

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.318 of 2020

[Arising out of Order dated 11.02.2020 passed by National Company Law Tribunal, Principal Bench, New Delhi in CP (IB)-540 (PB)/2017]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Reliance India Power
Fund,
Reliance Capital
Trustee Company
Limited,
Kamala City Compound,
Trade World, B Wing,
7th Floor, S.B. Marg,
Lower Parel (West),
Mumbai 400013

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Appellant

Versus

Mr. Raj Kumar Ralhan
Liquidator of
Su Kam Power Systems
Limited,
Pricewaterhouse
Coopers Professional
Services LLP,
Building No.10,
Tower-C, 17th Floor,
DLF Cyber City,
Gurgaon,
Haryana – 122002

Liquidator

Respondent

Also at:
Plot No.54, Sector 37,
Phase VI,
Udyog Vihar,
Gurugram,
Haryana 122001

For Appellant:

**Shri Sanjay Sharma and Ms. Anisha Mahajan,
Advocates**

For Respondent:

Ms. Misha and Shri Siddhant Kant, Advocates

ORDER

24.02.2020 Heard Counsel for Appellant. This Appeal has been filed against Impugned Order dated 11th February, 2020 passed in CA No.1096(PB)/2020 in CP (IB)-540 (PB)/2017. It is stated that the Corporate Debtor – Su Kam Power Systems Ltd. is undergoing liquidation proceedings. Counsel states that before the CIRP had started, the Appellant had initiated arbitration proceedings against the Corporate Debtor, which was hit by moratorium when CIRP started. The Counsel states that after the liquidation Order had been passed, the Appellant wanted to proceed with the arbitration proceedings but the Liquidator only caused appearance once and informed the Arbitrators regarding the liquidation proceedings but thereafter, has not participated and the arbitration proceedings are struck.

2. The learned Counsel refers to Section 35(k) of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) to submit that it is the duty of the Liquidator to defend any Suit, prosecution or other legal proceedings and it is stated that the Appellant would not have claimed anything if it was a private individual but according to the Counsel, under law, the Liquidator is bound to defend the proceeding. The learned Counsel referred also to the liquidation Order dated 3rd April, 2019 (Annexure A-9) to state that when liquidation Order was passed, the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) had directed the Liquidator in direction 'g' that the Liquidator shall follow up and investigate the financial affairs of

the Corporate Debtor in accordance with provisions of Section 35(1) of the Code. The argument is that the Liquidator is thus bound to come and defend the arbitration proceedings.

3. The learned Counsel for the Respondent – Liquidator is submitting that the arbitration proceeding relates to inter-shareholders dispute of the Corporate Debtor which was started before CIRP proceedings were initiated. The learned Counsel states that the Corporate Debtor – the Company as such has nothing to do with such inter se dispute. The learned Counsel states that because of this, the Liquidator has taken a decision that he need not contest the said arbitration proceedings.

4. The learned Counsel for the Appellant in Rejoinder states that the concerned Agreement (Annexure A-3) shows that the said Agreement was between the Corporate Debtor and the Appellant.

5. We find that the duty cast on the Liquidator is to institute or defend any Suit, prosecution or other legal proceedings. The same would include conscious decision which a Liquidator may take whether or not in the given set of facts, he needs to defend the proceeding. If the Liquidator has taken the decision, for reasons stated, we do not think that the Appellant has any right to force the Liquidator to come and defend and surrender to the action which the Appellant claims to have initiated.

6. We do not find any reason to interfere with the Impugned Order. The Appeal has no substance. The Appeal is dismissed at the stage of admission. No costs.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md