

(2020) 03 NCLT CK 0078

In the National Company Law Appellate Tribunal

Case No : Company Application No. 894 (PB) Of 2020 In Company Petition No. (IB)-202 (PB) Of 2017

Pawan Kumar Aggarwal HUF

APPELLANT

Vs

Mahendra Kumar Khandelwal Erstwhile

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 18, 30(2), 30(4), 31, 31(1), 60(5)

Citation : (2020) 03 NCLT CK 0078

Hon'ble Judges : Dr. Deepti Mukesh, J; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Sandeep Bajaj, Soayib Qureshi, Aditi Pundhir, Abhinav Vashisth, S. Chaturvedi, Priya Singh, Charu Bansal

Final Decision : Dismissed

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This is an application filed by Pawan Kumar Aggarwal HUF, Proprietor of Raghav Transport Company under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") with the following prayer:

"To direct the Resolution Professional to accept the claim of the Applicant and to set aside the decision of the Resolution Professional to accept only part claim of the Applicant."

2. The facts necessary for disposal of the present application very precisely are that Corporate Insolvency Resolution Process against M/s. Bhushan Power & Steel Limited ("Corporate Debtor") was initiated on 26.07.2017 and Mr. Mahendra Kumar Khandelwal was appointed as the Interim Resolution Professional. The Interim Resolution Professional invited claims through public announcement from the creditors of the corporate debtor with last date for

submission of claim as 09.08.2017. Applicant operational creditor filed its claim on 09.08.2017 for an amount of Rs. 3,69,03,626/-. The claim of the applicant was partly-admitted to the extent of Rs. 1,53,66,737/-. Subsequently the resolution plan submitted by JSW Steel Company was approved on 05.09.2019 under Section 31 of the Code.

3. Now only on 29.01.2020 the applicant has filed the present application for a direction on the Resolution Professional to accept the entire claim of the applicant. Admittedly the Corporate Insolvency Resolution Process against M/s. Bhushan Power & Steel Limited ("Corporate Debtor") has come to an end on 05.09.2019 with the approval of the resolution plan and the Resolution Professional has been discharged. Therefore, after cessation of insolvency process consideration of any claim by the erstwhile Resolution Professional under Section 18 of the Code does not arise.

4. In Company Appeal No. CA (AT) (Ins) 128 of 2018 decided on 24.05.2018 Hon'ble NCLAT has clarified that:

"5. After approval of the resolution plan under Section 31(1), the period of moratorium came to an end, the terms of resolution professional also came to end. The Committee of Creditors had no role to play thereafter."

5. The applicant has also prayed for consideration of part of his claim which has been rejected long before by the Resolution Professional.

6. It is pertinent to refer here that "Resolution Plan" approved by the 'Adjudicating Authority' under Section 31 of the Code is not only binding on the 'corporate debtor', but also on its employees, member creditors, guarantors and other stake holders involved in the Resolution Plan'

7. The relevant provisions of Section 31(1) of the Code is reproduced hereunder for ready reference:

"31.(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, creditors, guarantors and other stakeholders involved in the resolution plan."(emphasis given)

8. From the aforesaid provision of Section 31(1) it is clear that the 'Resolution Plan' is binding on the 'Corporate Debtors' 'Financial Creditors', 'Operational Creditors' and all other stakeholders.

9. Applicant operational creditor is bound by the approved resolution plan. Needless to say, that many operational creditors inter alia had assailed the

approval of resolution plan before NCLAT. At present the approved resolution plan has since attained finality.

10. In "Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. reported in 2019 SCC OnLine SC 1478", the Hon'ble Supreme Court has held:

"A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."

11. A successful resolution applicant cannot therefore be asked to face with undecided claims after the resolution plan submitted by him has been accepted and after successfully taking over the business of the 'Corporate Debtor'.

12. Determination of claim of applicant by Resolution Professional was open to correction. Applicant did not challenge the part rejection of its claim. The admitted portion of its claim has been taken care of in the 'Resolution Plan'. Neither the applicant has moved the Adjudicating Authority before approval of the plan, nor has moved the NCLAT after the approval of the plan. Once Resolution Plan has already been approved by the Adjudicating Authority as well as by the Appellate Authority (NCLAT), it is not open for any party to reopen the issues decided therein. When Resolution Plan was not challenged by the applicant and the Plan having attained finality, Adjudicating Authority has no jurisdiction to reopen the resolution process. The 'Resolution Plan' having already been approved at different levels and already acted upon, the present claim cannot be entertained at this stage.

13. As a sequel to the aforesaid discussion the CA-894 (PB)/2020 stands dismissed with cost for Rs. 10,000/- to be deposited in Prime Minister's relief fund. Let copy of the order be served to the parties.