

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 294 of 2017

IN THE MATTER OF:

Gurdeep Singh Sahani

...Appellant

Vs.

Berger Paints India Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Ramji Srinivasan, Senior Advocate with Mr. N.P.S Chawla, Mr. Naveen Hegde, Mr. Tushar Bhardwaj, Mr. Sohil Yadav and Mr. Sujoy Datta, Advocates.

ORDER

30.11.2017- The Appellant, who claimed to be a Promoter/Director of the 'Corporate Debtor' has preferred this appeal against the order dated 17th October, 2017 passed by Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.A. (IB) No. 405/2017 in C.P. (IB) No. 173/2017, whereby and whereunder the application preferred by one of the 'Financial Creditor' namely L & T Finance has been allowed and 'Resolution Professional' has been directed to give proportionate voting rights to the said Applicant- L & T Finance, in respect of the entire amount of the claim as shown therein.

2. Learned senior counsel appearing on behalf of the Appellant submitted that the extent of proportionate voting rights has been

Contd/-.....

allowed in favour of the Respondent- L & T Finance is not just and proper. However, as we find that the Appellant is a Promoter/Director of the 'Corporate Debtor', we are of the view that the Appellant has no *locus standi* to challenge the voting right of any of the 'Financial Creditor', the promoters having no such voting right under the 'I&B Code'.

3. It was also contended that the Appellant, who is a Promoter/Director of the 'Corporate Debtor' is also a 'Resolution Applicant' and already filed 'Resolution Plan' which is under consideration. However, we do not intend to express any opinion on such claim in absence of any pleading but may refer to provision of ineligibility as prescribed under Section 29A of the Insolvency and Bankruptcy Code, 2016, inserted vide notification dated 23rd November, 2017, and reads as follows: -

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly with such person, or any person who is a promoter or in the management or control of such person, —

- (a) is an undischarged insolvent;*
- (b) has been identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*

- (c) *whose account is classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and period of one year or more has lapsed from the date of such classification and who has failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of the resolution plan;*
- (d) *has been convicted for any offence punishable with imprisonment for two years or more; or*
- (e) *has been disqualified to act as a director under the Companies Act, 2013;*
- (f) *has been prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*
- (g) *has indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under this Code;*
- (h) *has executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor under insolvency resolution process or liquidation under this Code;*
- (i) *where any connected person in respect of such person meets any of the criteria*

specified in clauses (a) to (h).

Explanation.— *For the purposes of this clause, the expression “connected person” means—*

(i) any person who is promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

(iv) has been subject to any disability, corresponding to clauses (a) to (i), under any law in a jurisdiction outside India.”.

4. In fact, the aforesaid provision is to be looked into by ‘Resolution Professional’ and the Committee of Creditor as and when any ‘Resolution Plan’ will be taken up for consideration.

5. For the reasons aforesaid, no relief can be granted. We find no merit

in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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