

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 1690 of 2018

IN

Company Appeal (AT) (Insolvency) No. 405 of 2018

IN THE MATTER OF:

Srei Infrastructure Finance Ltd.

...Appellant

Vs.

State Bank of India & Ors.

...Respondents

Present: For Appellant: - Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Shambo Nandy, Mr. Aditya Shukla and Mr. Saikat Sarkar, Advocates.

For Respondents: - Mr. Amrendra Sharan and Mr. Arun Kathpalia, Senior Advocates with Ms. Neha Nagpal, Mr. Mahesh Agarwal and Mr. Arshit Anand, Advocates for R-19.

Mr. Rahul Ray, Advocate for R-8.

O R D E R

24.10.2018— This appeal has been preferred by one of the 'Financial Creditors', challenging the order approving the 'Resolution Plan' filed by 19th Respondent- 'Ghanshyam Misra & Sons Pvt. Ltd.'. The main ground taken is that the upfront payment made in favour of the 'Financial Creditor' is based on preference and not on the basis of proportionate share treating all the 'Financial Creditors' equal.

2. On 16th August, 2018, when the matter was taken up the following interim order was passed:

Contd/-.....

“xxx

xxx

xxx

During the pendency of the appeal, the Successful Resolution Applicant will deposit the upfront amount with the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench. The Adjudicating Authority will deposit the amount with the National Company Law Tribunal. The earlier interim order dated 27.07.2018 stands modified to the extent above.”

3. Subsequently, the ‘Successful Resolution Applicant’- (19th Respondent) was allowed to deposit the upfront payment with the Adjudicating Authority, Kolkata Bench. The Adjudicating Authority, Kolkata Bench was directed to keep the amount in a separate interest bearing account. No order prohibiting the ‘Successful Resolution Applicant’- (19th Respondent) to take over the ‘Corporate Debtor’ was passed, the plan having approved.

4. The case was heard in part and likely to be listed on 29th October, 2018 but as the matter is pending since long and as it may take some time and in the meantime there is Diwali Holiday, an application has

been moved by the 'Successful Resolution Applicant'- (19th Respondent) to allow them to take over the 'Corporate Debtor' to ensure that the Company remains a going concern.

5. Having heard learned counsel for the parties and taking into consideration the fact that the Adjudicating Authority has passed order under Section 31 approving the 'Resolution Plan' which is under challenge and as the 'Resolution Professional' cannot function after the order of approval and the (suspended) Board of Directors are required to hand over the assets etc. of the 'Corporate Debtor' (Company) to the 'Successful Resolution Applicant'- (19th Respondent), in absence of any order of prohibition, we allow the 'Successful Resolution Applicant'- (19th Respondent) to take over the assets and management of the 'Corporate Debtor', which shall be subject to contention of the parties and decision of the appeal. However, the 'Successful Resolution Applicant' will not sell nor alienate or make third party interest on any of the moveable or immoveable property of the 'Corporate Debtor', except in the course of transaction of business and keep the account of all such transaction if so required for perusal of the Adjudicating Authority.

6. By our order dated 27th July, 2018, we have already given liberty to the 'Committee of Creditors' to distribute the upfront amount

amongst them on the basis of their proportionate share treating all 'Financial Creditors' equal and if they decide so will inform it to the Adjudicating Authority. In such case, the Adjudicating Authority will release the upfront amount with interest, if any, in favour of the 'Committee of Creditors' for distributing amongst them on the basis of their proportionate share treating all the 'Financial Creditors' equal.

7. The objection raised on behalf of the 'Committee of Creditors' for distribution of upfront payment on proportionate basis is rejected as we have not directed the 'Committee of Creditors' to do so, but given liberty to do if they so choose.

I.A. No. 1690 of 2018 stands disposed of.

Post the case for 'further hearing' on 29th October, 2018 at 2.00 p.m. on the top of the list.

(Justice S.J. Mukhopadhyaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk