

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 175 of 2019

IN THE MATTER OF:

Dhinal Shah

....Appellant

Vs.

Bharati Defence Infrastructure Ltd.

....Respondent

Present:

**For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Sumant Batra,
Ms. Srishti Kapoor and Ms. Sylona Mohapatra, Advocates**

For Respondent:

O R D E R

22.02.2019: Appellant, Resolution Professional has preferred this appeal against order dated 14.01.2019 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai bench whereby and whereunder the Adjudicating Authority while expressed adverse observations against the appellant (Resolution Professional) [at Para 31,62,73,74,76,82,83] also ordered for liquidation of the Corporate Debtor (Bharti Defence Infrastructure Ltd.).

The grievance of the appellant is limited to the observations made by Adjudicating Authority against him. However from the impugned order we find that the resolution plan submitted by 'Edelweiss Asset Reconstruction Company Ltd.' was duly approved by the Committee of Creditors by voting share of 94.3%. In spite of the same, the Adjudicating Authority has gone into the question of the viability and feasibility of the resolution plan including maximization the assets.

The question arises for consideration in this appeal are:-

- (i) Whether the adjudicating authority can pass any adverse order against Resolution Professional in an application filed by the Resolution Professional under Section 31 (1) of the I&B Code, in absence of any complaint by the Committee of Creditors? and

(ii) Whether the Adjudicating Authority can sit in an appeal over the decision of the Committee of Creditors with regard to viability and feasibility and finance matrix of the resolution plan, if the resolution plan is otherwise in accordance with Section 30 (2) and not discriminatory?

Learned counsel for the appellant has placed reliance on decision of this Appellate Tribunal in '*Vandana Garg (RP) of Jyoti Infrastructure Ltd. Vs. SBI*' in Company Appeal (AT) (Ins.) No. 507/2018 disposed of on 26.12.2018.

In the facts and circumstances, of this case we allow the appellant to implead 'Edelweiss Asset Reconstruction Company Ltd.' (Successful Resolution Applicant) as party Respondent No. 2 to the present appeal.

Necessary correction in the cause title and other pages of the paper book may be made.

Let notice be issued on 2nd Respondent by Speed post. Requisite along with process fee, if not filed, be filed by 27.02.2019. If the appellant provides *e-mail* address of the respondents, let notice be also issued through *e-mail*.

Post the case 'for admission' on **29.03.2019**.

Until further order, the observations made against the appellant in the impugned order shall remain stayed. The liquidator or the Adjudicating Authority will not take any steps to sell or transfer or alienate movable or immovable assets of the Corporate Debtor, nor create any third party encumbrance on it without prior approval of this Appellate Tribunal.

[Justice S.J. Mukhopadhaya]
Chairperson

sa/sk