

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 55-56 of 2018

IN THE MATTER OF:

Arun Kumar Jagatramka

...Appellant

Versus

Gujarat NRE Coke Ltd.

...Respondent

Present:

For Appellant : **Mr. Sandeep Bajaj and Mr. Soayib Qureshi,**
Advocates

For Respondent : **Mr. Nakul Mohta and Mr. Videsh Vaish, Advocates**

O R D E R

10.07.2018 This application has been preferred by the appellant Promoter of Gujarat NRE Coke Ltd. (Corporate Debtor under Liquidation) against order dated 11th January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (I.B.) No. 182/KB/2017. By the impugned order the Adjudicating Authority, in absence of approval of 'resolution plan' and in want of time beyond 270 days, ordered for liquidation of 'Corporate Debtor' under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code').

2. Learned counsel appearing on behalf of the appellant submitted that the time consumed for certain purposes should have been excluded for the purpose of counting 270 days and requested the Appellate Tribunal exclude the period when 'resolution plan' was submitted and Section 29A was inserted vide

Notification dated 23rd November, 2017 on account of which resolution process could not proceed and making the Promoter (appellant herein) ineligible in terms of section 29A.

3. Learned counsel for the appellant further submitted that there are four other 'resolution plans' which could have been taken up for approval by the 'Committee of Creditor' but due to paucity of time they have not considered the same.

4. In reply, learned counsel for the liquidator submitted that the 'resolution plan' submitted by the Promoter and rest of the 'Plans' were taken up for consideration by the 'Committee of Creditors'. However, it is accepted that no formal order passed by the 'Committee of Creditors'.

5. Learned counsel for the appellant referred to Section 230 of the Companies Act, 2013 and submitted that even during the period of liquidation, the Corporate Debtor can compromise with the creditors or shareholders or other members. Learned counsel for the appellant also submitted that application under Section 230 of the Companies Act, 2013 is pending before the National Company Law Tribunal, Kolkata Bench, which is likely to be taken up in near future. The meeting of shareholders will take place on 16th July, 2018.

6. Having heard the learned counsel for the parties, while we are not inclined to exclude any period for the purpose of counting the period of 270 days of 'insolvency resolution process' in absence of any valid ground and thereby not inclined to interfere with the impugned order dated 11th January, 2018 make it clear that the orders passed by the Adjudicating Authority and this Appellate

Tribunal will not come in the way of the Tribunal to pass appropriate order in accordance with law on the petition filed under Section 230 of the Companies Act, 2013 which should not be in conflict with the provisions of the I&B Code. The appeal is dismissed with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/sk/