

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1200 of 2019

IN THE MATTER OF:

Mr. Ravi Srinivas

...Appellant

Vs.

M/s. Super Agri Seeds Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Prashanso C Sen, Senior Advocate with Mr. T.N. Durga Prasad and Mr. Kaustubh Singh, Advocates.

For Respondents: - None.

O R D E R

20.11.2019— Learned counsel for the Appellant submits that the certified copy of the impugned order dated 9th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, was made ready on 22nd August, 2019 and handed over to the Appellant on 6th September, 2019. The appeal was thereafter preferred on 14th October, 2019 and thereby there is delay of only about 6 days in preferring the appeal.

Having heard learned counsel for the Appellant and being satisfied with the grounds, the delay of 6 days in preferring the appeal is hereby condoned. I.A. No. 3514 of 2019 stands disposed of.

2. The 'Corporate Insolvency Resolution Process' was initiated against 'M/s. Super Agri Seeds Pvt. Ltd.'- ('Corporate Debtor'). Finally, the 'Resolution Professional' having failed to complete the same within the time, the 'Corporate Debtor' was ordered to be liquidated.

Contd/-.....

3. In the liquidation process, the Appellant, Shareholder/ Promoter filed I.A. No. 494 of 2018 alleging *inter alia*, undervaluation of Plant and Machinery and Germ Plasm/ Parent Seeds of 'M/s. Super Agri Seeds Pvt. Ltd.'- ('Corporate Debtor').

4. It was submitted that the undervaluation was made at the instance of the Liquidator. Therefore, the prayer was made to direct the Liquidator to state as to why he failed to value all the assets (Tangible, Intangible, Movable and Immovable) of the Company before going for sale.

5. It was alleged that the Liquidator has caused a loss of around Rupees Three Crores in respect of Liquidation value of the Company by not valuing the Plant and Machinery. The Adjudicating Authority, after hearing the parties, by order dated 9th August, 2019 rejected the application but taking into consideration the fact that Mr. Kiran Gubba, Director of Gubba Cold Storage (P) Ltd.' (6th Respondent before the Adjudicating Authority) has caused loss to the value of assets of the 'Corporate Debtor' by not protecting/ handing over the Germ Plasm/ Parent seeds to Liquidator (2nd Respondent before the Adjudicating Authority) and directions were issued in the interest of maximizing the value of assets of the 'Corporate Debtor', as follows:

"20. In the result, following directions are issued in the interest of maximizing the value of assets of the CD:

- (i) R5 is directed to pay the difference amount of Rs.31 lakhs to the Liquidation Account of the Corporate Debtor.*
- (ii) R6 is hereby directed to make good the loss caused to the Corporate Debtor by dumping*

Germ Plasm/ Parent seed by paying the value of the same which is to be estimated by a competent valour to be appointed by the R2/ Liquidator. However, from the liquidation value so arrived, amounts due to R6 by way of lease rentals from R1 shall be paid by R2.”

6. Learned counsel appearing on behalf of the Appellant submitted that an ‘Insolvency Resolution Professional’ or Liquidator must maintain integrity by being honest, straightforward, and forthright in all his professional relationships and he should act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias or conflict of interest.

7. It was submitted that the Liquidator had not acted in the manner he should have acted and thereby bias was alleged against the Liquidator in the matter of valuation.

8. However, we are not inclined to go into such issue in absence of any evidence of allegation of bias against Dr. K.V. Srinivas, Liquidator.

9. Further, if the Appellant or any Promoter(s) had any grievance against the Liquidator, it was always open to them to bring the same to the notice of the Insolvency and Bankruptcy Board of India, who was the Competent Authority to take any action after necessary enquiry.

10. It is stated that the complaint has been lodged before the Insolvency and Bankruptcy Board of India but that cannot be a ground for Adjudicating Authority to decide bias as alleged.

11. We have already held in other cases that the Adjudicating Authority has no jurisdiction to decide any allegations either against the 'Resolution Professional' or the Liquidator. Though if any act of the 'Resolution Professional' or the Liquidator, against the provisions of the 'I&B Code', is noticed then the matter is to be referred to the Insolvency and Bankruptcy Board of India.

12. This apart, in absence of any evidence to find that there was an undervaluation and there was a certain loss caused to the value of assets of the 'Corporate Debtor' by not protecting or not handing over the Germ Plasm / parent seeds, the auction purchaser has been rightly directed to pay the difference amount of Rs.31 lakhs to the Liquidation Account of the 'Corporate Debtor' which he had agreed. The 6th Respondent- Mr. Kiran Gubba, has been rightly directed to make good the loss caused to the 'Corporate Debtor' by dumping Germ Plasm/ Parent seed by paying the value of the same. Further, it is to be noted that the shareholders are not going to suffer any loss on the sale of the assets of the company as they were not entitled to any amount after liquidation in terms of Section 53(1) of the 'I&B Code'.

We find no ground to interfere with the impugned order. It is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M)
Member(Judicial)

Ar/g