

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1254 of 2019

IN THE MATTER OF:

CoC Represented through UCO Bank Appellant

Vs

Mr. Parag Sheth,
Interim Resolution Professional of
Digjam Limited Respondent

Present:

**For Appellant: Mr. Shivanshu Kumar and Mr. Vikky Dang,
Advocates**

For Respondent:

ORDER

15.11.2019 This Appeal has been preferred by 'Committee of Creditors'
with the following reliefs: -

- A. *That this Hon'ble Appellate Tribunal be pleased to allow the present Appeal;*
- B. *That this Hon'ble Appellate Tribunal be pleased to allow and direct the replacement of the IRP by the appointment of the proposed RP;*
- C. *That this Hon'ble Appellate Tribunal be pleased to direct the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad to expeditiously and effectively decide and adjudicate the Application being 306 of 2019 in/with C.P. (IB) No.594/NCLT/AHM/2018 filed by the CoC seeking the replacement of the IRP;*
- D. *That this Hon'ble Appellate Tribunal be pleased to direct the Adjudicating Authority to prepone the listing of the said Application and dispose the matter on the same date;*

E. *That this Hon'ble Tribunal be pleased to pass any other order which this Hon'ble Tribunal may deem fit in eyes of equity, justice and good conscience."*

2. Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') enables an aggrieved person to prefer an Appeal against any order passed by the Adjudicating Authority (National Company Law Tribunal), reads as follows: -

"61. Appeals and Appellate Authority.—(1) *Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
- (ii) there has been material irregularity in exercise of the powers by the resolution*

- professional during the corporate insolvency resolution period;*
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*
 - (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*
 - (v) the resolution plan does not comply with any other criteria specified by the Board.”*

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.”

3. In the present case, as no order is under challenge, the present Appeal is not maintainable. The Appellant – ‘Committee of Creditors’ should remember that it is not a ‘Writ Court’ for making a prayer for a ‘direction’ to any of the party, which can be preferred only before the Adjudicating Authority and not before the Appellate Tribunal. The Appeal is accordingly dismissed, being not maintainable.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

Ash/SK