

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

Company Appeal (AT) (Ins) No. 883 of 2021

IN THE MATTER OF:

Sudip Dutta @ Sudip Bijoy Dutta Appellant

Versus

Deepika Bhugra Prasad &Anr. Respondents

Present

**For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with
Mr. Shwetank Singh, Mr. Zain A Khan
and Mr. Aditya Shukla, Mr. Kumar
Anurag Singh and Mr. Anando
Mukherjee, Advocates.**

**For Respondent: Mr.Dhananjay Sud, Mr. Gaurav Mitra,
Mr. Aditya Gauri, Mr. Amarvivek, Ms.
Shalya Agarwal, Advocates for R-1
Mr. Ashwini Kumar Singh, Advocate for
R-2/SBI**

ORDER
(Date: 10.11.2021)
(Through Virtual Mode)

This appeal was heard on admission on 29.10.2021.

2. This appeal, which has been filed by the Appellant, who is a promoter and ex-Director of the Corporate Debtor, arises out of order dated 8.10.2021 (hereinafter called Impugned Order) in IA Company Appeal (AT) (Ins) No. 883 of 2021

No. 699/KB/2021 in CP (IB) No. 1284/2019 passed by NCLT, Kolkata (henceforth called Adjudicating Authority).

3. On an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC') filed by Respondent No.2 State Bank of India, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide order dated 14.2.2020 of the Adjudicating Authority, and Deepika Bhugra Prasad was appointed as the Interim Resolution Professional (IRP). On publication of Expressions of Interest (EOI), only one prospective Resolution Applicant came forward to submit resolution plan. Therefore, in the 4th meeting of Committee of Creditors (CoC), it was decided to extend timeline in order to get more applications for resolution plans. In the 5th meeting of CoC, it was decided not to publish the EOI again and to obtain Resolution Plan from the only prospective Resolution Applicant, who had expressed interest earlier. The prospective Resolution Applicant named IRC Natural Resources Private Limited submitted a Resolution Plan on 7.10.2020, but later vide e-mail dated 29.10.2020 it communicated to the Resolution Professional about its decision to withdraw the Resolution Plan and sought refund of the Earnest Money Deposit (EMD).

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4. In the 6th meeting of the CoC on 31.10.2020, the legal representative of the Appellant informed that it had submitted a One Time Settlement (OTS) proposal to Respondent No. 2 State Bank of India as it was interested in submitting a fresh restructuring proposal to the creditor bank. After withdrawal of the Resolution Plan by Prospective Resolution Applicant IRC Natural Resources Private Limited, a fresh EOI was published on 30.11.2020.

5. The Appellant has stated that its OTS dated 21.12.2020 was rejected by the Respondent No. 2 Bank vide letter dated 30.12.2020, whereafter it submitted revised settlement proposal to Respondent No. 2 on 13.1.2021, which was again rejected by Respondent No. 2. Again vide e-mail dated 25.2.2021, a revised scheme of restructuring and OTS was submitted by the Appellant to the Respondent No. 2 bank but this was also found unsatisfactory and rejected.

6. The Appellant has further stated that in the CIRP, the only Resolution Plan received from IRC Natural Resources Private Limited was considered by the CoC and put up for vote. Simultaneously, in the same CoC meeting, a proposal for liquidation was also put up and in the event the submitted

Resolution Plan was not approved the liquidation proposal would be considered and approved by the CoC. While the liquidation proposal was considered by the CoC, the Appellant again submitted a revised settlement plan vide e-mail dated 9.7.2021, which according to him, offered better returns to the creditors than what would have been available after liquidation of the Corporate Debtor.

7. Upon recommendation by the CoC, Respondent No.1 filed application under section 33 of IBC for obtaining liquidation orders from the Adjudicating Authority. The matter was listed on 11.8.2021 and reserved for orders. The Appellant has claimed that he was not aware of the action of filing application for liquidation by the Resolution Professional, and therefore he could not file any objection in the liquidation proceedings. He has further stated that after he received information of the order reserving judgment of the liquidation application he filed an application before the Adjudicating Authority for recalling the interim order passed on 11.8.2021 in the liquidation proceedings. This application was listed on 4.10.2021, when it could not be heard, and soon afterwards, the Adjudicating Authority passed orders for liquidation of the Corporate Debtor on 8.10.2021.

8, The Learned Counsel for the Appellant was heard in the matter. He has pleaded that the Appellant was not given effective opportunity to place on record his objections on section 33 application, and when the Appellant moved application for recall of the order by which judgment was reserved, he was not provided an opportunity of hearing. Therefore, the Learned Counsel has claimed, the Appellant's right to be heard in accordance with the principle of natural justice has been infringed. He has further argued that the CoC approved initiation of liquidation proceedings even though there was a valid scheme of settlement offered by the Appellant, which was financially viable and would have resulted in better returns to the creditors and should, therefore have been considered by the CoC.

9. In support of his arguments, the Learned Counsel for Appellant has placed reliance on the following judgments:-

(i) Judgment of NCLAT in Navaneetha Krishnan vs. Central Bank of India, Coimbatore [CA (AT)(Ins) No. 288 and 289 of 2018].

(ii) Judgment of NCLT, Mumbai in Satyanarayan Malu vs. SBM Paper Mills Limited [MA 1396/2018,

827/2018, 1142/2018 and 828/2018 in CP (IB) 1362(MB)/2017].

(iii) Judgment of Hon'ble Supreme Court in Reliant Alloys Pvt. Ltd. Vs. Mr. S Rajagopal and Ors.)

(iv) Judgment of NCLAT in Shaji Purshottam Vs. Union Bank of India [CA (AT) (Ins) No.921 of 2019].

(v) Judgment of NCLAT in Jai Kishan Gupta vs. Greenedge Buildtech and Ors. [CA (AT) (Ins) No. 969-970 of 2019].

10. We note that the CIRP against the Corporate Debtor was initiated vide order dated 14.2.2020 of the Adjudicating Authority. The IRP, (who subsequently became the Resolution Professional and is now the Liquidator) started prescribed actions for resolution of the Corporate Debtor. During the course of the CIRP, the Committee of Creditors (CoC), in its 13th meeting held on 16.6.2021, rejected the single resolution plan and decided that the Corporate Debtor should go into liquidation. Consequently the Resolution Professional filed an application under section 33 of IBC seeking orders for liquidation from the Adjudicating Authority.

11. We also note that the Appellant (a promoter and ex-Director of Corporate Debtor) was pursuing a One Time Settlement proposal with the Respondent No. 2 State Bank of India and in this process submitted a series of OTS proposals. The first OTS proposal was submitted by the Appellant on 21.12.2020 and after many revisions and submissions of revised proposals to Respondent No.2, the last OTS proposal was submitted by the Appellant vide e-mail dated 9.7.2021, which was also rejected by Respondent No.2. Since no settlement proposal was acceptable to the Respondent No. 2, the Appellant did not file application under section 12A of IBC.

12. It is recalled that the CIRP of the Corporate Debtor was initiated on 14.2.2020 and the decision by the CoC regarding moving for liquidation of Corporate Debtor was taken in its meeting dated 16.6.2021. Thus, there is a passage of 16 months from the initiation of CIRP to the decision by CoC to move for liquidation. The Hon'ble Apex Court has held in many judgments that proceedings under IBC should be completed in a time-bound manner. Moreover, if any resolution plan is not approved by CoC, the provision of section 33 of IBC has to kick in, with no option but to go for liquidation of the Corporate Debtor.

13. The catena of judgments cited by the Learned Counsel for Appellant (supra), relate to cases where applications were filed under section 12A of the IBC. In the instant case, no application was filed under Section 12A of IBC since there was no OTS that was acceptable to the Respondent No. 2 bank. In such an event, and in the absence of any valid settlement plan, the COC, in its wisdom, decided in its 13th meeting on 16.6.2021 (minutes of the meeting attached at pp. 111-135 of Appeal Paperbook) to move for liquidation of the corporate debtor.

14. Hon'ble Supreme Court has observed in the matter of **Gujarat Urja Vikas Nigam Limited v. Amit Gupta [(2001) 9 SCC 512]** that a "delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner". The timelines and a detailed procedure provided under the IBC is, therefore, to ensure timely completion of CIRP.

15. Hon'ble Supreme Court has held in many matters that the decision of the COC, taken in its commercial wisdom, should prevail unless such a decision has some legal infirmity.

16. The Hon'ble Apex Court has held in the matter of **Kalparaj Dharamshi versus Kotak Advisories Limited (2021 SCC Online SC 204)** that the commercial wisdom of the COC is not open to judicial intervention, unless it has some legal infirmity. The relevant extract from this judgment is reproduced below:

“150. It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by COC of approving the resolution plan or rejecting the same.

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155. This court observed, that the court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.

156. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Section 30 and 31 of the I&B Code"

17. The Ld. Counsel for Appellant has not pointed out to any legal weakness in the decision of the COC nor any infirmity in the order under section 33 of the Adjudicating Authority on which the liquidation order has been challenged.

18. In the light of the above discussion, we are not inclined to interfere with the impugned order passed by the Adjudicating Authority for liquidation of the corporate debtor. We find it entirely legal, just and proper for taking care of the interests of all the creditors. The appeal is, therefore, dismissed at the stage of admission. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
10th November, 2021

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