

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 539 of 2018

IN THE MATTER OF:

Paresh C. Shah

...Appellant

Vs

Udupi Vasudev Ganesh Nayak & Ors.

....Respondents

Present:

**For Appellant: Ms. Anannya Ghosh and Mr. Dushyant Manocha,
Advocate.**

**For Respondents: Mr. Rohan B. Agrawal, Advocate for R-1
(Liquidator).
Ms. J. Kiran, Advocate for SBI.**

ORDER

14.01.2019: Appellant - Promoter of 'M/s P&S Jewellery Ltd.' (Corporate Debtor) filed resolution plan before the Resolution Professional, which was placed before the Committee of Creditors. The Committee of Creditors rejected its plan, one of the ground taken is that the Promoter is a wilful defaulter and ineligible in terms of Section 29 A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'). The Adjudicating Authority in absence of any other viable plan ordered for liquidation of the Corporate Debtor.

2. The Appellant filed an Interlocutory Petition (INVP No. 22 of 2018) in the said resolution process invoking Section 60(5)(c) of the I&B Code. Apart from showing the reason for loss of business of the Corporate Debtor it was submitted that actual amount of loan sanctioned by the lead bank of consortium 'Union Bank of India' was about Rs.772 crores by its sanction letter dated 25th October, 2013, whereas the actual disbursement by all the lenders until 31st March, 2015 has only been Rs.490 crores leaving a sum of Rs.282 crores. The reason for non-disbursement was that the State Bank of India never signed the joint document for this disbursement of Rs.282 crores. However, the said stand as could not be

considered for the purpose of acceptance of one or other resolution plan, submission of Resolution Applicant has not been taken into consideration by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench for entertaining the Application.

3. Learned counsel for the Appellant submits that the Appellant (Promoter) has been wrongly held to be wilful defaulter and could not be held to be ineligible under Section 29A. Such submission has been disputed by learned counsel appearing on behalf of the Resolution Professional. It appears from record that Central Bank of India drawn attention on Mater Circular dated 1st July, 2015 issued on the subject of 'wilful defaulter' by providing guidelines and mechanism for identification of 'wilful defaulters'.

4. However, as such procedure is not mentioned under Section 29A, we are of the view that such ground could not be a ground to hold one or other ineligible. As the Appellant is a Promoter and Corporate Insolvency Resolution Process was initiated in the year 2017 and resolution plan was submitted on 16th March, 2018 and rejected on 19th March, 2018, we are of the view that the Resolution Applicant (Appellant) was also covered by the provision of Section 29A which came into force since 23rd November, 2017 and the Appellant being a 'Promoter' of the 'Corporate Debtor' in any case was not eligible.

5. This apart, it is also brought to our notice that the Committee of Creditors also found the plan submitted by the Appellant to be not viable or feasible and that it was less than the financial matrix. As the Committee of Creditors have already given its decision, we do not intend to go into the matter of viability, feasibility and financial matrix of the plan, as the Adjudicating Authority or NCLAT has no jurisdiction to sit on an appeal over the decision of the Committee

of Creditors until it is not shown that the same is perverse or against any of the provisions of I&B Code or existing law. We find no merit in this appeal, therefore, prayer of the Appellant is rejected. The Liquidator will proceed with the liquidation proceeding in accordance with law. The pendency of the appeal should be excluded from the period counted for process of liquidation, as this Appellate Tribunal had earlier passed interim order of stay. The appeal is dismissed with aforesaid observations. No costs.

Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk