

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency)No. 248 of 2019**

**IN THE MATTER OF:**

**Aishwarya Structural**

**.....Appellant**

**Vs.**

**Matrix Metals Traders Pvt. Ltd. & Ors.**

**.....Respondents**

**Present :**

**For Appellant:                    Mr. Kushal Bansal, Advocate**

**For Respondents:                Mr. Rajiv S.Roy, Mr. Avrojyoti Chatterjee, Mr.  
Abhijit S. roy, Advocates for R – 1 & R-2**

**Mr. S.K. Sarkar, Advocate for R-3**

**Mr. Pramod Kumar, Advocate for R-4**

**O R D E R**

**30.07.2019** - The Appellant – ‘Aishwarya Structural’ preferred this appeal against the order dated 5<sup>th</sup> December, 2018 passed by the Adjudicating Authority (‘National Company Law Tribunal’), Special Bench, Chennai, whereby the application u/s 33(1)(a) of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) has been allowed and order of liquidation has been passed.

2. Initially, when the matter was taken up, one Mr. Shubhank Arsen Gupta, Advocate appeared and submitted that property, in question, of

...contd.

which Sale Deed was executed in favour of the 'Corporate Debtor' was not given effect as the cheque given by the 'Corporate Debtor' could not be encashed. Therefore, according to the Appellant, in absence of transfer of the consideration amount, the immovable properties cannot be held to be the asset of the 'Corporate Debtor'.

3. Notice was issued on the Respondents and status quo order was maintained with regard to immovable properties, in question, on 14<sup>th</sup> March, 2019.

4. The Respondents have appeared. Learned counsel for the 'Resolution Professional' / 'Liquidator' submits that the records of the 'Corporate Debtor' show the immovable properties in question as that of the 'Corporate Debtor'. He placed reliance on Section 36(iii)(a) to suggest that assets over which the 'Corporate Debtor' has right, including the rights therein would be taken into consideration and evidence is the balance sheet of the 'Corporate Debtor' or a record in the registry or depositary recording securities etc. It is further submitted that two immovable properties, in question, were transferred, by Registered Sale Deeds. Registered Sale Deed also include the Construction Agreements which were also registered.

...contd.

5. Initially, Mr. Kushal Bansal, learned counsel for the Appellant prayed for pass-over to allow Mr. Shubhank Arsen Gupta to argue. However, after one hour when the matter was taken up in the absence of Mr. Shubhank Arsen Gupta, Mr. Kushal Bansal, learned counsel for the Appellant has made similar submissions.

6. The order of liquidation has been passed by the Adjudicating Authority in view of the application u/s 33 (1)(a) filed by the 'Resolution Professional' on the instruction of 'Resolution Professional' more than 180 days have been passed. In absence of any infirmity, we are not inclined to interfere with the order of liquidation dated 5<sup>th</sup> December, 2018.

7. So far as the claim of Appellant is concerned, he may move before the Liquidation Forum in terms of the provisions of the 'I&B' Code. On receipt of such application and hearing Liquidation may pass the appropriate order. Whatever stand is taken by the liquidator should be communicated to the Appellant.

8. We may make it clear that in the absence of any application u/s 60 filed by the Appellant before the Adjudicating Authority, the Adjudicating Authority has not decided such issue.

....contd.

9. For the said reason, we are not inclined to decide any such issue in the present appeal.

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

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

ss/sk