

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 186 of 2019

IN THE MATTER OF:

Gaurav Hargovindbhai Dave

...Appellant

Vs.

Hema Manoj Shah & Ors.

...Respondents

Present: For Appellant: - Mr. Vishwas Shah, Ms. Bhawana Shah and Mr. Udit Gupta, Advocates.

For Respondents: - Mr. Udit Sharma, Ms. Nandini Sharma, Ms. Kulkarni and Ms. Hema Shah, Advocates for R.P.

O R D E R

25.03.2019— This appeal has been preferred by Promoter- Mr. Gaurav Hargovindbhai Dave against the order dated 18th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby the Adjudicating Authority held that the 'Resolution Professional' has not been given the control of the 'Corporate Debtor' and only after taking over full control of the 'Corporate Debtor', the 'Resolution Professional' can comply with the directions of the this Appellate Tribunal.

2. The Promoter has taken plea that the properties in question do not belong to the 'Corporate Debtor' but belongs to him.

3. On 26th February, 2019, having heard learned counsel for the parties, we directed the Appellant (Promoter) to first hand over the

Contd/-.....

properties in question to the 'Resolution Professional' in terms of the order passed by the Adjudicating Authority and then to show whether the said property belongs to the 'Corporate Debtor' or any other individual. Such direction was given in terms of the Insolvency and Bankruptcy Code, 2016 as the 'Resolution Professional' cannot take possession of third party property, if not shown in the record of the 'Corporate Debtor'.

4. In the present case, admittedly the Appellant (Promoter) has not handed over any properties of the 'Corporate Debtor', including the books of accounts and other moveable or immoveable properties of the 'Corporate Debtor' to the 'Resolution Professional', who can decide the issue on verification of record. On the other hand, the Appellant creating hindrance to ensure non-compliance of the order passed by the Adjudicating Authority.

5. Ms. Hema Shah, the 'Resolution Professional' along with Mr. Mudit Sharma, Advocate inform that the movable and immoveable properties of the 'Corporate Debtor' including the 'Books of Accounts' and other records have not been handed over by the Appellant. In the circumstances, we are not inclined to entertain the appeal filed by the Appellant (Promoter).

6. The Adjudicating Authority will now take appropriate action against the Appellant and other Promoters in accordance with law and if so necessary will take help of local Police to enable the 'Resolution

Professional' to take over the assets and records of the 'Corporate Debtor', including the land in question. Thereafter, on verification, the 'Resolution Professional' can find out whether the movable properties in question belongs to the 'Corporate Debtor' or a third party.

7. The appeal is dismissed with cost of Rs. 1,00,000/- to be paid by the Appellant (Promoter) in favour of the Registrar, National Company Law Tribunal, Mumbai Bench, Mumbai within one month.

Compliance to be reported to the Adjudicating Authority dealing with the matter.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g