

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 07 of 2020

IN THE MATTER OF:

Ashish Mohan Gupta

...Appellant

Versus

Hind Motors Ltd. (In Liquidation) & Ors.

...Respondents

Present:

For Appellant: Mr. Sandeep Bajaj, Ms. Aakansha Nehra and Mr. Siddhartha Shukla, Advocates.

For Respondents: Mr. Savar Mahajan, Advocate for R-1 to 3.

ORDER
(Through Virtual Mode)

25.02.2021: A Two Member Bench of this Appellate Tribunal had, in terms of order dated 10th January, 2020 referred the matter to the Larger Bench for decision on the issue whether any Member or a Creditor can independently move an application under Section 230 of the Companies Act, 2013 while the Company is under liquidation and whether except the Liquidator a Member or Creditor can move an application under Section 230 of the Companies Act, 2013 without the permission of the Liquidator.

2. The matter came to be referred as the learned counsel for the Appellant in Company Appeal (AT) No. 08 of 2020 (Now Company Appeal (AT) No. 07 of 2020), referred to a decision of this Appellate Tribunal titled **“*Rasiklal S. Mardia vs.*”**

Cont'd..../

Amar Dye Chem & Ors.”, in *Company Appeal (AT) No. 337 of 2018* decided on 8th April, 2019 holding that Liquidator is only an additional person who can move application under Section 391 of the Companies Act, 1956 (corresponding to Section 230 of the Companies Act, 2013), when the Company was under liquidation.

3. The Referral Bench observed as under:-

“It appears that the said judgment is contrary to another judgment of a co-ordinate Bench of this Appellate Tribunal”

This Larger Bench provided a lot of opportunities to learned counsel for the parties to place on record any judgment of this Appellate Tribunal wherein view in conflict with *Rasiklal’s case (supra)* has been taken. However, despite lapse of one year no judgment of this Appellate Tribunal running parallel to or being in conflict with *Rasiklal’s case* has been brought to our notice.

4. In absence of particulars of any appeal having been decided with a finding being in conflict with finding recorded in *Rasiklal’s case* by this Appellate Tribunal, the reference made to this Larger Bench would be incompetent. We hold accordingly. The reference is therefore rejected being incompetent.

5. The appeal - Company Appeal (AT) No. 07 of 2020 is assigned to Court No. II for disposal under law, where it shall come up for consideration on 3rd March, 2021.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

am/gc