sole financial creditor and other claimants agreed to make payment of fees and resolution cost of the Resolution Professional, as verified and approved by the Committee of Creditors (Punjab National Bank). It is submitted that inspite of the same, the Adjudicating Authority, ignoring the settlement, directed the Punjab National Bank to pay the fee and cost of resolution to the Resolution Professional. Mr. Kamlesh Kumar Singhania, Resolution Professional submits that he will be happy to receive the amount as approved by the Committee of Creditors and do not bother who will pay the amount i.e. the Appellant – ‘Krishna Kumar Mintri’ or ‘Punjab National Bank’.

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

6. The issue relating to application of Section 12A and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 framed by the IBBI fell for consideration before the Hon'ble Supreme Court in '*Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors.*', *Petition for Special Leave to Appeal (C) No.31557/2018*. In the said appeal the Hon'ble Supreme Court by order dated 14th December, 2018 observed and held as follows:-

“ORDER

The only reason why the withdrawal was not allowed, though agreed to by the Corporate Debtor as well as the Financial Creditor State Bank of India and the Operational Creditor-Respondent No.3, is because Regulation 30A states that withdrawal cannot be permitted after issue of invitation for expression of interest.

According to us, this Regulation has to be read along with the main provision Section 12A which contains no such stipulation.

Accordingly, this stipulation can only be construed as directory depending on the facts of each case.

Accordingly, we allow the Settlement that has been entered into and annul the proceedings.

The Special Leave Petition is disposed of accordingly.”

7. From the aforesaid decision of the Hon'ble Supreme Court in '*Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors.*', it is clear that Regulation 30A cannot override the substantive provision of Section 12A. The Regulation has to be read alongwith the provision in Section 12A, which contains no such stipulation. No discrimination can be made for withdrawal of an application under Section 7 or Section 9 on the ground that the application was filed before a cutoff date or filed after a cutoff date. Such cutoff date has no nexus with the objective which is to be achieved. The Adjudicating Authority having failed to notice the aforesaid provisions issued long order discussing regulations and provisions of the Code. The Adjudicating Authority should have allowed application of withdrawal filed by the Applicant – Punjab National Bank, the Committee of Creditors having approved the Settlement with 100% voting share.

8. So far as Resolution Applicant is concerned, they do not have any right to plead merely because they have filed resolution plan, till its approval or rejection by the Adjudicating Authority. Similar view has been expressed by Hon'ble Supreme Court in '*Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.*' in *Civil Appeal Nos.9402-9405 of 2018, (2019) 2 SCC 1*.

9. For the reasons aforesaid, we set aside the impugned order dated 3rd August, 2018, allow the application filed by Punjab National Bank for withdrawal of the application under Section 7 and dismiss the Company Petition C.P.(IB) No. 421/KB/2017, the parties having settled the claim.

10. The Corporate Debtor is restored to its old position. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed pursuant to impugned order and action taken by the 'Resolution Professional',

including the advertisement published in the newspaper calling for applications and actions are declared illegal and are set aside. The 'Corporate Debtor' is released from the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

11. So far as payment of fees and resolution cost to the Resolution Professional is concerned, the Corporate Debtor will pay the full amount as approved by the Committee of Creditors in terms of their agreement. The Punjab National Bank will check the bills submitted by the Resolution Professional and approve the amount payable to him towards fee and resolution cost within two weeks. The Corporate Debtor will pay the approved amount in favour of the Resolution Professional within three weeks thereof.

12. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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