

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No.979 of 2021

IN THE MATTER OF:

Rajat Metaal Polychem Pvt. Ltd.

...Appellant

Versus

Resolution Professional

...Respondent

For Appellant:

Mr. Mrinal Harsh Vardhan and Mr. Shantanu Dubey, Advocates

For Respondent:

Mr Ashutosh Kumar, Advocate for RP

O R D E R
(Virtual Mode)

02.12.2021 Heard learned Counsel for the Appellant as well learned Counsel appearing for the Resolution Professional. With the consent of learned Counsel for the parties, the Appeal is disposed at the admission stage itself.

This Appeal has been filed against the Order dated 23rd September, 2021 passed by National Company Law Tribunal, New Delhi, Court – V in I.A. No.4040 of 2021 in IB-1295(ND)/2019, by which the Application filed by the Appellant had been rejected. The I.A. No.4040 of 2021 was filed by the Appellant raising the grievance that the Resolution Professional has not accepted his claim in full and has discredited the interest amount. Being aggrieved by the decision of the Resolution Professional, he has filed I.A. No.4040 of 2021. The Adjudicating Authority has rejected the Application making following observation:-

“Considering the submissions, it is admitted facts that the rejection of claim of the applicant towards interest has been communicated to the applicant on 02.09.2020 through email, which the applicant has enclosed at page 51 of the application and it is also admitted fact that the present application is filed on 09.09.2021, after the approval of the Resolution Plan by the CoC.

The contention of the Ld. Counsel for the applicant, in view of the decision of Hon’ble Supreme Court, the period for filing the application is extended and so, there is no limitation.

Herein the case in hand, it is not a question whether the application is filed after the prescribed period because so far the rejection of the claim by the RP is concerned, there is no provision to file an appeal like the rejection of claim by the liquidator, where there is a provision for appeal.

So, the period of limitation is not a question in this matter. The question for consideration is whether after the approval of Resolution Plan this Adjudicating Authority can direct that Resolution Professional to accept or consider the claim of the applicant or not. Now, it is a settled principle of law that after the approval of Resolution Plan by the CoC, the Adjudicating Authority will not interfere with the decision taken by the CoC because it is a commercial wisdom of the CoC.”

Learned Counsel for the Resolution Professional submits that the Resolution Plan has already been approved by Committee of Creditors and is

pending consideration before the Adjudicating Authority for approval. Learned Counsel for the Appellant also submits that he has already filed objection to the Resolution Plan. The reasons given by the Adjudicating Authority in the Impugned Order in IA No.4040 of 2021 are as under:-

“Herein the case in hand, it is not a question whether the application is filed after the prescribed period because so far the rejection of the claim by the RP is concerned, there is no provision to file an appeal, like the rejection of claim by the liquidator, where there is a provision for appeal.

So, the period of limitation is not a question in this matter. The question for consideration is whether after the approval of Resolution Plan this Adjudicating Authority can direct the Resolution Professional to accept or consider the claim of the applicant or not. Now, it is a settled principle of law that after the approval of Resolution Plan by the CoC, the Adjudicating Authority will not interfere with the decision taken by the CoC because it is a commercial wisdom of the CoC.”

The Adjudicating Authority took a view that against the rejection of the claim of RP, there is no provision to file an Appeal, hence, the claim of the Appellant cannot be considered. Further observations made by the Adjudicating Authority are that after approval of the Resolution Plan, the Adjudicating Authority cannot direct the RP to accept or consider the claim of the Applicant. In the present case, the Resolution Plan has not yet received approval by the Adjudicating Authority which has been submitted by the RP.

The same is under consideration before the Adjudicating Authority for approval.

The Application which was filed by the Appellant being I.A.No.4040 of 2021 is referable to Section 30(5) of the Insolvency and Bankruptcy Code, 2016 (IBC, in short). The view of the Adjudicating Authority that against the rejection of the claim of RP, there is no provision to file an Appeal, suffice it to say that, even if there is no right of Appeal given to claimant, he is entitled to make grievances regarding any claim made against the Corporate Debtor by virtue of Section 60(5)(b) of IBC, 2016. Thus, the rejection of Application I.A. No.4040 of 2021 by the Adjudicating Authority on the aforesaid ground, cannot be sustained. The Adjudicating Authority ought to have applied its mind on the merits raised in the above Application.

The Resolution Plan is already under consideration before the Adjudicating Authority for approval against which an objection has already been filed by the Appellant. The rejection of the claim of the Appellant could have been examined on merits and appropriate directions could be issued by the Adjudicating Authority in the said regard. When the Resolution Plan was submitted and pending consideration, the Adjudicating Authority is not deprived of its jurisdiction to issue suitable direction in the above regard.

We are of the view that in the facts of the present case, justice be served in disposing this Appeal with observation that Adjudicating Authority while considering the approval of Resolution Plan, shall also consider the objections which have been raised by the Appellant to the Resolution Plan. We make it

clear that we are not expressing any opinion on the merits of objection filed by the Appellant and it is for the Adjudicating Authority to consider and take appropriate decision in accordance with law.

In view of the above, we set aside the Order of Adjudicating Authority passed in I.A. No.4040 of 2021. The Appeal is disposed off with observation that Adjudicating Authority while considering the approval of Resolution Plan, shall also consider the objection of the Appellant in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

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