

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 66 of 2019

IN THE MATTER OF:

Ravi Mahajan

...Appellant

Vs

Jalesh Kumar Grover & Ors.

....Respondents

Present:

For Appellant: Ms. Annannya Ghosh, Mr. Mehul Parti and Mr. Gaurav Arora, Advocates.

For Respondents: Mr. G. P. Medora, Mr. Utkarsh Mishra and Ms. Pankhuri Kaur, Advocates for Liquidator.

Mr. Krishnendu Datta, Mr. Mohit Bakshi and Mr. Yohaann Limathwalla, Advocates for R-3.

Mr. Jitendra Kumar and Mr. Anjaneya Singh, Advocates for SBI.

Mr. Prashant, Advocate for PNB.

O R D E R

15.04.2019: This appeal has been preferred by Appellant – ‘Mr. Ravi Mahajan’, Promoter of ‘M/s Muskaan Power Infrastructure Ltd.’ (Corporate Debtor) against order dated 11th December, 2018 passed by Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, whereby it passed order of liquidation of the Corporate Debtor.

2. Learned counsel for the Appellant submitted that the initiation of the Corporate Insolvency Resolution Process was set aside by this Appellate Tribunal on 6th December, 2017 and the said order was set aside by Hon’ble Supreme Court by order dated 3rd August, 2018. Therefore, according to her the time

spent in litigation in Hon'ble Supreme Court i.e. 232 days should be excluded for counting the period of 270 days.

3. Learned counsel for the Financial Creditor opposed the prayer and submitted that the order of this Appellate Tribunal dated 6th December, 2017 setting aside the initiation of proceeding was stayed by the Hon'ble Supreme Court on 14th December, 2017 since then the Resolution Professional continued to function, therefore at the best 8 days can be excluded and in such case, 270 days will expire on 2nd May, 2018.

4. When we asked learned counsel for the Appellant, learned counsel for the Appellant submits that if the Resolution Process continues then the plan submitted by it can be considered. On the other hand according to learned counsel for the Respondent, the Appellant was ineligible in terms of Section 29A and the resolution plan submitted by Appellant was rejected by the Committee of Creditors in April, 2018. According to Counsel for the Appellant, the Corporate Debtor is a Small Scale Industry, therefore, the Promoter will be eligible to file resolution plan. However, it is accepted that such provision has been made by amendment of the I&B Code on 6th June, 2018 before which 270 days had already completed, therefore, the Appellant could not have derived advantage of this provision on the basis that it was Promoter of Small Scale Industry.

5. For the reason aforesaid, while we are not inclined to interfere with the impugned order dated 11th December, 2018 but make it clear that the Liquidator is to act in terms of order passed by this Appellate Tribunal in ‘Y. Shivram Prasad Vs. S. Dhanapal & Ors. etc.’ – Company Appeal (AT) (Insolvency) No. 224 of 2018 & 286 of 2018’, disposed of on 27th February, 2019, wherein this Appellate Tribunal directed, observed and held as follows:-

“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.”

6. It is made clear that at the stage of liquidation under Section 230 of the Companies Act, it is open to the members of Promoter to propose scheme in terms with the statement and object of the T&B Code and any scheme given by the Promoter is also to be considered in accordance with aforesaid order. The appeal stands disposed of with aforesaid observation. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

(Kanthi Narahari)
Member (Technical)

am/gc