

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 720 of 2019

IN THE MATTER OF:

First Step Ventures Ltd.

...Appellant

Vs.

Frontier Lifeline Pvt. Ltd. & Ors.

...Respondents

**Present: For Appellant: - Mr. Alok Dhir, Ms. Varsha Banerjee and
Mr. Akshat Singh, Advocates.**

O R D E R

17.07.2019— The ‘Corporate Insolvency Resolution Process’ was initiated against ‘Frontier Lifeline Private Limited’- (‘Corporate Debtor’) in which the Appellant- ‘First Step Ventures Limited’ filed a ‘Resolution Plan’. However, the ‘Committee of Creditors’ would not consider the ‘Resolution Plan’ due to completion of the ‘Corporate Insolvency Resolution Process’ period of 270 days. At that stage, the ‘Resolution Professional’ of ‘Frontier Lifeline Private Limited’ filed application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) for exclusion of 43 days from 29th April, 2019 to 10th June, 2019 on the basis of the decision of the ‘Committee of Creditors’.

2. However, it was not allowed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, by impugned order dated 18th June, 2019 with following observations:

Contd/-.....

“Therefore, we are of the view that it is a fit case for liquidation on two grounds- (i) CIRP Period of 270 days is over (ii) even in the event of liquidation is ordered, it is still open to the Liquidator to sell the Corporate Debtor as a going-concern. Normally, the Resolution Plan is viable if the Resolution Plan Value is more than Liquidation Value, in this case, one- Plan is not approved by the CoC till date, two- the Resolution Plan value is far below to the liquidation value, three- not taking a decision by the CoC without any reason will not become a reason for exclusion of the time period. Besides this, CoC has not even passed a resolution seeking exclusion or extension of time as prayed by the Resolution Professional.

On these ground, the application for exclusion is hereby dismissed leaving it open to the Resolution Professional to take appropriate action in accordance with law.”

3. Learned counsel appearing on behalf of the Appellant- 'Resolution Applicant' submitted that the Adjudicating Authority has wrongly held that the 'Committee of Creditors had not passed resolution seeking exclusion of the period as prayed for by the 'Resolution Professional'.

4. Referring to the opening second paragraph of the impugned order, it was submitted that the Adjudicating Authority noticed that the 'Committee of Creditors' asked the 'Resolution Professional' to request for exclusion of the period and to take a call over the 'Resolution Plan' submitted by the Appellant.

5. It is submitted that the Adjudicating Authority while granted 90 days' extension by order dated 20th February, 2019, it was given effect from 29th January, 2019 thereby in fact 68 days of extension was granted.

6. It is submitted that further 22 days is excluded by extending the period from prospective date i.e. with effect from 20th February, 2019, the 'Committee of Creditors' would have taken a call for the 'Resolution Plan' submitted by the Appellant.

7. In the present case, the Appellant has not challenged the order dated 20th February, 2019 whereby 90 days' period was granted from retrospective date. In such circumstances, we are not inclined to deliberate on the issue whether the extension of 90 days from the retrospective date is right or wrong in absence of such challenge. Now

270 days is being over as per calculation on the basis of the order of extension, we hold that in absence of any other reason, the Adjudicating Authority has rightly rejected the application for exclusion of certain period.

8. From the impugned order, it will be evident that the Adjudicating Authority has noticed that even during liquidation it is still open to the liquidator to sell the 'Corporate Debtor' as a going concern.

9. In the present case, no order of liquidation has been passed but we accepted that the period of 'Corporate Insolvency Resolution Process' is completed, appropriate order is required to be passed by the Adjudicating Authority. Even if an order of liquidation is passed by the Adjudicating Authority, in such case, the liquidator is to follow the procedure laid down under Section 230 of the Companies Act, 2013 in the light of the decision of this Appellate Tribunal in "**Y. Shivram Prasad Vs. S. Dhanapal & Ors.— Company Appeal (AT) (Insolvency) No. 224 of 2018**". Relevant of which is quoted below:

*"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."*

10. In view of such decision, we are of view that it is open to the Appellant to negotiate with the group of creditors ('Financial Creditor')

and the liquidator on behalf of the company to consider the 'Resolution Plan' as a Scheme under Section 230 of the Companies Act, 2013 along with any other Scheme, if proposed by any other member or group of members of person. In such case, the liquidator or group of creditors ('Financial Creditors') may consider the same.

11. The appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Kanthi Narahari)
Member(Technical)

Ar/g