

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 766 of 2019

IN THE MATTER OF:

Vijay Kumar Choudhary & Anr.

...Appellants

Vs.

M/s. Educomp Infrastructure & School & Ors.

...Respondents

Present: For Appellants: - Mr. Rajeeve Mehra, Senior Advocate with Mr. Apoorva Choudhary and Mr. Ratnesh Sharma, Advocates.

**For Respondents: - Mr. Vikas Mehta, Mr. Apoorv Khator and Mr. Mithun Shashank, Advocates.
Ms. Jatsala Rai and Mr. Raghav Chadha, Advocates.**

O R D E R

18.10.2019— M/s. Educomp Infrastructure & School Management Limited' ('Corporate Applicant') filed application under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for its 'Corporate Insolvency Resolution Process'.

2. The 'Resolution Professional' filed application under Sections 19(2) and 19(3) read with Sections 17, 18 and 25 of the 'I&B Code' alleging non-assistance by the management of the 'Corporate Debtor'. The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh by impugned order dated 14th June, 2019 concluded that the operation of Section 19 shall remain confined to 1st, 2nd, 3rd & 5th Respondents, which includes the Appellant and not on the rest of the Respondents and default determined against the Appellants and Ors.

Contd/-.....

3. It is informed that during the pendency of this appeal, the 'Corporate Insolvency Resolution Process' has been completed and the 'Resolution Plan' has been approved by the 'Committee of Creditors' and is pending consideration before the Adjudicating Authority for order under Section 31 of the 'I&B Code'.

4. Learned counsel for the Appellants submits that the impugned order has been passed in violation of Rules of Natural Justice. Neither *prima facie* charges were framed nor any hearing was given to the Appellant. He referred to the decision of this Appellate Tribunal in **"Committee of Creditors of Amtek Auto Ltd. through Corporation Bank vs. Mr. Dinkar T.Venkatasubramanian & Ors. –Company Appeal (AT) (Insolvency) No. 219 of 2019 etc."** dated 16th August, 2019.

5. In the present case, there is nothing on the record to suggest that a *prima facie* opinion was formed by the Adjudicating Authority about the allegation levelled against the Appellant and without giving opportunity to the Appellants/ Directors to explain such allegation. The impugned order was passed in violation of Rules of Natural Justice. The procedure as prescribed under Section 424 of the Companies Act, 2013 was not followed.

6. Further, we are of the opinion that all the records were made available with the 'Resolution Professional' otherwise there was no occasion to prepare the Information Memorandum or to call for Expression of Interest or filing of a 'Resolution Plan' which have been followed in the present case. If it is alleged that no co-operation was made by the Promoters and Director, how Information Memorandum was

issued for filing 'Resolution Plans'. The Adjudicating Authority has failed to discuss the aforesaid facts.

7. For the said reasons, we set aside the impugned order dated 14th June, 2019 so far as it relates to the observations as made against the Appellants. However, this order will not come in the way of the Adjudicating Authority to pass appropriate order after notice and hearing the Ex-Directors/ Promoters if any of the provision has been violated.

The appeal is allowed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g