
(2024) 10 NCLAT CK 1194

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No. 625 of 2024

Vyomesh Mahipatray Shah

APPELLANT

Vs

Birendra Kumar Agarwal & Anr.

RESPONDENT

Date of Decision : 19-10-2024

Acts Referred:

Citation : (2024) 10 NCLAT CK 1194

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Aayush Agarwala, Ayush J. Rajani

Final Decision : Dismissed

Judgement

21.10.2024 : Heard Counsel for the Appellant.

2. This Appeal has been filed against an Order dated 22.02.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II) in an Application under Section 95 filed by the Financial Creditor, JC Flower Asset Reconstruction Private Ltd., in which Application, the Resolution Professional (RP) has been appointed.

3. Adjudicating Authority in the Impugned Order has referred to the Order of the Hon'ble Supreme Court in the matter of 'Dilip B Jiwrajka' Vs. 'Union of India & Ors.' reported in 2023 SCC OnLine SC 1530.

4. An Application has also been filed in May 2024 by the Appellant i.e., I.A. 6859/2024 stating that JC Flowers Asset Reconstruction Pvt. Ltd. have assigned their debt to Omkara Asset Reconstruction Company Pvt. Ltd.

5. The Order Sheet of the Appeal indicates that Appellant has taken at least 6 adjournments in the Appeal and it was also recorded on 13.08.2024 that Parties are negotiating for settlement and consent term has yet to be finalised.

6. The Order impugned is only an Order appointing the RP.

7. The Judgment of the Hon'ble Supreme Court in 'Dilip B. Jiwrajka' (Supra), categorically lays down that all adjudicatory issues have to be considered at the time of hearing of the Application under Section 100.

8. Appellant, the Personal Guarantor shall have liberty to raise all issues at the time of hearing of Section 100 hence it is not necessary to enter into any issues sought to be raised in the present Appeal.

9. We thus do not find any ground to entertain the Appeal against the Order dated 22.02.2024.

Appeal is dismissed subject to liberty as above.

We make it clear that we have not expressed any opinion on the merits of the Appeal.