

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 155 of 2020

IN THE MATTER OF:

Sales Tax Department, State of Maharashtra

...Appellant

Vs

New Phaltan Sugar Works Ltd. & Anr.

....Respondents

With

Company Appeal (AT) (Insolvency) No. 156 of 2020

IN THE MATTER OF:

Sales Tax Department, State of Maharashtra

...Appellant

Vs

Ambey Iron Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Prashant S. Kenjale, Advocate.

For Respondents:

ORDER

27.01.2020: In Company Appeal (AT) (Insolvency) No. 155 of 2020, impugned order dated 11th November, 2019 having been served upon the Appellant on 17th December, 2019 by the Successful Resolution Applicant, the appeal preferred on 21st January, 2020 is beyond the statutory period of 30 days but within the extended period of 45 days, if delay of 15 days is condoned. Having heard learned counsel for the Appellant and keeping in view the reasons assigned for seeking condonation of delay, we condone the delay of 6 days in preferring the appeal. I.A. No. 385 of 2020 stands disposed of.

2. In Company Appeal (AT) (Insolvency) No. 156 of 2020, computed from the date of communication of the impugned order by the Successful Resolution Applicant to the Appellant - Operational Creditor i.e. 5th December, 2019, the appeal having been preferred on 20th January, 2020 is beyond the statutory period of 30 days allowed for filing of an appeal in terms of Section 61(2) of the Insolvency and Bankruptcy Code, 2016. However, the same falls within the period of 15 days beyond 30 days, which can be condoned. Having regard to the grounds projected, we find that a case is carved out for indulgence. Delay of 15 days in preferring the appeal is accordingly condoned. I.A. No. 387 of 2020 stands disposed of.

3. Appellant, Sales Tax Department, State of Maharashtra has preferred both the appeals assailing one order dated 28th November, 2019 passed in M.A. No. 3271/2019 in CP No. 2956/2018 in Company Appeal (AT) (Insolvency) No. 155 of 2020 and another order dated 14th October, 2019 passed in M.A. No. 82/2019 in CP No. 1704/2017 in Company Appeal (AT) (Insolvency) No. 156 of 2020, both impugned orders passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench. Learned counsel for the Appellant has taken same ground in both the appeals and submits that the Appellant does not fall within the definition of Financial Creditor or Operational Creditor under the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code'), it

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having first charge in terms of Section 37 of the Maharashtra Value Added Tax Act, 2002, therefore, Resolution Plan is not binding on the Appellant who was not a member of the Committee of Creditors which has reduced the claim of the Appellant to bare 1% (in Company Appeal (AT) (Insolvency) No. 155 of 2020)/ NIL (in Company Appeal (AT) (Insolvency) No. 156 of 2020).

4. Upon hearing learned counsel for the Appellant, we are of the considered opinion that issue raised in these appeals qua status of Appellant and mode and manner of distribution under an approved Resolution Plan no more survives for consideration in view of the dictum of Hon'ble Apex Court in "**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67/2019 and other petitions**", wherein it was held that it is the commercial wisdom of the Committee of Creditors to determine what amount be paid to different classes and sub-classes of creditors in accordance with the provisions of the statute and regulations framed thereunder and not the Adjudicating Authority or the Appellate Tribunal has the residual equity jurisdiction to interfere in the merits of business decision taken by the requisite majority of the Committee of Creditors, so long as it is in conformity with the law. The Resolution Plan approved in terms of the impugned order reducing claim of the Appellant to 1% (in Company Appeal (AT) (Insolvency) No. 155 of 2020)/ NIL (in Company Appeal (AT) (Insolvency) No. 156 of 2020).

Appeal (AT) (Insolvency) No. 156 of 2020) is not open to question even on the ground that the same contravenes the provisions of Maharashtra Value Added Tax Act, 2002. Admittedly, Section 37 of the aforesaid act creating first charge on the property of the assessee/ dealer in regard to any amount of tax, penalty, interest etc. has overriding effect as far as there is a contract to the contrary but the same has been subjected to any provision regarding creation of first charge in any Central Act in force. It is not in controversy that I&B Code has the overriding effect over other laws as specifically provided under Section 238, thus provisions of I&B Code shall have effect notwithstanding anything inconsistent therewith contained in any other law.

5. First charge under the Maharashtra Value Added Tax Act, 2002 has thus to yield and can neither supersede the I&B Code Mechanism nor run parallel to it. The argument advanced on behalf of the Appellant that the tax leviable under the Maharashtra Value Added Tax Act, 2002 is not an operational debt is equally fallacious as a liability or obligation arising in respect of a payment of dues under any law and payable to Central Government, State Government or any local authority falls within the ambit of Operational Debt as defined under Section 5(21) of the I&B Code, thereby, bringing the Appellant within the fold of 'Operational Creditor'.

6. In view of the finding that the Appellant is an 'Operational Creditor' and provision of Maharashtra Value Added Tax Act, 2002 creating first charge in its favour get eclipsed under the over-riding effect of provisions of I&B Code, Appellant cannot claim priority in distribution of money in an approved resolution plan. The business decision taken by the Committee of Creditors in its commercial wisdom reducing the Appellant's claim to 1% (in Company Appeal (AT) (Insolvency) No. 155 of 2020)/ NIL (in Company Appeal (AT) (Insolvency) No. 156 of 2020) is beyond the pale of challenge before the Adjudicating Authority or even before this Appellate Tribunal.

7. We find no merit in these appeals, both are accordingly dismissed.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Vijai Pratap Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

am/gc