

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) Insolvency No. 294 of 2018

IN THE MATTER OF:

Gail (India) Ltd.

...Appellant

Versus

M/s. Neycer India Ltd.

...Respondent

Present:

**For Appellant: Mr. Sudhir K. Makkar, Senior Advocate assisted
by Mr. Anurag Kishore, Ms. Saumya Gupta, Ms.
Niharika Sharma, Advocates.**

For Respondent 1: Mr. Neeraj Chaudhry, Advocate.

O R D E R

29.01.2019— The Respondent- ‘M/s. Neycer India Ltd.’ filed a petition bearing C.P. No. 664 of 2007 before the ‘Board for Industrial and Financial Reconstruction’ (“BIFR” for short), Chennai, who vide its order dated 6th October, 2008 sanctioned the ‘Modified Draft Revival Scheme’ for the Respondent Company- ‘M/s. Neycer India Ltd.’.

2. Before repeal of ‘Sick Industrial Companies (Special Provisions) Act, 1985, the Appellant filed a Writ Petition (Civil) No. 7776 of 2011 before the Hon’ble High Court of Delhi against the scheme wherein certain order was

passed by the Hon'ble High Court of Delhi. The petition was disposed of with the following directions to BIFR:-

“Learned Counsels for the parties agree that the BIFR would have to hear the Petitioner and Respondent No.1 limited to the issues specified in our order dated 2.11.2011 in respect of directions given in clause 10L of the scheme. Ordered accordingly.

Needless to say we have not examined any other part of the sanctioned scheme which may continue to be implemented qua the other parties.

The petition and the application stand disposed of.”

3. However, 'BIFR' being abolished by the 'Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the matter remained pending. The Central Government issued Notification dated 24th May, 2017 titled 'The Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017'. The first proviso to Section 2 of the Order reads as follows:

“.....Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code.”

4. Thereby, giving the opportunity to the Respondent ‘M/s Neycer India Ltd.’ to move before the Adjudicating Authority (National Company Law Tribunal), Chennai. The Appellant- ‘M/s. Gail (India) Ltd.’ took plea before the Adjudicating Authority that the application was not maintainable, which was accordingly rejected by the impugned order dated 13th April, 2018.

5. The aforesaid Notification dated 24th May, 2017 issued by the Central Government was referred before this Appellate Tribunal in ***M/s. Spartek Ceramics India Ltd. Vs. Union of India & Ors- Company Appeal (AT) (Insolvency) No. 160 of 2017 etc.*** wherein this Appellate Tribunal held that the case before the Adjudicating Authority was not maintainable and the Notification dated 24th May, 2017 was illegal as it travels beyond the

scope of the removal of difficulties provisions under the Insolvency & Bankruptcy Code. The decision of this Appellate Tribunal dated 28th May, 2018 in “**M/s. Spartek Ceramics India Ltd.**” (Supra) was challenged before the Hon’ble Supreme Court in Civil Appeal Nos.7291-7292 of 2018. The Hon’ble Supreme Court vide its order dated 25th October, 2018 upheld the decision of this Appellate Tribunal and held that the Notification dated 24th May, 2017 was illegal as it travels beyond the scope of the removal of difficulties provisions under the Insolvency & Bankruptcy Code.

6. The case of the Appellant being covered by “**Spartek Ceramics India Ltd. Vs. Union of India & Ors.**” (Supra), we set aside the impugned order dated 13th April, 2018 passed by the Adjudicating Authority, Single Bench, Chennai, being without jurisdiction. The application is not maintainable. However, it will be open to the Respondent to move before the appropriate forum for appropriate relief which may decide the same uninfluenced by the decision of this Appellate Tribunal.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 329 of 2018

IN THE MATTER OF:

State Bank of India

...Appellants

Versus

Punjab National Bank & Ors.

...Respondents

Present:

For Appellant : Mr. Abhay Gupta, Advocate for SBI

**For Respondents: Mr. NU Srinivasan, Advocate for R1
Mr. K.V. Balakrishnan, Mr. Rahul Sharma, Advocates
for R-3
Mr. Varun Srinivasan, Advocate for R-
4,5,6,7,11,13,17 and 23
Mr. Manmeet Singh, Ms. Nishtha Chaturvedi,
Advocates for SRA/R-25
Mr. Bishwajit Dubey, Mr. S. Banerjee, Advocates for
RP in 7 and 8**

With

Company Appeal (AT) (Insolvency) No. 529 of 2018

IN THE MATTER OF:

Punjab National Bank

...Appellants

Versus

State Bank of India & Ors.

...Respondents

Present:

For Appellant : **Mr. NU Srinivasan**

For Respondents: **Mr. Varun Srinivasan, Advocate for R-4,5,6,7,11,13,17 and 23**
Mr. K.V. Balakrishnan, Mr.Rahul Sharma, Advocates for R-3
Mr. Abhay Gupta, Advocate for SBI

ORDER

31.01.2019 Both the appeals relate to internal dispute between the 'State Bank of India' in one side and 'Punjab National Bank' in other side, the 'State Bank of India' (Volunteers Association on behalf of all the Banks) being lead Bank. According to the 'Punjab National Bank' and others, a sum of Rs. 300 crores was collected and was acquired through the sale of one of the assets of the 'Corporate Debtor' prior to the initiation of 'Corporate Insolvency Resolution Process'.

The grievance of Punjab National Bank and other Banks is that though all the banks have charge on the sale proceeds of Rs. 300 crores received on sale of assets of the 'Corporate Debtor', during the period of 'Moratorium', the 'State Bank of India' has encashed the amount and kept it with them. In the result, the other Banks could not get their respective shares out of proceeds of 300 crores received from the sale of the assets of the 'Corporate Debtor'. This has also not been reflected in the 'Resolution Plan'.

Learned Counsel appearing on behalf of the 'State Bank of India' submits that arguing Counsel Mr. Ramji Srinivasan, Senior Advocate is out of Delhi. According to the learned counsel for 'Successful Resolution Applicant', the claims of all the creditors including the banks in question have been dealt with by the 'Resolution Professional'.

Admittedly, the 'Resolution Plan' approved by the Adjudicating Authority (National Company Law Tribunal) under Section 31 of the Insolvency and Bankruptcy Code (I&B) is not under challenge in these appeals, therefore, we cannot express any opinion with regard to the approved Resolution Plan.

The question arises for consideration in these appeals are: -

- (i) *Whether internal dispute between the Banks with regard to generation of money out of the sale assets of the 'Corporate Debtor' can be decided by 'Resolution Professional' / Adjudicating Authority; and*
- (ii) *Whether such issue can be decided by the Appellate Tribunal.*

If not so, which is the Forum the parties should move.

We intend to hear the parties on such issues.

On the request of the learned Counsel for the 'State Bank of India' we adjourn the matter.

Post both these appeals for 'Orders' on **11th February, 2019.**

Both the appeals may be disposed of on the next date of hearing.

In the meantime, the parties may file short written submissions not more than three pages by 6th February, 2019.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 29 of 2019

IN THE MATTER OF:

Hari Sankaran

...Appellant

Versus

Union of India

Ministry of Corporate Affairs & Ors.

...Respondents

Present:

For Appellant : Mr. Rao, Advocate

**For Respondents : Mr. Parvez Nainwadi, Assistant Director, Legal
& Prosecution for R-1.**

**Mr. Vikash Kumar Jha and Mr. Karan Khanna,
Advocates for R-2, R-3 and R-4**

O R D E R

31.01.2019 Heard Mr. Rao, learned counsel for the Appellant and Mr. Parvez Nainwadi, Assistant Director (Legal & Prosecution) for 1st Respondent.

Due to mis-management of 'Infrastructure Leasing & Financial Services Limited', 'IL&FS Financial Services Limited' and 'IL&FS Transportation Networks Limited' (1st, 2nd and 3rd Respondents respectively),

the Union of India, Ministry of Corporate Affairs filed petition u/s 133 of Companies Act, 2013 before the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'Tribunal') wherein the Tribunal passed order dated 1st January, 2019 with the following observations and directions:-

*“Section 130(i) & (ii) lays down the **following pre condition for passing an order for recasting and re-opening the accounts of a company.***

(i) The relevant earlier accounts were prepared in a fraudulent manner;
or

(ii) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements”.

*At this stage, we cannot hold that alleged accounts of the companies were prepared in a fraudulent manner, because investigation is still pending. In our earlier order dated 1.10.2018 on the basis of prima facie report that the affairs of the company were mismanaged during the relevant period and that the affairs of the company and subsidiary companies were being mismanaged during the relevant period and that the affairs of the company and subsidiary companies were being managed during the relevant period as contemplated under Section (1) and (2). Therefore, we need not examine or express any opinion on the allegations made against the auditors in this Petition, at this stage. **The Union of India, without prejudice, is not pressing any allegation at this stage.***

In the circumstances, we allow this petition filed under Section 130 of the Companies Act, 2013 for re-opening the books of accounts and recasting the financial statements of Infrastructure Leasing & Financial Services Limited (R1), IL&FS Financial Services Limited (R2) and IL&FS Transportation Networks Limited (R3) for the past five financial years, viz. from Financial Year 2012-13 to Financial Year 2017-2018.

We further issue directions to Central Government to appoint such person / firm as the Chartered Accountants to recast the accounts / financial statements of all the three companies, i.e. Infrastructure Leasing & Financial Services Limited (R1), IL&FS Financial Services Limited (R2) and IL&FS Transportation Networks Limited (R3) for the past five financial years, viz. from Financial Year 2012-13 to Financial Year 2017-2018.

Regional Director may submit the name of the Auditor for our approval for the said purpose so that recasting of accounts can be done.

We further clarify that this order is without prejudice to the right of the auditors and all the parties present and will not affect the proceedings before ICAI in any manner, which will be decided independently on its own merits.

By passing an order for recasting the accounts will have no bearing on the main Company petition which is pending under Section 241-242 of the Companies Act, 2013.

Petition is disposed of accordingly.”

The Appellant, former Vice-President and Director, has challenged the said order dated 1st January, 2019 on the ground that the impugned order was passed ex-parte though notice was served to the Appellant and sought for time, but the Tribunal proceeded with the impugned order. According to him, the provision of Section 230 is Draconian Section introduced in Companies Act, 2013. However, such submission cannot be accepted till any person challenges the provisions before the Court of Competent Jurisdiction such as the Hon'ble High Court and the Hon'ble Supreme Court.

Even if it is accepted that the Appellant on receipt of notice wanted to file reply-affidavit but as no ground is made out to hold the impugned order dated 1st January, 2019 as illegal, we are not inclined to remit the matter to the Tribunal on the ground of violations of rules of natural justice.

We find no merit in this appeal. It is accordingly dismissed. No Cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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