

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.910 of 2024
& I.A. No. 3296 of 2024

IN THE MATTER OF:

Zulekha Amir Dodhia

...Appellant

Versus

Bank of Baroda & Anr.

...Respondents

Present:

For Appellant : Mr. Aayush Agarwala, Mr. Kunj Mehra, Advocates.

For Respondents :

O R D E R
(Hybrid Mode)

02.08.2024: Heard learned counsel for the Appellant. The Appeal has been filed against order passed by the Adjudicating Authority dated 14.03.2024 by which Section 95 application filed by the Bank of Baroda against the Appellant has been admitted.

2. Learned counsel for the Appellant challenging the order made two submissions. He submits that earlier the Adjudicating Authority has rejected the application by order dated 01.02.2024 which order was subsequently recalled by order dated 16.02.2024 and thereafter matter was heard again and impugned order was passed. He submits that the Appellant is entitled to challenge the order dated 16.02.2024 in the appeal. He further submits that the CIRP against the Principal Borrower has already been completed by approval of the Resolution Plan which is pending consideration of the Adjudicating Authority. Appellant has submitted proposal for settlement/

Cont'd.../

OTS offer which has not been considered and the Appellant has been communicated by letter dated 22.02.2024 that Respondent shall not consider the proposal of OTS.

3. We have considered the submissions of the Appellant and perused the record.

4. In so far as first submission of the Appellant that Appellant is entitled to challenge the order dated 16.02.2024 by which earlier order was recalled, we are of the view that it was open for the Appellant to challenge the order dated 16.02.2024. The Appellant did not challenge the order of recall and participated in the hearing of the application again, in consequence of which hearing order has been delivered. The provision for filing an appeal against order of Adjudicating Authority is provided under Section 61 of the IBC and under Section 61(2) limitation for filing appeal is only 30 days. When appellant has not filed appeal against order dated 16.02.2024, the submission of the Appellant that he can be allowed to challenge order dated 16.02.2024 in the present appeal which is filed against order dated 14.03.2024 cannot be accepted.

5. Learned counsel for the Appellant submits that the order dated 16.02.2024 has merged in the subsequent order dated 14.03.2024, hence, the Appellant is entitled to challenge both the orders. We are of the view that both the orders are separate orders and both orders need to be challenged

separately in the scheme of IBC as provision under Section 61 and the submission which has been made by the Appellant cannot be accepted.

6. In so far as second submission of the Appellant that Appellant's proposal for OTS has not been accepted, Appellant has referred to letter dated 22.02.2024 of the Bank which provides as follows:

"SAMB/05/Calchem/25

Date: 22.02.2024

*Mr. Amir Dodhia
Suspended Board of Directors of
Calchem Industries (India) Ltd
CJ302, Kanti Apartment, Mount Mary Road
Bandra West, Mumbai-400050*

Dear Sir,

Re: Your letter dated 26.02.2024 & 12.12.2023 for giving OTS Offer.

We acknowledge receipt of your letter dated 16.02.2024 concerning the OTS offer. In this regard, we bring to your attention the following:

- 1. Pursuant to the directive of the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, Court-III in IA/2054/2020 in C.P.(IB)/2092(MB)2018, the Resolution Professional was mandated to convene a meeting of the Committee of Creditors (CoC).*
- 2. The CoC meeting was duly convened on 29.11.2023, during which only one Resolution Plan from M/s Sadhana Nitro Chem Limited was presented to the CoC for consideration. This plan*

had previously been introduced in the 9th CoC meeting held 13.10.2020. on

3. *The CoC, upon due consideration, voted in favor of the Resolution Plan, which has subsequently been filed with the NCLT for approval.*

Given the aforementioned legal developments in the Corporate Insolvency Resolution Process (CIRP) of M/s Caichem Industries (India) Ltd, we regret to inform you that, at this Juncture, your request for the consideration of the two financial offers cannot be entertained by us. We advise you to pursue the matter by approaching the requisite quorum, tribunal, or court for consideration.

Please be guided accordingly

Your faithfully

Sd/-

PK Sinha

Dy. General Manager

7. Admittedly, in the CIRP of the Principal Borrower, the Resolution Plan has been approved, which is pending consideration before the Adjudicating Authority as communicated by letter dated 22.02.2024.

8. It is submitted that in the Resolution Plan of the Personal Guarantor which has to be finally approved, any amount is received in the CIRP of the Principal Borrower has to be given credit of and all aspects need to be considered while finalizing the Resolution Plan. We are, thus, of the view that

at the time of finalization of Resolution Plan of the Personal Guarantor, the Adjudicating Authority shall consider all aspects of the matter.

9. We do not find any error in the order of the Adjudicating Authority admitting Section 95 application warranting any interference in exercise of our appellate jurisdiction. Subject to observations made above, Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn