

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 469 of 2019

IN THE MATTER OF:

Prasad Gempex

...Appellant

Versus

Star Agro Marine Exports Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. V. Prakash, Senior Advocate with
Mr. Ajay Garg and Ms. Shubha Ananth, Advocates**

For 1st Respondent: **Ms. C. Rubavathi and Ms. Sabita Mahadevan,
Advocates for R.P.**

For 2nd Respondent : **Mr. Nakul Sachdeva, Advocate**

O R D E R

02.05.2019 The total claim of the Appellant was not entertained by the ‘Resolution Professional’ and being aggrieved the Appellant moved before the Adjudicating Authority and thereafter before this Appellate Tribunal. The Appellate Tribunal by order dated 1st February, 2019 passed in **“Company Appeal (AT) (Insolvency) No. 291 of 2018”** while directed the Adjudicating Authority to pass appropriate order under Section 31 of the I&B Code with regard to ‘resolution plan’ as approved by the ‘Committee of Creditors’. The Appellant was allowed to file claim under sub-section (6) of Section 60 of the ‘I&B Code’ before the Court of Law of appropriate jurisdiction or an application against the ‘Corporate Debtor’ namely *“M/s. Star Agro Marine Exports Pvt. Ltd.”* with the following observations :

“7. Similar issue fell for consideration before this
Appellate Tribunal in ‘M/s. Dynepro Private Limited’

vs. Mr. V. Nagarajan – Company Appeal (AT) (Insolvency) No. 229 of 2018 etc.’ The Appellate Tribunal by its judgment dated 30th January, 2019 held that ‘Resolution Professional has no jurisdiction to decide the claim of one or other creditor, including ‘Financial Creditor’, ‘Operational Creditor’, ‘Secured Creditor’ or ‘unsecured Creditor’. Referring to sub-section (6) of Section 60 of the ‘I&B Code’, this Appellate Tribunal further observed that after completion of the period of moratorium, a suit or application can be filed against the ‘Corporate Debtor’. Relevant portion of Section 60 is quoted below:-

“60. (1) *The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*

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(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been

made under this Part, the period during which such moratorium is in place shall be excluded.

From the aforesaid provision, it is clear notwithstanding the order passed under Section 31 of the I&B Code (any existing law), it is open to a person to file a suit or an application against the ‘corporate debtor’ after completion of the period of moratorium.

8. *The power of ‘Resolution Professional’ also fell for consideration before the Hon’ble Supreme Court in **‘Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018’**. In the said judgment dated 25th January, 2019, the Hon’ble Supreme Court held that ‘Resolution Professional’ has no adjudicatory power. The ‘Resolution Professional’ has to vet and verify the claims made and ultimately determine the amount of each claim. As opposed to this, the ‘Liquidator’ in the Liquidation proceedings under the I&B Code has to consolidate and verify the claims and either admit or reject such claims under Sections 38 to 40 of the Code.*
9. *In the present case, it is informed that the ‘resolution plan’ has already been approved by the ‘Committee*

of Creditors’ and the ‘Resolution Professional’ had placed the same before the Adjudicating Authority on 4th October, 2018 in ‘M/s. Prasad Gempex’ with regard to the ‘corporate insolvency resolution process’ initiated against ‘M/s. Star Agro Marine Exports Pvt. Ltd.’ (subject matter of Company Appeal (AT) (Insolvency) No. 291/18) . A ‘resolution plan’ has already been approved and placed before the Adjudicating Authority (Chennai) on 4th October, 2018. However, till date no order under Section 31 has been passed. We find that 270 days have passed.

- 10. Insofar as ‘corporate insolvency resolution process’ initiated against ‘Assam Company India Ltd.’ is concerned it is informed that a separate ‘resolution plan’ has already been approved by the ‘Committee of Creditors’ and same has been approved by the Adjudicating Authority under Section 31 of the I&B Code on 20th September, 2018.*
- 11. In the facts and circumstances, we direct the Adjudicating Authority (National Company Law Tribunal), Chennai to pass appropriate order under Section 31 of the I&B Code on the ‘resolution plan’ as approved by the ‘Committee of creditors’, if not yet passed, by 22nd February, 2019.*

12. *We allow the appellant - 'M/s. Prasad Gempex' to file claim in terms of sub-section (6) of Section 60 before the appropriate court of law or may file appropriate application against the 'corporate debtor' namely 'M/s. Star Agro Marine Exports Pvt. Ltd.', if the 'resolution plan' is approved and do not take proper care of the applicant. In case the 'resolution plan' is not approved and order of 'liquidation' is passed in respect of 'M/s. Star Agro Marine Exports Pvt. Ltd.', in such case, it will be open to the appellant 'M/s. Prasad Gempex' to file claim before the 'Liquidator' in accordance with the provisions as referred to above and the 'Liquidator' will decide the claim under Section 40 of the I&B Code.*
13. *We may observe that we have not expressed any opinion with regard to the claim as made by 'M/s. Prasad Gempex'. So far as the 'SREI Infrastructure Finance Ltd.' who is aggrieved by the decision of the 'Resolution Professional', it may also take steps under sub-section (6) of Section 60 against the 'corporate debtor' or any other party. In this case, we make it clear that we have not expressed any opinion with regard to the claim made by the 'SREI*

Infrastructure Finance Ltd.’ or the decision as taken by the ‘Resolution Professional’.”

2. The Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai thereafter passed an order u/s 31 of the I&B Code approving the ‘Resolution Plan’ by the impugned order dated 11th March, 2019. However, while passing such order, the Adjudicating Authority held and observed :

“13. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn and dismissed.”

3. After hearing the learned counsel for the Appellant, learned counsel for the ‘Successful Resolution Applicant’ who is now ‘Corporate Debtor’ and the learned counsel for the ‘Resolution Professional’, we are of the view that the Adjudicating Authority has no jurisdiction to pass any order with regard to any matter pending before the Court of criminal jurisdiction. Further, the parties having given opportunity to move against the ‘Corporate Debtor’ under sub-section (6) of Section 60 of the ‘I&B Code’, the Adjudicating Authority cannot prohibit the aggrieved person to file a claim before the Court of competent jurisdiction or an application before the appropriate Forum.

4. This Appellate Tribunal by order dated 1st February, 2019 in '*Company Appeal (At)(Insolvency) No. 291 of 2018*' having given liberty to the Appellant to file a claim in terms of sub-section (6) of Section 60 and the impugned order aforesaid to the extent as mentioned in paragraph 13 and quoted above being contrary to the decision of this Appellate Tribunal, is fit to be set aside.

5. For the reasons aforesaid, we set aside the observation and direction as given by the Adjudicating Authority at paragraph 13 of the impugned order dated 11th March, 2019 passed in CP/668/IB/2017 so far it relates to inquiry, investigation, proceedings whether civil or criminal, suits etc. The rest part of the order, 'approving the plan', is not interfered with as no case is made out to interfere with the same.

6. However, we make it clear that we have not decided the claim of the Appellant on merit nor express any opinion with regard to the pending suits or proceedings which may have reached finality in terms of Section 31 of the I&B Code.

7. The appeal is allowed in part. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc