NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No.2159 of 2024

12.08.2025

Present: Mr. N. Seshasayee (Judicial Member)
Mr. Arun Baroka (Technical Member)
Indevar Pandey (Technical Member)

In the matter of:

STROS-Sedlcanske Strojirny, a.s. ...Appellant

Vs

Poonam Basak, ...Respondent
IRP for STROS Esquire Elevators & Hoists Pvt. Ltd.

For Appellant: Mr. Anandh K, Mr. Ang Bajaj, Ms. Vashita Sharma, Advocates

For Respondent: Mr. Poonam Basak, IRP

ORDER

(Hybrid Mode)

This Appeal is preferred challenging an Order passed in I.A. No.783 of 2022 by the IRP in C.P. (IB) No.308 of 2020 by the NCLT, Ahmedabad.

2. The facts are as below:

a) The appellant has initiated a CIRP proceedings against M/s. STROS Esquire Elevators & Hoists Pvt. Ltd. The CD was incorporated as a joint venture vehicle based on a joint venture agreement entered into between the appellant and another company. In the CD the appellant holds 50% shares. Besides it has also advanced certain loans. Since the loan amount was not repaid, CIRP was set in motion against the CD. On 5.8.2022, CIRP was admitted and IRP was appointed.

b) The IRP found that there is only one financial creditor and no Operational Creditor and inasmuch as the appellant is a shareholder in the CD company, it is a related party and hence could not constitute the CoC, and filed I.A. No.783 of 2022 before the Adjudicating Authority seeking its directions in the matter.

c) The Adjudicating Authority appointed Mr. Saurabh Soparkar, Sr. Advocate, as an amicus curiae. He suggested liquidation of the CD Company as the only option available within the scheme of IBC and also relied on couple of Orders of other NCLTs to support his views.

d) The adjudicating authority, however, chose not to direct liquidation of the CD but directed the appellant to withdraw the CIRP. Aggrieved by the turn of events, the appellant is now before this Tribunal in this Appeal.

3. The learned Counsel for the appellant made the following submissions:

a) That the statutory embargo against constituting a CoC with a related party through the first proviso to Sec.21(2), is explained in ***Phoenix ARC Private Limited Vs Spade Financial Services Limited and Others*** [(2021) 3 SCC 475] where the Hon'ble Supreme Court has held that it is intended to obviate conflicts of interest which are likely to arise in the event of a related party becoming part of the COC. However, the legislature has not anticipated a situation of a related party – financial creditor with no other creditors of any kind and hence constituting the CoC with the sole financial creditor, even though related to the CD would still be in tune with the statutory intent behind the first proviso to Sec.21(2) of the IBC as there is hardly any possibility for any conflict of interest as pointed out in the ***Phoenix ARC case.***

b) At any rate, the Adjudicating Authority should not have ordered liquidation of the company. What the adjudicating authority now attempted is to restore status quo ante as was prior to the initiation of the CIRP. This would leave the appellant stranded and remediless within the legal system.

4. The RP appeared online and in person and concurred with the submissions of the counsel for the appellant that barring the appellant, the CD has no other creditors of any class or category. To a pointed query from us, the RP answered that CD is not operational now and is not running. The Counsel for

the appellant also submitted that CD is not operating. However, in her affidavit supporting I.A.783/2022, the RP had not indicated this fact.

5. The issue is how to remedy a sole related party-financial creditor's plight within the framework of the IBC. The learned counsel's submission to accommodate such financial creditor in the CoC based on ***Phoenix ARC*** case is impressive, but it requires this Tribunal to provide casus omissus, something Courts in general are wary of doing. Where there is any ambiguity in a provision of the statute or difficulty in harmonizing provisions within the statute, to iron out the creases, Courts resort to interpretative techniques, but still stay reluctant to supply what the legislature has omitted to do. It is something for the legislature to consider, and this Tribunal, though appreciate the argument of the learned counsel for the appellant, still may not engage in such overreaching exercises.

5.1 What answers has the IBC to offer to the appellant? If the statement of the RP were to be trusted, she has stated that the CD is not a going concern and it is now a company with no commercial activity and is waiting to die. Therefore, it a resolution process may not be attempted, for a resolution process aims to protect a going concern or a running company with stressed assets but not a company in coma with no commercial activities, though there may not be inherently wrong in attempting one. Necessarily the process should now move to liquidation.

5.2 Let the alternate scenario be considered. Even if the CD has commercial existence, still in a scenario where a CoC could not be constituted then the resolution process can never commence. After all, constituting the CoC is central to the theme of resolution process and the IBC has not provided for commencing a CIRP without the CoC at the helm of the said process. The only avenue then open is to pursue liquidation.

6. Looking the issue from both the aspects stated above, the option open is to direct liquidation of the CD. So far as the impugned Order is concerned, this tribunal is not in agreement with the conclusion of the Adjudicating Authority. It has created an impasse. It must be underscored that no judicial fora which may include the Tribunals can declare its helplessness to remedy a situation and leave the one who approaches it stranded without a solution. Necessarily, the Order now under challenge is liable to be interfered with.

7. In conclusion, this appeal is allowed and the Order of the Adjudicating Authority dated 06.09.2024, in I.A.783/2022 in C.P.(IB) 308 of 2020 on the file of NCLT, Ahmedabad is set aside, and this tribunal directs liquidation of the

corporate-debtor. The matter is now remanded back to the Adjudicating Authority, and it is now required to appoint a liquidator in terms of the relevant provisions of the IBC and continue the liquidation process as envisaged in the Code.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

rs/sk