

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No 203 of 2018**

**IN THE MATTER OF:**

**Kannan Tiruvengandam**

**...Appellant**

**Vs**

**M. K. Shah Exports Ltd. & Ors.**

**....Respondents**

**Present:**

**For Appellant: Mr. Rishav Banerjee and Ms. Jayantika Ganguly,  
Advocates.**

**For Respondents: Mr. Saumya Mehrotra and Mr. R. Sudhinder,  
Advocates for R-1.**

**ORDER**

**26.07.2018:** Corporate Insolvency Resolution Process under Section 7 of I&B Code was initiated against 'Assam Company India Ltd.' (Corporate Debtor). After following all the procedure, publication of advertisement, etc. Resolution Plans were received by Appellant – Resolution Professional. In view of the amendment, the Appellant –Resolution Professional also followed the provisions of Section 25(2)(h) read with regulation 36A of 'The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. At that stage, 'M/s M. K. Shah Exports Ltd.' filed an Interlocutory Application No. 24/2018 in CP(IB)/20/GB/2017 for direction to the Resolution Professional and the Committee of Creditors to reasonably relax the eligibility criteria regarding requirement of minimum tangible net worth of Rs.400 crore for Category-A prospective Resolution Applicants, i.e. private/public limited companies, LLPs, body corporates and publish/advertise the eligibility criteria afresh pursuant to such relaxation/ modification. In the alternative, to direct the Resolution Professional and Committee of Creditors that the eligibility-A prospective resolution applicants is to be recast as 'either minimum net worth criteria of INR 400 crores of proof of availability of cash.

2. The aforesaid prayer was opposed by the Resolution Professional as the criteria were already approved by the Committee of Creditors. The Adjudicating Authority by impugned order dated 26<sup>th</sup> April, 2018 referred to advertisement published on 11.04.2018 and observed that the Resolution Professional has left avenues for modification of the terms and conditions.

3. Learned counsel appearing on behalf of the Resolution Professional submitted that the Committee of Creditor had already considered the matter and minimum tangible net worth was noticed and prescribed. The same was reaffirmed in the 7<sup>th</sup> meeting of the Committee of Creditors held on 02.05.2018.

4. *Prima facie* we are of the view that it is not in the domain of the Adjudicating Authority to decide the requirement of minimum tangible net worth of one or other category of eligible Resolution Applicant, which is matter of experts like Committee of Creditors to decide. For the said reason, we stay the operation of the impugned order by our order dated 10.05.2018.

5. Learned counsel for the Resolution Professional informed that after the order of stay passed by this Appellate Tribunal they have already received four resolution plans which were not considered by the Committee of Creditors. Learned counsel appearing on behalf of 'M/s M. K. Shah Exports Ltd.' submitted that they are withdrawing themselves from the contest as Resolution Applicant.

6. In view of aforesaid stand taken by the counsel for the Respondent, as we are of the opinion that the question of eligibility criteria regarding requirement of minimum tangible net worth for one or other category of Resolution Applicants and other criteria are matter which can be dealt with by expert committee like Committee of Creditors, we hold that the Adjudicating Authority has no jurisdiction to sit in appeal over the decision of expert bodies relating to eligibility criteria till it is not shown that the same is perverse or against any of the provisions of I&B Code or existing law.

7. Accordingly, we set aside the impugned order dated 26<sup>th</sup> April, 2018 and direct the Resolution Professional and the Committee of Creditors to complete the process immediately. If one or other Resolution Plan confirms with provisions of Section 30(2), the same to be considered taking into consideration provisions of Section 29A and viability, feasibility and matrix and other factors of the plans. It will be open to the Committee of Creditors to approve the best plan. If such order of approval is passed by the Committee of Creditors, the Resolution Professional will place the same before the Adjudicating Authority for its orders under Section 31. It is expected that all the steps will be taken to ensure that the Resolution Process is successful within the prescribed period. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

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