NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
COMPANY APPEAL (AT) (CH) (INS) NO.47/2025
(IANo.165/2025)

IN THE MATTER OF :

MR. K.S. CHOWDRY
H. No. 71639, Plot No. 9,
Model Colony, Sanjeev Reddy Nagar,
Near ESI Hospital,
Hyderabad – 500038
Email id: chowdryks@rcminfra.com **… APPELLANT**

V

MUMMANENI VAZRA LAXMI,
Liquidator, Ravi Cranes & Movers,
IBBI/IPA-001/IP-P00919/2017-2018/11526,
Plot No. 9, Model Colony, Hyderabad,
Telengana – 500038.
Email id: rcmlirp2022@gmail.com **… RESPONDENT**

PRESENT:

For Appellant	:	Mr. TK. Bhaskar, Advocate For Mr. Chirag Gupta, Advocate
For Respondent	:	Ms. Mummaneni Vazra Laxmi, Liquidator

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

Incidentally, a very short question that, emerges for consideration by this Appellate Tribunal in the instant Company Appeal is that,

"*when the proceedings of CIRP have reached the stage of Section 33(2) of* *the I & B Code, 2016, whether at all a pendency of an Interlocutory Application, seeking to be permitted to intervene in the proceedings, could create an impediment for the proceeding filed under Section 33(2) of the I & B Code, 2016."*

2. The facts which engage consideration in the instant Company Appeal, are that, the Corporate (CD), M/s. Ravi Cranes and Movers is a Corporate Guarantor for M/s. RCM Infrastructure Ltd, that a CIRP proceeding as against the 'principal borrower' i.e., M/s. RCM Infrastructure Limited, stood initiated by an order passed by the learned Adjudicating Authority on 03.01.2019 in CP(IB)/601/10/HDB/2018 and Mr.J.Manivannan was appointed to function as an Interim Resolution Professional (IRP), that on 07.02.2022 extension of CIRP was refused and liquidation was ordered in respect of the principal borrower, that on 08.03.2022 the said order of liquidation was stayed by NCLAT, Chennai Bench and that on 22.11.2024, the said order of liquidation was set aside by NCLAT in CA(AT)(Ins) No. 81 of 2022, permitting extension of CIRP period of the principal borrower by 30 days to permit consideration of the Resolution Plan.

3. Further, in respect of the Corporate Debtor, M/s. Ravi Cranes and Movers Limited, CIRP proceeding was initiated at the behest of Indian Overseas Bank, being CP(IB)36/7/HDB/2022 on 26.09.2022 and the Respondent Ms. Mummaneni Vazra Laxmi, was appointed as an Interim Resolution Professional (IRP). CIRP period was extended from time to time to permit resolution of the insolvency of

the Corporate Debtor by calling for resolution plans, but the CIRP proceedings could not be successfully completed. Because of this, on 08.04.2024 in the 21st CoC Meeting, it was resolved that, the Corporate Debtor i.e., M/s. Ravi Cranes and Movers Limited, is to be liquidated. In furtherance of the said decision of 21st CoC meeting, the Resolution Professional filed an application for initiation of liquidation proceedings of the CD (M/s. Ravi Cranes and Movers Ltd.) under Section 33(2) of the I & B Code, 2016, the application being IA(IBC)(liq)/14/2024. Section 33(2) of the I & B Code, 2016, provides for, that the Resolution Professional may at any time, during the CIRP Proceedings and before the confirmation of the Resolution Plan, intimate the learned Adjudicating Authority of the decision taken by the Committee of Creditors (CoC), which obviously, as per the statute, has to be approved by not less than 66% of the voting shares, to liquidate the Corporate Debtor, on receipt of which the learned Adjudicating Authority is to pass an order in accordance with Section 33(1) of the I & B Code, 2016. If the entire contents of IA(IBC)(liq)/14/2024, is taken into consideration, the Resolution Professional had preferred an application before the learned Adjudicating Authority, seeking an order/direction, to liquidate the Corporate Debtor i.e., M/s Ravi Cranes and Movers Limited, owing to the fact that all the processes of the resolution, have failed and there was no other option left with the Resolution Professional except to seek for to liquidate the Corporate

Debtor.

4. While IA(IBC)(liq)/14/2024, was pending consideration, M/s.Maximus ARC ltd., the assignee of the debt of Union Bank of India, filed an intervention application on 05.09.2024, bearing IA No. 34/2024 in IA(IBC)(liq)/14/2024, praying thereof that, they have been assigned with the debt of Union Bank of India, they have now not a voting share of 61.38% in the Coc and since they have the majority in CoC, the process of liquidation as contemplated under IA(IBC)(liq)14/2024, and which was recommended by CoC earlier may now be kept in abeyance till IA no. 34/2024 preferred by him, is decided on its merits.

5. In the Application thus preferred by M/s.Maximus ARC Limited, they have prayed for the following reliefs, ***"keep IA(IBC)(liq)/14/2024 in abeyance without passing any orders till the disposal of Interlocutory Application filed by the Applicant in the instant of the stakeholders of the Corporate Debtor".*** The basis of the application as preferred by M/s. Maximus ARC Limited, was on the ground that the Union Bank of India, was the lead member of the Committee of Creditors, in respect of the Principal Borrower with 61.38% voting shares, they have been assigned with the debt portfolio and security interest in respect of the 'Principal Borrower' by the Union Bank of India, vide Assignment Deed dated 19.08.2024 and since they are in majority in CoC and they wish to explore alternative avenues of insolvency resolution instead of liquidation, it was a case of M/s. Maximus

ARC Limited that, since they have the liquidation proceedings as against the Corporate Debtor deserve to be deferred, till their IA No. 34 of 2024 was considered.

6. The M/s. Maximus ARC Limited, who was assigned with the loan on the basis of the deed of 19.08.2024, have contended in the intervention application thus preferred being IA No.34/2024 that, the present Appellant, Mr. K S Chowdry who is one of the Suspended Directors of the Corporate Debtor, in his communication of 24.08.2024, has shown his interest to submit a Resolution Plan, in respect of the Corporate Debtor M/s. Ravi Cranes and Movers Limited, and therefore liquidation proceedings may be kept in abeyance, in order to enable consideration of such resolution plan to be submitted. The learned Adjudicating Authority is said to have **reserved the order in IA(IBC)(liq)/14/2024 on 02.09.2024**. This date becomes relevant for consideration for the reason being that the application IA No. 34/2024 was preferred by M/s. Maximus ARC Limited, seeking to intervene in the liquidation proceedings of liquidation on 05.09.2024, 3 days later, to the date of order reserving the order/judgment in IA(IBC)(liq)/14/2024. Though the Applicant has mentioned IA No.34/2024, as to be an Intervention Application, there is no relief in the prayer sought in IA, where M/s. Maximus ARC Ltd, made a prayer to permit to intervene. The relief sought in IA No. 34/2024 is extracted here under:-

> *"In view of the abovementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Adjudicating Authority may be pleased to:*
>
> *a. Keep IA (IBC) (Liq) 14 of 2024 in abeyance without passing any orders till disposal of the Interlocutory Application being filed by the Applicant in the interests of Stakeholders of the Corporate Debtor and;*
>
> *b. Pass such other orders as this Hon'ble Tribunal deems fit in the interest of justice."*

7. The case of M/s. Maximus ARC Limited, the assignee of the loan by the Union Bank of India, is that in accordance with the Judgment of the Hon'ble Apex Court as rendered in ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, the objective should be to maximise the value of the assets of the Corporate Debtor so that the Corporate Debtor could be facilitated to run as a going concern and that in order to meet the aforesaid objective, the application of M/s Maximus ARC Limited ought to have been considered prior to taking any decision on IA(IBC)(liq)/14/2024.

8. The said application came up for consideration before the learned Adjudicating Authority. The learned Adjudicating while passing an order on IA(IBC)(liq)/14/2024, has observed that IA No.34/2024, preferred by M/s.

Maximus ARC Limited, for keeping the liquidation in abeyance by the Ld. Adjudicating Authority till disposal of interlocutory application owing to the Applicant having a voting share of 61.38%, will have no sustainability, owing to the fact that, the decision of liquidation has already been made by the Committee of Creditors in its 21st CoC Meeting with 100% voting shares and therefore, the pendency of IA No. 34/2024 for the nature of the relief claimed in IA No. 34/2024, will have no bearing on the decision required to be taken on IA(IBC)(liq)/14/2024. Based on the aforesaid logic, the learned Adjudicating Authority has proceeded to pass the Impugned Order, ordering liquidation of the Corporate Debtor, after considering the decision which was taken in the 21st CoC Meeting on 08.04.2024, to liquidate the Corporate Debtor by 100% voting. Thus, the process was carried as per the stipulations provided under Section 33(2) to be read with Regulation 39 of the IBBI (Insolvency of Resolution Process for Corporate Debtor) Regulations, 2016.

9. On perusal of the impugned order and particularly after hearing the learned counsels for both the parties, it is to be noted that in the Impugned Order, Ld. Adjudicating Authority has observed that, upon the declaration of the Corporate Debtor, to be placed under the CIRP Proceedings and the appointment of IRP by an order dated 26.09.2022, as passed in CP(IB)No. 36/7/HDB/2022, multiple attempts have been made by the IRP to resolve the insolvency, that the Suspended

Directors were not cooperative and had to be noticed by it to cooperate, that the CIRP period had been extended multiple times to avoid the option of liquidation, 20 meetings of CoC had been conducted to find a resolution including the option of one-time settlement and that finally in the 21st meeting CoC has resolved to liquidate the Corporate Debtor with 100% concurrence and requested the liquidator to file the necessary application for ordering liquidation of the Corporate Debtor. In view of the same and owing to the narrations and reasons which has been assigned by the Ld. Adjudicating Authority as above, the Impugned Order does not suffer from any error as it is clearly visible that all attempts have been taken to resolve the insolvency of the Corporate Debtor and when all those attempts failed, the decision to liquidate has been taken and this is fully in sync with the principle laid down by Hon'ble Apex Court in its judgment as rendered in Ghanashyam Mishra (Supra). The Impugned Order cannot be faulted on account of the pendency of IA No.34/2024, which was filed on 05.09.2024. At a point when the order was already directed to be reserved on IA(IBC)(liq)/14/2024 on 02.09.2024. Hence, the pendency of IA No.34/2024 filed by M/s. Maximus ARC Limited cannot create any restriction, as such in passing of the order of liquidation which has been passed in accordance with the provisions contained under Section 33 of the I & B Code, 2016. Further, the Impugned Order directing the liquidation of the Corporate Debtor to be carried does not suffer from any apparent error or legal vices calling for any interference.

10. Thus, the application IA No. 34/2024 is to be construed as misconceived. The Company Petition too, which has been preferred by Mr. K S Chowdry alleging himself to be a prospective applicant to the Resolution Plan is also misconceived, given the fact that several rounds of chances were given for submission of resolution plan in respect of the Corporate Debtor and he did not participate and he did not even cooperate with the Resolution Professional and now he cannot be permitted to stall the proceeding of liquidation because of the pendency of IA No.34/2024 and that too, particularly when the Applicant to the said application i.e., IA No. 34/2024, is not before this Appellate Tribunal, nor has been made as a party to the proceedings of this Company Appeal.

11. Owing to the above, the question as framed is answered in the manner that, merely because of the fact that the loan has been assigned by the Financial Creditor to M/s. Maximus ARC Limited, who had filed on IA No.34/2024, coupled with the fact that, merely because the Appellant in the capacity of being the suspended director of the Corporate Debtor, could have submitted a resolution plan, and merely because an application has been filed by M/s. Maximus ARC Limited to keep liquidation proceedings in abeyance, that in itself cannot stall the proceedings under Section 33(2) of the I & B Code, 2016. Thus, the question is

answered against the Appellant.

Hence, the **Company Appeal (AT) (CH) (Ins) No.47/2025,** lacks merit and the same is accordingly 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.04.2025
GKJ/MS/MS