

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD(COURT – II)**

IA No. 777 of 2022

IN

IA No. 690 of 2022

IN

CP (IB) No. 268 of 2020

[Application on the behalf of the applicants for joining as a Party in IA No. 690 of 2022]

In The Matter Between:

ARROW ENGINEERING LIMITED

....APPLICANT

Vs.

SHETH DEVELOPERS PVT. LTD.

....RESPONDENT

In The Matter of:

ARROW ENGINEERING LIMITED

...FINANCIAL CREDITOR

Vs.

GOLDEN TOBACCO LIMITED

...CORPORATE DEBTOR

Order Pronounced on: 21/12/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

MEMO OF PARTIES

ARROW ENGINEERING LIMITED

Arrow House No.,

Arrow City Manhattan Village – Kandalepada,

Talika - Pen, Goa Highway NH-17 Raigarh,

Raigarh, MH 402107 IN

.....Petitioner

SHETH DEVELOPERS PRIVATE LIMITED

Ground and 3rd Floor, Prius Infinity, Paranjape B Scheme,

Subhash Road, Vile Parle (East) Mumbai, Mumbai City

MH 400057 IN

.... Respondent

Appearance:

For the Applicant: Mr. Robin Jaisinghani, Adv.

For the Respondent: Mr. Jay Kansara, Adv.

ORDER

1. The present application is filed by the original financial creditor on whose behest the application initiating CIRP was admitted, and at present is constituting more than 98% voting share in the Committee of Creditors (hereinafter referred to as “CoC”). The present application is filed seeking impleadment in IA 690 of 2022 and requesting for vacating the interim stay on CIRP granted in IA 690 of 2022. IA 690 of 2022 is filed by Ms. Sheth Developers Pvt. Ltd. and M/s. Suraksha Reality Ltd. claiming to be the financial creditors, seeking direction to admit their claim and thereby to reconstitute the CoC. The grounds on which

impleadment in IA 690 of 2022 is sought by the applicant is stated in para 13 of its application as under:

“Presently Arrow Engineering Limited, the Applicants herein, enjoy a voting share in excess of 98% in the Committee of Creditors. In the event that Sheth Developers' claim for a sum of Rs.4240.63 crores is accepted by this Hon'ble Tribunal, the voting share of the present Applicants will be reduced to less than 50%. Thus any order in favour of Sheth Developers in IA 690 is bound to adversely affect the interest of the present Applicants viz. AEL. The Applicant therefore respectfully submits that the present Applicants are entitled to an opportunity of hearing to oppose IA 690.”

2. The Learned Counsel on behalf of the applicant has relied upon the judgment of *“Aashray Social Welfare Society & Ors. Vs. Saha Infratech Private. Ltd. Company Appeal (AT) (Insolvency) No. 904 of 2021”* passed by the Hon'ble NCLAT. We reproduce the relevant para hereinunder:

“22. When an allegation of connivance has been made against the Appellants by Respondents No. 2 and 3 themselves before the Adjudicating Authority, we are of the view that the Appellants have every right to be heard before the Adjudicating Authority.

23. In view of the foregoing discussion, we are of the view that the Adjudicating Authority committed an error in rejecting the impleadment application filed by the Appellants to implead them as party respondents in I.A. No. 2275 of 2021 and I.A. No. 2286 of 2021. As result, the Appeal is allowed. Order dated 21.10.2021 of

the Adjudicating Authority rejecting I.A. Nos. 2365 of 2021 and 2366 of 2021 are set aside. I.A. Nos. 2365 of 2021 and 2366 of 2021 are allowed. Let the Appellants be impleaded as party respondents in I.A. No. 2275 of 2021 and I.A. No. 2286 of 2021. Parties shall bear their own cost.”

3. The Learned Sr. Counsels for the respondents states that the said order relied upon by the Applicant has been stayed by the Hon'ble Supreme Court on 19.09.2022 wherein the Hon'ble Supreme Court held that *“in the meantime and until further order, operation and effect of the impugned order shall remain stayed”*. The said judgements are on record. Also, unlike in the NCLAT judgment quoted by the applicant above, there is no allegations of connivance by the applicant herein against any of the respondents, IRP the M/s. Seth Developers Pvt. Ltd./M/s. Suraksha Reality Ltd. the applicants in IA 690 of 2022 are seeking directions against IRP to admit their claims.
4. Heard both sides and perused the documents on record. We considered that the present applicant/Original Financial Creditor is presently having 98% voting share in the CoC. IA 690 of 2022 is filed by Ms. Sheth Developers Pvt. Ltd. and M/s. Suraksha Reality Ltd. claiming to be the financial creditors, after their claims were rejected by the Interim Resolution Professional, and sought direction from this Adjudicating Authority to direct the Interim Resolution Professional to admit their

claims and thereby reconstitute the CoC. We further considered that in IA 690 of 2022 Interim Resolution Professional is the only respondent on the ground that the claims were rejected by the Interim Resolution Professional without proper application of mind and verification of documents. The issue is regarding rejection of the claims which is essentially between the Interim Resolution Professional and claimants in this matter and there is no locus of any other third party in the matter. The claim of applicant in the present IA 777 of 2022 is already admitted and he has no grievance regarding this. Any fresh claim, which is judicially determined or admitted by the Interim Resolution Professional, will lead to change in voting share, but it can not be *ipso facto*, ground for impleading the existing members of COC. Entertaining such application would amount to opening the floodgate in the timebound CIR process, which will further derail & delay the resolution.

5. In view of the above, the present application is rejected. Hence, the application, i.e., IA No. 777 of 2022 is rejected and disposed of.

Let the copy of the Order be served to the parties.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

RAHUL/LRA