

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 240 of 2019

IN THE MATTER OF:

State Bank of India and Anr. Appellants

Vs

Visa Steel Limited and Anr. Respondents

Present:

**For Appellants: Mr. Rajiv Ranjan, Senior Advocate with
Mr. Shantanu Chaturvedi and Ms. Sylona
Mohapatra, Advocates.**

**For Respondents: Mr. S.N. Mookherjee, Senior Advocate with
Mr. Sabyasachi Chowdhuri, Mr. V.V.V. Sastry
and Mr. Rakesh Sinha, Advocates.**

ORDER

16.10.2019 A Joint Petition for sanctioning of the Scheme of Arrangement of Visa Steel Limited (Transferor Company) and Visa Special Steel Limited (Transferee Company) was filed under Sections 230 to 232 of the Companies Act, 2013 (for short the 'Companies Act') (earlier the same was filed under Sections 391-394 of the Companies Act, 1956 before the High Court of Orissa). Later on, in view of Section 434 of the Companies Act, it was transferred before the National Company Law Tribunal, Cuttack Bench, Cuttack. All steps under the provisions of law were taken by the Hon'ble High Court of Orissa. Subsequently, when the matter was taken up by the National Company Law Tribunal, Cuttack Bench, by impugned order dated 8th July, 2019, the Tribunal sanctioned the Scheme of Demerger of the

Companies. The said order of Demerger is challenged by State Bank of India, one of the Creditors.

2. Learned Counsel appearing on behalf of the Appellant submitted that no notice was issued to the Appellant. However, it is accepted that the Hon'ble High Court had issued notice as per law, when the matter was pending in the Hon'ble High Court.

3. Next, it was submitted that no notice of hearing was given after transfer of the case. However, we are not inclined to interfere with the impugned order and remit the Appeal on such ground as we have heard the parties on merit.

4. The main plea taken by the Appellant and other 'Financial Creditor' is that the Appellant has already moved a petition under Section 19 of the Debts Recovery Tribunal (DRT)-1, Kolkata as detailed hereunder: -

- “1. SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA: OA/646/2017 before DRT Cuttack filed on 06 November 2017*
- 2. CANARA BANK: OA/321/2018 before DRT-1, KOLKATA filed on 24 July 2018*
- 3. UNION BANK OF INDIA: OA/312/2018 before DRT-1, KOLKATA filed on 10 August 2018*
- 4. DENA BANK: OA/497/2018 before DRT-1, KOLKATA filed on 24 September 2018*
- 5. EDELWEISS ASSET RECONSTRUCTION COMPANY LTD: OA/157/2019 before DRT-1, KOLKATA filed on 25 October 2018*

6. *BANK OF INDIA: OA/184/2019 before DRT-1, KOLKATA filed on 09 April 2019*
7. *EXPORT IMPORT BANK OF INDIA: OA/31/2019 before DRT-1, KOLKATA filed on 04 February 2019*
8. *SYNDICATE BANK: OA/809/2018 before DRT-III, KOLKATA filed on 26 October 2018.”*

5. It is submitted that all the pending matters before the DRT, Kolkata will be affected, if the Company is allowed to Demerge.

6. Learned Counsel appearing on behalf of the Respondent Companies accepted that in spite of the Demerger, the proceedings before DRT, Kolkata or Cuttack will continue against both the Companies. If necessary, the Banks/ Applicants ('Financial Creditors') may be allowed to implead them as party Respondents in those cases pending before the DRT, Kolkata or Cuttack, if not yet made and claim the amount with joint liability.

7. Having heard the parties and taking into consideration the facts that the technical infirmity is now alleged that aforesaid fact was not brought to the notice of the National Company Law Tribunal, including the exit from CDR by all lenders, we are not inclined to set-aside the impugned order or to remit the matter to the Tribunal. We make it clear that in spite of impugned order of Demerger passed by National Company Law Tribunal, Cuttack Bench, the proceedings pending before different DRTs, including the Cuttack and Kolkata will continue against both the Companies. If so necessary, the concerned Applicants may ask for impleading them as party Respondents. It is also made clear that interest of both the parties including the Appellants

and other Creditors will not be affected because of the impugned order of Demerger. All those right are kept open for determination by the respective DRTs. It is also made clear that if there is any other right in favour of any of the 'Financial Creditor', who has moved before the DRT under any provision of law, the same will not be affected because of the impugned order of Demerger dated 8th July, 2019. The Appeal stands disposed of with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/SK