

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 91-92 of 2020

IN THE MATTER OF:

Ms. Pavithra & Anr.

...Appellants

Versus

Monitoring Committee & Ors.

...Respondents

Present:

For Appellant :

Mr. Keshav Sharma, Mr. Sulshan Vardhan, Ms. Aditi Mishra and Ms. Khushboo Bhagat, Advocates

O R D E R

24.01.2020 The Appellant(s) – Shareholders have preferred this appeal and have challenged the order dated 13th November, 2018 and 16th October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai.

2. By order dated 13th November, 2018, the Application under Section 7 filed by the ‘Asset Reconstruction Company (India) Limited’ against ‘M/s. Sri Srivathsa Paper Mills Private Limited’ was admitted.

3. Subsequently, the ‘corporate insolvency resolution process’ came to an end by the approval of the ‘resolution plan’. The plan submitted by ‘M/s. Hi-Tech Bio Products Pvt. Ltd.’ was approved on 19th July, 2019.

4. At the stage of monitoring, the Monitoring Committee moved an Application under Section 60(5) of the ‘Insolvency and Bankruptcy Code, 2016 (‘I&B Code’, for short) for seeking the following reliefs:

“(i) direct the Registrar of Companies, Coimbatore to remove the name of M/s. Hemalatha (DIN 01642913), Kadarkarai Elavarasi (DIN 07618830), Paithra Sanjeevi

(DIN 07791151) and Sanjeev Darsini Priya (DIN 07867459) as Director of Corporate Debtor viz. M/s. Sri srivathsa Paper Mills Pvt. Ltd. (CIN No. U21012TZ2006PTC13010).

(ii) direct the Registrar of Companies, Coimbatore to include the name of Mr. D. Gnanvadivel (DIN 02334048) and Mrs. A. Umamaheswari (DIN07770794) as Director of Corporate Debtor M/s. Sri Srivathsa Paper Mills Pvt. Ltd. (CIN No. U21012TZ2006PTC01010) representing Resolution Applicant M/s. Hi-Tech Bio Products Private Limited.

(iii) direct the Registrar of Companies, Coimbatore to allot new shares to Mr. D. Gnanavadivel (DIN 02334048) and Mrs. Umamaheswari (DIN07770794) for entire amount of Rs. 21.66 Crores infused.

(iv) direct the RoC to permit the applicant to file the necessary forms and documents for the proper implementation of the Resolution Plan of the Corporate Debtor as approved by the Hon'ble Tribunal by its order dated 19.07.2019.

(v) pass such orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.”

5. The Adjudicating Authority (National Company Law Tribunal), Special Bench, Chennai directed the Registrar of Companies to delete the names of

Hemalatha, Kadarkarai Elavarasi, Pavithra Sanjeevi and Sanjeevi Dharshini Priya (Appellants) the erstwhile Directors of 'M/s. Sri Srivathsa Paper Mills Private Limited' (Corporate Debtor).

6. Learned counsel for the Appellant submitted that the 'corporate insolvency resolution process' was initiated and continued, which is completely against the law. It is further submitted that the 'Resolution Professional' has not followed the procedure, the 'Committee of Creditors' was reduced to one member committee and notice period was also not provided to the stakeholders. It is further submitted that the 'Resolution Professional' was working as haphazardly and only in the interest of the sole financial creditor who has in-charge of the peculiar interest.

7. Though we have noticed the aforesaid allegations relating to the role of the 'Resolution Professional' and also other issues raised such as purchase of 'NPA account' by the financial creditor etc., we are not inclined to interfere with the impugned order(s) for 2 reasons:

a) The Appeal under Section 61(2) of the 'I&B code' can be filed within 30 days and proviso provided that after the expiry of the said 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but condone the delay exceeding 15 days, as quoted under :

“(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is

satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

The order dated 13.11.2018 being barred by limitation and as this Appellate Tribunal Appellate Tribunal has no jurisdiction to condone the delay beyond fifteen days apart from thirty days period prescribed for filing the Appeal in terms of sub-section (2) of Section 61 of the I&B Code, we dismiss the Appeal against the said order dated 13th November, 2018 being not maintainable.

(b) Admittedly, the ‘resolution plan’ of ‘M/s. Hi-Tech Bio Products Pvt. Ltd.’ was approved on 19th July, 2019 and the approval of the plan is not under challenge in this appeal. The ‘approved plan’ is binding on all the stakeholders including the ‘financial creditors’, ‘operational creditors and ‘shareholders’/ ‘directors’ etc.

As the plan has reached its finality, now the erstwhile Directors make a room for the ‘successful resolution applicant’, whose plan has been approved and therefore, there is no interference called for in the impugned order dated 21st October, 2019 as the names of the Appellant(s) has already been ordered to be struck off .

The appeal stands disposed of. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

/ns/gc/