

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.277 of 2019

IN THE MATTER OF:

K.L. Jute Products Pvt. Ltd.

.....Appellant

Vs.

Tirupati Jute Industries Ltd. & Ors.

.....Respondents

Present :

For Appellant:

Dr. U.K. Chaudhary, Sr. Advocate with Mr. Dhruv Gupta, Advocates

For Respondents:

Mr. Vaibhav Mahajan, Mr. Ravneet Singh, Mr. Siddhant Gupta, Advocates for R-1

Mr. Abhijeet Sinha, Mr. Anup Kumar, Advocate for R-2

Shreya Sinha, Advocate for R-7

Mr.D.N. Sharma, Ms.Neha Somani, Mr. Piyush Singh, Advocates for R-8

Mr. Abhinav Gupta, Advocates for R-6

Ms. Mohak Sharma, Mr. A.Anand, Advocates for R-4 and R-5

O R D E R

30.08.2019 - Learned counsel for the Appellant – ‘Resolution Applicant’ submits that the relevant machineries of the ‘Corporate Debtor’ were leased to

....contd.

Respondent No. 2 few month before 'Corporate Insolvency Resolution Process', by the 'Corporate Debtor'. Without the aforesaid machineries, the 'Corporate Debtor' cannot be made a going concern. The Appellant, a 'Resolution Applicant' also made it clear that the machineries were leased in favour of Respondent No. 2, however, the Adjudicating Authority has not accepted the same and ordered for liquidation.

2. In the present case, the issues required to be considered are: -

(i) whether at the stage of liquidation, the question of 'preferential transactions' u/s 43 of the 'I&B' Code can be decided by the Adjudicating Authority; and

(ii) whether the liquidator has jurisdiction to decide such issue.

3. *Prima facie*, it appears that once the order of liquidation is passed, the liquidator is to take custody of all the assets including the leased assets for the purpose of liquidation. However, it is only our *prima facie* opinion which requires to be determined after hearing the parties.

4. Learned counsel for the Appellant submits that if the custody of the machineries are taken by the liquidator, the 'Resolution Plan' of Appellant be treated as Scheme of Arrangement u/s 230 of the Companies Act, 2013 in view of the decision of this Appellate Tribunal in **Company Appeal (AT)**

....contd.

(Insolvency) No. 224 of 2018 in Y. Shivram Prasad Vs. S. Dhanapal & Ors.

However, we are not inclined to decide such issue at this stage. The Appellant sought for and allowed one week's time to obtain instructions.

Post the case for 'orders' on **5th September, 2019.**

In the meantime, the Liquidator will ensure that the Company remains a going concern.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/gc

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