NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 3410 of 2022
in
Company Appeal (AT) (Insolvency) No. 03 of 2022

IN THE MATTER OF:

Sanjeev Mahajan **...Appellant**

Versus

Indian Bank **...Respondent**
(Erstwhile Allahabad Bank) & Anr.

WITH
Contempt Case (AT) No. 25 of 2022
in
Company Appeal (AT) (Insolvency) No. 03 of 2022

IN THE MATTER OF:

Sanjeev Mahajan **...Appellant**

Versus

Indian Bank **...Respondents**
(Erstwhile Allahabad Bank) & Anr.

Present:

For Appellant:	Mr. Abhijeet Sinha, Kumar Anurag Singh, Mr. Nakul Mohta, Mr. Vinayak Bhadari, Mr. Zain A Khan, Advocates
For Respondent:	Mr. Rajesh Kr. Gautam, Mr. Anant Gautam, Mr. Nipun Sharma, Mr. Sachin Singh, Vidur Ahluwalia, Mr. Sumit Sharma, Advocates for Indian Bank. Ms. Mancy Nagrath, Mr. Raktim, Advocate for RP.

J U D G E M E N T

Ashok Bhushan, J:

1. I.A. No. 3410 of 2022 and the Contempt Case (AT) No. 25 of 2022 arising out of Judgment of this Tribunal dated 04th July, 2022 passed in Company

Appeal (AT) Ins. No. 03 of 2022 have been heard together and are being disposed of by this common Judgement.

2. Company Appeal (AT) Ins. No. 03 of 2022 was filed by the Appellant-Suspended Director of the Corporate Debtor challenging the Order dated 24.12.2021, by which, Application under Section 7 filed by the Respondent-Indian Bank had been admitted. This Tribunal after hearing the Appeal, disposed of the Appeal by Judgement dated 04.07.2022.

3. It is necessary to extract the relevant portion of the Judgment i.e. Paragraphs 13 to 16 of the Judgment, which is to the following effect:

> *"13. The statutory scheme under the IBC delineated under Section 12A of the Code as well as Regulation 30 A of the CIRP Regulations, 2016 which has been brought in the statute w.e.f. 06.06.2018 is a clear recognition of provisions and procedures for settlement in the IBC proceedings. In the facts of the present case and sequence of the events which we have noticed above, we are of the view that one more opportunity be given to the Appellant to submit an Application under Section 12A to the IRP/ RP for being placed before the CoC which is in place in view of our order dated 15.03.2022 vacating the interim order on constitution of the CoC. We are of the view that since the offer of Rs. 81 Crores of the Appellant is not accepted by the Bank, the Application may be filed by the Appellant only if it makes an offer under Section 12A Application for an amount of more than Rs.81 Crores.*
>
> *14. The CoC under the IBC has been given full freedom to grant an approval of 90% voting share to a proposal under Section 12A only thereafter Application can be filed before the Adjudicating Authority. The freedom of decision of the*

CoC is unfettered. However, in the facts of the present case, we are of the view that CoC while taking a decision for accepting or rejecting of proposal under Section 12A may also take following factors into consideration:-

(i) The Bank had issued a proposal for sale of NPA of the Corporate Debtor to the Asset Reconstruction Companies (ARC's)/ Non-Banking Financial Companies (NBFC's)/ Financial Institution (FI's) for an amount of Rs.81 Crores.

(ii) Whether the Financial Creditor looking to the assets of the Corporate Debtor shall be able to realise an amount more than offered by the Appellant either in the insolvency resolution process by Resolution Plan or a liquidation process.

(iii) The maximisation of the assets of the Corporate Debtor is one of the objectives, equally important is the recovery of the financial dues of the Bank and we have no doubt that CoC while taking a decision shall take decision under which it shall be able to realise its dues to the maximum.

(iv) The CoC having been constituted after our order dated 15.03.2022 may also proceed to issue Form-G and receive the Resolution Plans. However, till the decision on proposal under Section 12A is not taken, CoC shall not proceed to take a vote on any of the Resolution Plans.

15. In view of the foregoing discussions, we dispose of this Appeal with following directions:-

(i) Appellant shall submit a fresh Application under Section 12A to the IRP/ RP for placing it before the CoC which contains an offer of more than Rs.81 Crores.

(ii) The said Application shall be filed within two weeks from this date.

(iii) The CoC shall consider the Application under Section 12A after obtaining approval of the Competent Authority of

the Bank keeping into consideration the factors as have been mentioned in paragraph 14, as above.

(iv) The CoC shall complete the process of taking decision on Section 12A Application within a period of two months from this date. For a period till CoC takes a decision on a proposal under Section 12A, CoC may not put any Resolution Plans, if any, to vote.

16. In result, we dispose of this Appeal with above directions without interfering in the impugned order passed by the Adjudicating Authority"

4. After the Order of this Tribunal dated 04.07.2022, the Applicant/Appellant submitted a Settlement Proposal under Section 12-A of the Code. In the proposal, three options were given by the Applicant/Appellant. It is useful to note the prayers made in the Settlement Proposal:

"In compliance to directions of the Hon'ble Appellate Tribunal, we hereby propose the payment terms, amount to be paid, upfront payment, source of payment in detail as set out in the enclosure. It is our earnest request that our proposal may be placed before the Committee of Creditors. Since the proposal sets out 3 options, it becomes imperative that an active deliberation takes place between the stakeholders, including the Promoter (and/or his representative) to arrive at an amicable settlement.

An an Interim Resolution Professional, we hope that you shall be functioning in a manner prescribed under the Code and the law in force."

5. Subsequent to submission of Settlement Proposal, the Committee of Creditors held its 06th CoC Meeting dated 20th August, 2022, where Appellant who was present in the Meeting stated that he has not submitted any plan and he is sticking to the 12-A Proposal which is pending before the Committee of Creditors. 07th CoC Meeting held on 25th August, 2022, Member of CoC stated that contents of Resolution Plan be disclosed so they can take decision on Settlement Proposal of Sanjeev Mahajan. In Item No. A4, following is extracted from the parts of minutes of the Meeting:

> *"Mr. N C Nehra, CoC member, Indian Bank, referred to the point no. 14 of order of Hon'ble NCLAT stating that the contents of the resolution plans shall be disclosed so that they can take a decision on the settlement proposal of Sanjeev Mahajan…."*

6. The Appellant was also present and submitted that there was no objection in opening of the Resolution Plan. Resolution Professional took the view that plan can not be discussed and disclosed to Committee of Creditors. It would be tantamount to adjudication. The interpretation put by the Resolution Professional to the Judgement of this Tribunal dated 04.07.2022 was strongly opposed by the CoC Member. The view of the CoC Member as recorded in the 07th CoC meeting while discussing the Item No. A4 is as follows:

> *"The CoC member strongly opposed the interpretation of the said order of RP and stated that the order states not to vote on the resolution plans, however, the contents can be disclosed to the CoC. The CoC member further referred to the legal opinion obtained by them where their legal counsel has opined that as per para 14 of the said order, the decision of the committee on 12A has to be taken considering the factors mentioned therein whereby one of the factors states that the CoC to consider whether a greater value can be realized from a resolution plan or settlement*

> *proposal as submitted by the promoter for which they shall necessarily require the comparison of resolution plans with the settlement proposal. The CoC member again mentioned that the restriction has been imposed only on the voting of the resolution plans"*

7. In the 08th CoC Meeting held on 02nd September, 2022, were Mr. N.C. Mehra on behalf of CoC informed that competent authority has decided to cast the dissenting vote and rejected the Settlement Proposal submitted by the Promoter.

8. In the next CoC Meeting held on 08th September, 2022, again on <u>Item No. A4</u> , Following discussion was recorded in minutes:

> *"<u>Item No. A4</u>*
> *<u>To open the resolution plans received from the resolution applicants in the matter of Corporate Debtor.</u>*
> *The RP submitted that, as already informed to members of the CoC, two resolution plans were received for the corporate debtor and the same shall be opened in the meeting, he further submitted that the Prospective Applicants have been communicated to be present before the CoC.*
> *The CoC member, the Indian Bank in the meeting mentioned that the resolution shall be opened and presented to the CoC member only and the suspended board of director shall not be present in the meeting while the plans are being opened as he had submitted the 12A application and he was also one of the Prospective Resolution Applicant.*
> *RP read the section 30 & 21(2) of the IBC, 2016 and also requested to not delay in opening of the resolution plans received, the CoC also endorsed the view of RP.*

Further, they have referred the matter to head office and also to the legal counsel and to obtain a legal opinion in this regard and would be sharing the same with the Chairman soon.

Further, the suspended board objected to the same and informed that he shall be present in the meeting where resolution plans will be opened, Mr. Mahajan placed on record one Judgement in this regard, in respect to which the CoC requested the Chairman to share the same with them, as it would take some time to understand the judgement and submit the same to their HO and legal counsel. Both suspended board and CoC member could not arrive at any consensus.

The RP informed the CoC member, that the director can be present in the meeting at the time of opening of the plans.

However, CoC member refused to open the resolution plan in front of the suspended Board and therefore, the agenda was deferred to the next CoC meeting, meanwhile, RP and CoC would obtain a legal opinion on the said matter.

The members took note of the same.

9. In I.A. No. 3410 of 2022, following prayers have been made:

> *"a) Allow the instant application and direct the Respondent/CoC to negotiate, deliberate and take a decision on the settlement proposal U/s 12A given by the Applicant along with the plans received by the Prospective Resolution Applicants. And/or;*
>
> *b) The Applicant be allowed to submit a Resolution Plan.*
>
> *c) Pass any further order(s) in the interest of justice."*

10. Mr. Abhijeet Sinha, Learned Counsel for the Appellant submitted that the Judgement passed by this Tribunal on 04.07.2022 has not been correctly understood both by the Resolution Professional and CoC in its true spirit. Judgement of this Tribunal contemplated that CoC shall consider the proposal submitted by the Appellant under Section 12A as well as Resolution Plans received in the Corporate Insolvency Resolution Process. The intent and purpose of the Judgement was that Appellant was also entitled to be given opportunity in deliberation and negotiation in relation to the Resolution Plans submitted in the CIRP to find out as to which are best for the maximisation of the value of the corporate debtor. It is submitted that without giving opportunity to the Appellant to negotiate and enhance his proposal, the Settlement Proposal of the Appellant cannot be outrightly rejected.

11. Learned Counsel for the Appellant in support of his contempt Application submitted that CoC action after the Judgement of this Tribunal dated 04.07.2022 is in clear violation of the directions issued by this Court. Hence, the Contempt Application have been moved by the Appellant.

12. Mr. Rajesh Kr. Gautam -Learned Counsel appearing for the Bank which is the sole Member of CoC submits that there is no question of any violation on behalf of CoC of the Order passed by this Court. CoC is proceeding in accordance with the directions issued by this Court on 04.07.2022. It is submitted that Appellant was very much present when the plans which were received in the CIRP, were discussed and the Appellant is also aware of the value which was offered in two plans. Hence, it is not necessary to give any further opportunity to the Appellant in the process.

13. Learned Counsel for the RP submits that the RP has also acted in accordance with the Judgment of this Tribunal dated 04.07.2022. The

Appellant has not submitted EMD or Rs. 5 Crores which was submitted by other two Resolution Applicants and he can not claim consideration of his settlement proposal along with the Resolution Plans received by the two Resolution Applicants.

14. We have considered the submissions of Learned Counsel for the Parties and have perused the record.

15. The 06^{th}, 07^{th} and 08^{th} CoC Meetings which have been brought on record in the Contempt Application clearly indicate the substantial part of discussions in the minutes of the CoC where with regard to the interpretation of the Order of this Tribunal dated 04.07.2022, there was divergence in the views of the Resolution Professional and the CoC with regard to the interpretation of the Order dated 04.07.2022. The Appellant has filed this Application with the prayers as noted above. The Order dated 04^{th} July, 2022 contemplated that CoC while considering the Application under Section 12A was to keep in mind the factors as has been mentioned in paragraph 14 of the Judgment dated 04.07.2022. It has already been noticed in the Judgement that maximisation of the assets of the Corporate Debtor is one of the objectives and equally important is recovery of the financial dues of the Bank. The proposal of Applicant under section 12A for Settlement has naturally to be weighed against the Resolution Plans received in the process unless the Resolution Plans are opened and deliberated side by side with the proposal of settlement submitted by the Appellant, the objective as contemplated in paragraph 14(iii) cannot be achieved. We thus are of the view that the Order dated 04.07.2022 clearly entitled that the CoC to weigh the Resolution Plans as well as Settlement Proposal together.

16. It is well settled that it is the commercial decision of the CoC which is paramount in the CIRP. The Appellant who is suspended Director of the Corporate Debtor who has already submitted Settlement Proposal was permitted to participate in the meeting of the CoC which is apparent from the minutes of the CoC brought on record. We are of the view that Appellant who was representing the Corporate Debtor and has submitted the Settlement Proposal is entitled to participate in deliberation and negotiation undertaken by the CoC. CoC can very well ask the Resolution Applicants to revise their plans similarly the Appellant can always be asked to revise his proposal to match the Resolution Applicants' Offer. It goes without saying that ultimate decision is of the CoC. We thus are of the view that carrying out purpose and intendment of the judgment dated 04.07.2022, the CoC is to deliberate on the two Resolution Plans received in the CIRP as well as Settlement Proposal under Section 12A submitted by the Applicant/ Appellant and thereafter to take a final decision. The CoC is also fully entitled to negotiate with the Resolution Applicant as well as the Appellant to optimise the maximum value.

17. Learned Counsel for the Respondents submitted that period of CIRP is coming to an end on 28th November, 2022. In view of the fact that there was debate with regard to the interpretation of the Order dated 04.07.2022 and hence no final decision has been taken as on date, we are of the view that CIRP period needs to be extended for a period of 15 days after 28th November, 2022. We dispose of I.A. No. 3410 of 2022 to the above extent.

18. Now coming to the Contempt Case (AT) No. 25 of 2022, from the facts which have been brought on record, we are of the opinion that no violation of the Order dated 04.07.2022 can be imputed to the Committee of Creditors. Minutes of the CoC clearly indicate that there was certain difference of opinion regarding the interpretation of the order and views expressed in the CoC meetings regarding the interpretation of the Order dated 04.07.2022 cannot amount to any contempt. We are satisfied that there is no ground to initiate any proceeding for contempt for disobedience of the Order dated 04th July, 2022. The Contempt Application (AT) No. 25 / 2022 deserves to be dismissed.

19. In result, I.A.No. 3410 of 2022 is disposed of as above and Contempt Application is rejected.

[Justice Ashok Bhushan]
Chairperson

[Mr. Naresh Salecha]
Member (Technical)

21st November, 2022
New Delhi

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