

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

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

IN THE MATTER OF:

Dhinal Shah

...Appellant

Vs

Bharati Defence Infrastructure Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Srishti Kapoor, Ms. Sylona Mohapatra and Mr. Nikhil Ramdev, Advocates.

For Respondents: Mr. Aditya Wadhwa, Mr. Debopriyo Moulik and Mr. Dhaval Vussonji, Advocates for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Atul Sharma, Mr. Sugam Seth and Ms. Arveena Sharma, Advocates for R-2 (ERAC).

Mr. Rajesh Chhetri and Ms. Meenakshi Raval, Advocates for Union of Workers.

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Nakul and Mr. Aakarshan, Advocates for Liquidator.

ORDER

29.03.2019: This appeal has been preferred by 'Dhinal Shah', Ex-Resolution Professional against impugned order dated 14th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in so far it relates to adverse observations made against the Resolution Professional (at para 31, 62, 73, 74, 76, 82 and 83) while passing order of liquidation. As limited prayer has been made against the adverse observations, we separate this appeal from the other appeal in which same very order of liquidation is under challenge (Company Appeal (AT) (Insolvency) No. 195 of 2019).

2. The grievance of the Appellant is limited to the observations made by the Adjudicating Authority against him. From the impugned order we find that the Resolution Plan filed by 'Edelweiss Asset Reconstruction Company Ltd.' was duly approved by the Committee of Creditors with 94.3% voting share, inspite of the same the Adjudicating Authority gone into the question of viability and feasibility of the resolution plan including maximization of assets. Against the same very impugned order dated 14th January, 2019 other appeal - Company Appeal (AT) (Insolvency) No. 195 of 2019 has been filed by 'Superna Dhawan & Anr.', wherein we would hear the aforesaid issue relating to jurisdiction of the Adjudicating Authority to pass order of liquidation when the Committee of Creditors have voted a plan with 94.3% voting share.

3. On hearing the parties, we find that the adverse observations were made against the Ex-Resolution Professional – 'Dhinal Shah' without issuing individual notice to him. In essence, no notice was issued to him to reply as to why adverse observations be not passed against him for any act of omission or commission. We are of the view that without such notice and without impleading Resolution Professional by name, the Adjudicating Authority was not competent to make any observation against the Resolution Professional. If there was any lapse on the part of Resolution Professional which has come to the notice of the Adjudicating Authority, he should have referred the matter to the 'Insolvency

and Bankruptcy Board of India' (IBBI) for taking appropriate action in accordance with law, which is the competent authority to take any action, after seeking explanation from the Resolution Professional.

4. For the reason aforesaid, we set aside the part of the impugned order dated 14th January, 2019 so far it relates to adverse observations made against 'Dhinal Shah', Ex-Resolution Professional including the observations made at para 31, 62, 73, 74, 76, 82 and 83. In so far as other question relating to order of liquidation is concerned, it will be considered in other appeal Company Appeal (AT) (Insolvency) No. 195 of 2019). The appeal is allowed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

am/sk