

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 89 of 2021

IN THE MATTER OF:

UTI Structured Debt Opportunities Fund-I

...Appellant

Versus

Ms. Pinkush Jaiswal

IRP of Mercator Petroleum Ltd.

... Respondent

Present: -

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Himanshu Satija, Mr. Tejas Agarwal and Mr. Ankit Lohia, Advocates.

For Respondent: Ms. Ankita Singhania and Mr. Amit Jaste, Advocates.

ORDER
(Virtual Mode)

08.02.2021 Heard Learned Counsel for the parties.

2. The Appeal filed by the Appellant against the order dated 22.01.2021 in IA 24/MB/2021 in C.P. (IB) 3434/(MB)/2019 passed by Adjudicating Authority, National Company Law Tribunal, Court-V, Mumbai Bench.

3. The case of the Appellant is that the Appellant is a financial service provider and a Category II- Alternate Investment Fund registered with the Securities and Exchange Board of India (SEBI) and floated by UTI Structured Debt Opportunities Trust having SEBI Registration No. IN/AIF/17-18/0358, as per the applicable laws. The Appellant is represented by its investment manager, that is, UTI Capital Limited. The investment manager is empowered to administer and manage the Appellant and take all actions in relation thereto.

4. The Respondent is the Interim Resolution Professional (IRP) appointed by the Ld. Adjudicating Authority vide order dated 31.08.2020 in Company Petition

(IB) No. 3434 of 2019 in respect of the Corporate Debtor – Mercator Petroleum Limited, under Section 9 of the insolvency and Bankruptcy Code, 2016.

5. The Mercator Limited (ML) is a private limited company engaged *inter alia* in the business of shipping and mercantile operations.

6. The Appellant agreed to subscribe the Debentures that were being issued by ML. Axis Trustee Services Limited was appointed as the Debenture Trustee in respect of the aforesaid Debentures in Trust and benefit of the Debentures Holders i.e. the Appellant.

7. The Deed of Corporate Guarantee dated 26th March, 2018 was also entered into by the Debenture Trustee (on behalf and for the benefit of the Appellant) and the Corporate debtor, along with the Debenture Trust Deed, on 26th March, 2018.

8. Pursuant to the aforesaid transaction, the Appellant disbursed Rs. 130 Crores (in multiple tranches) by allotment of 1300 Secured Non-Convertible Debentures having a face value of Rs. 10,00,000/- each to the Appellant, on terms set out the Debenture Trust Deed and other Transaction Documents.

9. The Appellant then learnt that Corporate Insolvency Resolution Process had been initiated in respect of the Corporate Debtor vide order dated 31st August, 2020 by Ld. Adjudicating Authority. On 24th September, 2020 the Appellant lodged its claims of Rs. 2,57,84,25,381/- with the Respondent.

10. On 2nd October, 2020 the Respondent addressed an e-mail to the Appellant *inter alia* stating that the Respondent was not admitting the Appellant's claim for the reasons set out therein.

11. On 3rd October, 2020, the Respondent served a copy of the Interlocutory Application No. 1746 of 2020 on this Appellant, filed before the Ld. Adjudicating

Authority for seeking avoidance of the Appellant's transaction and other reliefs as more particularly set out therein.

12. Aggrieved by the rejection of the Appellant's claim by the Respondent, on 6th October, 2020 the Appellant filed an Interlocutory Application No. 1628 of 2020 in the Company Petition No. 3434 of 2019 before the Ld. Adjudicating Authority.

13. The Appellant thereafter mentioned the I.A. NO. 1628 of 2020 on 9th October, 2020 before the Ld. Adjudicating Authority and the Ld. Adjudicating Authority directed the Respondent to file its reply on or before 13th October, 2020 and listed the matter for 14th October, 2020.

14. On 14th October, 2020, the Ld. Adjudicating Authority heard the parties and directed the parties to *inter alia* complete their pleadings and posted the matter for 13th November, 2020 for hearing.

15. The parties completed their pleadings. The matter was heard by this Hon'ble Tribunal on three occasions, on 13th, 26th & 27th November, 2020 and after that both the I.As bearing I.A. No. 1628 of 2020 and I.A. No. 1746 of 2020 were reserved for Orders.

16. Thereafter, parties filed their Written Submissions on 1st December, 2020 in both the Applications.

17. On 2nd December, 2020 the Appellant learnt that the Respondent had issued an Expression of Interest (EOI) on 14th November, 2020 and the last date for receipt of EOI from the prospective resolution Applicants was 5th December, 2020. Thereafter, time for submission of expression of interest by the prospective resolution Applicants was extended to 20th December, 2020.

18. Learned Counsel for the Appellant submitted that he has a right to participate in the Corporate Insolvency Resolution Process, however, the said right has been curtailed by the Respondent by wrongly rejecting the claim of the Appellant.

19. On 7th January, 2021, I.A. NO. 1628 of 2020 and I.A. No. 1746 of 2020 were listed before the Ld. Adjudicating Authority at which time different opinions were passed. The matters will now have to be heard and finally decided by a third Hon'ble Member and thereafter appropriate orders be passed thereupon. The matters are now fixed for hearing on 12th February, 2021 before the third Member.

20. Learned Counsel for the Appellant submitted that CIRP is continuing and propose resolution plan from the Applicant have been asked to be filed latest by 18th February, 2021.

21. It was further submitted that as I.A. No. 1628 of 2020 and I.A. No. 1746 of 2020 is pending for hearing before the Ld. third Member and status qua not maintained, this cause serious prejudice to the Appellant. So *status quo* prevailing till orders of the Ld. third Member.

21. Learned Counsel for the Respondent opposed the prayer.

22. From the perusal of the orders dated 18.12.2020 at page 379 Vol.-II of the Appeal Paper Book passed by the Ld. Adjudicating Authority it appears that "*In view of the orders being reserved for I.A. 1628 of 2020 and I.A. 1746 of 2020, the IRP is directed to extend the EOI for a period of 15 days i.e. 5th January, 2021. I.A. is partly allowed and disposed off.*"

23. After hearing the parties we dispose of the Appeal with the following directions.

- i) Resolution Professional is permitted to receive the Resolution Plan but he will not open Resolution Plan and will not take any decision. The *status quo* prevailing as on today, shall be maintained till one week after the Ld. third Member decide the matter.
- ii) The Ld. third Member of the Adjudicating Authority is directed to hear the I.A. No. 1628 of 2020 & I.A. No. 1746 of 2020 and decide the same on such as expeditiously as possible.
- iii) This Appeal is disposed of accordingly.
- iv) The Registry is directed to send the copy of this order to the Ld. Adjudicating Authority, National Company Law Tribunal, Court-V, Mumbai Bench for compliance.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

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