

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency)No. 921 of 2019**

**IN THE MATTER OF:**

**Shaji Purushothaman**

**.....Appellant**

**Vs.**

**Union Bank of India & Ors.**

**.....Respondents**

**Present :**

**For Appellant:**

**Mrs. Vibha Datta Makhija, Sr. Advocate with Mr. Karuppaiah, Mr. Reghunatha, Ms. Kanika, Mr. Praveen Gaur, Advocates**

**For Respondents:**

**Mr. R.P. Agrawal, Mr. Prateek, Ms. Bhumika, Advocates**

**O R D E R**

**06.09.2019** - This appeal has been preferred by 'Shaji Purushothaman' , Director of 'Empee Distilleries Ltd.' ('Corporate Debtor') against the order of rejection of the Miscellaneous application filed by him before the Adjudicating Authority ('National Company Law Tribunal'), Division Bench, Chennai dated 29<sup>th</sup> July, 2019.

2. We find that the application u/s 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) by 'Union Bank of India' ('Financial Creditor') was admitted against the 'Corporate Debtor' on 1<sup>st</sup> November, 2018. The said order was challenged before this Appellate Tribunal which was dismissed and thereafter the Appellant moved before the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, the Appellant took plea that he is ready and willing to clear the outstanding dues with the 'Union Bank of India' within 15 days. For the said reason, the Hon'ble Supreme Court by the order dated 14<sup>th</sup> June, 2019 granted liberty to move an application within two weeks before the Adjudicating Authority ('National Company Law Tribunal').

3. It is informed that the Appellant in the meantime has settled the matter with 'Union Bank of India' and some other 'Financial Creditors'. The Appellant moved a miscellaneous application with prayer for setting aside the order dated 1<sup>st</sup> November, 2018.

4. The Adjudicating Authority taking into consideration the aforesaid fact in the impugned order dated 29<sup>th</sup> July, 2019 observed that order of admission cannot be set aside, except where an application u/s 12A is filed, by settling the matter with all the Creditors with approval of 90% of the voting share of the

‘Committee of Creditors’ subject to filing of an application by ‘Union Bank of India’ for withdrawal of application u/s 7 of the ‘I&B’ Code.

5. Learned counsel for the Appellant submits that, M/s. Edelweiss Asset Reconstruction Company Ltd.’ in whose favour guarantee was given by the ‘Corporate Debtor’ is not entitled to any claim. However, we are not inclined to decide such issue at this stage having not raised before the Adjudicating Authority. We find no illegality in the order.

6. At this stage, learned counsel for the Appellant submits that the Appellant is ready to settle the claim with all the Creditors including ‘M/s. Edelweiss Asset Reconstruction Company Ltd.’

7. However, Mr. R.P. Agarwal appearing on behalf of ‘Union Bank of India’ submits that the ‘Resolution Plan’ has already been approved by the ‘Committee of Creditors’ after taking into consideration the claim of the ‘M/s. Edelweiss Asset Reconstruction Company Ltd.’

8. In the circumstances, while we are not inclined to issue any specific direction, give liberty to the Appellant to move an application u/s 12A for settling the claims of all the Creditors including the guarantors.

9. If an application u/s 12A is filed by the Appellant, the 'Committee of Creditors' may decide as to whether the proposal given by the Appellant for settlement in terms of Section 12A is better than the 'Resolution Plan' as approved by it, and may pass appropriate order. However, as such decision is required to be taken by the 'Committee of Creditors', we are not expressing any opinion on the same.

The appeal stands disposed of. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

ss/sk