

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 75 of 2018

IN THE MATTER OF:

Tarini Steel Company Pvt. Ltd.

...Appellant

Versus

Trinity Auto Components Ltd. & anr.

...Respondents

Present:

For Appellant : Mr. Arvind Kr. Gupta, Ms. Henna George and Ms. Purti Marwaha Gupta, Advocates

O R D E R

09.03.2018 This appeal has been preferred by the appellant (Resolution Applicant) against order dated 22nd January, 2018 passed by the Adjudicating Authority (National Company law Tribunal), Mumbai Bench in MA 544/2017 in CP No. 1032/I&BC/MB/MAH/2017 whereby and whereunder the Adjudicating Authority approved the resolution plan with modification as quoted below :

*“12. Keeping this settled principle in mind, we have noted that upon calling for **“expression of interest”** only one Applicant came forward and submitted the Resolution Plan. The Resolution Plan for our consideration is received from **Resolution Applicant viz. M/s. Tarini Steel Limited**. The Plan envisages infusion of fresh funds by the existing Promoters. Through a Statement an undertaking is annexed that interest of all stakeholders, including Financial Creditors and Operational Creditors shall be dealt with.*

*12.1 In our view in this Plan there is no inconsistency that under the Heading “Assumption” as per Clause “A”, it is noted that, quote **“New Promoters Deposit to the extent of ₹2 crores***

to be allowed to be covered into Equity Shares by Financial Year 2022-23.” However, under the Head “Conclusion” as per Clause V under the Head “Promoters’ Loan” it is proposed, quote **“the fresh Unsecured Loans of ₹350 lakhs to be infused by the Promoters under the Resolution Plan shall be repayable during 2021-23.”** In addition to these two observations, interestingly and in contrast, an observation is at para 13 under the Head “What will be the Promoters’ contribution” the proposal is that quote **“The promoters propose to invest another amount of ₹349.51 lacs by way of interest-bearing deposit @ 12% repayable by 2023. The promoters will ensure the regular payment of instalments and interest to the bank before payment of interest to the promoter on proposed investment of Rs.349.51 lacs.”** Indeed, it is strange situation that at three places three different Plans have been proposed in respect of the contribution of the Promoters. We are not in agreement of the two propositions and accept only one. We are of the view that considering the financially stressed position of the Debtor Company the **fresh Unsecured Loans infused by the Promoters is required to be converted into Equity** so that the burden of repayment must be deferred instead dividend can be distributed.

13. One more suggestion is necessary to be incorporated is that under the Head “Contingency Liabilities” it is proposed that, quote “j) (i) if any contingent liability devolves on the company with respect to statutory OR unsecured credits in future for the past transactions prior to 31.03.2011, the same will be settled at 15% of its crystalized principal amount as per the scheme sanctioned by BIFR,” In respect of the Government Dues it is inappropriate to settle up to 15% of the crystalized

liability hence the condition of settlement up to 15% shall not apply on the Government dues.

14. *Before we conclude, it is worth to place on record that this Resolution Plan is proposed by the Promoters by infusing additional Capital as per supra, therefore, the Resolution Plan submitted by the Promoters is to be accepted because a Certificate is on record that the Promoters are not “wilful defaulter” hence their proposal is acceptable as per the latest Amendment [The I & B Code (Amendment) Act, 2017 (No.8 of 2018)] dated 18th January, 2018 wherein S. 29-A is inserted and prescribed that, a person shall not be eligible to submit a Resolution Plan if such person is “wilful defaulter”. In this regard an Affidavit-cum-Declaration submitted by the Resolution Applicant declaring therein that the Declarant had not been identified as a “wilful defaulter”. As a consequence, the provisions of S. 29-A are not applicable in this case.*
 15. *To conclude, the Resolution Plan is approved subject to the modifications suggested hereinabove which is binding on the Corporate Debtor and other stakeholders involved in this Resolution Plan so that revival of the Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.”*
2. On 6th March, 2018 when the matter was taken up, we express our *prima facie* view that the modification as made by the Adjudicating Authority, Mumbai

Bench, do not suffer from any illegality. Learned counsel for the appellant prayed for time to take instructions from the appellant whether the appellant intends to press the appeal or not.

3. Learned counsel for the appellant submits that the Adjudicating Authority has no jurisdiction to modify the 'resolution plan' once approved by the Committee of Creditors. However, if such submission is accepted in that case then only recourse will be available to the Adjudicating Authority is to reject the resolution plan, being not satisfied with the resolution plan.

4. At this stage, learned counsel for the appellant submits that the appellant does not want liquidation of the corporate debtor. In this regard, while we are not expressing any opinion, give liberty to the appellant to withdraw the resolution plan, if it is not satisfied with the amendment made therein. In such case the Adjudicating Authority will allow the same and proceed with the liquidation.

4. The appeal is disposed of with the aforesaid liberty. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk