

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insol.) No. 41 of 2017

IN THE MATTER OF:

Vasan Healthcare Pvt. Ltd.

...Appellant

Vs

M/s. Alcon Laboratories (India) Pvt. Ltd.

...Respondent

Present: For Appellant:- Mr. S.R. Rajagopal, Mr. S. Santanam Swaminadhan, Mr. Rohan Rajasekaran and Ms. Nishtha Khurana, Advocates.

For Respondent:- Mr. Arun Kathpalia, Sr. Advocate with Mr. C.A. Sinha and Mr. D. Philip, Advocates.

ORDER

30.05.2017- This appeal has been preferred by Appellant/Corporate Debtor under section 61 of Insolvency & Bankruptcy Code, 2016 ("I & B Code" for short) against order dated 21st April, 2017 passed by the National Company Law Tribunal, Chennai Bench in C.A 1/(IB)/2017, whereby and whereunder the application preferred by Respondent Operational Creditor for initiation of corporate insolvency resolution process under section 9 of I&B Code has been admitted, order of moratorium passed and all proceedings pending before all courts were stayed.

On 1st May, 2017, the Appellant brought to the notice of the Appellate Tribunal that a winding up petition is pending before the Hon'ble Madras High Court pursuant to an application made by Appellant under section 433(e) of the Companies Act, 1956. Having noticed such facts, the Appellate Tribunal issued notice to Respondents

Operational Creditor to decide whether the insolvency resolution process initiated under section 9 of the I&B Code is maintainable in a case where winding up petition against the corporate debtors is pending.

On 19th May, 2017, Ld. Counsels for the Appellant brought to the notice of this Appellate Tribunal an order passed by Hon'ble Madras High Court in Company Application Nos. 462 and 463 (in Company Petition No. 267 of 2015), whereby the Hon'ble Madras High Court stayed the operation of insolvency proceedings initiated by Adjudicating Authority. On hearing the parties this Appellate Tribunal raised doubt about the jurisdiction of the Hon'ble Madras High Court under section 433(e) of the Companies Act, 1956 in interfering with a resolution process initiation by adjudicating authority under I&B Code, in view of Section 238, of I&B Code which reads as follows:

“238. Provisions of this Code to override other laws.-

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Now having heard the Ld. Counsels for the parties and taking into consideration the fact that the Appellant has already moved before the Hon'ble Madras High Court and have obtained an order of stay on 4th May, 2017, the Appellant was asked to reply as to why the present appeal

be not dismissed, as the Appellant has already another remedy before the Hon'ble Madras High Court.

Today when the matter was taken up, Ld. Counsel for the Appellant sought permission to withdraw the appeal. In the circumstances, we allow the Appellant to withdraw the appeal without any liberty to move against the same very impugned order dated 21st April, 2017 passed by Adjudicating Authority in Company Application No.1/(IB)/2017.

The appeal is dismissed as withdrawn with aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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