

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 577 of 2019

IN THE MATTER OF:

N. Padmanabhan & Anr.

...Appellants

Versus

M/s. Sri Adinath Enterprises & Anr.

...Respondents

Present:

For Appellant : Mr. M. Sridhar, Advocate

For 2nd Respondent : Mr. Vikram Hegde, Advocate

O R D E R

02.09.2019 This appeal has been preferred by the Appellants – ‘Promoters’/‘Directors’ against the order dated 4th April, 2019 passed by the Adjudicating Authority (National company Law Tribunal), Division Bench, Chennai whereby the Adjudicating Authority ordered for ‘Liquidation’ of ‘M/s. RRP Housing Pvt. Ltd.’. Learned counsel for the Appellants submitted that the ‘Resolution Professional’ had not taken any interest and not issued ‘Expression of Interest’ due to which no ‘resolution plan’ was submitted. On account of no action on the part of the ‘Resolution Professional’ resulted in non-submission of ‘Resolution Plan’ and, therefore, Miscellaneous Application was filed for exclusion of 162 days from the ‘Corporate Insolvency Resolution Process’. It is submitted that if 162 days had been excluded and proper resolution process had taken place by the ‘Resolution Professional’, then there was a chance of successful resolution.

2. Having heard the learned counsel for the parties and on perusal of the record, we find that 270 days period was completed on 26th September, 2018 and within the aforesaid period for one or another reason, the ‘Resolution Professional failed to issue ‘Information-Memorandum’, resulted of non-

submission of any 'resolution plan'. For the said reason, the Adjudicating Authority passed the order of 'Liquidation'.

3. Section 12A of the 'Insolvency and Bankruptcy Code, 2016 now stands amended by the Gazette Notification issued on 6th August, 2019 to which amendment has come into force on 16th August, 2019. Pursuant to the same, even if some period is allowed we find that the process is to start from the very beginning of 'collate the claims' and issue fresh 'Information-Memorandum', we are not inclined to pass any order for exclusion of any period for successful resolution.

4. In '**Y. Shivram Prasad vs. S. Dhanpal & Ors.**' – '**Company Appeal (AT)(Insolvency) No. 224 of 2018 etc.**' disposed of on 27th February, 2019, this Appellate Tribunal held that even during the 'Liquidation process', the 'Liquidator' should take steps under Section 230 of the Companies Act and on failure, the 'Corporate Debtor' should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue. This Appellate Tribunal observed and held as follows:

*“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."

5. In view of the aforesaid finding, we direct the 'Liquidator' to collate the claims and proceed in accordance with the I&B Code and also as directed in '**Y. Shivram Prasad vs. S. Dhanpal & Ors.**' (Supra). The Appellant/Promoter can also approach the 'Liquidator' and may submit a proposal or plan for revival of the 'Corporate Debtor'.

6. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc