

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 786 of 2019

IN THE MATTER OF:

Abhay N. Manudhane

.... Appellant

Vs

Gupta Coal India Pvt. Ltd.

.... Respondent

Present:

**For Appellant: Mr. Krishna Mohan Menon, Mr. Mohit Singh,
 Ms. Meghna Rao, Advocates.**

For Respondent:

O R D E R

01.10.2019 This appeal has been preferred by Mr. Abhay N. Manudhane, Liquidator of Gupta Coal India Pvt. Ltd. ('Corporate Debtor') against the order dated 30th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench. By the impugned order, the application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') preferred by the Liquidator for institution of suit or other legal proceedings on behalf of the 'Corporate Debtor' under Liquidation in the Courts/ Tribunals situated within the jurisdiction of NCLT ordering Liquidation has been rejected.

2. Learned Counsel appearing on behalf of the Appellant referred to Section 33(5) of the I&B Code to suggest that '*no suit or other legal proceeding shall be instituted by or against the corporate debtor, provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority*'. It is submitted that in this background, the Appellant intends to file application under Section 9 against different companies, there being a debt payable to the present 'Corporate Debtor' against other companies or against other 'Corporate Debtors'.

3. However, such submission cannot be accepted in view of specific prohibition under Section 11 of the I&B Code, as quoted below:-

“11. Persons not entitled to make application.—*The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:--*

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or*
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or*
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or*
- (d) a corporate debtor in respect of whom a liquidation order has been made.*

Explanation.—For the purpose of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.”

4. From clause (d) of Section 11, it is clear that a ‘Corporate Debtor’ in respect of whom a liquidation order has been made is not entitled to make application to initiate ‘Corporate Insolvency Resolution Process’ under Chapter II. That means, it cannot file any application under Sections 7 or 9 of the I&B Code. Therefore, no application under Chapter II can be filed by the ‘Corporate Debtor’, which is under Liquidation of which the Appellant is Liquidator. In so far as, sub-section (5) of Section 33 is concerned, it is

subject to Section 52. Section 52 relates to right of secured creditor in liquidation proceedings. However, in case where matter does not relate to any secured asset and recovery of any money by the 'Corporate Debtor', which is not under Liquidation, a suit or other legal proceedings may be instituted by the Liquidator on behalf of the 'Corporate Debtor', but not an application under Section 9 of the I&B Code.

5. In the circumstances, if the Adjudicating Authority has refused to grant permission to file application under Section 9 of the I&B Code, we are not inclined to interfere with the impugned order dated 30th May, 2019. The Appeal is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC