

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1082 of 2022

&

I.A. No. 3188 of 2022

IN THE MATTER OF:

**The General Manager,
Eastern Railway & Ors.**

...Appellants

Versus

Palogix Infrastructure Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Vijay Joshi, Advocate Sr. Panel Counsel (UoI)

For Respondent: Mr. Shatadru Chakraborty, Sonia Duve, Kanchan Yadav, Advocates

O R D E R

08.09.2022: I.A. No. 3151 of 2022 in Company Appeal (AT) Ins. No. 1082 of 2022. This is an Application praying for condonation of refiling delay of 100 days. The ground given in the Application is that the Registry has marked certain defects. Appellant who is based on Kolkata was required to sign the Application along with the Documents to be filed along with the Appeal which took sufficient time causing refiling delay.

2. Cause shown sufficient, refiling delay is condoned. I.A. No. 3151 of 2022 is allowed.

3. Learned Counsel for the Appellant submits that there is no delay in filing the Appeal which was filed on 11th May, 2022 against the Order dated 25th November, 2021 and Delay Condonation Application I.A. No. 3188 of 2022 is

only by abundant caution. In view of the Order of the Hon'ble Supreme Court in Suo Moto Writ Petition No. 03 of 2022, the present Appeal filed on 11th May, 2022 is within time as allowed by the Order of the Hon'ble Supreme Court.

4. Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent. This Appeal has been filed against the Order dated 25th November, 2021 passed by the Adjudicating Authority on I.A. No. 614(KB) 2020 in C.P. (IB) No. 37/KB/2017. Resolution Plan of the Corporate Debtor was approved on 12th February, 2018 subsequently certain demands were issued by the Appellant to the Successful Resolution Applicant for certain charges from the Successful Resolution Applicant such as Terminal Charge, Demurrage Charges, etc. An Application was filed by Successful Resolution Applicant being I.A. No. 614(KB) 2020 where following prayers have been made:

“a) An order declaring that the Corporate Debtor is not liable to make payment of any amount to the Respondents 1 to 11 and/or any of them for the period prior to the approval of the Resolution Plan on February 12, 2018 on any account whatsoever, save and except as provided in the Resolution Plan approved on February 12, 2018.

b) An order directing the Respondents 1 to 11 and/or any of them to forthwith refund the said sum of Rs. 2,31,70,018/- or any other sum adjusted and/or deducted for the period subsequent to February 12, 2018 and adjusted towards the dues for the period prior to the approval of the Resolution Plan within such

time and/or such terms as to this Hon'ble Tribunal may deem fit and proper;

c) To direct the Respondents 1 to 11 and/or any of them not to act in contravention of the approved Resolution Plan as approved by the order dated February 12, 2018;

d) An order of injunction restraining the Respondents 1 to 11 and/or any of them from realizing and/or adjusting any amount due and receivable by the Corporate Debtor on account of claims for the period prior to the Resolution Plan;

.....”

5. The Application I.A. No. 614/KB/2020 has been allowed by the Adjudicating Authority holding that no pre-CIRP dues can be claimed by the Appellant in view of the approval of the Resolution Plan on 12th February, 2018.

6. Learned Counsel appearing for the Respondent submits that in the Application which was filed, the Respondent has claimed relief quo pre-CIRP dues of the Appellant which stood extinguished in view of the approval of the Resolution Plan. Learned Counsel for the Appellant submits that even after approval of the plan, certain charges are payable by the Successful Resolution Applicant (Corporate Debtor) for which demands have been issued. As submitted by Learned Counsel for the Respondent the application was only with regard to the pre-CIRP dues and hence the order dated 25.11.2021 shall have no effect on the payments claimed by any subsequent period after approval of the Resolution Plan on 12th February, 2018. We record the above

statement of Counsel for the Successful Resolution Applicant and clarify that Order dated 25.11.2021 is confined to only pre-CIRP dues and has no bearing on any claim after 12.02.2018. With the above clarification, we dismiss the Appeal.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn