17 sn 12.1.21

C.O.41 of 2021

RAJENDRA MANSINGHKA VS. RACHNA JHUNJHUNWALA & ANR.

Mr. Shovan Ghosh
..for the petitioner

This revisional application has been filed by the borrower challenging the order dated January 1, 2019 as also the order dated July 19, 2019 passed by the learned National Company Law Tribunal in C.P.(I.B.) No.1042/KB/2018.

By the order dated January 1, 2019, the learned Tribunal admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the said Code), filed by the financial creditor and directed the appointment of an Interim Resolution Professional for the Corporate Debtor, for the purpose of ascertaining the particulars of the creditors and convening a committee of creditors for evolving a resolution plan. The said order was passed in the absence of the Corporate Debtor as despite service the Corporate Debtor failed to appear before the learned Tribunal. By the order dated July 19, 2019, the learned Tribunal passed the following orders:-

"(I) Corporate Debtor M/s. **Manasi Oils & Grains Pvt. Ltd.**, CIN: U15139WB1997PTC085500 having its registered office at 4D, Park Plaza, 4th Floor, 71, Park Stree, Kolkata-700016, in the state of West Bengal, is ordered to be liquidated.

(ii) Smt. Rachna Jhunjhunwala having registration no.IBBI/IPA-001/IP-P00389/2017-18/10707 of Siddha Weston, 9, West Street, Kolkata-700013, is appointed as the liquidator.

(iii) Liquidator is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1)(b)(ii) of the Code read with Reg.12(1) of IBBI (Liquidation Process) Regulations, 2016.

(iv) The Registry is directed to communicate this order to the Registrar of Companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi.

(v) The order of Moratorium passed under Section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under Section 33(5) shall commence.

(vi) This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of I&B Code, 2016.

(Vii) The Liquidator is directed to proceed with the process of the liquidation in a manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016.

(viii) Upon proceeding with the liquidation the Liquidator shall file a preliminary report as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file ***progress reports*** as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.

(ix) The fee payable to the

> Liquidator shall form part of the liquidation cost as provided under Reg.4(1) of the IBBI (Liquidation Process) Regulations, 2016.
>
> (x) The CA(IB) No.668/KB/2018 is disposed of accordingly.
>
> (xi) The copy of this order is to be sent to the Liquidator, RP, Financial Creditor and the Corporate Debtor by Speed Post as well as by email for information and for taking necessary steps.
>
> (xii) Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities."

The said order was passed upon contest. Aggrieved by the aforementioned order an appeal was preferred by the Company before the National Company Law Appellate Tribunal, New Delhi, and the said appeal was registered as Company Appeal (AT)(Insolvency) No.920 of 2019. By an order dated September 11, 2019, the learned Appellate Tribunal allowed the appellant therein to file an application for substitution of one of the shareholders/ directors as an appellant and to transpose Mansi Oils & Grains Pvt. Ltd. as a Corporate Debtor (Respondent No.2). It was further recorded that if the substitution was allowed the appellant may request to the shareholder to take part in the arrangement/scheme under Section 230 of the Companies Act, 2013. The learned Appellate

Tribunal had directed the substitution to be carried out within a week. The matter was fixed "For Orders" on September 20, 2019. On September 20, 2019, none appeared on behalf of the appellant before the learned Appellate Tribunal. On September 20, 2019, the learned Appellate Tribunal came to the conclusion that in spite of liberty granted for substitution the same was not done. As none appeared on behalf of the appellant and the appeal was dismissed as not maintainable. The learned Appellate Tribunal also directed the liquidation process to continue. This order has not been challenged by the petitioner before the Hon'ble Apex Court. Instead, the petitioner has filed this revisional application as a director of the suspended board of Mansi Oils & Grains Pvt. Ltd. and is seeking to revive the challenges to the orders passed by the Tribunal on an application under Section 7 of the said Code. The orders of the Tribunal were appealable before the appellate authority under Section 61 of the said Code. The appellate authority had granted liberty to the Corporate Debtor to sue through the director and/or shareholders in terms of the prevailing law.

Such substitution was not carried out. None appeared before the appellate authority and the appeal stood dismissed by an order dated September 20, 2019.

If the petitioner was aggrieved by the order of the appellate authority, the remedy of the petitioner would be to apply before the Hon'ble Apex Court under Section 62 of the said Code. No such appeal within the statutory period was filed before the Hon'ble Apex Court.

After almost one year and four months from the date of dismissal of the appeal, this revisional application has been filed challenging the orders, which were challenged before the appellate authority in Company Appeal (AT)(Insolvency) No.920 of 2019. The appeal had been dismissed on September 20, 2019. This is not only barred by the provisions of law but also is an abuse of process of Court. Challenge to the orders of the learned Tribunal and the appellate authority by invoking jurisdiction under Article 227 of the Constitution of India beyond the period of limitation for an appeal before the Hon'ble Supreme Court as per the statute is not permissible under the law.

The revisional application is not entertainable for the afore-mentioned reasons.

This revisional application is thus dismissed.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, be supplied to the parties on priority basis.

(***Shampa Sarkar,J.)***