

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 131 of 2020

IN THE MATTER OF:

Phoenix ARC Pvt. Ltd.

...Appellant

Vs

Patna Highway Projects Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Ramji Srinivasan, Senior Advocate with
Mr. Abhijeet Sinha, Mr. Prateek Kumar, Ms.
Sneha Janakiramna, Mr. Rohit Ghosh, Mr.
Rishab Kapoor and Kamesh Vedula, Advocates.**

For Respondents:

ORDER

24.01.2020: The issue raised in this appeal is that the insolvency petition was filed by the Corporation Bank in violation of the binding inter-creditor agreement as also against the decision taken in the meetings of lenders of Patna Highway Projects Ltd. held on 4th April, 2019 and 20th August, 2019.

Learned counsel for the Appellant further submits that apart from the initiation of Corporate Insolvency Resolution Process by the Corporation Bank being bad, the same was in departure of the lenders decision not to initiate Corporate Insolvency Resolution Process without consent of other lenders. He further submits that the impugned order is in conflict with decision of this Appellate Tribunal rendered in '*Gaja Trustee Company Pvt. Ltd. & Ors. Vs.*

Haldia Coke and Chemicals Pvt. Ltd., *Company Appeal (AT) (Insolvency) No. 137 of 2017*, which has been upheld by Hon'ble Apex Court.

It is stated that the Interim Resolution Professional has issued public announcement but Committee of Creditors has not been yet constituted.

Let notice be issued on Respondents by Speed Post. Requisites alongwith process fee be filed by 27th January, 2020. If the Appellant provides email address of the Respondents, let notice be also issued through email.

Post the case 'for admission (after notice)' on **13th February, 2020**.

In the meantime, the Interim Resolution Professional will not constitute any Committee of Creditors, if not yet constituted. However, he will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors. The persons who are working will perform their duties including the paid Directors. The person who is authorised to sign the bank cheques may sign cheques only after authorisation of the 'Interim Resolution Professional' with counter signature of the 'Interim Resolution Professional' at the back side of the cheques. In such case, the Bank shall release the payment. The Interim Resolution Professional will place this order before the Banks, in which accounts of Corporate Debtor are maintained. The

Bank Account(s) of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of Current Bills of the Suppliers, Salaries and Wages of the employees'/workmen, electricity bills etc.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

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