

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 807 of 2018

IN THE MATTER OF:

Coal India Ltd. ...Appellant

Vs.

Gulf Coil Lubricants India Ltd. & Anr. ...Respondents

Present: For Appellant: - Mr. Arun Kathpalia, Senior Advocate with Mr. Ranjan Kumar Pandey, Mr. Sandeep Bisht, Mr. Anuj Tiwari, Mr. Shikhar Shivastan and Mr. Vinay Ranjan, Advocates.

For Respondents: - Mr. Shwetaank Nigam, Advocate for R-1.

O R D E R

11.02.2019— An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) was filed by ‘M/s. Gulf Oil Lubricants India Limited’- (‘Operational Creditor’) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘Eastern Coalfields Limited’. The said application has been admitted by impugned order dated 19th December, 2018 by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata. The present appeal has been preferred by ‘Coal India Limited’.

2. On 22nd December, 2018, when the matter was taken up, taking into consideration the submissions made by learned Senior Counsel for the Appellant, the following order was passed:

Contd/-.....

“22.12.2018 *Learned Senior Counsel referred to the impugned order and enclosures annexed thereto, to suggest that the principal amount had already been paid and as per the terms of Agreement/ Contract, no interest is payable. This fact, though, noticed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench), Kolkata, in spite of that impugned order dated 19th December, 2018 has been passed in an application under Section 9 of the I&B Code, 2016.*

It is also informed that parties have already settled the claim and nothing payable to the respondents (Operational Creditor).

Let notice be issued on respondents by Speed Post.

The requisite be filed by 26th December, 2018 by 11:00 AM. If the appellant provides email address of the respondents, let notice be issued through e-mail also.

Post the matter for admission before the 1st Court on 29th January, 2019 within two cases. Appeal may be disposed of at the stage of admission.

Until further orders, the operation of the impugned order dated 19th December, 2018 passed in

CP (IB) No. 228/KB/2018 by NCLT Kolkata Bench shall remain stayed. The Resolution Professional, if joined may report.”

3. Pursuant to the notice, the Respondent has appeared.
4. Learned counsel appearing on behalf of the contesting Respondent- ‘M/s. Gulf Oil Lubricants India Limited’- (‘Operational Creditor’) accepts that the principal amount was paid prior to the admission of the application under Section 9 and interest has been paid and matter has been settled by agreement dated 26th January, 2019.
5. It is submitted that such settlement has already been made prior to the constitution of the ‘Committee of Creditors’.
6. In the case of **‘Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018’**, the Hon’ble Supreme Court observed as follows:

“52. It is clear that once the Code gets triggered by admission of a creditor’s petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate

debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.”

7. In view of the fact that the parties have now settled the matter prior to the constitution of the ‘Committee of Creditors’ and the Adjudicating Authority has failed to notice that the principal amount has already been paid and original plea of the ‘Corporate Debtor’ was that no interest was payable in terms of the Agreement/ Contract, we set aside the impugned order dated 19th December, 2018 passed by the Adjudicating Authority.

8. In effect, order (s), passed by the Adjudicating Authority appointing ‘Interim Resolution Professional’, declaring moratorium, freezing of

account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional' for the period he has functioned. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk