

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 628 of 2021

IN THE MATTER OF:

M/s. Asset Reconstruction Company (India) Ltd.

Through its authorized officer,

Having its registered office at:

The Ruby, 10th Floor, 29, Senapati

Bapat Marg, Dadar (W), Mumbai 40002,

In the capacity of lead member of the Committee of Creditors

Of M/s. Shamken Spinners Limited.

...Appellant.

Versus

M/s. Shamken Spinners Ltd.

Registered office at:

94 Km Stone, Delhi Mathura Road, Village Kotwan,

Mathura, Uttar Pradesh-281403

Through its Resolution Professional

Mr. Anshul Gupta, RP

IP Registration No.-IBBI/IPA-002/IP-N00310/2017-18/10899

Registered address for communication:

Flat No. 1501, Spring Grove Towers,

Lokhandwala Township,

Kandivali East, Mumbai – 400101

Mob No. 7738342001

Email Id. contactanshulgupta@gmail.com

& shamkenspinnders.cirp@gmail.com

...Respondent.

For Appellant: Mr. Dinkar Singh, Mr. Rohit Singh, Advocates

For Respondent: Mr. Milan Singh Negi, Advocate for RP, R-1.

With

Company Appeal (AT) (Insolvency) No. 629 of 2021

IN THE MATTER OF:

M/s. Asset Reconstruction Company (India) Ltd.

Through its authorized officer,

Having its registered office at:

The Ruby, 10th Floor, 29, Senapati

Bapat Marg, Dadar (W), Mumbai 40002,

In the capacity of lead member of the Committee of Creditors

Of M/s. Shamken Cotsyn Limited.

...Appellant.

Versus

M/s. Shamken Cotsyn Ltd.

Registered office at:

94 Km Stone, Delhi Mathura Road, Village Kotwan,

Mathura, Uttar Pradesh-281403

Through its Resolution Professional

Mr. Anshul Gupta, RP

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Mob No. 7738342001

Email Id. contactanshulgupta@gmail.com

& shamkencotsyn.cirp@gmail.com

...Respondent.

For Appellant: Mr. Dinkar Singh, Mr. Rohit Singh, Advocates

For Respondent: Mr. Milan Singh Negi, Advocate for RP, R-1.

With

Company Appeal (AT) (Insolvency) No. 630 of 2021

IN THE MATTER OF:

M/s. Asset Reconstruction Company (India) Ltd.

Through its authorized officer,

Having its registered office at:

The Ruby, 10th Floor, 29, Senapati

Bapat Marg, Dadar (W), Mumbai 40002,

In the capacity of lead member of the Committee of Creditors

Of M/s. Shamken Multifab Limited.

...Appellant.

Versus**M/s. Shamken Multifab Ltd.**

Registered office at:

94 Km Stone, Delhi Mathura Road, Village Kotwan,
Mathura, Uttar Pradesh-281403

Through its Resolution Professional**Mr. Anshul Gupta, RP**

IP Registration No.-IBBI/IPA-002/IP-N00310/2017-18/10899

Registered address for communication:

Flat No. 1501, Spring Grove Towers,
Lokhandwala Township,
Kandivali East, Mumbai – 400101

Mob No. 7738342001

Email Id. contactanshulgupta@gmail.com

...Respondent.

For Appellant: Mr. Dinkar Singh, Mr. Rohit Singh, Advocates

For Respondent: Mr. Milan Singh Negi, Advocate for RP, R-1.

ORDER
(Virtual Mode)

23.08.2021 Heard Learned Counsel for the Appellant and Mr. Milan Negi, Advocate who is appearing for the Resolution Professional in these three Appeals. These three Appeals are relating to Corporate Debtors: (i) Shamken Spinners Limited, (ii) Shamken Cotsyn Limited and (iii) Shamken Multifab Limited. In these three Appeals, Learned Counsel for the Appellant is pointing out date-wise events as follows:

“(i) Company Appeal (AT) (Ins.) No. 628 of 2021

Sr. No.	Particulars	Date
1	<i>Insolvency Commencement date</i>	<i>May 29th, 2018</i>
2	<i>Expiry of 180 days form insolvency commencement date.</i>	<i>Nov 25th 2018</i>
3.		

4.	First Extension of CIRP for 90 days under Section 12(3) of the Code, 2016 CIRP End date (270 days) under Section 12(3) of the Act, 2016	Vide Order dated 16.11.2018 passed by Adjudicating Authority being NCLT at Allahabad February, 23 rd , 2019
5	The CoC in its 11 th CoC meeting held on 18 th February, 2019 passed resolution to initiate the process for liquidation of the Corporate Debtor as the Resolution Applicant withdrew his Resolution Plan before being considered by the CoC.	February 18 th , 2019
6.	The Ex-Promoter filed an application before the Ld. Adjudicating Authority to stay the decision of the CoC taken in its 11 th CoC meeting held on 18 th February, 2019 to initiate the liquidation process of the Corporate Debtor	February 20 th , 2019
7.	The Ld. RP vide CA No. 86/2019 filed an Application before the Ld. AA to liquidate the CD. The application is still pending and not decided by the Ld. Adjudicating Authority.	26 th February, 2019
8.	The Ex-Promoter after completion of the maximum period to complete the CIRP of Corporate Debtor filed at such belated stage an application CA No. 350/2019 dated 19.10.2019 to declare that the initial petition filed by the Appellant herein shall be declared as barred by the law of limitation	19.10.2019

(ii) Company Appeal (AT) (Ins.) No. 629 of 2021

Sr. No.	Particulars	Date
1	Insolvency Commencement date	May 29 th , 2018
2	Expiry of 180 days form insolvency commencement date.	Nov 25 th 2018
3.	First Extension of CIRP for 90 days under Section 12(3) of the Code, 2016	Vide Order dated 16.11.2018 passed by Adjudicating Authority being NCLT at Allahabad
4.	CIRP End date (270 days) under Section 12(3) of the Act, 2016	February, 23 rd , 2019

5	<i>The CoC in its 11th CoC meeting held on 11th February, 2019 passed resolution to initiate the process for liquidation of the Corporate Debtor as the Resolution Applicant withdrew his Resolution Plan before being considered by the CoC.</i>	<i>February 18th, 2019</i>
6.	<i>The Ex-Promoter filed an application before the Ld. Adjudicating Authority to stay the decision of the CoC taken in its 11th CoC meeting held on 18th February, 2019 to initiate the liquidation process of the Corporate Debtor</i>	<i>February 20th, 2019</i>
7.	<i>The Ld. RP vide CA No. 86/2019 filed an Application before the Ld. AA to liquidate the CD. The application is still pending and not decided by the Ld. Adjudicating Authority.</i>	<i>26th February, 2019</i>
8.	<i>The Ex-Promoter after completion of the maximum period to complete the CIRP of Corporate Debtor filed at such belated stage an application CA No. 350/2019 dated 19.10.2019 to declare that the initial petition filed by the Appellant herein shall be declared as barred by the law of limitation</i>	<i>19.10.2019</i>

(iii) Company Appeal (AT) (Ins.) No. 630 of 2021

Sr. No.	Particulars	Date
1	<i>Insolvency Commencement date</i>	<i>May 29th, 2018</i>
2	<i>Expiry of 180 days form insolvency commencement date.</i>	<i>Nov 25th 2018</i>
3.	<i>First Extension of CIRP for 90 days under Section 12(3) of the Code, 2016</i>	<i>Vide Order dated 16.11.2018 passed by Adjudicating Authority being NCLT at Allahabad</i>
4.	<i>CIRP End date (270 days) under Section 12(3) of the Act, 2016</i>	<i>February, 24th, 2019</i>
5	<i>The CoC in its 11th CoC meeting held on 18th February, 2019 passed resolution to initiate the process for liquidation of the Corporate Debtor as the Resolution Applicant withdrew his</i>	<i>February 18th, 2019</i>

	<i>Resolution Plan before being considered by the CoC.</i>	
6.	<i>That on 18th of February 2019, another Resolution Applicant namely Mr. SN Sharma, claiming the support of the workers and employees had presented a plan to the resolution professional. However, considering the circumstances that the time to submit the plan had expired hence the resolution professional was not in a position to accept the plan due to the paucity of time.</i>	<i>February 18th, 2019</i>
7.	<i>The Ld. RP vide CA No. 87/2019 filed Liquidation Application to liquidate the CD.</i>	<i>26th February, 2019</i>
8.	<i>Mr. S N Sharma vide its CA No. 321/2019 also filed his Objections against the decision of rejection of its Plan submitted with CoC.</i>	<i>26th February, 2019</i>
9.	<i>The Ld. AA being NCLT vide its order dated 24th May, 2019 allowed the objections of the RA and directed the CoC to reconsider the Resolution Plan submitted by the RA within thirty days from the date of order. The Ld. AA vide the same order exempted the time consumed in adjudication of the objections of the RA and time to be taken by CoC to reconsider the Resolution Plan</i>	<i>May 24th, 2019</i>
10.	<i>The Ld. RP after passing of order dated 24th May, 2019 conducted 12th CoC meeting to reconsider the plan.</i>	<i>June 7th, 2019</i>
11.	<i>The CoC in its 13th CoC considered the plan and rejected the plan.</i>	<i>June, 18th, 2019</i>
	<i>The Ld. RP, filed additional affidavit dated 16.09.2019 to bring on record the subsequent events after passing of order dated 24th May, 2019 which again led to recommendation for initiating Liquidation of the CD.</i>	<i>June 24th 2019</i>
12.	<i>The Ex-Promoter after completion of the maximum period to complete the CIRP of Corporate Debtor filed at such belated stage an application CA No. 351/2019 dated 19.10.2019 to declare that the initial petition filed by the Appellant herein shall be declared as barred by the law of limitation</i>	<i>19.10.2019</i>

2. In these three Appeals, the Impugned Orders passed are as under:

(A) Reference: - Company Appeal (AT) (Ins.) No. 628 of 2021:- The Impugned order dated 14.07.2021 in CP No.(IB)131/ALD/2017, CA No. 85/2019, CA No. 249/2019, CA No. 322/2019, CA No. 349/2019.

“The matter was taken up today through Video Conferencing.

Heard Ld. Counsels for the parties through Video Conferencing.

Ld. Counsels for the parties are arguing simultaneously, therefore, the matter cannot be heard.

Accordingly, put up this matter in the week commencing 23rd August, 2021 for arguments before the Regular Court/through Video Conferencing, by which time, Ld. Counsels for the parties may file their short written submissions, if they so desire.”

(B) Reference: - Company Appeal (AT) (Ins.) No. 629 of 2021:- The Impugned order dated 14.07.2021 in CP No.(IB)132/ALD/2017, CA No. 64/2019, CA No. 86/2019, CA No. 250/2019, CA No. 303/2019, CA No. 350/2019.

“The matter was taken up today through Video Conferencing.

Heard Ld. Counsels for the parties through Video Conferencing.

In view of the order passed in CP No.(IB)131/ALD/2017, CA No. 85/2019, CA No. 249/2019, CA No. 322/2019, CA No. 349/2019, put up this matter in the week commencing 23rd August, 2021 for arguments before the Regular Court/through Video Conferencing, by which time, Ld. Counsels for the parties may file their short written submissions, if they so desire.”

(C) Reference: - Company Appeal (AT) (Ins.) No. 630 of 2021:- The Impugned order dated 14.07.2021 in CP No.(IB)133/ALD/2017, CA No. 87/2019, CA No. 251/2019, CA No. 304/2019, CA No. 321/2019, CA No. 351/2019.

“The matter was taken up today through Video Conferencing.

Heard Ld. Counsels for the parties through Video Conferencing.

In view of the order passed in CP No.(IB)131/ALD/2017, CA No. 85/2019, CA No. 249/2019, CA No. 322/2019, CA No. 349/2019, put up this matter in the week commencing 23rd August, 2021 for arguments before the Regular Court/through Video Conferencing, by which time, Ld. Counsels for the parties may file their short written submissions, if they so desire.”

3. Learned Counsel for the Appellant and Learned Counsel for the Resolution Professional both submit that the Applications filed for passing orders of Liquidation are pending since long and are yet not decided. Learned Counsel for both sides submit that the promoters have filed Application to reopen the question of Limitation and thus claim recall of the admission orders itself which are pending and because of such Applications the matters are being prolonged.

4. We have seen the Impugned Orders and the disturbing portion of the Impugned Orders is that the parties were arguing simultaneously and that the Adjudicating Authority was unable to hear. Parties would be expected to maintain decorum at the time of hearing. Against the Impugned Orders which have been passed Appeals as such would not arise as there is no adjudication as such.

5. We do hope that the Adjudicating Authority urgently decides the matters pending before it with regard to Applications for orders of Liquidation and Applications stated to have been filed by the Promoters.

With these observations, these Appeals stand disposed of.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Basant B./gc.