

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 241 of 2018

IN THE MATTER OF:

R. Sridharan

...Appellant

Vs

**Assets Care & Reconstruction
Enterprise Ltd. (ACRE)**

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Pooja M. Saigal, Mr. Akshay Gupta, Ms. Aishwarya Nabh and Mr. Naveen Hegde, Advocates.

For Respondent: Mr. Rajeev Mehra, Sr. Advocate with Mr. Dhruv Malik, Advocate for Respondent No.1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Samrat Nigam, Advocate for Oriental Bank of Commerce (Lead Bank).

Mr. Pulkit Deora, Advocate for IRP.

ORDER

25.07.2018: This appeal has been preferred by a shareholder of 'M/s Shriram EPC Ltd.' against order dated 17th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, whereby and whereunder application under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by 'M/s Assets Care & Reconstruction Enterprise Ltd.' (Financial Creditor) for initiation of Corporate Insolvency Resolution Process against M/s Shriram EPC Ltd. has been admitted, order of moratorium passed and Resolution Professional has been appointed with certain direction.

2. The main plea taken by the Appellant was that the Adjudicating Authority failed to notice that there was no default on the part of the Corporate Debtor.



The other issue was raised on the status of the M/s Assets Care & Reconstruction Enterprise Ltd. as a 'Financial Creditor'.

3. Mr. Ramji Srinivasan, learned senior counsel appearing on behalf of the Appellant submits that the Corporate Debtor never committed any default and consequently, the petition under Section 7 of I&B Code was not maintainable. It is submitted that the fund was always available in terms of arrangement with the Consortium of the Banks of which Oriental Bank of Commerce was the lead bank. As the bank was maintaining the account and there was a verity of funds, it was duty of the Bank to pay amount as was due to the Respondent - 'M/s Assets Care & Reconstruction Enterprise Ltd.'

4. The Oriental Bank of Commerce, which is the lead bank of the Consortium of Banks has shown reasons in its affidavit. The reason shown is that 'The Development Bank of Singapore Ltd.' (DBS) of which M/s Assets Care & Reconstruction Enterprise Ltd. is an assignee was not paid the proportionate share in terms of debt schedule agreed upon in the 'Master Restructuring Agreement' (MRA)/ Corrective Action Plan, as DBS failed to fulfill its obligations under the MRA for release of working capital finance. At this stage, the Respondent - 'M/s Assets Care & Reconstruction Enterprise Ltd.' declined to sign the deed of accession and amended Master Restructuring Agreement, consequent where to the lenders refused to recognize 'M/s Assets Care & Reconstruction Enterprise Ltd.' as lender.

5. After notice when matter was taken up on 31st May, 2018, the stand of the parties was noticed as quoted below:

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“ORDER

31.05.2018: Mr. Arun Kathpalia, learned senior counsel appearing on behalf of the 'Lead Bank' submits that whatever payment is due to the 1st Respondent (Financial Creditor) in terms of 'Master Restructuring Agreement' (MRA) which is approx. Rs.30 crore, they will release the amount within 10 days.

Mr. Rajeev Mehra, learned senior counsel appearing on behalf of the 1st Respondent submits that approx. Rs.55 crore is payable to the 1st Respondent but the 1st Respondent agrees to settle the claim, if parties sit together.

In the circumstance we adjourn the matter and stay the Corporate Insolvency Resolution Process initiated by order dated 17th May, 2018 to enable the parties to settle the claim. However, Resolution Professional if appointed may report to the office of the Corporate Debtor.

In the meantime, without prejudice and right and contentions of the parties, the Lead Bank is allowed to release an amount of Rs.30 crore in favour of the 1st Respondent, subject to decision of this appeal.

Post the matter 'for admission' on **4th July, 2018.**"

6. The consent terms agreed between the Appellant and the 1st Respondent has been filed, relevant portion of which is quoted below:

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“5. The Corporate Debtor viz. SPEC and the 1st Respondent have held several meetings and discussions in order to fairly attempt an amicable resolution. Pursuant to negotiations and exchange of correspondence inter se, the parties have arrived at the following terms of settlement of their rival claims and contentions:

- (i) That Shriram EPC Limited have offered and ACRE has agreed to accept a sum of Rs.180 crores as full and final payment towards its claims which payment is to be made as per the payment schedule agreed below:

FY/Q	Q1	Q2	Q3	Q4	Total
FY 19	30.00		1.50	1.50	33.00
FY 20	2.00	2.00	2.00	2.00	8.00
FY 21	4.00	4.00	4.50	4.50	17.00
FY 22	5.00	5.00	5.00	5.00	20.00
FY 23	7.50	7.50	7.50	7.50	30.00
FY 24	9.00	9.00	9.00	9.00	36.00
FY 25	9.00	9.00	9.00	9.00	36.00
Total					180.00

*Each of the Quarterly payments would be made at the end of the respective quarter.



Out of this sum of Rs.180 crores, a sum of Rs.30 crores has already been paid to ACRE in terms of the order dated 31.05.2018 passed by this Hon'ble Appellate Authority.

- (ii) That the payment of upto Rs.180 crores to ACRE as per the above payment schedule stated above is subject to the condition that the 1st Respondent viz. ACRE appropriately substitutes itself for the DBS Bank Limited in terms of the extant CDR documents executed inter se the CDR lenders of SEPC and agrees to accept the repayments (as per schedule above) from the TRA Account.*
- (iii) The 1st Respondent confirms that it will execute the extant CDR documents for substitution in place of the DBS Bank Ltd., subject to inclusion of the payment terms as per the agreed settlement amount and its payment schedule, alongwith 1st Respondent not being required to release any additional funding to SEPC.*
- (iv) In light of the above mutual amicable settlement arrived at between the parties, an amount of upto Rs.180.00 crores is agreed to be paid to the 1st Respondent as per the schedule hereinabove from the Trust and Retention Account upon the 1st Respondent*



completing the documentation formalities as a member of the consortium of lenders for substitution in place of the DBS Bank Ltd. which documentation will include the payment terms to ACRE as per the agreed settlement amount and its payment schedule alongwith 1st Respondent not being required to release any additional funding to SEPC.

6. *In the above circumstances, the parties, through their duly authorized representatives, most humbly pray this Hon'ble Appellate Authority to be pleased to take the above consent terms on record and be pleased to set aside the orders passed by the Hon'ble Adjudicating Authority in CP/714/(IB)/CB/2017 dated 17.05.2018 subject to completion of the documentation formalities and thus render justice."*

7. It is informed that in terms of the consent of the parties, all agreements now being executed and parties have acted upon.

8. From the stand taken by the parties, we find that there was no fault on part of the Corporate Debtor, in fact due to misunderstanding between the members of the Consortium of Banks, the amount was not released in favour of 'M/s Assets Care & Reconstruction Enterprise Ltd.', which could not be treated to be default on the part of the Corporate Debtor. As the Adjudicating Authority failed to notice the aforesaid fact, we set aside the impugned order dated 17th May, 2018.

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9. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action taken by the '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 7 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

10. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the 'Corporate Debtor' will pay the fees of the Interim Resolution Professional, and other cost incurred by him. The appeal is allowed with aforesaid observation and direction. No Cost.

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OF THE ORIGINAL

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31/7/18

Assistant Registrar

National Company Law Appellate Tribunal,
New Delhi

am/uk

sd/-

[Justice S. J. Mukhopadhaya]
Chairperson

sd/-

[Justice Bansi Lal Bhat]
Member (Judicial)

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