

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 687 of 2019

IN THE MATTER OF:

Alliance Projects

...Appellant

Versus

RP of Ind-Barath Power (Madras) Ltd.

...Respondent

Present:

For Appellant : Mr. Anirudh Wadhwa and Mr. Nikhil Pratap, Advocates

O R D E R

05.07.2019 The Appellant, one of the 'Resolution Applicant' has preferred this appeal against the order dated 22nd April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad whereby the Adjudicating Authority passed order of Liquidation of 'Ind-Barath Power (Madras) Ltd. (Corporate Debtor).

2. Learned counsel appearing on behalf of the Appellant submitted that when only few days were left for completion of 270 days the information-memorandum was issued. Pursuant to that resolution plan was submitted, which was more than liquidation value. From the record, we find that the 'original plan' and the 'revised plan' submitted by the Appellant was rejected by the 'Committee of Creditors' being not viable and feasible. This apart more than 270 days have passed. The Adjudicating Authority thus had no other option but to pass order of liquidation. In the circumstances, no relief can be granted as sought for. However, we are of the view that the 'Liquidator' should act in terms of the order

‘Y. Shivram Prasad vs. S. Dhanpal & Ors.’ – ‘Company Appeal (AT)(Insolvency) No. 224 of 2018 etc.’ disposed of on 27th February, 2019 wherein this Appellate Tribunal observed and held as:

- “15. Learned counsel appearing on behalf of the Appellant (Promoter) submitted that the provisions under Section 230 may not be completed within 90 days, as observed in **“S.C. Sekaran v. Amit Gupta & Ors.”** (Supra).
16. It is further submitted that there will be objections by some of the creditors or members who may not allow the Tribunal to pass appropriate order under Section 230 of the Companies Act, 2013.
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."*

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

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc