

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 385 of 2021

In the matter of:

IDBI Trusteeship Services Ltd.

....Appellant

Vs.

Shiv Nandan Sharma (IRP of Saha Infratech Pvt. Ltd)

....Respondent

For Appellant: Mr. Ramji Srinivasan, Senior Advocate with Mr. Atul Sharma, Ms. Renuka Iyer, Mr. Shivkrit Rai, Advocates.

For Respondent: Mr. Ashish Makhija, Mr. Ashish Hira, Advocates for RP
Mr. K. Datta, Senior Advocate with Mr. Abhijeet Sinha, Mr. Nikhil Bamal, Mr. Raghavendra M. Bajaj, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 386 of 2021

In the matter of:

Assets Care & Reconstruction Enterprise Ltd.

....Appellant

Vs.

Shiv Nandan Sharma

....Respondent

For Appellant: Mr. Virender Ganda, Senior Advocate with Mr. Vishal Ganda, Mr. Dev J Roy, Mr. Anand Singh, Mr. Ayandeb Mitra, Mr. Atul Sharma, Advocates.

For Respondent: Mr. Ashish Makhija, Mr. Ashish Hira, Advocates for RP
Mr. K. Datta, Senior Advocate with Mr. Abhijeet Sinha, Mr. Nikhil Bamal, Mr. Raghavendra M. Bajaj, Advocates.

Contd/-.....

ORDER
(Through Virtual Mode)

09.06.2021: These two Appeals have been filed by two Financial Creditors claiming to be assignees of financial debt and on the strength of the same seeking to be part of the Committee of Creditors (CoC). It is claimed that the Appellants would constitute 68% of the CoC and thus they have an important stake involved. It appears that earlier an I.A No. 2167 of 2021 was filed by the Appellants and subsequently the same become infructuous. It is stated that in that I.A, there was interim stay granted by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-II, in (IB)-1781(ND)2018- *“Indu Kumar & Ors. vs. M/s. Saha Infratech Pvt. Ltd.”*. When the said I.A was coming up, other I.A Nos. 2286 and 2275 of 2021 came to be filed by the Appellants. I.A No. 2286 of 2021 was filed by ‘IDBI Trusteeship Services Ltd.’ and I.A No. 2275 of 2021 was filed by ‘Assets Care & Reconstruction Enterprise Ltd.’ I.A No. 2286 of 2021 was filed challenging the decision of the Resolution Professional to hold the Appellant in Company Appeal (AT) (Insolvency) No. 385 of 2021 as ‘related parties’. I.A No. 2275 of 2021 was filed for same reasons by the Appellant in Company Appeal (AT) (Insolvency) No.386 of 2021. The applications were filed on 19th May, 2021.

2. The Adjudicating Authority on 24th May, 2021 passed the following orders in I.A No. 2286 of 2021, which reads as under:-

“ORDER

IA-2286/2021: *Mr. Ashish Makhija appeared for RP and accepted the notice. RP is directed to file the reply within a week from today. Rejoinder, if any, be filed within two days after receipt of the reply.*

List on 4th June, 2021 along with IA-2275/2021.”

3. The Adjudicating Authority on 21st May, 2021 passed composite orders with regard to I.A No. 2167 of 2021, I.A No. 2275 of 2021 and other IAs. In IA No. 2167 of 2021, the following order was passed:-

“ORDER

IA/2167/2021: *Heard the Ld. Counsel appearing for the IRP Mr. Ashish Makhija, Sr. Counsel Mr. Virender Ganda appearing for the Applicant No.1 and Sr. Counsel Mr. Pramod Kumar Dubey appearing for Applicant No.2.*

In the course of hearing, the Counsel for the IRP submitted that the IRP has already filed an affidavit on 17.05.2021, by which he has informed the decision taken regarding the claims of both the Petitioners, which has also been communicated to the Petitioners through e-mail. Therefore, this Application has become infructuous. Mr. Virender Ganda, Sr. Counsel for ACRE ARC also submitted that in the facts and circumstances of the matter, the IA has become infructuous.

*Therefore, **the IA is dismissed, being infructuous.**”*

4. As regards I.A No. 2275 of 2021 (against which Company Appeal (AT) (Insolvency) No. 386 of 2021 is filed), the Adjudicating Authority passed the following orders:-

“ORDER

xxx

xxx

xxx

IA/2275/2021: *Mr. Ashish Makhija appearing for the sole Respondent accepts the notice on his behalf. Hence, there is no need to issue notice upon the Respondent. Time of ten days is granted to file the Reply. List the matter on 12.06.2021.*

In course of hearing, Mr. Pramod Kumar Dubey, Sr. Counsel for the IDBI submitted that he has filed an Application bearing IA/2286/2021, which is not listed today. The Registry is directed to list this Application on 24.05.2021.”

5. The present Appeals have been filed against such orders passed in I.A No. 2275 of 2021 and I.A No. 2286 of 2021, as interim relief to stay CoC was not granted.

6. Having heard Counsel for both sides, we find that this is a matter where Corporate Insolvency Resolution Process (CIRP) started on 28th February, 2020 against the Corporate Debtor- ‘M/s. Saha Infratech Pvt. Ltd.’ and the Corporate Insolvency Resolution Process is still pending. It appears that there are various disputes raised including issues relating to the admission of the claim of the Appellants are the issues. It also appears from Company Appeal (AT) (Insolvency)

No. 385 of 2021 that the Interim Resolution Professional (IRP) had rather recorded that there were dues and recoverables from the Appellant. It also appears that there is dispute regarding the Appellants to be related parties. All these issues are yet to be decided one way or the other by the Adjudicating Authority. It would not be appropriate for us to entertain the present appeals against the impugned orders as stated above, on the basis that holding of CoC should have been stayed. When the Corporate Insolvency Resolution Process has already consumed so much of time considering the objects of the Insolvency and Bankruptcy Code, 2016, it would not be appropriate to stay the holding of meetings of the CoC.

7. The Counsel for the Appellants claim that now the Applications before the Adjudicating Authority are fixed on 11th June, 2021. They request that the direction may be given to the Adjudicating Authority to decide the applications one way or the other on 11th June, 2021. The Counsel for the Appellants claim that they will be giving all the co-operation to the Adjudicating Authority. We expect all parties to co-operate.

8. It was also claimed by the Learned Counsel for the Appellants that the CoC meeting has been held on 23rd May, 2021 and even if any further meetings take place whatever they decide should be subject to outcome of the applications filed by the Appellants. Although the Learned Counsel for the Appellants making such request, it is not necessary for us to deal with this particular subject as it remains matter of law to be looked into at appropriate stage.

9. For such reasons, we dispose off these appeals with a request to the Adjudicating Authority to consider and decide the applications which are pending at the earliest so that the Corporate Insolvency Resolution Process continues smoothly.

10. With these observations, we dispose off both these appeals. Parties to co-operate before the Adjudicating Authority.

No costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[V.P. Singh]
Member (Technical)

Anjali/g