

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 645 of 2018**

**IN THE MATTER OF:**

**Enercon India GmbH**

**...Appellant**

**Vs.**

**Mr. Shailen Shah & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Arun Kathpali, Senior Advocate with Mr. Lzafeer Ahmad, Ms. Bani Brar, Ms. Kanika Sharma and Ms. Swati Khinvasara, Advocates.**

**For Respondents: -Mr. Ramji Srinivasan, Senior Advocate with Ms. Neha Naik and Mr. Bunmeet Singh Grover, Advocates.**

**O R D E R**

**25.10.2018—** The Appellant has preferred this appeal against the order dated 23<sup>rd</sup> October, 2018. However, the certified copy has not been enclosed.

2. Mr. Ramji Srinivasan, learned Senior Counsel appearing on behalf of the 'Resolution Professional' (1<sup>st</sup> Respondent) produced the copy of the order dated 23<sup>rd</sup> October, 2018 which reads as follows:

*"Sr. Advocate Mr. Saurabh Soparkar with Mr. Salil Thakore, Mrs. Kanika Shakma Goenka and Mr. Cyrus Jal i/b Vashi and Vashi is present for the Applicant. Sr. Advocate Mr. Navin Pahwa with Ms. Neha Naik is present for the Respondent-1.*

*In compliance of the order dated 11.10.2018 the Learned Lawyer appearing on behalf of the RP provided the information by way of an affidavit which is reflected in the information memorandum as well as virtual data base.*

*List the matter on 27.11.2018.”*

3. Learned Senior Counsel appearing on behalf of the Appellant submits that the application under Section 60(5) is pending since June, 2018 and the grievance of the Appellant has not been redressed by the Adjudicating Authority (National Company Law Tribunal). However, according to learned Senior Counsel for the 'Resolution Professional', the grievance has been redressed by the impugned order.

4. Having heard learned counsel for the parties, we are of the view that the matter requires further deliberation by the Adjudicating Authority who should mention as to whether application under Section 60 (5) stands disposed of or not.

5. The impugned order merely shows lawyers appeared on behalf of the 'Resolution Professional' and provided the information by way of an affidavit. However, that serves no purpose. Whether the grievance as made in the application under Section 60(5) has been addressed has not been mentioned by the Adjudicating Authority. We are expecting the Adjudicating Authority to mention whether application filed by the

Appellant stands disposed of or not. We may mention that we have not decided the claim of the Appellant on merit nor decided whether any proceeding should be stayed or not. This is for the Adjudicating Authority to decide taking into consideration the decision of this Appellate Tribunal on such issue and the Hon'ble Supreme Court, including the decision in "**Arcelor Mittal India Pvt. Ltd vs. Satish Kumar Gupta(R.P.) & Ors.**" and "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors**" etc.

The appeal and interlocutory application stand disposed of.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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