

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 721 of 2024

&

I.A. No. 2590, 2592 of 2024

IN THE MATTER OF:

SREI Equipment Finance Ltd.

...Appellant

Versus

Harsh Arora & Anr.

...Respondents

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Shambo Nandy, Ms. Akanksha Kaushik, Ms. Alina Merin Mathew, Mr. Bhaskar Anand and Mr. Arijit Mazumdar, Advocates.

For Respondents : Mr. Arvind Nayyar, Sr. Advocate with Ms. Ekta Choudhary, Mr. Divyank Dutt Dwivedi and Ms. Aditi Sharma, Advocates for PNB. Mr. Harsh Kumar Arora and Mr. Rishi Singhal, Advocates for RP. Mr. Rajat Bhardwaj, Advocate.

O R D E R
(Hybrid Mode)

14.05.2024: Heard Counsel for the Appellant, Sh. Arvind Nayyar, Sr. Advocate appearing for Punjab National Bank and Leaned Counsel appearing for ex-Directors.

2. This appeal has been filed against the order dated 29.01.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Court – V), in I.A. 3151/2022 in C.P. (IB) No. 271/PB/2017, by which order Adjudicating Authority has issued certain directions and applications were directed to be listed on 11.03.2024.

3. The application I.A. 3151/2022 was filed by the Punjab National Bank (PNB), where the following prayers were made:

“a. Pass appropriate directions to the Resolution professional to conduct Transaction Audit of the books of the Corporate Debtor in compliance of the order dated 01.12.2021 & 04.04.2022 appointing Mr Amit Khandelwal as an independent auditor; and/or

b. Declare the re-constitution of COC by RP without conducting the transaction audit as illegal; and/or

c. Declare as illegal the approval of resolution plan by the illegally constituted COC; and/or

d. Set aside the approval of resolution plan by the illegally constituted COC; and/or

e. Pass any further or other orders as this Hon’ble Tribunal deems fit and proper in the interest of justice.”

4. The application came for hearing on which date the impugned order was passed.

5. Sh. Krishnendu Datta, Sr. Advocate appearing for the Appellant challenging the order submits that the Adjudicating Authority has directed the Resolution Professional (RP) to examine the issue afresh and submit its view on the next date of hearing which indicates that there was some material to examine the issue of reconstitution of the Committee of Creditors (CoC), whereas, there is no material or reason to issue any such direction.

6. It is submitted that Resolution Plan has already been approved by the CoC in June 2022 and pending before the Adjudicating Authority.

7. Sh. Arvind Nayyar appearing for PNB refuting the submissions of the Appellant submits that in the present case, earlier RP was replaced and the new RP was appointed who had appeared before the Adjudicating Authority on 29.01.2024 whose statement was noted. It is submitted that in the

application, PNB has been praying for direction for reconstitution of the CoC and the issue was very much alive.

8. Sh. Arvind Nayyar subsequently on 11.03.2024, order has been passed on I.A. 3151/2022, where Adjudicating Authority had directed issuance of Notice to all the Members of the CoC and asked them to file a Reply.

9. It is submitted that in view of the subsequent orders when the application is yet to be decided, this appeal need not be entertained.

10. Learned Counsel for the ex-Directors submits that the question of reconstitution of the CoC arises on account of order of IBBI, where reconstitution of the CoC by the earlier RP was frond of.

11. We have considered the submissions of both the parties and perused the record.

12. The order impugned in this Appeal is an interlocutory order passed in I.A. 3151/2022. In view of the subsequent order passed by the Adjudicating Authority on 11.03.2024 following directions have been issued in I.A. 3151/2022:

“I.A./ 3151 /2022:-

This is an application filed under Section 60(5) of the IBC, seeking certain direction to the Resolution Professional including seeking re-constitution of the CoC. Since the prayer is also relates to re-constitution of the CoC, Applicant is directed to issue notice to all the members of the CoC along with the copy of the application for filing their reply and appearance. Notice be issued by all means and proof of service be filed. List this application on 02.05.2024.”

13. The subsequent order clearly indicates that Applicant was directed to issue Notice to all Members of the CoC alongwith the copy of the application for filing the Reply and appearance.

14. The subsequent order indicates that application I.A. 3151/2022 earlier directions have been followed by fresh direction of issuing Notice and filing Reply which indicates that all issues in I.A. 3151/2022 was open to be decided and considered by the Adjudicating Authority after hearing all the parties including the Appellant, who was Member of the CoC.

15. We, thus are of the view that the impugned order being only interlocutory order and subsequently another order has been passed on 11.03.2024 all issues pertaining to the application are open and to be considered and decided by the Adjudicating Authority after hearing both the parties.

16. We are of the view that since the Adjudicating Authority in subsequent order makes it clear that the application may be decided afresh after hearing both the parties and considering the Reply, we see no reason to keep the appeal pending. We make it clear that all contention of both the parties are left open on all issues which the Adjudicating Authority may decide in accordance with law.

17. We have noted that in order dated 29.01.2024, the Adjudicating Authority had directed the RP to examine the issue afresh and submits its view on the next date of hearing. Counsel for the RP submits that he has not received the relevant documents by Appellant and erstwhile RP. In view of the

aforesaid, we are of the view that Adjudicating Authority shall decide the application after considering the Reply of the parties in accordance with law.

The Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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