

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 13 of 2019

IN THE MATTER OF:

Yavar Dhala

...Appellant

Vs

**JM Financial Asset Reconstruction Company
Ltd. & Ors.**

...Respondents

Present:

**For Appellants: Mr. Sumesh Dhawan and Ms. Vatsala Kak,
Advocates.**

For Respondents: Mr. Anant A. Pavgi, Advocate for R-1.

Mr. Saurabh Agrawal, Advocate for R-2.

**Mr. Goutham Shivshankar and Mr. Shantanu
Singh, Advocates for R-3.**

ORDER

08.03.2019: Corporate Insolvency Resolution Process was initiated against 'M/s Forward Shoes (India) Pvt. Ltd.' (Corporate Debtor). Pursuant to the resolution process 'M/s Ace Star Properties Pvt. Ltd., Chennai' (Respondent No.3 herein) become the Successful Resolution Applicant. 'M/s Siddharth Credit & Investment (Chennai) Pvt. Ltd.' (Respondent No. 4) was also to make some financial contribution in support of Respondent No. 3 - 'M/s Ace Star Properties Pvt. Ltd.'. The plan submitted by them was approved by the Adjudicating Authority (National Company Law Tribunal) Division Bench, Chennai on 27th March, 2018. After approval the Corporate Debtor was taken over by the Respondent No. 3 - 'M/s Ace Star Properties Pvt. Ltd.' but later on it failed to pay the due in term with the resolution plan. It is in this background, "M/s J M Financial Asset Reconstruction Company Ltd.' (Financial Creditor – Respondent No. 1 herein) filed application before the Adjudicating Authority, who by impugned order dated 11th December, 2018 ordered for liquidation of the Corporate Debtor.

2. The Appellant, erstwhile Promoter and Ex Managing Director of the Corporate Debtor has filed this appeal. Learned counsel appearing on behalf of the Appellant submitted that instead of passing order of liquidation, the Adjudicating Authority should have taken steps for revival of the Corporate Debtor by accepting other plan. However, such submission cannot be accepted.

3. In the situation where a Resolution Applicant succeeds as Corporate Debtor but if fails to comply its assurance in terms of the resolution plan, what step is to be taken has been already been laid down in Sub-section (3) of Section 33 of the I&B Code, which reads as follows:-

“33. (3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

4. In view of the specific provision made under the I&B Code, we are of the view that the Adjudicating Authority had no option but to pass order of liquidation and could not have resorted to revival of the Corporate Debtor by taking fresh resolution plans.

5. The question as to what steps the Liquidator requires to take if order of liquidation has passed has already been dealt by this Appellate Tribunal in **‘Y. Shivram Prasad Vs. S. Dhanapad & Ors., etc – in Company Appeal (AT) (Insolvency) No. 224 of 2018 and 286 of 2018, disposed on 27th February,**

2019'. The Liquidator is required to act in the terms of directions given in '**Y. Shivram Prasad Vs. S. Dhanapad & Ors., etc**'. It is open to the Company through Liquidator to make arrangement with even a class of Creditors like 'Financial Creditors' or to accept one or other resolution plan for the purpose of making arrangement and framing scheme after following the procedure laid down in Section 230 of the Companies Act, 2013. The appeal stands disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

am/gc