

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 540 of 2019

(Arising out of Order dated 26th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai in MA/170/IB/2019 in CP/722/IB/2017)

IN THE MATTER OF:

Quantum Coal Energy Pvt. Ltd.

...Appellant

Vs.

M/s. Danalakshmi Paper Mills Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Arijit Prasad, Senior Advocate with Mr. Ayush Negi, Abhishek Chaudhary and Mr. Himanshu Tyagi, Advocates.

For Respondents: - Mr. Mohan Parasaran, Senior Advocate with Mr. Ravi Raghunath, Ms. Aakash Lodha, Ms. Aditi Dani, Advocates.

Mr. P. Eswara Moortay, R.P.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the ‘Corporate Insolvency Resolution Process’ initiated against ‘M/s. Danalakshmi Paper Mills Private Limited’- (‘Corporate Debtor’), the ‘Resolution Professional’ filed application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) for approval of the ‘Resolution Plan’ submitted by ‘M/s. Srinivasa Garments Private Limited’ jointly with Mr. P. Ramesh and Mrs. Suganthi Ramesh.

The Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, by impugned order dated 26th March, 2019 approved the plan under Section 31 of the 'I&B Code'.

2. The Appellant has challenged the order of approval on the ground that one of the 'Resolution Applicant' is related party to one Mr. B. Srinamulu, Director of the 'Corporate Debtor' and thereby the 'Resolution Applicants' are jointly ineligible under Section 29A of the 'I&B Code'.

3. Learned counsel for the Appellant submits that the Adjudicating Authority by order dated 19th July, 2018 has noticed the manner in which Mr. B. Srinamulu and his son had resigned and transferred their shares from the company, and at the time of the initiation of the Insolvency Commencement Date i.e. 29th May, 2018 they were the Directors and controlling the affairs of the 'Corporate Debtor'.

4. The 'Successful Resolution Applicant(s)' jointly have denied the allegation. It was submitted that either of the 'Resolution Applicants' have no connection with Mr. B. Srinamulu.

5. It is not in dispute that Mr. B. Srinamulu transferred his shareholding of the 'Corporate Debtor' on 17th March, 2018 which was also reflected in the Annual Returns for the year ending 31st March, 2018. Thereafter, Mr. B. Srinamulu also resigned as a Director of the 'Corporate Debtor' on 19th March, 2018.

6. The application under Section 9 of the 'I&B Code' was admitted much thereafter on 29th May, 2018 and the 'Resolution Plan' was submitted by the 'Resolution Applicants' on 5th November, 2018.

7. Section 29A of the 'I&B Code' reads as follows:

***“29 A. Persons not eligible to be resolution applicant. – A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person,—
.....(j) **has** a connected person not eligible under clauses (a) to (i).”***

8. In ***“Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.— (2018) SCC OnLine SC 1733”***, the Hon’ble Supreme Court while dealing with the ineligibility under Section 29A held that the ineligibility is to be tested when the ***‘Resolution Plan’ is to be submitted by the ‘Resolution Applicant’***.

9. In the present case, the resignation was submitted by Mr. B. Srinamulu on 19th March, 2018, i.e. much before initiation of the 'Corporate Insolvency Resolution Process'. Thereby, Mr. B. Srinamulu having ceased to be a Director or Shareholder of the 'Corporate Debtor', the 'Resolution Applicants' cannot be held ineligible as on the date of submission of 'Resolution Plan'.

We find no merit in this appeal. It is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

NEW DELHI
6th August, 2019

AR