

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 764 of 2019

IN THE MATTER OF:

Madhusudan Sharma

...Appellant

Versus

J.D. Aneja Edibles Pvt. Ltd.

...Respondent

Present:

For Appellant:

Mr. Vinod Kr. Chaurasia, Advocate

O R D E R

27.08.2019 This appeal has been preferred by Mr. Madhusudan Sharma, 'Resolution Professional' of the 'Corporate Debtor' against the order dated 7th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench. By the impugned order, the Adjudicating Authority while approving the 'resolution plan' made certain observations against the 'Resolution Professional' as under:

“29. In relation to IA No. 58/JPR/2018 filed by the
RP bringing to the notice of this Tribunal about
the transactions as contemplated under the
provisions of Section 43, 45, 50 and 66 for
orders under the corresponding sections, it is
required to notice that even though the said

application was filed on 15.10.18 no serious effort was taken by RP to press this application for disposal. In relation to the same it is required to note that the RP had not been too vigilant in pressing for an order to be passed as it is required to notice that under Section 29A (g) a person will not be eligible to be a resolution applicant who has been a promotor or in the management or in control of CD in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority under this code.

30. *However, no such order has been passed even though in application IA No. 58/JPR/2018 has been filed by the RP of which we have already expressed our opinion in relation to the conduct of the RP in not seriously pressing for this application to be disposed of prior to accepting*

the Resolution Plan filed by the RA. Further it is also required to note that during the course of submission, learned RP brought to the notice of this Tribunal that the COC has also been apprised of the several transactions alleged to be falling under the above sections however, the CoC has not chosen to press for the charges/ allegation made against the promoters of the Corporate Debtor, however has chosen to approve the resolution plan taking into consideration the commercial wisdom and in fact has given a clean chit while an appeal was pending before the Hon'ble NCLAT vide letter dated 16.08.2018 in relation to default. Further, it is also pointed out and a repeated assertion is made by the respondents, including the Resolution Applicants, in relation to IA No. 57 of 2018 that the Corporate Debtor is a closely held company and pre-dominantly carried with funds made available by related parties and

that funds of the public are not involved for carrying out the affairs/business of the Corporate Debtor. It is also stressed that all the activities like purchase or sale are carried at arms length transactions only and not as averred by the RP, who at the time of oral submissions by learned counsel for RA/Respondent contends that the same has been made by the RP without understanding the nature of business done by the Corporate Debtor being that of dealing in mustard seeds, mustard cake, mustard oil are driven by its own mechanics, however for the time being we are not closing application in CA No. 58 of 2018 filed by the RP in view of the directions issued to direct the monitoring agency in the concluding part of this order.”

2. Learned counsel appearing on behalf of the Appellant referred to 8 orders dated 25.10.2018; 30.11.2018; 04.01.2019; 07.02.2019; 14.02.2019; 22.02.2019; 28.02.2019 and 07.03.2019 to suggest that I.A. No. 58/JPR/2018

filed by the 'Resolution Professional' was taken up 8 times but no order was passed by the Adjudicating Authority. In spite of the same, the Adjudicating Authority has wrongly made the observations that no serious effort was made by the 'Resolution Professional'. It is submitted that the 'Resolution Professional' brought the facts to the notice of the Adjudicating Authority who took up the matter 8 times but no order is passed by the Adjudicating Authority.

3. Taking into consideration the aforesaid facts, we accept the stand taken by the Appellant and find that when the I.A. was listed before the Adjudicating Authority no order was passed by the Adjudicating Authority on the aforesaid dates and as such no observation can be made against the performance of the 'Resolution Professional'.

4. For the reasons aforesaid, we set aside the observations as made against the 'Resolution Professional' in paragraphs 29 and 30 of the impugned order and allow the appeal.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc