

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 252 of 2019

IN THE MATTER OF:

Avasarala Venkateshwra Rao

.....Appellant

Vs.

M/s. Servomax India Pvt. Ltd. & Ors.

.....Respondents

Present :

For Appellant: Mr. Rajesh Bohra, Advocate

For Respondents: Ms. Shweta Kapoor, Advocate

Mr. G.Madhusudhan Rao, Advocate - Liquidator

O R D E R

06.08.2019 - The Appellant, who claimed to be a 'Resolution Applicant' has preferred this appeal against the order dated 4th February, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal'), Hyderabad Bench, Hyderabad whereby at the instance of 'Committee of Creditors', an application preferred by 'Resolution Professional', order of liquidation was passed u/s 33(1)(a) and 34 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short).

2. Learned counsel appearing on behalf of the Appellant submits referring to 9th meeting of the 'Committee of Creditors' (at page-365 of Vol.II), none of the

....contd.

four 'Resolution Plan' were put before the 'Committee of Creditors' on the ground that they can get higher realisation at less time period given in the 'Resolution Plan'.

3. The aforesaid ground given was that the 'Resolution Plan' submitted by different persons sought number of years to resolve the matter.

4. Mr. G.Madhusudhan Rao, Learned counsel appearing on behalf of Liquidator submits that none of the 'Plan' were found to be viable and feasible. It is also submitted that now more than 270 days have passed and an application u/s 33(1) read with Section 34 was filed before the Adjudicating Authority.

5. Learned counsel for the Appellant submits that the Appellant has filed an application before the Adjudicating Authority for exclusion of 126 days for the purpose of counting the period of 270 days. However, the 'Resolution Applicant' having no right to file a 'Resolution Plan' as held by Hon'ble Supreme Court in ***"Arcelormittal India Private Limited vs. Satish Kumar Gupta and Ors. – (2018) SCC OnLine SC 1733"***, the 'Resolution Applicant' cannot file any application for exclusion of any period for the purpose of counting total period of 270 days for which it was open to the 'Committee of Creditors' / 'Resolution Professional' to file application for exclusion of time, for good ground and if the 'Resolution Plan' is viable and feasible, 'Resolution Plan' needs consideration, in absence of such application by the 'Committee of Creditors' / 'Resolution

Professional', no relief can be granted in an application preferred by the Appellant.

6. For the reason aforesaid, we are not inclined to interfere with the Impugned Order dated 4th February, 2019 whereby Adjudicating Authority issued liquidation order , however, we make it clear that Liquidator is to act in terms of the decision of this Appellate Tribunal passed **in Company Appeal (AT) (Insolvency) No. 224 of 2018 in the matter of Y. Shivram Prasad Vs. S. Dhanapal & Ors. on 27th February, 2019** and may proceed to first take steps u/s 230 of the Companies Act read with the 'I&B' Code wherein they can act on any plan, as scheme, agreeable or by class of the 'Creditor' / class of Members.

The appeal is disposed of. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc

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