

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

Company Appeal (AT) (Insolvency) No. 764 of 2022

IN THE MATTER OF:

Ravishankar Choudhary

...Appellant

Versus

Saradidnu Jena

...Respondent

Present:

**For Appellant: Mr. Sandeep Bisht and Mr. Shikhar Shrivastava,
Advocates.**

For Respondent:

**ORDER
(Virtual Mode)**

12.07.2022: Heard learned counsel for the Appellant. This Appeal has been filed against the order passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench dated 09.05.2022 by which application filed under Rule 11 of the NCLT Rules 2016 by the Appellant, a member of the Stakeholders' Consultation Committee, has been rejected.

2. The Corporate Debtor was insured with Insurance Company for 'Standard Fire and Special Perils Policy'. Fire broke out in the premises of the Corporate Debtor with regard to which insurance claim was submitted and insurance claim for an amount of Rs.4,07,08,081 was accepted and was paid to the Corporate Debtor. The CIRP process was initiated in the meantime and the Liquidator for finding out as to whether a further claim to be pursued before the Consumer Forum appointed two Surveyors to submit report for prima facie satisfaction of the Liquidator that whether proceeding for claiming further claim be initiated. After the two Surveyor Reports were received, the

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Resolution Professional took decision that there are no material to pursue claim any further on behalf of the Corporate Debtor. Hence, the Resolution Professional decided not to prosecute any further claim. The Appellant has filed an application praying for following reliefs:-

“a) to set aside the decision of the Liquidator for not initiating any legal proceedings against the Insurance Company to recover of balance insurance claim amount as arbitrary, illegal, null and void;

b) Direct the Liquidator to initiate appropriate legal proceedings against the Insurance Company for recovery of balance insurance claim amount of Rs.5,99,25,046; and

c) grant any other relief that this Hon’ble Authority may deem fit for in the interest of justice.”

3. The Adjudicating Authority considered the prayers made by the Appellant and after considering the materials on the record including the Surveyor Reports and the decision of the Liquidator was of the view that Liquidator has acted in accordance with the available information/documents and made prudent decision based on the two Surveyor Reports, documents. Information collected from the Bank pertaining to stock, etc. The said order is sought to be challenged by the Appellant.

4. It is submitted by learned counsel for the Appellant that even in the second report of Surveyor of which reference has been made, it has been observed that justification on the point has to be taken from the insured by the Surveyor. Learned counsel for the Appellant pointed out that the Opinion

Report dated 20.12.2021 which was referred has been filed at page 145 of the paper book.

5. We have gone through the said Opinion Report filed by the Insurance Surveyor. The report records the opinion that no further claim be pursued on behalf of the Corporate Debtor. It is clear that on the basis of both the Surveyor Reports alongwith materials on record the Liquidator has taken decision not to pursue insurance claim any further.

6. In this context, we may refer to Section 35 of the I&B Code which deals with powers and duties of Liquidator. Liquidator is statutorily empowered to take such measures to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary and further he is empowered to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the Corporate Debtor. In this context, Section 35(1)(d) and (k) are to the following effect:-

“35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

x x x

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

x x x

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;”

7. The Liquidator having statutory power and having taken decision on the basis of the information and materials available including the two Surveyor Reports, we see no error in the decision of the Liquidator warranting any interference in exercise of our Appellate Jurisdiction. When the Adjudicating Authority has after going through Surveyors Report, decision of the Liquidator and materials on record has affirmed the decision taken by the Liquidator, we see no reason to interfere with the decision. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Archana/nn