

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 757 of 2018

IN THE MATTER OF:

R. Anil Bafna Appellant

Vs

Madhu Desikan & Ors. Respondents

Present:

**For Appellant: Mr. Ashwin Kumar D.S. and Ms. Aditi Dani,
Advocates.**

For Respondents:

ORDER

05.07.2019 The Appellant Mr. R. Anil Bafna, Promoter and Director of Jain Granites & Projects Limited ('Corporate Debtor') preferred this Appeal against order dated 1st November, 2018, whereby and whereunder the Adjudicating Authority (National Company Law Tribunal) Division Bench, Chennai passed order of liquidation in absence of viable and feasible 'Resolution Plan'.

2. Earlier, the Appellant took plea that there was revised 'Resolution Plan' which was to be filed, but because of order of liquidation, it could not be considered by the 'Committee of Creditors'.

3. To find out whether the resolution process could be successful by excluding certain period, we asked the 'Committee of Creditors' to propose revise 'Resolution Plan'. But after consideration of the same, it is informed by the Counsel for the 'Committee of Creditors' that the revised 'Resolution

Plan' is also not viable and feasible. In these circumstances, Counsel for the Appellant submits that they will take appropriate steps on the stage of proceeding under Section 230 of the Companies Act, 2013.

4. In the facts and circumstances, we are not inclined to interfere with the impugned order dated 1st November, 2018. However, we direct the Liquidator to act in terms of the decision of this Tribunal in **Y. Shivram Prasad vs. S. Dhanapal & Ors. – Company Appeal (AT) (Ins.) N.224 of 2018 decided on 27.02.2019**, wherein this Appellate Tribunal 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.”

5. The Appellant being Promoter can take advantage of Section 230 in consultation with the ‘Liquidator’. The Appeal stands disposed of with the aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC