

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 326 of 2019

IN THE MATTER OF:

Navneet Chaurasia

...Appellant

Versus

M/s. Lanco Infratech Ltd. & Ors.

...Respondents

Present:

For Appellant :

Mr. Kaustubh Sinha, Advocate

Mr. Raj Khurana, A/R for the Appellant

For Respondents :

**Ms. Misha, Mr. Vaijayant Paliwal and Ms. Charu
Bansal, Advocates**

O R D E R

19.08.2019 The Appellant claims to be the owner (Lessor) of the premises given on rent to the 'Corporate Debtor' (Lessee). A 'Corporate Insolvency Resolution Process' was initiated against the 'Corporate Debtor' and during the said period it is alleged that no rent was paid.

2. However, learned counsel for the 'Resolution Professional' / 'Liquidator' accepts that the rent amount had not been paid after August, 2016. Subsequently, due to failure no resolution has taken place and the company was ordered to be liquidated under Section 33 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the **I&B Code**') and liquidation proceedings are going on. In the meantime, the Appellant filed an application before the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench Hyderabad to allow the appellant to take appropriate remedies against the 'Corporate Debtor',

which was rejected by the impugned order dated 12th February, 2019 and this appeal has been preferred.

3. Learned counsel appearing on behalf of the Appellant submitted that during the resolution process with the 'corporate debtor', there is default in paying the rent and having failed to pay so, the Appellant has right to file a suit.

4. We have heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the 'Liquidator'.

5. During the 'Corporate Insolvency Resolution Process', in view of provisions of Section 14 of the 'I&B Code', it was not open to the Appellant to prefer a suit or a 'Corporate Debtor' to vacate from the premises in question, though we accept that during the 'Corporate Insolvency Resolution Process', the Appellant was also entitled for the rent. We also accept that if the rent of the earlier period has not been paid, it is for the Adjudicating Authority to decide at one or other stage. Learned counsel appearing on behalf of the 'Resolution Professional' / 'Liquidator' has also not disputed that the rent amount is payable to the Appellant prior to the commencement of the 'Corporate Insolvency Resolution Process'. However, we are not deciding such issue in this appeal as it is for the appropriate authority/Court of competent jurisdiction to decide the same. The fact is that the 'Corporate Debtor' has been ordered to be liquidated and now the question of payment of any rent as the 'resolution cost' cannot be assessed before the completion of the liquidation proceedings.

6. In the case of "**Y. Shivram Prasad Vs. S. Dhanapal & Ors. - Company Appeal (AT) (Insolvency) No. 224 of 2018 etc.**" this Appellate Tribunal observed and held :

15. *Learned counsel appearing on behalf of the Appellant (Promoter) submitted that the provisions under Section 230 may not be completed within 90 days, as observed in “S.C. Sekaran v. Amit Gupta & Ors.” (Supra).*
16. *It is further submitted that there will be objections by some of the creditors or members who may not allow the Tribunal to pass appropriate order under Section 230 of the Companies Act, 2013.*
17. *Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in “S.C. Sekaran v. Amit Gupta & Ors.” (Supra), this Appellate Tribunal allowed 90 days’ time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme.*
18. *During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and*

scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member

keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. *In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the ‘Corporate Debtor’ or the ‘creditors’ or a class of creditors like ‘Financial Creditor’ or ‘Operational Creditor’ approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the ‘Corporate Debtor’ so as to enable the employees to continue.*
20. *Both the appeals are disposed of with aforesaid observations and directions. No cost.”*

7. In view of the decision of this Appellate Tribunal in “**Y. Shivram Prasad Vs. S. Dhanapal & Ors’**, it is stated that the ‘Liquidator’ shall take steps to

get the matter settled by way of arrangement or scheme in terms of Section 230 of the Companies Act, 2013. During the 'liquidation process' in terms of Section 35 read with Sections 36, 38, 39 and 40 of the I&B Code, the 'Liquidator' is required to collate and determine the claims. The Appellant at that stage may file the claim, which may be determined.

The 'Liquidator' is also to make arrangement and from claims in terms of Section 230 of the Companies Act, 2013 and while doing so, it may take into consideration the claim of the Appellant along with others. On failure, if the 'Corporate Debtor' is sold with its employees, such person will take care of the claim of the Appellant otherwise, if finally it is to be liquidated by the assets of the 'Corporate Debtor', the Appellant will be entitled in terms of Section 53 of the 'I&B Code'.

In the meantime, in view of Section 33(5) of the I&B Code, we cannot allow the Appellant to file a suit. However, this order will not come in the way of the Appellant and the 'Liquidator' to make settlement for payment of amount to post-liquidation as the 'Corporate Debtor' will kept as a going concern.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc