

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 616 of 2019

IN THE MATTER OF:

Ajay Kumar

.... Appellant

Vs

Shree Sai Industries Pvt. Ltd. & Anr.

.... Respondents

Present:

**For Appellant: Mr. Apoorv Shukla and Mrs. Prabhleen Kaur,
Advocate with Mr. Ajay Kumar, Resolution
Professional.**

For Respondents:

O R D E R

11.07.2019 At the instance of Shree Sai Industries Pvt. Ltd. ('Operational Creditor') 'Corporate Insolvency Resolution Process' was initiated against Dharam Paul Metal Pvt. Ltd. ('Corporate Debtor'). In the said case, the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench passed interim order of Liquidation before completion of 180 days, though it was brought to the notice of the Adjudicating Authority that the Promoters of Dharam Paul Metal Pvt. Ltd. ('Corporate Debtor') have not cooperated and not handed over the records of the Company. Learned Counsel for the 'Resolution Professional' further submits that in absence of any cooperation, he was not in a position to take effective control of the 'Corporate Debtor' and faced difficulty in proceeding with the liquidation process. For the said reason, the Appellant Mr. Ajay Kumar, who is the 'Resolution Professional' submits that he did not intend to continue as

Liquidator and this was brought to the notice of the Adjudicating Authority, but in spite of the same, he has been directed to continue as Liquidator.

2. In spite of notice to the Banks-‘Financial Creditors’, nobody appeared on behalf of the Respondents. The 1st Respondent is the ‘Operational Creditor’, being not a Member of the ‘Committee of Creditors’, and is not a necessary party. It is not made clear by the ‘Committee of Creditors’ (Respondent Nos.3 and 4), who were the Members of the ‘Committee of Creditors’, why they proposed for Liquidation, without asking for extension of the period during which the Promoters had not cooperated the ‘Resolution Professional’ or requested the Adjudicating Authority to pass orders in terms of Section 70 and other provisions of the Insolvency and Bankruptcy Code, 2016 (I&B Code).

3. As all these issues have not been taken into consideration and the Adjudicating Authority without appreciation of the facts has pre-maturely ordered for Liquidation, we have no other option, but to set-aside the impugned order dated 20th May, 2019. The C.P. (IB)-16/MB/2018 is remitted back to the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, who will pass appropriate order in accordance with law and if necessary by granting additional 90 days’ time, excluding period of non-cooperation by the Promoters of the ‘Corporate Debtor’ after hearing the ‘Committee of Creditors’ and may thereby proceed from the stage of preparation of Information Memorandum, which could not be followed due to non-cooperation of the Promoters, and, if the Appellant does not want to function as a ‘Resolution Professional’, appoint another ‘Resolution

Professional' from the approved list. The 'Committee of Creditors' be noticed and appropriate order be passed at an early date in accordance with law. The Appeal is allowed with the aforesaid observations and directions.

4. It is needless to say that if the Promoters do not cooperate and handover the necessary documents and information the Adjudicating Authority will take the help of the Superintendent of Police of the concerned area to ensure that the possession of the 'Corporate Debtor' and all the records are handed over to the 'Resolution Professional' and, if necessary, take criminal action against the Promoters.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC