

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 296 of 2021

[Arising out of order dated 02.03.2021 in IA-1116/ND/2021 (IB)-2029/ND/2019) passed by National Company Law Tribunal, New Delhi, Court - IV]

IN THE MATTER OF:

Daimler Financial Services India Pvt. Ltd.

Through its Authorised Representative
Having Registered office at:
Tek Meadows Campus, 1st Floor, Unit No. 1,
Block B, No. 51, Ragiv Gandhi Salai,
Chennai-600119.

...Appellant

Versus

1. Mr. Ankit Kumar Aggarwal,

Resolution Professional in the matter of
M/s Mass Metals Pvt. Ltd.
Reg. No. IBBI/IPA-001/IP-P-01708/2019-2020/1263
C/4/E 135 Janakpuri, New Delhi - 110058
Email Id : ankit.aggarwal@outcomess.com,
legal@primusresolutions.in

Also, at:

M/s Mass Metals Pvt. Ltd.
Off: Plot No. 49 A,
Street No. 30, New Rohtak Road,
Anand Prabat, New Delhi-110005.

Also, at:

Primus Insolvency Resolution and Valuation
311, Bestech Chambers, B-Block,
Sushant Lok Phase-I,
Sector 27, Gurgaon, Haryana 122002
Email Id: ankit.aggarwal@outcomess.com

legal@primusresolutions.in
massmetals@primusresolutions.in

2. Consortium of Rajesh Grover & Vishnu Gopal Gupta

40/13 Chawla Park,
East Patel Nagar, New Delhi-110008
Email Id: cavishnu2@gmail.com

...Respondents

For Appellant: Mr. Prasouk Jain, Advocate.

For Respondent: Ms. Honey Satpal, Advocate for R-1.

Mr. Abhishek Anand, Advocate for R-2.

J U D G M E N T

Justice Anant Bijay Singh,

The instant Appeal has been filed by the Appellant / Financial Creditor being aggrieved and dissatisfied by the order dated 02.03.2021 passed by National Company Law Tribunal, New Delhi, Court-IV, in IA-1116/ND/2021 filed in (IB)-2029/ND/2019 whereby and whereunder the Application filed by the Appellant / Financial Creditor seeking direction against the Resolution Professional to admit its claim and also praying to reject the Resolution Plan which is already approved by the Committee of Creditors **(for short CoC)** was dismissed.

2. Heard Learned Counsels for the Appellant and Respondents.

3. Learned Counsel for the Appellant while assailing the impugned order submitted that the Adjudicating Authority was duty bound to consider the objections raised against the Resolution Plan which was submitted by

Respondent No. 2 but without hearing him IA- 1116/ND/2021 was rejected on the ground that the already Resolution Plan was approved by the CoC with 79.48% voting share. The Adjudicating Authority holding that the objections filed by the Appellant is after submission of the Resolution Plan on which the hearing has also been made by the Adjudicating Authority and order being reserved, if it is entertained will amount to Hydra propping. This practice has been deprecated by the Hon'ble Supreme Court in the Judgment of 'Committee of Creditors of Essar Steel, India Ltd. Vs. Satish Kumar Gupta and Ors. Reposted in 2020 (8) SCC 531' is contrary to law and impugned order be set aside and Appeal be allowed.

4. Learned Counsel for the Respondents is present.

5. From the perusal of the impugned order it transpires that Resolution Plan is approved by the CoC and the Resolution Plan was heard and order was reserved by the Adjudicating Authority on 12.01.2021 and only belated stage on 25.02.2021 the Appellant had written a letter in August, 2020 clearly indicating that after taking instructions they will file their claims giving the details but they have not done anything in this connection and only when Resolution Plan was accepted and approved by the CoC with voting share of 79.48% and further order was reserved on 12.01.2021 by the Adjudicating Authority. The Appellant only on 25.02.2021 have sent the Form-C after the Resolution Plan was approved by the CoC and the Adjudicating Authority also kept the order reserved on 12.01.2021, thereafter, the Appellant filed

Application to direct the Resolution Professional to admit the claim and the same is rightly rejected by the Adjudicating Authority, so the Appeal is not maintainable.

6. After hearing the parties and gone through the records, we do not find any illegality in the impugned order passed by the Adjudicating Authority and the facts are admitted. The Adjudicating Authority rightly relied on the judgment of Hon'ble Supreme Court and rejected the IA-1116/ND/2021 filed by the Appellant giving reason that it will amount to Hydra propping. So there is no merit in the Appeal. The Appeal is accordingly dismissed. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

01st June, 2021

NEW DELHI
R. N.