

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 408 of 2018**

**IN THE MATTER OF:**

**Jya Finance and Investment Company Ltd.**

**...Appellant**

**Vs.**

**J.R. Agro Industries Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Sudipto Sarkar, Senior Advocate assisted by Mr. Arijit Mazumdar and Mr. Shambo Namdy, Advocates.**

**For Respondents:- Mr. Arvind Kumar Gupta and Ms. Henna George, Advocates.**

**O R D E R**

**30.07.2018—** The questions arise for consideration in this appeal are:

- i. Whether provision of Section 53 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') is applicable while deciding the approval of a 'Resolution Plan'?
- ii. Whether the Adjudicating Authority (National Company Law Tribunal) has jurisdiction to hold that Section 53 of the 'I&B Code' is discriminatory, the Adjudicating Authority not being a court, much less a Constitutional Court to decide such issue?

Contd/-.....

- iii. Whether the Adjudicating Authority has jurisdiction to decide the viability, feasibility and matrix of a 'Resolution Plan' once it is approved by the 'Committee of Creditors' and if it is not against any of the provisions of law or perverse?
- iv. Whether the amount payable by the 'Corporate Debtor' towards the 'Income Tax' and 'GST' can be taken care of in a 'Resolution Plan' treating the Central Government and the State Government as 'Operational Creditors'?
- v. Whether the Adjudicating Authority has *suo moto* jurisdiction to decide the question of Section 43 of the 'I&B Code', in absence of an application filed by the 'Resolution Professional'/'Liquidator'?

2. Issue notice. Mr. Arvind Kumar Gupta, Advocate accepts notice on behalf of the 1<sup>st</sup> Respondent. No further notice need be issued to him. Let notice be issued on rest of the Respondents by speed post. Requisite along with process fee, if not filed, be filed by 31<sup>st</sup> July, 2018. If the Appellant provides the e-mail address of Respondents, let notice be also issued through e-mail.

Post the case 'for admission' on 21<sup>st</sup> August, 2018.

3. Until further orders, the operation of the impugned order dated

24<sup>th</sup> July, 2018 shall remain stayed. However, it will be open to the 'Committee of Creditors' to decide a fresh as to whether the 'Resolution Plan' stipulates 'non-payment of Income Tax' or 'GST' and other aspects, which may be treated to be against an existing provisions of law.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansilal Bhat)  
Member(Judicial)

Ar/uk