

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Comp. App. (AT) (Insolvency) No. 782 of 2020

IN THE MATTER OF:

Kind Special Steels (India) Pvt. Ltd. ... Appellant

Versus

Amtek Auto Ltd. ...Respondent

Present:

For Appellant: Mr. Anant Merathia, Mr. Rajiv Dvivedi, Mr. Rishi Srinivas and Mr. Sushant Sarkar, Advocates

For Respondent: Mr. Sumant Batra, Mr. Sanjay Bhatt and Ms. Niharika Sharma, Advocates for Caveator

ORDER
(Through Virtual Mode)

16.09.2020: Appellant's application under Section 60(5) of the I&B Code numbered as CA-293/2018 in CP(IB)/42/CHD/HRY/2017 came to be dismissed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in terms of order dated 9th July, 2020 which has been impugned in this appeal.

2. After hearing learned counsel for the Appellant, we find that Appellant 'Kind Special Steels (India) Pvt. Ltd.', claiming to be an Operational Creditor of the Corporate Debtor filed aforementioned CA on 27th July, 2018 seeking a direction in the name of Resolution Professional to revise and ascertain the liquidation value payable to the Appellant and also admit the claim submitted by Appellant on 4th August, 2017. Learned Adjudicating Authority found that the Appellant had filed the CA subsequent to the approval of the Resolution Plan of 'LHG' by the Committee of Creditors and

also by it. The Adjudicating Authority while taking note of the fact that the Hon'ble Apex Court had directed to invite fresh offers as the approved Resolution Plan was non-implementable, declined to accept the contention raised on behalf of Appellant that in view of such development Appellant's application under 60(5) of the I&B Code was maintainable. The Adjudicating Authority also found that the Appellant had failed to submit the proof of delivery in respect of the invoices, which were not admitted, with the CA.

3. After hearing learned counsel for the Appellant and scanning through the record, we are of the considered opinion that the Hon'ble Apex Court had, in view of the approved Resolution Plan being found non-implementable, opened a limited window only permitting inviting of fresh offers. The entire Corporate Insolvency Resolution Process was not directed to recommence *denovo*. Filing of claims afresh and their consideration for admission or otherwise was not at all contemplated. It is absurd to suggest that the insolvency resolution process stood reopened right from making of public announcement and inviting of claims. Regard being had to the timelines prescribed under the I&B Code, such construction cannot be placed on the orders of Hon'ble Apex Court, which only directed inviting of fresh offers as the approved Resolution Plan had been declared non-implementable. That apart, the Appellant failed to substantiate its claim, to the extent the same had not been admitted, by annexing acceptable evidence. It is significant to note that Company Appeal (AT) (Insolvency) No.

703 of 2020 preferred against the impugned order in relation to I.A. No. 62/2020 has been dismissed in terms of order dated 24th August, 2020.

4. In view of the foregoing discussion, we are of the considered opinion that there is no merit in this appeal. We accordingly dismiss the appeal at the very threshold stage. I.A. Nos. 2094/2020, 2095/2020 and 2096/2020 also stand disposed of.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Venugopal M.]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

/am/gc/