

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1162 of 2019

IN THE MATTER OF:

G.V. Suresh Kumar & Ors.

...Appellants

Vs

**Kapil Dev Taneja, RP in
CIRP of M/s Apex Drugs Ltd.**

....Respondent

Present:

For Appellants: Mr. Y. Rajagopala Rao, Advocate

For Respondent: None.

ORDER

07.11.2019 There is a delay of 14 days in preferring the appeal. For the reasons stated by the Appellant and being satisfied with the grounds, the delay of 14 days is condoned. I.A. No. 3433 of 2019 stands disposed of.

2. Heard learned Counsel for the Appellant. Corporate Insolvency Resolution Process (in short CIRP) was initiated against the Corporate Debtor M/s Apex Drugs Ltd on 6th September, 2018 and earlier appointed IRP was substituted by Respondent No. 2 – Kapil Dev Taneja who became the Resolution Professional as per order dated 26.11.2018. The Expression of Interest was invited by Public Notice and in the 10th meeting of Committee of Creditors, Resolution Plan was approved and the Resolution Professional filed Interlocutory Application No. 439 of 2019 before the Adjudicating Authority (National Company Law Tribunal) Hyderabad, Hyderabad seeking approval of the Resolution Plan.

3. It appears from the impugned order that the last date for completion of CIRP was 03.06.2019. While I.A. No. 439 of 2019 was pending approval of the Adjudicating Authority, the Appellants claiming to be employees of the Corporate Debtor went and submitted claim before the Resolution Professional on 27.06.2019. Resolution Professional took stand that the Respondent is *functus officio* and when the Appellants moved the Adjudicating Authority, the Adjudicating Authority observed:

...

“6. We have gone through the contentions raised by the Respondent in his counter. After considering counter and annexure filed with it, and on perusal of Rules and regulations relied by the Respondent under Insolvency and Bankruptcy Code, 2016 we are of the considered view that the claims by RP can be admitted only within 90 days from the starting of CIRP Proceedings, upon submission of claim in prescribed form and formats.

7. In the present case, it is clear that there is a failure on part of the Applicant in filing the claim against the Corporate Debtor to the Resolution Professional. On perusal of documents annexed in counter it is assured that the Respondent has performed his duty and the public notice was issued for calling of claims. The Resolution Professional is nowhere liable to issue personal notice to the Debtors of the Company. Thus, the contention of the Applicants that

Resolution Professional did not inform about submitting the claim is vague.”

...

4. The Adjudicating Authority observed that in the main petition Resolution Plan was pending for approval and thus claim now tendered by the Appellants could not be considered.

5. Learned Counsel for the Appellant submits that the Appellants are employees of the Corporate Debtor and did not know about the Corporate Insolvency Resolution Process. Appeal claims that the Appellants continued and still continue to be workmen and were continuously present in the premises on working days. We do not agree with the contention of the learned Counsel for the Appellant. When Public Notice was issued, whoever is eligible and wants to file claim, can file the claim with IRP/RP in prescribed form. After Resolution Plan has already been submitted, such claims cannot be accepted. The process cannot be reversed in a manner that clock is set back. Such actions can lead the Company into liquidation.

6. It appears to us that the option for the Appellant is to take help of Section 60(6) of Insolvency and Bankruptcy Code, 2016 and may resort to appropriate remedy in appropriate forum.

7. The appeal shows that the Appellants have already taken up the issue with the Commissioner of Labour who has issued Certificate of Recovery on 04.07.2019. The Appellants can pursue their legally available remedies, which

they have already adopted, after further developments in the proceeding pending before the Adjudicating Authority and end of moratorium.

8. With these observations, we decline to entertain the appeal. The appeal is accordingly disposed of.

[Justice A.I.S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc/Gc