

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 672 of 2020

IN THE MATTER OF:

Dr. Vivek Agarwal

...Appellant

Versus

Kanak Resource Management Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Amit Agrawal, Ms. Radhika Yadav and Ms. Kushagra Agarwal, Advocates.

For Respondents: Mr. Abhishek Kumar, Mr. Vikas Goel and Mr. Rajesh Kumawat, Advocates for R-1.

Mr. Sanjeev Ahuja, Advocate for R-2.

ORDER
(Through Virtual Mode)

26.08.2020: This appeal has been preferred for setting aside of order dated 12.05.2020 passed in CP (IB) No.89 (PB)/2017 by virtue whereof the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi declined to revisit its own order dated 21.10.2019 on the ground that once main Company Petition was dismissed, the Adjudicating Authority becomes functus officio. These observations were made in the context of Appellant seeking appointment of an Administrator for the Corporate Debtor i.e. 'M/s Kanak Resources Management Ltd.' and Resolution Professional in CA No. 2872/2019 and CA No. 1330(PB)/2020 in CP No. (IB) No. 89(PB)/2017.

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2. After hearing learned counsel for the Appellant, it comes to fore that the Corporate Debtor is one of the Group Companies of IL&FS. CIRP was commenced against the Corporate Debtor on 25.09.2017 and a Resolution Professional was appointed. Subsequently on 15.10.2018, this Appellate Tribunal stayed proceedings against the subsidiaries of IL&FS Group. When the Resolution Professional sought clarification in regard to CIRP pending against the Corporate Debtor, the Adjudicating Authority, vide order dated 21.10.2019 dismissed the main Company Petition with following observations:

“3. An application emerging from these proceedings was filed before the Hon’ble Appellate Tribunal with a prayer for clarifying the issue as to whether the moratorium would impact the proceedings before us. Hon’ble Appellate Tribunal in its order dated 02.09.2019 has refused to entertain the issue in the aforesaid application being I.A. No. 2566 of 2019 and left the matter to be decided by the Adjudicating Authority-NCLT. Liberty has been given to file any application before us. In the order dated 25.10.2018 it was admitted that the corporate debtor namely Kanak Ressourc Management Ltd. is a group company of IL & FS. We do not need with to go any further except reading para-I of the Hon’ble Appellate Tribunal order dated 15.10.2018

which shows that institution or continuation of suits or any other proceedings by any party or person or Bank or Company in respect of group companies in any Court of Law/Tribunal would remain stayed. Accordingly, the petition is dismissed at this stage with liberty to the parties to file an appropriate application if any other development warranting intervention of NCLT-Adjudicating Authority arises.

4. CA-2222(PB)/2019 stands disposed of”

3. On a plain reading of the aforesaid order it is manifestly clear that since this Appellate Tribunal had, in terms of order dated 15.10.2018 stayed the institution or continuation of suits or any other proceedings by any party or person or bank or company in respect of group companies in any Court of Law/ Tribunal, the Adjudicating Authority was left with no option but to dismiss the Company Petition. It is not disputed that the Adjudicating Authority has granted liberty to the parties to come back and seek intervention if any other development so warrants. It is therefore futile on the part of Appellant to contend that the Adjudicating Authority only intended to dispose of CA No. 2222(PB)/2019 and did not intend to dismiss Company Petition No. (IB) No. 89(PB)/2017. No fault can be found with the impugned order as liberty has already been granted to the parties

to seek intervention by the Adjudicating Authority if any further development in regard to the IL&FS Group Companies insolvency resolution so warrants. In the wake of the liberty granted it was unwarranted on the part of the Appellant to approach the Adjudicating Authority for revisiting of its order dated 21.10.2019 without any development/ change of circumstances having taken place in the IL&FS Group Companies insolvency resolution matter.

4. We find this appeal devoid of merit, same is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[V. P. Singh]
Member (Technical)

am/gc