

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 200-201 of 2019

IN THE MATTER OF:

Indian Overseas Bank

.....Appellant

Vs.

M. Gagan Bothra & Anr.

.....Respondents

Present :

For Appellant: Mr. Kunal Tandon, Advocate.

For Respondents:

O R D E R

19.03.2019 – Corporate Insolvency Resolution Process was initiated against M/s. PRC International Hotels Private Limited by order dated 24th July, 2018. In the said case, before completion of 180 days, the Applicant filed an application and prayed for direction on Respondent to accept the Expression of Interest of the Applicant (Resolution Applicant) and to pass other order/ direction as the Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

2. It was submitted by the Resolution Applicant that in response of the EOI dated 26th December, 2018 submitted before the Resolution Professional a proposal has been placed before the Committee of Creditors in the 5th Meeting dated 7th January, 2019. The Minutes of the 5th Meeting of the Committee of Creditors shows that the Resolution Applicant was declared as ineligible on 29th December, 2018 due to reason that he could not bring Demand Draft of Rs.10 lakhs and non-refundable fee of Rs.2500/- which as per the Committee of Creditors was mandatory condition for submitting Resolution Plan. The said defects were pointed out and a mail was sent to

the Resolution Applicant to remove the defect on or before 29.12.2018, to which no response was given by the Resolution Applicant.

3. The Resolution Applicant submitted that his father was hospitalized and was discharged on 30th December, 2018, therefore, he made a request to the Resolution Professional to consider his proposal, but the Resolution Professional did not consider the same. The Resolution Applicant referred to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 wherein under Regulation 36A(4)(d) it has been made clear that there is no requirement of payment of any fee or any non-refundable deposits for submission of Expression of Interest. Therefore, according to the said Resolution Applicant, the fee taken by the Committee of Creditors is contrary to the Regulation. The Adjudicating Authority after taking into consideration the Regulation 36A(4)(d), set-aside the order dated 29th December, 2018 and directed the Committee of Creditors to re-consider the proposal given by the Resolution Applicant by providing him the opportunity of being heard. The Resolution Professional was also directed to convene the meeting of the Committee of Creditors. As the CIRP period of 180 days was to be completed on 19.01.2019, the Adjudicating Authority by impugned order extended the period for another 90 days with effect from 20th January, 2019 onwards.

4. Learned Counsel appearing on behalf of the Appellant submits that the Appellant has already filed application alleging fraud on the part of Financial Creditor, who was the Applicant under Section 7. It is further submitted that the Committee of Creditors had requested through Resolution Professional to move an application for liquidation in absence of plans not accepted.

5. The aforesaid submissions made on behalf of the Indian Overseas Bank is contrary to the first part of the argument. If accepted, then it is to be held that the Financial Creditor, who filed an application under Section 7 have played fraud and the initiation of Corporate Insolvency Resolution Process was not proper, then the Corporate Debtor will revive. If the other part of the submission is accepted, then it is to be held that Corporate Debtor is to be liquidated. In view of such contrary submissions having been made, we find no error in the impugned order and we are not inclined to interfere with the same. We may observe that the duty of the Committee of Creditors is to ensure that the Resolution Process is successful and the liquidation is only when there is no other way to revive the Corporate Debtor.

6. In the circumstances, while we reject the prayer for directing the Committee of Creditors to take into consideration the Resolution Plan, but if required, it may call for fresh plans immediately and consider them in accordance with law.

The appeal is dismissed with the aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

Ash/GC