

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1498 of 2019

IN THE MATTER OF:

Kunwer Sachdev

...Appellant

Versus

Su-Kam Power Systems Ltd., through
Raj Kumar Ralhan, Liquidator

...Respondent

Present:

For Appellants:

Mr. Kunal Anand and Mr. Aditya, Advocates.

**Ms. Misha, Mr. Siddhant Kant, Ms. Charu Bansal
and Ms. Jasveen Kaur, Advocates for the
Liquidator.**

ORDER

19.12.2019 This Appeal has been preferred by Promoter/ Shareholder of Su-Kam Power Systems Ltd. ('Corporate Debtor') against order dated 31st October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by which application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') preferred by Appellant with prayer to set-aside the impugned email dated 19th September, 2019 sent by the 'Liquidator' and to allow the Appellant to participate for submitting the proposal of scheme of compromise and arrangement has been rejected.

2. The 'Liquidator' held that the Promoter/ Shareholder cannot take part in the scheme of compromise or arrangement in terms of Section 230 of the Companies Act, 2013. This is also affirmed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi referring to Section 29A read with Section 35(1)(f) of the I&B Code, 2016.

3. Learned Counsel for the Appellant submits that the Appellant has given the best proposal scheme for compromise and arrangement, which is beneficial to all the creditors. If it is not accepted, then the 'Corporate Debtor'

is to be liquidated without any 'resolution' or 'revival'. Therefore, it should have been entertained by the 'Liquidator', if the Members or the Creditors have no objection.

4. Similar issue fell for consideration before this Appellate Tribunal in **“Jindal Steel and Power Limited vs. Arun Kumar Jagatramka and Anr. - Company Appeal (AT) No. 221 of 2018”**. In the said case, the question fell for consideration as to whether in the liquidation proceeding under Insolvency and Bankruptcy Code, 2016 in terms of Section 230-232 of the Companies Act, 2013 a promoter is eligible to file application for compromise and arrangement, while he is ineligible under Section 29A of the I&B Code. This Appellate Tribunal by its judgment dated 24th October, 2019 held: -

“12. From the aforesaid provision, it is clear that the Promoter, if ineligible under Section 29A cannot make an application for Compromise and Arrangement for taking back the immovable and movable property or actionable claims of the ‘Corporate Debtor’.”

5. As the case of the appellant is covered by the decision of this Appellate Tribunal in **Jindal Steel and Power Limited**, we hold that the Appellant in view of Section 29A of the I&B Code, cannot file any application for compromise and arrangement in terms of Section 230-232 of the Companies Act, 2013 to take over the Company. While we hold that there is no delay in preferring the Appeal, the Appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)