

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 291 of 2018

IN THE MATTER OF:

M/s. Prasad Gempex

...Appellant

Versus

**Star Agro Marine Exports
Pvt. Ltd. & Ors.**

...Respondents

Present:

For Appellant :

**Mr. V. Prakash, Senior Advocate assisted by
Mr. Ajay Garg, Ms. Shubharanjani Ananth and Mr.
Kartikeya Goel, Advocates**

For Respondents:

Mr. M. M. Abbasi, Advocate for R.P.

**Mr. Rajiv S. Roy, Mr. Avorjyoti Chatterjee,
Mr. Abhijit Roy and Ms. Jayasree Saha, Advocates
for Respondent No. 2**

Mr. Syed Medi Imam, Advocate for Respondent No.3

Company Appeal (AT) (Insolvency) No. 591 of 2018

IN THE MATTER OF:

SREI Infrastructure Finance Ltd.

...Appellant

Versus

Kannan Tiruvengandam (R.P.) & Anr.

...Respondents

Present:

For Appellant :

**Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr.
Akanksha Kaushik, Mr. Akshay Chanda, Mr. Aditya
Shukla and Mr. Saikat Sarkar, Advocates**

For Respondent:

Mr. Ajay Gaggar and Mr. Rubin Sirohi, Advocates

ORDER

01.02.2019 In both the appeals as common question of law is involved, they are disposed of by this common order.

2. The appellant '**M/s. Prasad Gempex**' filed a claim as 'Financial Creditor'. The 'Resolution Professional' rejected the claim. '*M/s. Prasad Gempex*' thereafter claimed to be an 'Operational Creditor' on suggestion of the 'Resolution Professional' but the same has also been rejected.

3. According to the appellant '*M/s. Prasad Gempex*' had filed 'Expression of Interest' before the 'Resolution Professional' but it was not taken care by the 'Committee of Creditors'. In this background, the appellant filed an application before the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai and by impugned order dated 22nd May, 2018, the Adjudicating Authority rejected the application.

4. According to the respondents the 'Resolution Professional' had rejected 'Expression of Interest' and it was not placed before the 'Committee of Creditors'. It is not in dispute that the so called 'resolution plan' met the criteria.

5. In this appeal the appellant has assailed all the rejection of its claim as 'financial creditor', rejection of its claim as 'operational creditors' and rejection of its claim as 'Resolution Applicant'.

6. The connected appeal has been preferred by 'SREI Infrastructure Finance Limited' (Financial Creditor) against the order dated 23rd July, 2018. By the said order, the application preferred by the appellant '*SREI Infrastructure Finance*

Limited’ to set aside the decision of the ‘Resolution Professional’ dated 15th April, 2018 for refusing, re-calculating or reducing the claim in respect of the ‘corporate debtor’ has not been entertained. Thus, the rejection/reduction of the claim by ‘Resolution Professional’ by order dated 15th April, 2018 reached a finality. The question arises for consideration in both the appeals is whether the ‘Resolution Professional’ has jurisdiction to decide or reject the claim of one or other ‘Financial Creditor’ or ‘Operational Creditor’.

7. Similar issue fell for consideration before this Appellate Tribunal in ‘*M/s. Dynepro Private Limited*’ vs. *Mr. V. Nagarajan – Company Appeal (AT) (Insolvency) No. 229 of 2018* etc.’ The Appellate Tribunal by its judgment dated 30th January, 2019 held that ‘Resolution Professional has no jurisdiction to decide the claim of one or other creditor, including ‘Financial Creditor’, ‘Operational Creditor’, ‘Secured Creditor’ or ‘unsecured Creditor’. Referring to sub-section (6) of Section 60 of the ‘I&B Code’, this Appellate Tribunal further observed that after completion of the period of moratorium, a suit or application can be filed against the ‘Corporate Debtor’. Relevant portion of Section 60 is quoted below:-

“60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

*xxx**xxx**xxx*

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the

period during which such moratorium is in place shall be excluded.

From the aforesaid provision, it is clear notwithstanding the order passed under Section 31 of the I&B Code (any existing law), it is open to a person to file a suit or an application against the 'corporate debtor' after completion of the period of moratorium.

8. The power of 'Resolution Professional' also fell for consideration before the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018**'. In the said judgment dated 25th January, 2019, the Hon'ble Supreme Court held that 'Resolution Professional' has no adjudicatory power. The 'Resolution Professional' has to vet and verify the claims made and ultimately determine the amount of each claim. As opposed to this, the 'Liquidator' in the Liquidation proceedings under the I&B Code has to consolidate and verify the claims and either admit or reject such claims under Sections 38 to 40 of the Code.

9. In the present case, it is informed that the 'resolution plan' has already been approved by the 'Committee of Creditors' and the 'Resolution Professional' had placed the same before the Adjudicating Authority on 4th October, 2018 in '*M/s. Prasad Gempex*' with regard to the 'corporate insolvency resolution process' initiated against '*M/s. Star Agro Marine Exports Pvt. Ltd.*' (subject matter of *Company Appeal (AT) (Insolvency) No. 291/18*). A 'resolution plan' has already been approved and placed before the Adjudicating Authority (Chennai) on 4th October, 2018. However, till date no order under Section 31 has been passed. We find that 270 days have passed.

10. Insofar as 'corporate insolvency resolution process' initiated against '*Assam Company India Ltd.*' is concerned it is informed that a separate 'resolution plan' has already been approved by the 'Committee of Creditors' and same has been approved by the Adjudicating Authority under Section 31 of the I&B Code on 20th September, 2018.

11. In the facts and circumstances, we direct the Adjudicating Authority (National Company Law Tribunal), Chennai to pass appropriate order under Section 31 of the I&B Code on the 'resolution plan' as approved by the 'Committee of creditors', if not yet passed, by 22nd February, 2019.

12. We allow the appellant - '*M/s. Prasad Gempex*' to file claim in terms of sub-section (6) of Section 60 before the appropriate court of law or may file appropriate application against the 'corporate debtor' namely '*M/s. Star Agro Marine Exports Pvt. Ltd.*', if the 'resolution plan' is approved and do not take proper care of the applicant. In case the 'resolution plan' is not approved and order of 'liquidation' is passed in respect of '*M/s. Star Agro Marine Exports Pvt. Ltd.*', in such case, it will be open to the appellant '*M/s. Prasad Gempex*' to file claim before the 'Liquidator' in accordance with the provisions as referred to above and the 'Liquidator' will decide the claim under Section 40 of the I&B Code.

13. We may observe that we have not expressed any opinion with regard to the claim as made by '*M/s. Prasad Gempex*'. So far as the '*SREI Infrastructure Finance Ltd.*' who is aggrieved by the decision of the 'Resolution Professional', it may also take steps under sub-section (6) of Section 60 against the 'corporate debtor' or any other party. In this case, we make it clear that we have not expressed any opinion with regard to the claim made by the '*SREI Infrastructure Finance Ltd.*' or the decision as taken by the 'Resolution Professional'.

Both the appeals stand disposed of with aforesaid observation and directions given to the Adjudicating Authority, Chennai in one of the case. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/sk/