

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 589 of 2019**

**IN THE MATTER OF:**

Palash Goswami ..... Appellant

Vs

M/s Alloys & Metals (India) & Anr. .... Respondents

**Present:**

**For Appellant:            Mr. Ganesh Chand Sharma, Advocate.**

**For Respondent:        Mr. Vivek Sibal, Advocate for R.P.**

**ORDER**

**30.05.2019**        This Appeal has been preferred by the Appellant, who was an employee and former Director (Finance) (not a Shareholder) of M/s. Hindustan Paper Corporation Ltd. ('Corporate Debtor') against order dated 2<sup>nd</sup> May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, whereby, order of liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) has been passed.

2.        Learned Counsel for the Appellant submits that the Appellant was not given opportunity to attend the meeting of the 'Committee of Creditors'. However, such submission cannot be accepted for two reasons namely: -

- (i)        The Appellant was not a Shareholder Director, but an employee of the 'Corporate Debtor'.
- (ii)        If he was 'Operational Creditor', then he had no right to attend the meeting in absence of having more than 10% of the total debt.

3.        Learned Counsel for the Appellant submits that Model Code of Conduct came into force on 10<sup>th</sup> March, 2019 and continued till 2<sup>nd</sup> May, 2019, when the impugned order has been passed. However, such

submission cannot be accepted as Model Code of Conduct cannot be applied to 'Corporate Insolvency Resolution Process' for counting exclusion of days from the period of 270 days.

4. Admittedly, more than 270 days have crossed and in absence of any viable and feasible 'Resolution Plan', the Adjudicating Authority had no option, but to pass order under Section 33 of the I&B Code.

5. This same very impugned order dated 2<sup>nd</sup> May, 2019 fell for consideration before this Appellant Tribunal in *Company Appeal (AT) (Insolvency) No. 585 of 2019 (Hindustan Paper Corporation Officers & Supervisor Association & Ors. Vs Hindustan Paper Corporation Ltd. & Ors.) and Company Appeal (AT) (Insolvency) No. 586 of 2019 (Cachar Paper Project Workers' Union (INTUC) Vs Hindustan Paper Corporation Ltd. & Ors.)*. This Appellate Tribunal by order dated 29<sup>th</sup> May, 2019 disposed of the Appeals with certain observations and directions to the Union of India with regard to ensuring that the 'Corporate Debtor' remains a going concern. The Appellant will also be covered by this decision. The Appeal stands disposed of with the aforesaid observations and directions. No cost.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

Ash/GC