

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 330 of 2019

IN THE MATTER OF:

**North East Centre for Technology
Application and Reach**

...Appellant

Vs.

Sri Vari Metal Works Pvt. Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. P.S. Singh, Advocate.

O R D E R

16.04.2019— This appeal has been preferred by 'North East Centre for Technology Application and Reach'- ('Financial Creditor') against the order dated 5th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, whereby the application under Sections 33(1)(a), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the 'Resolution Professional' has been allowed and order of liquidation has been passed with regard to 'M/s. Sri Vari Metal Works Private Limited'- ('Corporate Debtor').

2. Learned counsel appearing on behalf of the Appellant submitted that a 'Resolution Plan' was submitted by one 'M/s. Grandvalult Enterprises, Bengaluru' which *prima facie* complied with the provisions of Section 30(2) of the 'I&B Code' and, therefore, it was required to be placed before the 'Committee of Creditors' for voting. However, without

placing the matter before the 'Committee of Creditors', the 'Resolution Professional' applied for liquidation.

3. In the present case, we find that the 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor' was initiated on 9th January, 2018 and on 13th November, 2018, when the 'Resolution Professional' filed Miscellaneous Application under Sections 33 & 34 of the 'I&B Code' by that time approximately 270 days had passed.

4. In the aforesaid background, the Adjudicating Authority having ordered for liquidation, it cannot be held to be illegal. This apart, we find that the Expression of Interest was invited on 31st May, 2018 and in the third meeting of the 'Committee of Creditors' held on 27th June, 2018 it was informed that one 'M/s. Grandvalult Enterprises, Bengaluru' had expressed its interest for submitting the 'Resolution Plan'. In fact, no 'Resolution Plan' was filed by the said 'M/s. Grandvalult Enterprises, Bengaluru' which submitted it much later i.e. after more than four months on 4th October, 2018. It was informed to the 'Committee of Creditors' on 5th October, 2018 but due to late submission of the 'Resolution Plan', the 'Committee of Creditors' declined to consider the same.

5. Thus, we find that the 'Resolution Plan' submitted by 'M/s. Grandvalult Enterprises, Bengaluru' was not submitted within time and therefore, the 'Resolution Plan' of the said 'M/s. Grandvalult Enterprises, Bengaluru' was not considered.

6. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 5th December, 2018, we direct the Liquidator to act in accordance with law in terms of the decision of this Appellate Tribunal in **“Y. Shivram Prasad Vs. S. Dhanapal & Ors.— Company Appeal (AT) (Insolvency) No. 224 of 2018”** wherein this Appellate Tribunal held and observed as follows:

“17. Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in “S.C. Sekaran v. Amit Gupta & Ors.” (Supra), this Appellate Tribunal allowed 90 days’ time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme.

18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the ‘Corporate Debtor’ (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the ‘I&B Code’, the

arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

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.

20. Both the appeals are disposed of with aforesaid observations and directions. No cost."

7. The appeal stands disposed of with aforesaid observations and directions. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g