ADHUNIK METALIKS LIMITED

Adhunik

Corporate Office : "LANSDOWNE TOWERS", 2/1A, SARAT BOSE ROAD, KOLKATA - 700 020
PH. : 033-3051 7100 ★ FAX : 91-33-2289 0285 ★ Website : www.adhunikgroup.com
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March 26, 2019

Listing Department BSE Limited Phiroz Jeejeebhoy Towers Dalal Street Mumbai – 400 001 Scrip Code: **532727**	Listing Department National Stock Exchange of India Ltd Exchange Plaza Bandra Kurla Complex, Bandra (East) Mumbai – 400 051 Scrip Code: **ADHUNIK**

Dear Sirs,

Sub: Intimation pursuant to Regulation 30 of the SEBI (LODR) Regulations, 2015

This is to inform you that the Hon'ble National Company Law Appellate Tribunal, New Delhi ("Hon'ble NCLAT") has passed a final judgment on 15 March, 2019 in relation to the matters which were sub-judice before the Hon'ble NCLAT in the matter of Adhunik Metaliks Limited ("the Company"). **A copy of the certified true copy of the said judgment has been attached herewith for your kind reference.**

In connection with the above, please note that there were two matters which were sub-judice before the Hon'ble NCLAT, an appeal filed by MSTC Limited contending that payment for the goods supplied by it to the Company during the Corporate Insolvency Resolution Process ("CIRP") of the Company has not been taken care of in the Resolution Plan and payment for the same are payable to MSTC Limited with a demand to treat their outstanding claim amount as 'resolution process cost. And an another appeal filed by Liberty House Group Pte Ltd ("LHG") seeking directions for implementing the resolution plan by Long Stop Date as defined in the resolution plan and also seeking directions for the committee of creditors to not to pursue any application for liquidation.

Both the aforementioned applications were dismissed on 30 January, 2019 post hearing all the parties to the applications and the Hon'ble NCLAT passed a final judgment on 15 March, 2019 in relation to the said matters. The Hon'ble NCLAT in the matter of MSTC Limited held that the prayer made by MSTC Limited cannot be accepted to treat any amount as a 'resolution cost'. The Hon'ble NCLAT also stated that any amount due to the 'Operational Creditor' prior to the date of CIRP Admission cannot be appropriated during the moratorium period. Further, in the matter of Liberty House Group, the submission made by them to treat the 'effective date' of implementation

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of resolution plan as the date of approval by 'Competition Commission of India' (CCI) was also not accepted by the Hon'ble NCLAT.

Therefore, having rejected the prayers, as made by both the appellants as mentioned above, the Hon'ble NCLAT gave one opportunity for the purpose of compliance of this order and implementation of the plan, by allowing the appellant- 'Liberty House Group' another 30 days to make upfront payment in terms of the resolution plan. The Hon'ble NCLAT also mentioned that [redacted]

in accordance with law.

This is for your information and records.

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 519 of 2018

(Arising out of Order dated 17th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench in CA(IB) No. 595, 613 & 614/KB/2018 in CP (IB) No. 373/KB/2017)

IN THE MATTER OF:

MSTC Limited ...Appellant

Vs.

Adhunik Metalliks Ltd. & Ors. ...Respondents

Present: **For Appellant:- Mr. Pallav Shishodia, Senior Advocate with Mr. Sidharth Bhatnagar, Ms. Pallavi Pratap, Ms. Prachi Pratap, Mr. Sidharth Mohan and Mr. Barnik Ghosh, Advocates.**

For Respondents:- Mr. Arun Kathpalia, Senior Advocate with Ms. Roopali Singh, Ms. Sayobani Basu, Mr. V.P Singh, Advocates for R-1 to R-3.

Mr. S.N. Mukherjee, Senior Advocate with Mr. Krishnendu Datta, Advocate for R-4.

Company Appeal (AT) (Insolvency) Nos. 53 & 54 of 2019

(Arising out of Orders dated 12th December, 2018 and 3rd January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 373/KB/2017 and CA(IB) Nos. 403, 1069, 1072 & 1138/KB/2018 in C.P. (IB) No. 373/KB/2017)

IN THE MATTER OF:

Liberty House Group Pte. Ltd. ...Appellant

Vs.

State Bank of India & Anr. ...Respondents

Present: **For Appellant:- Mr. S.N. Mukherjee and Mr. Gopal Mukerjee, Senior Advocates with Mr. Krishnendu Datta, Advocate.**

For Respondents:- Mr. Tushar Mehta, Senior Advocate with Ms. Misha, Mr. Vaijayant Paliwal and Ms. Charu Bansal, Advocates for SBI.

Mr. Sidharth Bhatnagar, Ms. Pallavi Pratap and Mr. Barnik Ghosh, Advocates for MSTC.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' initiated against 'M/s. Adhunik Metalliks Ltd.'- ('Corporate Debtor'), the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, by impugned order dated 17th July, 2018 approved the 'Resolution Plan' under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code" for short) submitted by 'Liberty House Group Pte. Ltd.' ("Liberty House Group" for short), which was approved by the 'Committee of Creditors' with 99.94% voting shares.

2. By the same very impugned order, the claim of 'MSTC Limited'- ('Operational Creditor'), a Public Sector Undertaking under the Govt. of India, to treat the additional expenses incurred by it as Resolution Cost, and thereby to pay it, has been rejected.

3. The fact is that the 'Liberty House Group', whose 'Resolution Plan' was approved on 17th July, 2018, failed to pay the upfront amount within 57 days from the date of the approval of the 'Resolution plan' in terms of plan. On such failure, the 'Committee of Creditors' alleging non-compliance of relevant terms in the 'approved Resolution Plan' filed an application before the Adjudicating Authority [illegible]

Case of 'Liberty Group House'

7. Learned counsel appearing on behalf of the 'Liberty House Group' submitted that the 'Resolution Plan' not only contemplated corresponding obligations of the parties who were required to take necessary steps for implementation of the 'Resolution Plan', it also contemplated certain material assumptions on the basis of which the Appellant prepared and structured the 'Resolution Plan'.

8. It was submitted that the 'Liberty House Group' made best efforts to perform its part of the obligations for implementation of 'Resolution Plan' and is continuing to do so, however, the implementation of the 'Resolution Plan' suffered road block due to multiple factors which were beyond the control of the Appellant.

9. According to 'Liberty House Group', the claim of 'MSTC Limited' as shown in Clause 6.8.2 of the 'Resolution Plan' is a critical assumption based on which the offer of upfront payment has been made. The 'Committee of Creditors' and the Adjudicating Authority approved such plan dated 17th July, 2018.

10. Clause 6.8.2 of the 'Resolution Plan' reads as follows:

> *"6.8.2 the Liquidation Value payable to MSTC is **NIL**. Based on Information provided, MSTC has been paid the entire dues that were incurred during the CIRP period in full. Further, based on the information*

provided, we understand that INR 56.72 crores was paid during the CIRP period to MSTC in order to ensure continued supply of goods (which was necessary to continue the going concern nature of the business of the corporate debtor), which payments have been approved by the CoC. In the circumstances, since the Operational Creditors under the Code are entitled to Liquidation Value and in this case the Liquidation Value payable to the Operational Creditors is NIL, MSTC as an Operational Creditor will be paid ***NIL.****"*

11. Therefore, according to 'Liberty House Group', the 'MSTC Limited' is entitled to receive no further amount as suggested in the 'Resolution Plan' and approved by the 'Committee of Creditors' and the Adjudicating Authority.

12. Further, according to 'Liberty House Group', in terms of Clause 4.2.1 of Part II of the 'Resolution Plan', the implementation of the 'Resolution Plan' is subject to receipt of requisite approval from the Competition Commission of India ("CCI" for short), if so required. Therefore, the 'effective date' of implementation of the 'Resolution Plan' should be the date of receipt of 'CCI's approval, if required. It was submitted that at the time of submission of the 'Resolution Plan', the Appellant- 'Liberty House Group' had no knowledge of assessing requirement of 'CCI's approval, which is dependent on financial position

of the previous year. The Appellant was under the *bona fide* assumption that 'CCI's approval would be required for its 'Resolution Plan', as a *de-minimus* exemption was not available. The Appellant had anticipated that the 'CCI' approval would be received within a month-and-a-half of the approval of the 'Resolution Plan' and, therefore, the Appellant indicated 57 days' timeline to commence which should be from the date of 'CCI's approval, and not from the date of approval of the 'Resolution Plan'.

13. It is accepted that the assessment of 'CCI' approval with regard to the 'Corporate Debtor' was finalized on 4th September, 2018 at the time of pre-filing consultation with regard to the other entity namely— 'Amtek Auto Limited' on 4th September, 2018, the 'CCI' has inquired about the status of 'Corporate Debtor'. Thereafter, the Appellant kept receiving correspondences from the 'CCI' till as late as 10th December, 2018 seeking clarifications regarding the 'Corporate Debtor'.

14. It was submitted that the 'Resolution Plan' contemplated various regulatory approvals and consultation with the stock exchange and other Governmental department like the Reserve Bank of India and the 'CCI' etc., the Appellant was under the *bona fide* assumption that the timeline given is only an 'indicative timeline' for payment of upfront amounts as set out in the 'Resolution Plan'.

15. Having heard learned counsel for the parties, we find that the submissions as made on behalf of the Appellant- 'Liberty House Group' is an afterthought as the Appellant being 'Resolution Applicant' was

knowing that the 'Resolution Plan' is to fulfil all the requirements in terms of Section 30 (2) of the 'I&B Code'. Section 30 (2) (f) mandates that the 'Resolution Plan' should not be against any of the provisions of the existing law.

16. Whether the 'Resolution Plan' is against Section 6(1) of the Competition Act, 2002 can be decided only by the 'CCI'. Pursuant to the 'Resolution Plan' as the 'Liberty House Group' will acquire 'Adhunik Metalliks Ltd.' – ('Corporate Debtor') being 'Successful Resolution Applicant' is required to intimate the 'CCI' in terms of Section 6(2) of the Competition Act, 2002. Therefore, the submission made on behalf of the 'Liberty House Group' that the 'effective date' of plan is date of approval by 'CCI' cannot be accepted. The prayer is rejected.

Case of 'MSTC Limited'

17. The Appellant – 'MSTC Limited' was doing business with the 'Adhunik Metaliks Ltd.'- ('Corporate Debtor') of facilitating the transactions of import and export of iron ore, coke, coal, etc. Before the Adjudicating Authority, the Appellant – 'MSTC Limited' contended that it had incurred expenses of Rs. 343.43 Crores for facilitating the procurement of raw materials during the 'Corporate Insolvency Resolution Process' period to keep the Company as a going concern. Out of such amount only Rs. 244.12 Crores has been paid. The rest of the raw materials lying stored in the Company as on the date is of Rs.99.31

Crores which were procured subsequent to Commencement Date (date of admission).

18. It was further contended that the Appellant – 'MSTC Limited' had incurred additional expenses of Rs. 14.33 Crores and thereby the said Appellant made a claim of total sum of Rs. 113.64 Crores towards the 'Resolution Process Costs' and not towards claim as an 'Operational Creditor'.

19. The 'Resolution Professional' disputed the claim and taken plea that 'MSTC Limited' is a facilitator and not a vendor or owner of raw materials, 'MSTC Limited' procure such materials from different vendors and supplies to the buyers. In the present case, 'MSTC Limited' made available iron ore, coke etc., which are the key inputs in the production process of steel industry ('Corporate Debtor'). As per facility arrangement, the Appellant – 'MSTC Limited' pays the vendor directly against the supply of raw material to the 'Corporate Debtor'. So when every raw material is lifted from the possession of the 'MSTC Limited', the 'Corporate Debtor' is required to pay the amount only in respect of the materials lifted from the possession of the 'MSTC Limited'.

20. It was submitted that 'MSTC Limited' as 'Operational Creditor' had submitted its claim for an amount of Rs. 172.15 Crores along with proof of claim on 9th January, 2018. The 'Resolution Professional' collated the claim and admitted a sum of Rs. 165.09 Crores payable as on the

'Insolvency Commencement Date'. The 'Corporate Debtor' was availing raw material procurement facility from 'MSTC Limited' from other

21. Further, according to the 'Resolution Professional' a sum of Rs. 165.09 Crores as on the 'Insolvency Commencement Date' less an amount of Rs. 18.5 Crores was disbursed to 'MSTC Limited', after which their pending claim stood at Rs. 146.59 Crores. In order to ensure continued supply of goods (raw materials) through 'MSTC Limited' an advance amount of Rs.56.72 Crores out of the admitted claim of Rs. 146.59 Crores was made. Thereafter, amount as due was Rs. 108.36 Crores.

22. It was further submitted that 'MSTC Limited' is demanding to treat their outstanding claims of Rs. 108.36 Crores which relates to supply made prior to the 'Insolvency Commencement Date'. It was submitted that the aforesaid amount of Rs. 108.36 Crores cannot be treated as 'Resolution Process Cost'.

23. According to Appellant – 'MSTC Limited', whatever payment made by the 'Resolution Professional' has been appropriated towards the old dues. According to learned counsel, such appropriation can be made even during the moratorium period.

24. Having heard learned counsel for the parties, we find that the Adjudicating Authority rightly held that Section 14 of the 'I&B Code' will override any other provisions contrary to the same. Any amount due to the 'Operational Creditor' prior to the date of 'Corporate Insolvency

Resolution Process' (Admission) cannot be appropriated during the moratorium period.

25. In view of the aforesaid findings, we hold that no case has been made out by the 'MSTC Limited' to treat any amount as a 'Resolution Cost'.

26. Having rejected the prayer, as made by both the Appellants, to give one opportunity for the purpose of compliance of this order and implementation of the plan, we allow the Appellant- 'Liberty House Group' another 30 days to make upfront payment in terms of the 'Resolution Plan'. On failure, it will be open to the Adjudicating Authority, Kolkata Bench to pass appropriate order in accordance with law.

27. Both the appeals stand disposed of with aforesaid observations and directions. No cost.

sd/-
(Justice S.J. Mukhopadhaya)
Chairperson

sd/-
(Justice Bansi Lal Bhat)
Member(Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

NEW DELHI
15th March, 2019
/AR/

20/3/19
Assistant Registrar
National Company Law Appellate Tribunal
New Delhi