

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 721 of 2018

IN THE MATTER OF:

Kamesh Badhana

...Appellant

Vs

Goving Ram & Ors.

....Respondents

Present:

**For Appellant: Mr. Shravan Yammanur and Mr. Abhishek Kumar,
Advocates**

**For Respondents: Mr. Monamshel Maring, Advocate for Respondent
Nos. 1, 2 & 3.**

**Mr. Kanwal Chaudhary, Advocate for Respondent
No. 4**

O R D E R

18.09.2019 This appeal has been preferred by Promotor of M/s BOP Projects Pvt. Ltd ('Corporate Debtor') against the order dated 11th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi), New Delhi. In the said order the Adjudicating Authority entertained the application under Section 33(2) read with Section 44 of Insolvency and Bankruptcy Code, 2016 (in short **IBC**) filed by the Resolution Professional and in absence of any approved Resolution Plan, ordered for liquidation of the 'Corporate Debtor'.

2. The appeal was preferred on 03.11.2018 and since then whenever the matter was taken up, the case was adjourned for one or other reason. Subsequently, it was informed that with regard to allottees of Real Estate Company, the explanation to Section 5(8)(f) has been challenged before the

Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. and Anr. Vs. Union of India & Ors.*** – Writ Petition(Civil) No. 43 of 2019 and other cases. In view of the pendency of the Writ Petition, the appeal was adjourned from time to time. Now it has been brought to our notice that Hon'ble Supreme Court has upheld the explanation to Section 5(8)(f) by its judgement rendered in ***Pioneer Urban Land and Infrastructure Ltd. and Anr. Vs. Union of India & Ors.*** – Writ Petition(Civil) No. 43 of 2019 – 2019 SCC Online 1005.

3. Learned Counsel for the Appellant submits that Hon'ble Supreme Court while disposing of the Writ Petitions and the Civil Appeal ordered to continue the stay orders granted until NCLT takes up each application and decide the same in the light of the judgement. Relevant partition of the judgment reads as under:

“106. All writ petitions and the civil appeal are disposed of in the light of this judgment. Stay orders granted by this Court to continue until the NCLT takes up each application filed by an allottee/home buyer to decide the same in light of this judgment.”

4. We find that the said Interim Order of stay passed by the Hon'ble Supreme Court is not applicable in the present case as the application filed by the allottee/home buyer was admitted on 13.04.2018 and the order of liquidation was passed on 11.10.2018.

5. Learned Counsel for the Appellant submits that the Appellant was not allowed to file any Resolution Plan. However, such submission cannot be

accepted at this stage. The Appellant having not moved application under Section 60(5) of the IBC before the Adjudicating Authority with such prayer.

6. Learned Counsel appearing on behalf of the Liquidator brought to our notice that this Appellate Tribunal had already granted the Appellant liberty to file scheme of arrangement but the Appellant had not availed the remedy available under Section 230 of the Companies Act, 2013. Scheme can be filed only if the Appellant is eligible i.e., not declared ineligible in terms of Section 29A of the IBC. However, there is nothing on record to suggest that the Appellant moved before the Liquidator stating that he is eligible and not barred under Section 29A of the IBC and for scheme of arrangement in terms of Section 230 of the Companies Act, 2013.

7. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 11th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) but the door is open to the Appellant to take up the matter with the Liquidator for scheme of arrangement under Section 230 of the Companies Act if he is not ineligible in terms of Section 29-A of the IBC.

8. In so far the winding up proceeding pending before the Hon'ble High Court of New Delhi is concerned, in terms of Section 434 of the Companies Act, 2013, the said petition is to be transferred, which Hon'ble High Court is stated to have been re-transferred before the National Company Law Tribunal, but the Tribunal on wrong presumption, have sent back the record to the Hon'ble High Court, Delhi. In such case the aggrieved person may move before the appropriate forum.

The appeal is dismissed with the aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Akc/Sk