

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 832 of 2019

IN THE MATTER OF:

R. Adaikkalavan

...Appellant

Versus

**C.T. Ramanathan Infrastructure
(P) Ltd. & 2 Others**

...Respondents

Present:

For Appellant : Ms. Toral Banerjee, Advocate

O R D E R

20.08.2019 Having heard learned counsel for the appellant and being satisfied with the grounds, the delay of 12 days in preferring the appeal is condoned.

I.A. No. 2538 of 2019 stands disposed of.

The Appellant - Shareholder of 'M/s. C.T. Ramanathan Infrastructure Private Limited has preferred this appeal against order dated 3rd May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai whereby order of 'Liquidation' has been passed in exercise of powers conferred under Section 33(1) of the I&B Code on the basis of the decision of the 'Committee of Creditors'.

Learned counsel appearing on behalf of the Appellant submits that the Appellant submitted a 'Terms of Settlement' and it was not considered in proper manner and the order of 'Liquidation' was passed.

On hearing the learned counsel for the Appellant and perusal of the record, we find that after long period 'resolution plan' was filed which was not found to be viable and feasible and it not effective for reviving the 'Corporate Debtor' and as 270 days was completed, the 'Committee of Creditors' decided to request the Adjudicating Authority to liquidate the 'Corporate Debtor', so an order of liquidation under Section 33 of the 'I&B Code' came to be passed. For the said reason, we are not inclined to interfere with the impugned order dated 3rd May, 2019.

However, we make it clear that while liquidating the 'Corporate Debtor' (Company), the 'Liquidator' is required to follow the provisions of Section 230 of the Companies Act, 2013 in terms of decision of this Appellate Tribunal in "**Y. Shivram Prasad Vs. S. Dhanapal & Ors. - Company Appeal (AT) (Insolvency) No. 224 of 2018 etc.**" observed and held :

15. *Learned counsel appearing on behalf of the Appellant (Promoter) submitted that the provisions under Section 230 may not be completed within 90 days, as observed in "**S.C. Sekaran v. Amit Gupta & Ors.**" (Supra).*
16. *It is further submitted that there will be objections by some of the creditors or members who may not allow the Tribunal to pass appropriate order under Section 230 of the Companies Act, 2013.*
17. *Normally, the total period for liquidation is to be completed preferably within two years. Therefore,*

in **“S.C. Sekaran v. Amit Gupta & Ors.”** (Supra), this Appellate Tribunal allowed 90 days’ time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme.

18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the ‘Corporate Debtor’ (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the ‘I&B Code’, the arrangement of scheme should be in consonance with the statement and object of the ‘I&B Code’. Meaning thereby, the scheme must ensure maximisation of the assets of the ‘Corporate

Debtor’ and balance the stakeholders such as, the ‘Financial Creditors’, ‘Operational Creditors’, ‘Secured Creditors’ and ‘Unsecured Creditors’ without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the ‘Liquidator’ to constitute a ‘Committee of Creditors’ for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. *In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the ‘Corporate Debtor’ or the ‘creditors’ or a class of creditors like ‘Financial Creditor’ or ‘Operational Creditor’ approach the company through the liquidator for compromise or*

arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.

20. Both the appeals are disposed of with aforesaid observations and directions. No cost."

The Appellant being member of the Company may move before the Creditors (Financial Creditors/Committee of Creditors) and the 'Liquidator' to propose any arrangement in terms of the provisions of Section 230 of the Companies Act. In such case, the impugned order will not come in the way of the Appellant. The appeal stands disposed of with aforesaid observations. No order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/gc