

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.128 of 2018

IN THE MATTER OF:

Indian Bank & Ors.

...Appellants

Vs

Kadevi Industries Ltd. & Ors.

....Respondents

Present:

For Appellants: Mr. T. N. Durga Prasad and Mr. Sowmik Ghoshal, Advocates.

**For Respondents: Mr. Siddharth Jain, Advocate for R-1 (Corporate Debtor).
Mr. Yogesh K. Jagia and Tanya Nagi, Advocates for R-2.**

With

Company Appeal (AT) (Insolvency) No.129 of 2018

IN THE MATTER OF:

Raghu Babu Gunturu

...Appellant

Vs

Kadevi Industries Ltd. & Ors.

....Respondents

Present:

For Appellant: Mr. Yogesh K. Jagia and Tanya Nagi, Advocates.

**For Respondents: Mr. Siddharth Jain, Advocate for R-1 (Corporate Debtor).
Mr. T. N. Durga Prasad and Mr. Sowmik Ghoshal, Advocates for R-2, 3, 4 and 5.**

With

Company Appeal (AT) (Insolvency) No.135 of 2018

IN THE MATTER OF:

Kadevi Industries Ltd.

Through Shareholder

Mr. Malapaka Bhima Shankar Purushottam

...Appellant

Vs

Indian Bank & Ors.

...Respondents

Present:

For Appellant: Mr. Siddharth Jain, Advocate.

For Respondents: Mr. T. N. Durga Prasad, Advocate for R-1 to 4.

**Mr. Yogesh K. Jagia and Tanya Nagi, Advocates
for R-5.**

ORDER

24.05.2018: These appeals have been preferred by 'Indian Bank & Ors.' (Financial Creditors), 'Mr. Raghu Babu Gunturu' (Resolution Professional) and 'M/s Kadevi Industries Ltd.' (Corporate Debtor) against a common order dated 23rd February, 2018, whereby and whereunder the Adjudicating Authority (National Company Law Tribunal) Hyderabad Bench, Hyderabad issued certain directions and imposed costs on Financial Creditors and Corporate Debtor and also passed adverse remarks against the Resolution Professional.

2. The Corporate Insolvency Resolution Process was initiated on an application filed by Appellant – 'Indian Bank' under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code'). It appears that inspite of the

completion of 270 days on 11th December, 2017, the Resolution Applicant i.e. 'M/s Citax Ventures Pvt. Ltd.' had not deposited the amount in the Escrow Account. The Financial Creditors, Officers of the Corporate Debtor and the Resolution Professional prayed to grant some additional time. The Adjudicating Authority referring to the manner in which Corporate Insolvency Resolution Process progressed, imposed the cost on Financial Creditors and Corporate Debtor and passed adverse remarks against the Resolution Professional, due to non-receipt of the amount from the Resolution Applicant in the Escrow Account of the ICICI Bank, Kahiratabad Branch, Hyderabad.

3. The impugned order shows that the Corporate Insolvency Resolution Process completed within 270 days. M/s Citax Ventures Pvt. Ltd. having found best Resolution Applicant, the Committee of Creditors approved their plan and the Adjudicating Authority also approved the plan under Section 31(1) of the I&B Code. After approval of the resolution plan, M/s Citax Ventures Pvt. Ltd. failed to deposit amount in the Escrow Account of the ICICI Bank, for reasons best known to him. For the said reasons, the Financial Creditors, Officers of Corporate Debtor and the Resolution Professional were held responsible and the Adjudicating Authority held that they are hand in glove.

4. The impugned order do not suggest as to which member of the Financial Creditors or which officers of the Corporate was hand in glove with any person including M/s Citax Ventrure Pvt. Ltd. The Adjudicating Authority has also failed to state as to how a Resolution Professional can be stated to be hand in glove in absence of any evidence.

5. After the approval of the resolution plan under Section 31(1), the period of moratorium came to an end, the terms of Resolution Professional also came to an end. The Committee of Creditors had no role to play thereafter. Therefore, the Corporate Debtor, their officers could not be held to be responsible in absence of any evidence.

6. If the Adjudicating Authority was not in a position to decide as to what order could be passed, if the successful Resolution Applicant do not deposit the amount in terms of the resolution plan approved under Section 31(1), it was open to him to decide such issue. It was for the Adjudicating Authority to decide the course of action after issuing notice to the Resolution Applicant.

7. In such case, for the purpose of getting assistance, the Adjudicating Authority could have requested the Resolution Professional and the members of the Committee of Creditors and the officers of the Corporate Debtor to address as to what steps should be taken under the law.

8. In the present appeal, we are not deliberating on such issue at such stage, as it is required to be decided by the Adjudicating Authority after notice to the parties. If the amount has not been deposited by the Resolution Applicant in the Escrow Account of the ICICI Bank, Kahiratabad Branch, Hyderabad, it was also open to him to notice the Resolution Applicant.

9. In absence of any reason and evidence, we set aside the part of the impugned order dated 23rd February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in C. P. No.

CP(IB)10/7/HDB/2017, so far it relates to imposition of costs on the 'Financial Creditors' and 'Corporate Debtor' and adverse remarks as made against Resolution Professional.

10. We make it clear that this order will not come in the way of the Adjudicating Authority to decide as to what steps should be taken to get the resolution plan implemented in accordance with law. Appeals are allowed to the extent above. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc