

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 186 of 2018

[Arising out of Order dated 19th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai in CA/61/2017 in Company Petition No. 510/(IB)/2017]

IN THE MATTER OF:

V. Ramakrishnan

...Appellant

Vs.

**M/s. Veelsons Energy Systems
Private Limited and Ors.**

...Respondents

**Present: For Appellant: - Mr. K.B.S. Bedi and Mr. Raghavachari,
Advocates.**

**For 1st and 2nd Respondents: - Mr. B. Dhanaraj and Mr.
G. Ananda Selvam, Advocates.
Mr. R. Raghav Endran, Liquidator.**

**For 3rd Respondent: Ms. Madhusmita Bora and Mr. M.
Anbalagan, Advocates.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the Appellant- Shareholder of M/s. Veelsons Energy Systems Private Limited-(‘Corporate Debtor’) against an order dated 19th March, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in CA/61/2017 in CP/510/(IB)/2017, whereby and whereunder the

Adjudicating Authority passed order of liquidation of the 'Corporate Debtor'.

2. The 'Corporate Debtor'- M/s. Veelsons Energy Systems Private Limited filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code"), which was admitted on 19th June, 2017, the order of 'Moratorium' was passed and the 'Interim Resolution Professional' was appointed.

3. On completion of 270 days, which ended on 12th March, 2018, the Adjudicating Authority passed the order of liquidation on 19th March, 2018.

4. Learned counsel for the Appellant submitted that the Appellant being Director of the 'Corporate Debtor', had attended all the meetings of the 'Committee of Creditors'. There are three 'Financial Creditors' namely— SBI having voting shares of 62.18%, IDBI having voting shares of 35.2% and TIIC having voting shares of 2.5%. In the 1st and 2nd meetings no major decisions were taken. Some important decisions were taken in the 3rd and 5th meetings of the 'Committee of Creditors'. In the 3rd meeting of the 'Committee of Creditors' held on 21st November, 2017, the State Bank of India voted against extension of period of the 'Resolution Process'. Thereby, the 'Committee of Creditors' had obstructed revival of the Company, which is against the spirit of the 'I&B Code'.

5. It was submitted that 'IDBI Capital Markets Pvt. Ltd.' was in favour of extension of period. The 'Resolution Professional' undertook to file an application for the opinion of the Adjudicating Authority on the subject, as there was less than 75% of the votes. Instead of seeking opinion of the Adjudicating Authority on the subject, the 'Resolution Professional' filed an application for liquidation on 15th December, 2017, which is against the earlier proceedings recorded by the 'Resolution Professional'.

6. It was further submitted by learned counsel for the Appellant that the 4th meeting of the 'Committee of Creditors' was held on 11th December, 2017 in which the representative of IDBI Capital Markets Pvt. Ltd. was also invited to finalize the 'Resolution Plan', but because of the objections of the 'State Bank of India', the other 'Financial Creditors' could not express their views.

7. Learned counsel appearing on behalf of the Appellant while highlighting the object of the 'I&B Code' submitted that the 'State Bank of India' stalled implementation of the order of the Adjudicating Authority and overturned the process of resolution till the end. It was also alleged that the 'Resolution Professional' who is required to be a neutral entity and was expected to perform his duties objectively, without bias he had not acted in the manner and in accordance with law.

8. Learned counsel for the 3rd Respondent submitted that the 'Board of Directors' always attempted to stall the 'Resolution Process' and made all futile efforts to stall the proceedings, though nobody came forward as a 'Resolution Applicant'. No 'Resolution Plan' was filed. It is the 'Corporate Debtor' who of their own introduced that 'IDBI Capital Markets Pvt. Ltd.', who had made only a presentation but had not submitted any 'Resolution Plan'. This factor has also been deliberated by the 'Committee of Creditors'. Learned counsel for the 3rd Respondent relied on Page Nos. 153 and 169 of Vol. II of the paper book in support of his submissions.

9. According to the learned counsel for 3rd Respondent one Mr. V. Shankar, brother of the Appellant and Director (Finance) of the 'Corporate Debtor' also wanted to make proposal, effectively suggesting sale of non-core assets, restructuring of existing credit facilities, etc. Otherwise, no person applied as a 'Resolution Applicant' nor filed any 'Resolution Plan'.

10. It has been brought to our notice that the 'Corporate Debtor' had been incurring huge loss every year and the 'Audited Balance Sheets' of the 'Corporate Debtor' show that they had been incurring recurring losses every year and the losses have eroded its reserves and surplus. The operating loss of the 'Corporate Debtor' as on March, 2015 was Rs. 433.17 lakhs, which was increased to Rs. 2391.66 lakhs during March, 2016 and then Rs. 2553.87 lakhs in March, 2017. It is alleged that the Directors have committed various falsification of accounts irregularities

and discrepancies in accounts have been made. Waiver of debts to the tune of Rs. 31.00 Crores, due to the 'Corporate Debtor' has been shown as bad debts. This apart funds were collected from third parties by the Director, which were not reflected in the books of accounts of the 'Corporate Debtor'.

11. From the record it is clear that the 'Information Memorandum' was prepared by the 'Resolution Professional' which was published but in the absence of any 'Resolution Applicants', there was no other option for the Adjudicating Authority, but to go for liquidation on completion of 270 days.

12. We find no merit in this appeal. It is accordingly dismissed. Order of stay passed earlier is vacated. However, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

31st May, 2018
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