

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 655 of 2019

IN THE MATTER OF:

M/s ICICI Bank Ltd.

.... Appellant

Vs

Mr. Gopalsamy Ganesh Babu,
Insolvency Professional
M/s. Subburaj Spinning Mills Pvt. Ltd.

.... Respondent

Present:

For Appellant: Ms. Madhusmita Bora, Advocate.

For Respondents:

O R D E R

05.07.2019 Having heard learned Counsel for the Appellant and being satisfied with the grounds, the delay of 14 days in preferring the Appeal is condoned. Interlocutory Application No.1966 of 2019 stands disposed of.

2. In the ‘Corporate Insolvency Resolution Process’ against M/s. Subburaj Spinning Mills Pvt. Ltd. the ‘Interim Resolution Professional’ called for claims, which were collated and thereafter Information Memorandum was prepared. On the basis of such Information Memorandum, Expression of Interests were filed by ‘Resolution Applicants’ followed by ‘Resolution Plans’. In May 2018, the Appellant was informed that it may file its claim, but the Appellant sat tight on the matter and did not file its claim either as ‘Financial Creditor’ or ‘Operational Creditor’ pursuant to such information given by the ‘Resolution Professional’.

3. On the basis of the total claim collated, the 'Resolution Applicants' submitted their proposal and the best of the 'Resolution Plan' was approved by the 'Committee of Creditors' on 17th December, 2018. It is only after approval of the 'Resolution Plan' by the 'Committee of Creditors', the Appellant filed its claim before the 'Resolution Professional' on 21st December, 2018.

4. For the said reason, the 'Resolution Professional' having no jurisdiction, could not include the claim of the Appellant. The 'Resolution Plan' approved by the Authority on 12th March, 2019, the Appellant thereafter moved before the Adjudicating Authority (National Company Law Tribunal) Single Bench, Chennai, which having noticed the aforesaid fact by impugned order dated 9th April, 2019 rejected the claim. The Adjudicating Authority noticed that the Appellant has already moved before the Subordinate Court with respect to the same very claim in O.S. No.308 of 2008 and the matter remained pending because of Moratorium. It was in this background also no relief was granted.

5. Learned Counsel for the Appellant submits that the 'Resolution Plan' is already under challenge and pending consideration before this Appellate Tribunal in another Appeal. However, that cannot be a ground to admit the claim of the Appellant after approval of the 'Resolution Plan' by the 'Committee of Creditors' or thereafter. The period of Moratorium having completed, the Appellant may pursue the suit O.S. No.308 of 2008 pending before the Subordinate Court in the light of Section 60(6) of the I&B Code.

6. We may mention that the Adjudicating Authority has not rejected the claim, nor we have rejected the claim made by the Appellant, which may be determined by the Court of competent jurisdiction uninfluenced by the order passed by the Adjudicating Authority or this Appellate Tribunal. The Appeal stands disposed of with the aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC