

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 282 of 2019

IN THE MATTER OF:

Kautilya Industries Pvt. Ltd.

...Appellant

Vs.

Parasrampuriya Synthetic Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. Abhishek Anand, Advocate and Mr. Raman Aggarwal, C.A.

For Respondents: - Mr. Chandrashekhar, Advocate.

Mr. Dinkar Singh, Advocate for R-2.

Mr. Ashutosh Kumar and Mr. Pulkit Agrawal, Advocates for R-1.

Mr. Brijesh Kumar Tamber and Mr. Khyati, Advocates for R-10.

Mr. Sidhartha Barua, Advocate for R-3 & 13.

Mr. Parveen Kumar Mehdiratta, Advocate for R-4 & 11.

O R D E R

31.07.2019— This appeal has been filed by 'Kautilya Industries Private Limited', one of the 'Resolution Applicants' against the order dated 15th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur, whereby application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the 'Resolution Professional' for liquidation of 'M/s. Parasrampuriya Synthetic Limited'- ('Corporate Debtor') has been approved.

Contd/-.....

2. Learned counsel appearing on behalf of the Appellant submitted that the order of liquidation was passed on the ground that 270 days have already been completed on 10th February, 2019, but the Adjudicating Authority failed to notice that there was an interim order passed by the Hon'ble High Court of Judicature for Rajasthan, Bench at Jaipur, on 27th September, 2018 which was vacated on 3rd January, 2019. Therefore, according to the Appellant, further revised 'Resolution Plan' submitted by the Appellant on 4th February, 2019 could have been re-considered if the period between 27th September, 2018 to 3rd January, 2019 i.e. 97 days is excluded for the purpose of counting the period of 270 days.

3. Learned counsel appearing on behalf of 2nd Respondent- 'Asset Reconstruction Company (India) Limited' submitted that the 'Financial Creditors' having voting shares of about 68% are agreeable to re-consider the revised plan if the aforesaid period is excluded. However, such submission has been opposed by learned counsel appearing on behalf of 'Stressed Assets Stabilization Fund'-(3rd Respondent), 'SBI Funds Management Pvt. Ltd.'-(13th Respondent), 'Specified Undertaking of the UnitTrust of India'-(4th Respondent), 'UTI Trustee Company Pvt. Ltd.'-(11th Respondent) and 'ICICI Bank Debenture Trustee'-(7th Respondent).

4. From the record we find that the 'Committee of Creditors' with its voting shares of 88.92 percent decided that the 'Resolution Professional' should file application for liquidation under Section 33(2). Now some of them want exclusion to again re-consider one or other revised plan purported to have been submitted by the Appellant a week prior to 270 days.

5. The record shows that the Hon'ble High Court of Judicature for Rajasthan, Bench at Jaipur, by impugned order dated 27th September, 2018 passed order of winding-up in Company Petition No. 28/1999 and an 'Official Liquidator' was appointed to take over the possession of the assets. No order of prohibition was made specifically prohibiting the 'Committee of Creditors' not to consider the 'Resolution Plan'.

6. On 3rd January, 2019, the Hon'ble High Court of Judicature for Rajasthan, Bench at Jaipur, taking into consideration the fact that the 'Resolution Professional' has been appointed under the 'I&B Code' by the Adjudicating Authority on 17th May, 2018, recalled the earlier order and disposed of all the Company Petitions to enable the 'Resolution Process' to continue.

7. From the aforesaid fact, it appears that there was no specific prohibition on the 'Committee of Creditors' for considering one or other 'Resolution Plan'. They held meeting after the first order of the Hon'ble High Court of Judicature for Rajasthan, Bench at Jaipur, i.e. on

27th September, 2018 and on different dates i.e. 8th October, 2018, 22nd October, 2018, 30th October, 2018, 6th November, 2018, 10th December, 2018 and 18th January, 2019.

8. The 'Resolution Plan' of the Appellant as was placed was not accepted.

9. In view of the aforesaid facts, we find that no case is made out for exclusion of any of the period for the purpose of counting 270 days which stands completed on passing the impugned order of liquidation.

However, this order will not come in the way of the Liquidator who is required to follow the provisions of Sections 35, 36, 37, 38, 39 & 40 of the 'I&B Code' and Section 230 of the Companies Act as ordered by this Appellate Tribunal passed in "**Y. Shivram Prasad Vs. S. Dhanapal & Ors.— Company Appeal (AT) (Insolvency) No. 224 of 2018**".

10. The Liquidator is also required to ensure that during the liquidation the 'Corporate Debtor' remains a going concern and in case no Scheme is approved under Section 230 of the Companies Act, 2013, then to sell the Company as going concern alongwith employees as ordered in "**Y. Shivram Prasad Vs. S. Dhanapal & Ors.**" (Supra) before taking recourse of final liquidation.

11. It is open to the Liquidator/class of creditors such as, 'Committee of Creditors' and 'Financial Creditors' or members or class of members of the 'Corporate Debtor' to consider the 'Resolution Plans' as were filed by one or other 'Resolution Applicants' but were not taken up for the purpose of preparation of Scheme, but ensure that such Scheme should not violate the Statement of Objects and Reasons of the 'I&B Code' which is the maximization of the assets of the 'Corporate Debtor', feasibility and viability of the Scheme and balancing the stakeholders as observed in "**Y. Shivram Prasad Vs. S. Dhanapal & Ors.**" (Supra).

12. We make it clear that we have not decided what arrangement or Scheme is to be considered by accepting any one or other particular plan, which depends on members of the creditors or members of the 'Corporate Debtor' to decide in consultation with the Liquidator.

The appeal stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g