

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 663 of 2019

IN THE MATTER OF:

**J.M. Financial Asset Reconstruction
Company Limited**

...Appellant

Versus

**G. Madhusudhan Rao,
R.P. of Bheema Cements Ltd.**

...Respondent

Present:

For Appellant : **Mr. Ramji Srinivasan, Senior Advocate with
Mr. Abhishek Anand, Mr. Tushar Tyagi, Ms. Sylona
Mohapatra and Mr. Nikhil Ramdev, Advocates**

For Respondent : **Mr. G. Madhusudhan Rao, Resolution Professional**

O R D E R

18.07.2019 The Appellant – ‘J.M. Financial Asset Reconstruction Company Limited’ (one of the ‘Financial Creditor’ and member of the ‘Committee of Creditors’) filed I.A. No. 266 of 2019 before the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad for exclusion of 135 days period from 27th August, 2018 to 8th January, 2019 and in addition to the period of 147 days starting from 9th November, 2018 to 4th April, 2019 from the ‘Corporate Insolvency Resolution Process’ of the ‘M/s Bheema Cements Ltd.’ (Corporate Debtor). Before the Adjudicating Authority, the Appellant submitted that from 27th August, 2018 to 8th January, 2019 the matter remained pending for renewal of mining lease, which is the main asset of the ‘Corporate Debtor’. In addition to it the period from 9th November, 2018 to 4th April, 2019 was prayed to be excluded as another I.A. No. 551 of 2018 was pending. The

Adjudicating Authority taking into consideration that it had already allowed further period of 90 days on 10th January, 2019 in addition to 180 days period, in view of the fact that 3 mining leases of renewed on 3rd January, 2019 refused to exclude the further period by the impugned order dated 16th May, 2019. Learned counsel appearing on behalf of the Appellant made similar prayer for exclusion at least the period during which the Interlocutory Application was pending before the Adjudicating Authority. It was submitted that Section 28 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the **I&B Code**') was not applicable as the Adjudicating Authority wrongly referred to the said provision before the approval of the 'Committee of Creditors' and for that certain action was required, which was not taken by the 'Financial Creditor'. It is further submitted that the 'Resolution Plans' are already pending for consideration and if the period is excluded then it will be open to the 'Committee of Creditors' to consider the resolution plan, which are pending for consideration.

Mr. G. Madhusudhan Rao, 'Resolution Professional' submits that 2 plans were received after 270 days and they were not opened by the 'Committee of Creditors'.

In the present case, we find that during the 'Corporate Insolvency Resolution Process' i.e. completion of 180 days, 3 Mining Leases were renewed by the Government of Telangana. It is true that the Mining Leases are the assets of the 'Corporate Debtor' and 'Information-Memorandum' should have been reflected the assets. It is informed that the aforesaid asset was reflected in the 'Information-Memorandum' but in view of the fact that the Mining Leases were not responsible to have renewed at the end of 180 days. However, we find because of the fact that it was renewed at the time of end of 180 days i.e. on 8th

January, 2019, the Adjudicating Authority allowed further 90 days on 10th January, 2019 for completion of the process. Even during the extended period of 90 days, there was nothing to suggest that ‘Committee of Creditors’ took any step for calling of fresh resolution plan, though it was open to them to call for fresh resolution plan or information that mining lease, which is reflected in the ‘Information-Memorandum’, has already been renewed. 90 days having already allowed, we find no ground is made out to exclude any period for completion of the ‘resolution process’ and in view of the fact that 270 days have already been passed, the Adjudicating authority has no other option but to pass order of liquidation. However, we are not expressing any opinion with regard to the same as it is informed at the Bar that the Central Government has moved for amendment to allow 330 days in place of 270 days. If it is amended then the ‘Committee of Creditors’ takes advantage of the same subject to its applicability. On the other hand, the Appellant was Member of the ‘Committee of Creditors’ if do not get any advantage of such amendment which is made in future, in such case, the ‘Corporate Debtor’ is ordered to be liquidated. ‘Liquidator’ is required to follow the observations and directions as given by this Appellate Tribunal in **“Y. Shivram Prasad Vs. S. Dhanapal & Ors.-Company Appeal (AT) (Insolvency) No. 224 of 2018 etc.”** wherein this Appellate Tribunal vide order dated 27th February, 2019 observed and directed as follows :

15. *Learned counsel appearing on behalf of the Appellant (Promoter) submitted that the provisions under Section 230 may not be completed within 90 days, as observed in “S.C. Sekaran v. Amit Gupta & Ors.” (Supra).*

16. *It is further submitted that there will be objections by some of the creditors or members who may not allow the Tribunal to pass appropriate order under Section 230 of the Companies Act, 2013.*
17. *Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in “S.C. Sekaran v. Amit Gupta & Ors.” (Supra), this Appellate Tribunal allowed 90 days’ time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme.*
18. *During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the ‘Corporate Debtor’ (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing*

order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. *In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the*

aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.

20. Both the appeals are disposed of with aforesaid observations and directions. No cost."

It is needless to say that if proceedings u/s 230 of the Companies Act, 2013 is taken up, it will be open to the 'Liquidator' to take up with creditors or class of creditors (who was the Financial Creditors) and if any of the 'resolution plan' has filed or may be called for following the same procedure of 'I&B Code', may accept such plan as one of the scheme taking into consideration if it is viable and feasible.

The appeal stands disposed of with aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

/ns/gc