

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 683 of 2020

IN THE MATTER OF:

Edelweiss Asset Reconstruction Co. Ltd.

... Appellant

Versus

Shri Shyam Sundar Rathi & Anr.

...Respondents

Present:

For Appellant :

**Mr. Arun Kathpalia, Senior Advocate with
Mr. R. P. Agarwal and Ms. Manisha Agarwal,
Advocates**

For Respondents :

Mr. Shyam Rathi, Resolution Professional

ORDER
(Through Virtual Mode)

14.08.2020 Appellant is aggrieved of the impugned order passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench on 1st July, 2020 by virtue whereof the Adjudicating Authority has directed Resolution Professional to produce details of assets of the 'Corporate Debtor' along with the valuation report by two valuers within four weeks. This appears to have been done purportedly for bringing more material on record.

Mr. Arun Kathpalia, learned Senior Advocate for the Appellant submits that the 'Committee of Creditors' has recommended liquidation of the 'Corporate Debtor' by unanimous vote and under Section 33 (2) of the 'Insolvency and Bankruptcy Code, 2016' (**'I&B Code'** for short) there is no option for the Adjudicating Authority but to pass an order of liquidation. Mr. Shyam Sundar Rathi, Resolution Professional appearing in person does not dispute this proposition and submits that the application under Section 33 of the 'I&B Code' has been filed for liquidation of the 'Corporate Debtor' in terms of the unanimous

resolution and the recommendation of the 'Committee of Creditors' and is pending since September, 2019.

After hearing the learned counsel we find that the 'Corporate Debtor' is not a going concern and there being no resolution plan, the 'Committee of Creditors' has unanimously decided to send the 'Corporate Debtor' into the liquidation. Once the application under Section 33 of the 'I&B Code' was moved before the Adjudicating Authority, in the given circumstances, it was left with no option but to order the liquidation of the 'Corporate Debtor'. Collecting of material in regard to the assets of the 'Corporate Debtor' and valuation reports etc. is not germane to the disposal of the application under Section 33 of the 'I&B Code'. Since the impugned order suffers from legal infirmity, same cannot be supported, we accordingly set aside the impugned order with direction to the Adjudicating Authority to dispose of the application of the 'Resolution Professional' under Section 33 of the 'I&B Code' within a week's time.

The appeal stands disposed of.

A copy of this order be sent to the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench forthwith.

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

**[Dr. Alok Srivastava]
Member (Technical)**

**[Shreasha Merla]
Member (Technical)**

/ns/gc/