

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 380 of 2018

IN THE MATTER OF:

M/s. Bhaskara Agro Agencies

...Appellant

Vs.

M/s. Super Agri Seeds Pvt. Ltd.

...Respondent

Present: For Appellant: -Mr. Judy James, Advocate.

ORDER

23.07.2018- The Appellant, one of the 'Resolution Applicants' has preferred this appeal against the order dated 21st March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, in CP (IB) 172/10/HDB/2017. By the impugned order, the Adjudicating Authority passed order under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") for liquidation of the Company in absence of any viable 'Resolution Plan'.

2. There is a delay of five days in preferring the appeal. Taking into consideration the grounds taken, we condone the delay.

3. Learned counsel appearing on behalf of the Appellant submitted that 'Resolution Plan' was viable and feasible but in spite of the same, it was not approved by the 'Committee of Creditors'. The Adjudicating Authority has failed to notice the aforesaid fact.

4. It is further submitted that the 'Resolution Professional' had not complied with the requirements made under Section 29(2) which should have been provided to the 'Resolution Applicants' by allowing them to access to relevant information. However, we find that the 'Resolution Applicant' has already filed the 'Resolution Plan'.

5. It is submitted that the 'Resolution Applicant' has shown in the plan to deposit Rs. 5 Crores in the form of Fixed Deposit, out of the said amount, the 'Resolution Applicants' deposited Rs. 2 Crores. Further, undertaking was given by the 'Resolution Applicant' (Appellant) that he will invest a sum of Rs. 7 crores for purchase of the company seed processing facility on sale and lease back to the company.

6. The same very impugned order dated 21st March, 2018 was challenged by the Shareholders in another appeal on the ground that the 'Committee of Creditors' has wrongly held that there is no 'Resolution Plan' in the eyes of law and therefore, they wrongly recommended for the liquidation of the 'Corporate Debtor'. They submitted that if opportunity would have been given to the (suspended) Board of Directors then they could have been shown that there are other 'Resolution Applicants' who were ready to submit the plans. This Appellate Tribunal taking into consideration all the relevant facts by its judgment dated 11th July, 2018 in ***“Mr. S. Ravi Srinivas Vs. M/s. Super Agri Seeds Pvt. Ltd. & Ors.— Company Appeal (AT) (Insolvency) No. 124 of 2018”*** dismissed the

appeal. This Appellate Tribunal held that all the 'Resolution Plans' were taken into consideration by the 'Committee of Creditors'. However, in absence of any viable 'Resolution Plan' and due to paucity of time they recommended for liquidation of the Company.

7. So far as viability or feasibility of 'Resolution Plan' is concerned, the Adjudicating Authority or this Appellate Tribunal cannot sit in appeal over the decision of the 'Committee of Creditors'. They are the experts to find out the viability and the feasibility of a plan and the matrix. As the aforesaid factors are technical in nature which can be determined by experts like the 'Financial Creditors', we are not inclined to sit in appeal over the decision of the 'Committee of Creditors' to find out whether one or other 'Resolution Plan' is viable and feasible or not. We find no merit in this appeal. It is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk