

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 662 of 2019

(Arising out of Order dated 30th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in C.A. 1058(PB)/ 2018 in Company Petition No. (IB)- 272(PB)/ 2017)

IN THE MATTER OF:

**Mr. Arvind Garg
Liquidator of Moser Baer Solar Limited** **...Appellant**

Vs.

**Committee of Creditors of
Moser Baer Solar Limited
Through Punjab National Bank** **...Respondent**

Present: For Appellant: - Mr. Krishnendu Datta, Mr. Abhishek Anand, Mr. Tushar Tyagi and Ms. Niharica Khanna, Advocates.

For Respondent:- None.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by Mr. Arvind Garg, the 'Resolution Professional' of 'Moser Baer Solar Limited'- ('Corporate Debtor') against the order dated 30th May, 2019, whereby the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, passed order of liquidation under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short).

2. Learned counsel appearing on behalf of the Appellant submitted that the 'Corporate Debtor' is eligible for subsidies from the Central Government, Ministry of Electronics and Information Technology, in the light of the decision of the order passed by the Hon'ble High Court of Delhi which is likely to be released in near future.

3. According to learned counsel for the Appellant, the order of liquidation may affect the 'Corporate Debtor' and if the Central Government comes to know that it has gone for liquidation, it may not allow subsidies.

4. From the impugned order, we find that the 'Resolution Professional' himself filed application with following relief:

“Order of liquidation of the corporate debtor under Section 33 (1) of the Code i.e. the automatic consequence upon completion of 270 days on non-receipt of resolution plan be kept pending, subject to the outcome of the Writ Petition already filed on 01.10.2018 by the Applicant seeking disbursal of subsidy from the Ministry of Electronics and IT before the Hon'ble High Court of Delhi.”

5. In view of the aforesaid prayer made, more than 270 days have already been completed and in absence of any 'Resolution Plan', the order of liquidation was passed. We find no illegality in the said order.

6. From the record, we find that the Ministry of Electronics & Information Technology, Government of India by its letter dated 15th January, 2019 giving reference to the decision of the Hon'ble High Court of Delhi informed the 'Resolution Professional' that the claim of 'Moser Baer Solar Limited'- ('Corporate Debtor') for disbursement of subsidy of Rs. 269.70 Crores is not being acceded for the reasons mentioned therein.

7. The aforesaid letter was challenged by the 'Corporate Debtor' through the 'Resolution Professional' before the Hon'ble High Court of Delhi in W.P. (C) No. 1876/2019 impleading Ministry of Electronics & Information Technology as party Respondent. The said Writ Petition was dismissed on 25th February, 2019.

8. The Letter Patent Appeal (LPA) No. 225 of 2019 was thereafter filed by the 'Corporate Debtor' through the 'Resolution Professional' before the Hon'ble High Court of Delhi wherein vide its order dated 25th February, 2019, the Hon'ble Division Bench allowed the 'Corporate Debtor' to file a review application before the learned Single Judge. Thereafter, the 'Corporate Debtor' filed Review Petition No. 241/2019 and CM No. 26018/2019 before the learned Single Judge of the Hon'ble High Court

of Delhi. The said Review Petition was allowed and the order dated 25th February, 2019 was recalled. The Ministry of Electronics & Information Technology was directed to re-examine the claim of the 'Corporate Debtor', as expeditiously as possible, within a specified period.

9. It was in this background, the Appellant has taken plea that the order of liquidation should not have been passed by the Adjudicating Authority and it should have deferred till the decision of the Ministry of Electronics & Information Technology. However, we are not inclined to interfere with the order of liquidation on such ground.

10. In "**Y. Shivram Prasad Vs. S. Dhanapal & Ors.— Company Appeal (AT) (Insolvency) No. 224 of 2018**", this Appellate Tribunal by its order dated 27th February, 2019 while directed the Liquidator to ensure that the 'Corporate Debtor' remains a going concern even during the period of liquidation, observed and directed as follows:

*"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.

20. Both the appeals are disposed of with aforesaid observations and directions. No cost.”

11. The said decision and direction are also binding in the present case and the ‘Resolution Professional’ (now ‘Liquidator’) is required to follow the procedure, as mentioned therein, and ensure that the ‘Corporate Debtor’ remains a going concern during the period of liquidation.

12. In view of the aforesaid position of law, we are of the view that it is still open to the Ministry of Electronics & Information Technology to release subsidies, if otherwise permissible, as in spite of the order of

liquidation, the 'Corporate Debtor' is to continue as a going concern to ensure revival and resolution even during the liquidation process.

13. We are of the considered view that the Competent Authority of the Ministry of Electronics & Information Technology will consider the case of the 'Corporate Debtor' in terms with the direction of the Hon'ble High Court of Delhi, as referred to above, uninfluenced by the order of liquidation, as the 'Corporate Debtor' is to continue as a going concern.

The appeal stands disposed of with the aforesaid observations. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

NEW DELHI
23rd July, 2019
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