

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 782-783 of 2018

IN THE MATTER OF:

Ravi Kant Gupta & Ors.

...Appellants

Versus

Alply Pvt. Ltd. through IRP

...Respondent

Present:

For Appellant : **Mr. Mohit Chaudhary and Ms. Garima Sharma,**
Advocates

For Respondent : **Mr. Anurag Sharma, IRP**
Mr. Gunjan Mittal, Advocate

ORDER

14.05.2019 This appeal has been preferred by ‘Ravi Kant Gupta & Others’ (Promoters) of ‘M/s. Alply Private Limited (Corporate Debtor and Corporate Applicant). The ‘Corporate Applicant’ against orders dated 16th October, 2018 and 12th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Bench III) whereby in absence of a ‘Financial Creditor’, the Adjudicating Authority observed that since the main petition seeking the ‘insolvency resolution process’ had been moved by the ‘Corporate Debtor’ and in absence of any ‘Financial Creditor’, the cost of payment of fees in relation to the Authorised Representatives appointed, as well as to defray the costs of ‘Resolution Professional’ the same shall be borne by the ‘Corporate Debtor’. The said order has been clarified by the subsequent order dated 12th November, 2018 wherein it was also observed that the ‘Corporate Debtor’ is a legal entity and without the sanction of the Board could not have initiated the process and for necessary compliance the corporate veil is required to be lifted and see the legal persons behind the debtor company which has filed the application based on which the Tribunal has initiated the ‘corporate

insolvency resolution process'. Learned counsel appearing on behalf of the Appellant submitted that the observation made in the last paragraph of the order dated 16th October, 2018 will affect the 'Promoter', as the 'Corporate Debtor' has filed the application under Section 10 of the 'Insolvency & Bankruptcy Code, 2016' (for short, the 'I&B Code'). Further, according to him, the money is not available with the 'Corporate Debtor' and in absence of money with the 'Corporate Debtor', the 'corporate insolvency resolution process' is required to be funded by Section 10 petitioner has been directed.

2. Mr. Anurag Sharma, Interim Resolution Professional, who appears in person, submits that pursuant to the advertisement, no claim has been filed by the creditors, only one water supplier has filed the claim beyond the period which is also to be noticed. He further submits that the 'Corporate Debtor' was dealing with the business of providing 'air tickets' and those who purchase the plans pursuant to '7 different plans' have also filed certain applications, though which are not in format but they are treated to be claims.

3. On the direction of this Appellate Tribunal, the Appellants have enclosed the copy of the "Plans", which includes – 'Star Plan'; 'P-One Plan'; 'P-You Plan'; 'Couple Plan'; 'P-Two Plan' and 'Blackout Destinations' have been shown therein and the charges of each plan have also been shown for '10 Air tickets'.

4. There is nothing on record to suggest that any decision was taken by the Annual General Meeting of the 'Corporate Debtor' to file an application under Section 10 of the I&B Code.

5. There have been 'default' against the purchasers of the Plans, who otherwise do not come within the meaning of 'Financial Creditors' or 'Operational Creditors'. However, the Adjudicating Authority having seen some discrepancies

raised doubt about the genuineness of the 'Corporate Debtor' and the application as has been filed. The 'Resolution Professional' also claims that financial irregularities have also been committed by the 'Corporate Debtor'.

6. In the circumstances, while we are of the opinion that the order regarding expenses of 'Resolution Professional' was not required to be determined at this stage, we are also of the view that considering the record, the Adjudicating Authority should also see whether the application under Section 10 of the I&B Code was filed with fraudulently or with malicious intention for any purpose other than for the resolution of the insolvency or liquidation as defined under Section 65 of the I&B Code and if so necessary, it may request the Central Government for reference to the SFIO under Sections 212 and 213 of the Companies Act, 2013 and other provisions of the Insolvency & Bankruptcy Code including Part II Chapter VII wherein 'Offences and Penalties' has been prescribed.

7. As the doubt has been raised, we are not inclined to interfere with the impugned orders. However, this will not come in the way of the Adjudicating Authority to proceed with the matter in accordance with the law. The appeal stands disposed of with the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc