



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

22nd October, 2023

Subject: Judgment¹ dated 19th October 2023 of Hon'ble National Company Law Appellate Tribunal Principal Bench, New Delhi in the matter of Rahul Gupta & Ors. Vs. Chandra Prakash (Erstwhile Resolution Professional) [CA (AT) (Ins.) No. 966 of 2021].

Brief Facts-

Erstwhile resolution professional of CD i.e., Gem Batteries Private Limited had filed an application against the suspended directors of CD before AA under section 19(2) read with section 19(3) of the Code, for non-cooperation and not providing the documents and information related to CD. AA *vide* order dated 07.06.2022, allowed the said application and imposed a cost of Rs. 10,00,000/- each on the suspended directors under section 70 of the Code.

Aggrieved by said order of AA, the suspended directors preferred an appeal before NCLAT wherein challenging the order passed by AA is without jurisdiction.

Issues Before Hon'ble NCLAT:

Whether the order imposing fine under section 70 of the Code can be passed by AA or can only be passed by way of trial of offences by a special court in terms of section 236 of the Code?

Findings & Observations of the Hon'ble NCLAT:

NCLAT allowed the appeal filed by the suspended directors holding that order has been passed overlooking the provisions of the Code and ignoring the precedent cases settled in this regard. NCLAT observed that section 236 of the Code deals with "The offences and penalties" as prescribed and dealt with by Chapter VII, which specifically provides that the offences under this Code shall be tried by the special court and prosecution under section 70 can be initiated only in accordance with the procedure as provided under section 236(2) of the Code. Further it laid emphasis on its own judgment in the matter of *Writer Business Services (P.) Ltd. Vs. Ashutosh Agrawala, resolution professional for Cox & Kings Ltd.*, and held that an act which is termed as offence within specific provision of Chapter VII of Part-II cannot be indirectly dealt with by the AA by imposing a fine.

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