

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

**Company Appeal (AT) (Insolvency) No. 384 of 2020**

[Arising out of Order dated 31<sup>st</sup> January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench - I, Chennai in MA/1322/2019 & MA/1323/2019 in MA/406/2018 in TCP/205/IB/2017]

**IN THE MATTER OF:**

**Muhamad Yavar Dhala**

Resident of:

4/6, Casurina Drive,

Sri Kapaleeswara Nagar

Neelankarai

Chennai – 115.

**...Appellant.**

**Versus**

**Kavita Surana, Liquidator of Forward  
Shoes (India) Pvt. Ltd. (The Corporate Debtor)**

At:

50, Raja Muthiah Salai,

Periamet,

Chennai – 600003.

**...Respondent.**

**Present:**

**For Appellant: Mr. Sumesh Dhawan and Ms. Ankita Bajpai,  
Advocates.**

**For Respondent: Mr. Krishnendu Datta, Sr. Advocate with  
Mr. Naveen Kumar and Ms. Kavitha Surana  
(Liquidator), Advocates.**

**ORAL JUDGMENT**

**08.12.2020**

**A.I.S. Cheema, J. :**

1. This Appeal has been filed by the Appellant/Muhamad Yavar Dhala against Impugned Orders dated 31<sup>st</sup> January, 2020 passed in MA/1322/2019 & MA/1323/2019 in MA/406/2018 in TCP/205/IB/2017. The Corporate Debtor/M/s. Forward Shoes (India) Pvt. Ltd. is under Liquidation since

Liquidation Orders dated 11<sup>th</sup> December, 2018. The Appellant is admittedly promoter of the Corporate Debtor which has gone in Liquidation.

**2.** It is stated that earlier when Liquidation Order was passed it was challenged before this Appellate Tribunal and Appeal got dismissed. During the course of Liquidation Proceedings, the Appellant claims to have filed two schemes. One is Annexure -6 (Page 75) and other scheme is Annexure-7 (Page 106). Both are dated 25<sup>th</sup> September, 2019. The Learned Counsel for the Appellant submits that in both the schemes which are otherwise similar, in scheme at Annexure -6 the scheme was proposed with one M/s. Sri Ram Properties who had agreed to invest. The other scheme at Annexure -7 was proposed with M/s. Vijay Raja Homes Pvt. Ltd. The schemes were proposed under Section 230 of the Companies Act, 2013.

**3.** It is stated that the Respondent/Liquidator filed M.A./1322/2019 before the Adjudicating Authority (National Company Law Tribunal, Division Bench -I, Chennai seeking relief to condone delay of 35 days in filing Application for extension of a period of 90 days to follow the entire process under Section 230 of the Companies Act with regard to the Corporate Debtor. The delay was condoned. It appears that MA 1323 of 2019 was filed by the Liquidator under Section 35 (n) and Section 60 (5) of Insolvency and Bankruptcy Code, 2016 (IBC in short) read with Section 230 of the Companies Act and Regulation 32 of IBBI (Liquidation Process) Regulations 2016 and Rule 11 of NCLT Rules, 2016 for orders to call, hold and conduct meeting of the secured creditors. Further directions were also sought.

4. The Adjudicating Authority appears to have heard the parties and in the process noticed that during pendency of the Liquidation Proceedings, the Appellant had obtained MSME Certificate (Annexure -10 Page 153) showing investment (Plant & Machinery/Equipment) as only two lakhs while the schemes proposed itself stated the value of the property itself to be around Rs. 67 crores. The Adjudicating Authority observed in Paragraph 8 (as at Page 11 of the Impugned Order which has 3 para '8'), as under:-

*“8. The Learned Counsel for the Respondent, contradicting the submissions made by the Learned Counsel for the Liquidator has emphatically contended that the Corporate Debtor is an MSME and as such the ineligibility in relation to Section 29 A of the IBC, 2016 would have no bearing upon them by virtue of Section 240A of the IBC, 2016. A perusal of the MSME Certificate attached with the typed set filed by the Respondent would go on to show that the said Certificate was obtained on 02.04.2018, which is after the initiation of the CIRP by this Tribunal. Further, it may be seen in the said MSME Certificate that the Investment (Plant & Machinery/Equipments) is shown as Rs. 2 Lakhs, whereas the Liquidation value as per the Scheme itself is stated to be around Rs. 67 Crores. Thus, it can be seen that the Respondent is trying to play a fraud upon this Tribunal, in order to gain backdoor entry to the assets of the Corporate Debtor in the guise of projecting themselves as MSME. Thus, this Tribunal is of the view that the Respondents are trying to deceive this Tribunal by claiming themselves as an MSME, so as to enable them to submit the Scheme before the Liquidator, which is nothing short of an abuse of process of IBC.”*

5. Now the Learned Counsel for the Appellant has taken us to the schemes Annexures -6 and 7. He referred to Annexure -6 (at Page 78) where it is mentioned that the Applicant, i.e, the Appellant has received offer from M/s. Sri Ram Properties a leading Real Estate Developer in Chennai to construct Residential Complex in the property owned by the Corporate Debtor. The proposed scheme of settlement states that the Applicant is interested in using the services of M/s. Sri Ram Properties in developing the Residential/Commercial Properties on the land of the Corporate Debtor. In the other scheme in place of M/s. Sri Ram Properties the other entity shown is M/s. Vijay Raja Homes Pvt. Ltd. (Page 109). It is argued by the Learned Counsel for the Appellant that the Adjudicating Authority proceeded on wrong premise as if the Appellant was making back-door entry, although hit by Section 29-A of IBC. The argument is that the Appellant who submitted these schemes to the Liquidator is merely a facilitator for the scheme being proposed and for execution of the same. For the sake of convenience, we refer to the averments made in Annexure-6. The Learned Counsel referred to Part-I of the scheme Paragraph 2 (Page 84) where it is recorded that the Applicant “shall not interfere in the current business or management status of the Corporate Debtor”. The Learned Counsel also referred to Status Report which was filed by the Liquidator (Annexure -9 Page 146) at Page 151 where it was mentioned in Paragraphs 8 and 9 as under:

“8. The Respondent in the proposed scheme is only facilitator of the development of the property of the

Corporate Debtor. The Respondent expects to realize a sum of around Rs. 150 Crores from the development of the property which will be put in an escrow and distributed to the creditors of the Corporate Debtor as well as its sister concerns namely Conceria Virginia and M/s. Forward Leather. It is submitted that the proposed scheme is almost identical to the settlement filed before the DRT at Chennai with the financial creditor as well as the earlier resolution plan which was approved by this Hon'ble Tribunal.

9. The scheme does not seek to restore the management nor is it one which seeks to reclaim the assets of the Corporate Debtor but it is only to settle the dues of the Corporate Debtor. Since an outright sale of the property would fetch only Rs. 60 Crores at maximum and none of the other creditors apart from the financial creditor would be settled. Therefore it is submitted that the proposed scheme takes into consideration all the stake holders of the Corporate Debtor and outright rejection on the ground of disqualification under section 29-A of the Code would indeed be gravely prejudicial to the various other creditors and stake holders of the Respondent apart from the Respondent herein who would also be put in irreparable loss.”

**6.** The argument is that the Liquidator had also agreed with the Appellant that the Appellant is only a facilitator of the development of the property. Thus, according to the Learned Counsel, the schemes could not have been thrown out by the Adjudicating Authority without examining them in details and

without giving opportunity to the Appellant on the basis that the Appellant was hit by Section 29-A of IBC.

**7.** It is further argued by the Learned Counsel for the Appellant that Annexure 10 (Page 153) entry No. 18 in Certificate mentions “Investment (Plant & Machinery/Equipment’s) as Rs. 2 lakhs. The Learned Counsel referred to another document at Page 122 to show that in 2017 the value of the Plant and Machinery was shown around Rs. 59 lakhs which would have further gone down thus according to him the Adjudicating Authority erred in comparing value of the property of Corporate Debtor and reading the same also in the column of Plant & Machinery/Equipment. The Learned Counsel for the Appellant states that there is no bar to the Appellant applying for the MSME Certificates even during the course of Liquidation Proceedings.

**8.** Against this, the Learned Counsel for the Respondent has referred to the contents of the two schemes. The Learned Counsel referred to Annexure – 7 where in the preamble itself the Appellant is shown as Applicant. Even the scheme was tendered to the Liquidator by the Appellant under his signature as can be seen from the Letter submitted on 25<sup>th</sup> September, 2019 (Page 106). The Learned Counsel also took us to various contents of the scheme. For instance, Part-I (The Scheme of Settlement) - Paragraph 4 and referring to the same it is argued that the Appellant who is Applicant in the scheme stated that the Applicant wanted to sell the said project under RERA. Learned Counsel also referred to Part-III Division II at Page 124, to submit that it is the Applicant who would be taking all the possible/necessary steps to implement the project

and mobilize the expected funds as mentioned, considering the volatility in the Real Estate. Reference was also made to Part-V of the scheme (Page 128) where rights, duties and responsibilities of the Applicant are specified. Learned Counsel reminded us that in Paragraph 1.11 of the scheme (Page 113) the Definition of “Applicant” was given as present Appellant “Muhamad Dhala” alone. Learned Counsel referred to the contents of Part V to point out that the Appellant would be getting Power of Attorney in his favour and he would be developing and executing the scheme. Learned Counsel referred to contents of Part VI where there are recitals that the Corporate Debtor shall ensure transfer of said property in favour of the Applicants, nominees, purchaser etc. Referring to all these contents, the averment is that in effect it is the Appellant alone who would be doing everything and thus, the argument is that the Adjudicating Authority rightly found to the effect that the Appellant who was ineligible under Section 29-A was trying to make back-door entry.

**9.** Learned Counsel for the Liquidator further submitted that during pendency of the Liquidation Proceedings, the Appellant made the E-Application on 27<sup>th</sup> December, 2019 to Ministry of MSME as can be seen from Annexure R-8 of the Reply (Diary No. 22198). The argument is that Section 33 (7) of IBC if considered, the Appellant had no authority to make the Application as the Sub-Section 7 reads as under:

“33.....

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the

business of the corporate debtor is continued during the liquidation process by the liquidator.”

On this basis, the Learned Counsel is submitting that the Applicant/Appellant could not have obtained such Certificate once the Corporate Debtor was under ‘CIRP’ or in Liquidation Proceedings.

**10.** Mr. Sumesh Dhavan, Advocate for the Appellant has responded by referring to the Report of Liquidator in compliance of order dated 11<sup>th</sup> December, 2019 (Page 72) of the Reply (Diary No. 22198) Paragraph 2.1 where it is mentioned that the Appellant has proposed and submitted the schemes on 25<sup>th</sup> September, 2019 in his position as Promoter/Ex-Director of the Corporate Debtor on basis of offers received from two Real Estate Developers. It is also argued that the Adjudicating Authority did not hold that the Appellant could not have filed Application for obtaining Certificate of MSME.

**11.** We have heard Learned Counsel for both sides and gone through the record. We do not find any substance in the submissions made by the Learned Counsel for Appellant that the Appellant was merely facilitator of the two schemes as stated. Having gone through the contents of the schemes, it is quite clear that the Appellant was to remain in command. We do not find it can be said that the Appellant is only a mere facilitator. The Schemes were of Appellant and were fully centered and linked with Appellant who was ineligible under Section 29-A of IBC.

**12.** Coming to the Certificate of MSME Annexure -10 there is no dispute regarding the fact that Liquidation Proceedings started on 11<sup>th</sup> December, 2018 and the schemes were submitted by the Appellant On 25<sup>th</sup> September, 2019



and the Application for obtaining Certificate of MSME was filed on 27<sup>th</sup> December, 2019. We find substance in the submissions of the Learned Sr. Counsel for the Liquidator that when Order of Liquidation is passed it would amount to discharge the officers/employees/workmen of the Corporate Debtor, except when and to the extent of the business of the Corporate Debtor to be continued during the Liquidation Process by the Liquidator. Apart from this once CIRP is initiated under IBC, the management vests in IRP/RP and if Liquidation Order gets passed the Powers and Duties of the Liquidator as in Section 35 of IBC vest with Liquidator. Without liquidator taking steps no such application to obtain Certificate of MSME could have been filed by the Appellant. The Learned Counsel for the Appellant has submitted that this was not the reason for the Adjudicating Authority to hold against the Appellant. If just by filing application Certificate is obtained and there are no verifications or checks, it would be matter of concern. We find that it is a matter of record in the present matter and matter of applying the law. We find that the Applicant/Appellant could not have moved the Authorities for Certificate under MSME by-passing the Liquidator and such action must be held as illegal.

**13.** It is argued that chance may be given to the other persons to propose scheme and Appellant would not take the lead. However, Learned Counsel for the Liquidator has pointed out that during the pendency of the Liquidation Proceedings, auction has already taken place on 25<sup>th</sup> September, 2020 of the property of the Corporate Debtor in Liquidation and on 27<sup>th</sup> November, 2020 Letter of Intent has already been issued to one Sri Balaji Vidyapith. It is stated

that there were workmen's dues who were not satisfied with the action of the Liquidator with regard to their dues and they have filed Writ Petition in the High Court and the High Court has directed to keep the successful bid in cover at the moment. Learned Counsel for Respondent says Liquidator will meet that challenge in High Court.

**14.** These further developments will take their own course. We do not find it appropriate to reverse the process to give any further opportunities of actions under Section 230 of the Companies Act, 2013.

**15.** We do not find any substance in the Appeal. The Appeal is dismissed. No costs.

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

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

Basant B./md.