

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 466 of 2019
**[arising out of Order dated 10th April, 2019 by NCLT, Principal Bench,
New Delhi in (IB) No. 102 (PB)/2017]**

IN THE MATTER OF:

DBS Bank India Ltd.

...Appellant

Versus

Edu Smart Services Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : **Mr. Sakal Bhushan and Mr. Bhuran Ravindran,
Advocates**

For Respondents : **Ms Ritu Rastogi, Advocate for Respondent Nos. 1, 2
and 8**

Mr. Ranje R. Raj, Advocate for Respondent No. 5

**Mr. PBA Srinivsan, Ms. I. Kailash and Mr. Abhay
Kumar, Advocates for Respondent Nos. 7, 10, 11 &
13**

**Mr. Jayant Mehta, Ms. Misha, Mr. Shantanu
Chaturvedi and Ms. Charu Bansal, Advocates for
Respondent No. 9**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the ‘Corporate Insolvency Resolution Process’ in ‘Edu Smart Service Pvt. Ltd.’, the Appellant – ‘DBS Bank Ltd.’ filed an application with a prayer for issuance of direction to reconstitute the ‘Committee of Creditors’ by excluding the double claims of the Respondents. A reliance was placed on

the decision of this Appellate Tribunal in '**Dr. Vishnu Kumar Agarwal vs. M/s. Piramal Enterprises Ltd.**' in 'Company appeal (AT) (Insolvency) NO. 346 of 2018.'

2. During the course of hearing, the learned counsel for the Axis Bank place a reliance on para 63 of the judgment of this Appellate Tribunal inter parties in '**Export Import Bank of India vs. Resolution Professional JEKPL Pvt. Ltd.**' in 'Company Appeal (AT (Insolvency) No. 304 of 2017 & other connected appeals' dated 14th August, 2018' which reads as under:-

"63. Having held that the 'Export Import Bank of India' is 'Financial Creditor' in relation to 'JEKPL Pvt. Ltd.' (Corporate Debtor) and 'Axis Bank Limited' is 'Financial Creditor' in relation to 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor), we hold and direct respective 'Resolution Professionals' and 'Adjudicating Authorities' to treat the Appellant Banks as members of their respective Committee of Creditors, who in their turn are directed to hold meeting of Committee of Creditors in accordance with law and reconsider/consider the Resolution Plan(s) submitted in each Corporate Insolvency Resolution Process which are in accordance with Section 30(2) of the I&B Code."

3. In view of the aforesaid decision of this Appellate Tribunal, the Adjudicating Authority by impugned order dated 11th April, 2019 refused to

take any contrary view with observation that if any clarification is required, the Appellant – ‘DBS Bank Ltd.’ is free to move before the appropriate Forum.

4. Learned counsel appearing on behalf of the Appellant again placed reliance on the decision of this Appellate Tribunal in ‘*Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd. (Supra)*’ that for the ‘same set of debt’ claim cannot be filed by ‘same Financial Creditor’ in two separate ‘Corporate Insolvency Resolution Processes’. It was submitted that the decision of this Appellate Tribunal in ‘*Export Import Bank of India (Supra)*’ on 14th August, 2018 would apply *inter se* parties which is not binding in other cases.

5. Respondent No. 7 – ‘IDBI Bank Ltd.’; Respondent No. 9 – ‘Axis Bank Ltd.’; Respondent No. 10 – ‘State Bank of India’; Respondent No. 11 – ‘Canara Bank’ and Respondent No. 13 – ‘Central Bank of India’ appeared and opposed the prayer.

6. Learned counsel appearing on behalf of the Respondents submitted that the present appeal is not maintainable as the judgment in ‘Edu Smart Service Pvt. Ltd.’ earlier decided by this Appellate Tribunal has reached finality as the Hon’ble Supreme Court has dismissed the appeal by speaking order.

7. It is further submitted that this Appellate Tribunal if any contrary judgment will be given that will amount to review of own order by this Appellate Tribunal without asking for review of the original decision in ‘Edu Smart Service Pvt. Ltd.’

8. On perusal of the record and hearing the parties, we find that the question relating to induction of Axis Bank as a member of the 'Committee of Creditors' in the case of 'Edu Smart Service Pvt. Ltd.', reached finality as the said judgment dated 14th August, 2018 passed in '**Company Appeal (AT) (Insolvency) No. 302 of 2018**' has been affirmed by the Hon'ble Supreme Court by its order dated 23rd January, 2019 passed in Civil Appeal No. 10134/2018 which was preferred by 'K.B. Educational Services Pvt. Ltd.'

In the aforesaid circumstance, there is no scope for the Adjudicating Authority to grant the relief to the Appellant, as was sought for. We find no illegality in the impugned order, the Appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

18th November, 2019

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