



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

2nd January, 2024

Subject: Judgment¹ dated 22nd December, 2023 of Hon'ble National Company Law Appellate Tribunal, in the matter of Jubilee Metal Pvt. Ltd. Vs. Mr. Surendra Raj Gang Resolution Professional of Metenere Ltd. & Anr. [CA(AT)(Ins) No. 1550-1552 of 2023].

Brief Facts-

Corporate Insolvency Resolution Process (CIRP) against CD was initiated *vide* order dated 25.09.2020 of AA. Resolution plan submitted by the successful resolution applicant (SRA) was approved by CoC on 27.07.2021 with 92.54% votes. Subsequently, performance security as required was deposited by the SRA. The resolution plan as approved by CoC was submitted before AA. Subsequently, it was informed to Resolution Professional (RP) by director of one of the group companies of SRA that there was change in directorship and constitutionality pattern of resolution applicant. The resolution was approved based on certain conditions and undertaking given by the SRA that they would not change or dilute the structure of their company. However, pursuant to such change in directorship, two IAs were filed before AA by RP- One on behalf of CoC seeking withdrawal of resolution plan and other seeking extension/exclusion of CIRP. AA *vide* order dated 21.11.2023 dismissed the IAs seeking approval of resolution plan and allowed IA seeking withdrawal of resolution plan. Further, exclusion for such period was allowed. The SRA filed appeal before NCLAT against the orders of AA.

Issues Before Hon'ble NCLAT:

The prominent issue for consideration was, can CoC seek withdrawal of resolution plan in case where there are implications of the sale of resolution plan approved by the CoC to a third party, as there is subsequent change in the shareholding of the SRA.

Findings & Observations of Hon'ble NCLAT:

NCLAT while disposing of the appeal noted that SRA, a company, comprising chain of companies viz., holding 100% shares wholly owned by 'Shoora Minerals Pvt. Ltd' which is 100% owned by 'Shoora Capital FZE' which in turn is 100% owned by Mr. Gaurav Gupta. After change of directorship, Mr. Gaurav Gupta ceases to continue as director of 'Shoora Capital FZE'. It also apprised the fact that there was existence of specific clause under terms of Letter of Intent (LoI). Moreover, an undertaking/addendum providing that SRA will not dilute its investment in all/any of the subsequent entities was also given. The NCLAT observed that even though the CoC cannot pray for withdrawal of the resolution plan as it is binding on the CoC, this may not apply in a case where the SRA himself has breached the terms and conditions and undertaking given by it. NCLAT while

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upholding the order of AA observed that “*The very basis and substratum of the Resolution Applicant which led the CoC to approve the Resolution Plan has been knocked out by changing the shareholding and directorship of the Resolution Applicant.*” and concluded that the SRA has committed a breach of the addendum and the conditions included in the LoI. It also held that Regulation 36B (4F) only contemplate one contingency that where performance security shall stand forfeited but the said provision does not exclude forfeiture of performance security in other conditions as contemplated in RFRP and accordingly, forfeiting the performance security is in accordance with RFRP.