

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No. 630 of 2018

IN THE MATTER OF:

Vandana Industries Ltd.

...Appellant

Versus

IL & FS Financial Services Ltd. & Anr.

...Respondent

Present:

For Appellant : **Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Kunal, Godhwani, Advocates**

For Respondent 1 : **Mr. Bishwajit Dubey, Mr. Shatrajit Banerji, Advocates**

Mr. A.K. Mehta, Liquidator

ORDER

01.2.2019 This appeal has been preferred by Appellant Vandana Industries Limited, a shareholder of Vandana Udyog Limited ('Corporate Debtor') against order dated 25.06.2016, whereby and whereunder, the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai passed order of liquidation under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) and issued certain orders and directions to the Liquidator.

2. The brief fact of the case is that an application u/s 10 of the 'I&B Code' was filed by Vandana Udyog Limited ('Corporate Debtor') through the Board

of Directors showing one of IL & FS Financial Services Limited as one of the 'Financial Creditor' in respect of whom the alleged default was committed. The said application u/s 10 was admitted on 21.06.2017 and the matter proceeded. Subsequently, the order of liquidation has been passed on 25.06.2018.

3. Learned Counsel appearing on behalf of the Appellant- 'Vandana Industries Limited' submitted that one of the shareholders has no knowledge that the Board of Directors has decided to move application u/s 10 of the 'I&B Code'. He has also no knowledge that such an application was admitted on 21st June, 2017. It is only after the order of liquidation was passed, the shareholder of 'Vandana Industries Limited' has come to know of the same.

4. Learned Counsel appearing on behalf of Appellant submitted that no prior approval of shareholders was taken in Extra Ordinary General Meeting of the 'Corporate Debtor'. The Board of Directors, without jurisdiction, filed an application u/s 10 without such approval from the meeting of the shareholders in its Extraordinary General Meeting.

5. Reliance has been placed on Article 129 of the Articles of Association.

6. It is contended that the Board of Directors has no jurisdiction to take decision for liquidation or file application u/s 10 and thereby application filed u/s 10 was not maintainable.

7. In “***Gaja Trustee Company Private Limited & Ors. Vs. Haldia Coke and Chemicals Private Limited -Company Appeal (AT) (Insolvency) No. 137 of 2017***” this Appellate Tribunal by judgement dated 19.07.2018 held that application u/s 10 cannot be filed by the Board of Directors of a Company without prior approval of the shareholders in its Extraordinary General Meeting / Annual General Meeting (AGM).

8. Learned Counsel for the Appellant further submitted that there is only one ‘Financial Creditor’ with whom the matter had been settled. This is also accepted by Mr. Vishwajeet Dubey, Counsel on behalf of the IL & FS Financial Services Limited (‘Financial Creditor’). He submits that in case of default, the ‘Financial Creditor’ is allowed to trigger Corporate Insolvency Resolution Process against the ‘Corporate Debtor’ and to sue the person who signed the agreement.

9. Mr. Adesh Mehta, ‘Resolution Professional’ / ‘Liquidator’ appears in person. He submits that he has filed the details of fees and Corporate Insolvency Resolution Process cost which comes to about Rs. 12.18 lacs payable in his favour.

10. Learned Counsel for the Appellant submits that the Appellant and ‘Corporate Debtor’ will pay such amount to the ‘Resolution Professional’ / ‘Liquidator’.

11. In the present case, as we find that the application u/s 10 filed by the Board of Directors was not maintainable, we hold that initiation of

Corporate Insolvency Resolution Process by order dated 21.06.2017 has been shown void. For the same very reason such matter could not have been proceeded. We hold that the impugned order of liquidation dated 25.06.2018 is illegal. The said order is accordingly set aside.

12. The parties having settled the matter, no further order is required to be passed except to state that the 'Corporate Debtor', Directors/Shareholders will be bound by the terms of settlement.

13. Taking into consideration the stand taken by the 'Resolution Professional' / Liquidator and learned counsel for the Appellant, we direct the Appellant to pay the sum of Rs. 12.18 lacs in favour of Mr. Adesh Mehta, the 'Resolution Professional' / 'Liquidator' within two weeks from the date of receipt of the copy of this order.

14. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent under Section 10 of the 'I&B Code' is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

15. The appeal is allowed with the aforesaid direction. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

ss/sk/