

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 562 of 2019

(Arising out of Order dated 23rd April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in (IB)-202(PB)/2017)

IN THE MATTER OF:

Committee of Creditors of
Bhushan Power and Steel Limited
Through State Bank of India

.... Appellant

Vs

Mr. Mahendra Kumar Khandelwal,
Resolution Professional of
Bhushan Power and Steel Limited.

.... Respondent

Present:

For Appellants: **Mr. Tushar Mehta, Senior Advocate with Mr. Bishwajit Dubey, Mr. Spandan Biswal, Ms. Srideepa Bhattacharya, Ms. Sylona Mohapatra and Ms. Surabhi Khattar, Advocates**

For Respondent: **Mr. Mukul Rohatgi, Senior Advocate with Mr. Arvind Kr. Gupta, Ms. Henna George, Advocates**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This Appeal has been preferred by the 'Committee of Creditors' against order dated 23rd April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, wherein the arguments advanced by the parties have been noticed and the order was reserved.

2. Learned Counsel appearing on behalf of the Appellant submits that the matter is pending since long and long delay has been caused in the matter of 'Corporate Insolvency Resolution Process', therefore, direction should be given for an early disposal of the matter.

3. It is brought to our notice that this Appellate Tribunal by order dated 4th February, 2019 passed in Company Appeal (AT) (Insolvency) No.198 of 2018 remitted the matter back to the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi for consideration of the 'Resolution Plan' submitted by 'JSW Steel' in accordance with law with certain observations and directions. Thereafter, the matter has been heard and judgment was reserved. Learned Counsel for the Appellant submits that in the meantime, the Hon'ble High Court of Punjab and Haryana at Chandigarh passed certain directions on 18th April, 2019 in CWP No.10325 of 2019 (O&M) directing the Adjudicating Authority to follow certain procedure giving reference to the decision of the Hon'ble Supreme Court and holding that any order passed by the Adjudicating Authority/ NCLT, which are in contravention, contradiction or derogation of the directions of the Hon'ble Supreme Court should not be taken into consideration.

4. Counsel for the Appellant submits that the aforesaid writ petition was filed by Mr. Ravi Prakash Goyal, one of the Director of Bhushan Power and Steel Limited. It is submitted that the Hon'ble High Court of Punjab & Haryana has no jurisdiction to pass any order, when the matter is pending and cannot order to remit the matter for fresh decision as more than 270 days have been passed.

5. Mr. Mukul Rohatgi, learned Senior Counsel appeared on behalf of the said Ravi Prakash Goyal and Mr. Sanjay Singal, erstwhile Directors and Promoters of Bhushan Power and Steel Limited to oppose the prayer. It is submitted that the Appeal under Section 61 is not maintainable in absence of any decision by the Adjudicating Authority. On behalf of the Ex-Directors and Promoters of Bhushan Power and Steel Limited, namely – Mr. Ravi Prakash Goyal and Mr. Sanjay Singal, learned Counsel wanted to intervene, but we are not inclined to help them at this stage.

6. The matter is pending before the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi and in absence of any order passed by the Adjudicating Authority, we are not inclined to entertain this Appeal.

7. However, it is not clear as to how the Hon'ble Punjab & Haryana High Court, that too the vacation Bench had passed an order as noticed above. The record shows that the said writ petition was heard ex-parte and disposed of without notice to the Respondent-Punjab National Bank and others

8. The Hon'ble High Court has jurisdiction under Article 226 of the Constitution of India and has also supervisory jurisdiction under Article 227 of the Constitution of India. We are not expressing any opinion as to whether they have the supervisory jurisdiction over all the Tribunals or not, but it is not clear as to how the Punjab and Haryana High Court can pass an order, which has no territorial jurisdiction over Delhi, where Principal Bench of National Company Law Tribunal, New Delhi is situated, who is considering the matter.

9. In view of the aforesaid observation, we are not inclined to accept the aforesaid question, which is raised. We do not want to express any opinion with regard to the order of the Hon'ble High Court of Punjab and Haryana dated 18th April, 2019 passed in CWP No.10325 of 2019. The Adjudicating Authority is suppose to decide the case on merit in accordance with law uninfluenced by any order except the decision of this Appellate Tribunal and the Hon'ble Supreme Court. While observing so, we are not expressing any opinion with regard to the intervention, which is sought to be made by the Ex-Directors and Promoters of Bhushan Power and Steel Limited, as more than 270 days has been passed and final order is yet to be passed by the Adjudicating Authority. The Appeal stands disposed of with the aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

NEW DELHI
11th June, 2019
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