

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins) Nos. 517 of 2021**

In the matter of:

**M/s. Unicon Buildtech
(Prospective Resolution Applicant)
009, Sai Plaza, 187-188, Sant Nagar
East of Kailash, Delhi-110065
Email: uniconbuildtech2007@gmail.com
Ph.: 9810113153, 9582955871
(Through its Authorised Representative Suresh
Kumar Gupta)**

....Appellant

Vs.

**Aishwarya Mohan Gahrana
Resolution Professional,
Durha Vitrak Private Limited
4, Birbal Marg, 2nd Floor,
Jangpura Extension, New Delhi- 110014
Email: aishwaryam_gahrana@yahoo.com,
cirp.durha@gmail.com**

...Respondent

**For Appellant: Mr. Atul Sharma, Ms. Renuka Iyer and Mr. Aditya
Vashisth, Advocates.**

ORDER

(Through Virtual Mode)

12.08.2021: Seen orders dated 26th July, 2021 and 6th August, 2021 of ours. Counsel states, he has filed amended Appeal. For convenience we take up the Amended Appeal from Diary No.28565 where amendment was allowed.

2. Heard Counsel for the Appellant. The Appellant- 'M/s. Unicon Buildtech' has filed this Appeal against impugned order passed in IA/901/2021 in CP (IB)/470(ND)/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) on 31st May, 2021. The

Adjudicating Authority by the said impugned order allowed the Application filed by the Resolution Professional seeking liquidation of the Corporate Debtor ('Durha Vitrak Private Limited'). The Appeal claims and the Learned Counsel is pointing out that the Appellant is a prospective Resolution Applicant who participated in the Corporate Insolvency Resolution Process (CIRP) proceedings and the Resolution Professional had accepted the Appellant as prospective Resolution Applicant. The Appellant had submitted Resolution Plan along with earnest money. The Resolution Plan submitted was revised alongwith addendums submitted by the Appellant in view of the discussions with Committee of Creditors (CoC). The grievance of the Appellant is that in such background when 6th CoC meeting was going to be held on 28th January, 2021 via virtual mode, the Appellant, on 27th January, 2021 (one day before the 6th CoC Meeting was to be held virtually) had vide e-mail sent to the Respondent- Resolution Professional conveyed unavailability of the professional team of the Appellant which was required for the presentation of the revised Resolution Plan before members of the CoC and to address query. The Appellant had conveyed that due to farmer's protests around Delhi NCR, the professional team was stuck at different locations without proper network facility and so the meeting should be postponed.

3. Appellant claims that inspite of such e-mail, the CoC in 6th meeting rejected the Resolution Plan submitted by the Appellant. The Appellant claims that the CoC and the Resolution Professional acted arbitrarily to suit the vested interests of creditors and in defiance of the objectives of the IBC,

rejected the Resolution Plan of the Appellant. The Appellant claims that the Appellant was offering the Resolution Plan of Rs.77 Crores against total debt of Rs.52 Crores of the Corporate Debtor and thus, his plan was required to be considered.

4. It is argued for the Appellant that after such meeting on 28th January, 2021, the Resolution Professional filed Application I.A 910/2021 to approve the liquidation of the Corporate Debtor. According to the Appellant, the Appellant filed I.A 1625/2021 on 26th March, 2021 seeking opportunity from Adjudicating Authority to present Resolution Plan of the Appellant before CoC. The Learned Counsel for the Appellant is arguing that while I.A 1625/2021 was still pending, the Adjudicating Authority has passed impugned order without considering the pending I.A 1625/2021 filed by the Appellant. Because of the liquidation order passed, the I.A filed by the Appellant has become infructuous. Thus, the present Appeal.

5. Having heard Learned Counsel for the Appellant, we have perused the record. At Annexure A-14 filed with Application for Amendment of the Company Appeal (Diary No.28565), there are Minutes of 6th CoC Meeting dated 28th January, 2021. Item No.9 of the said Minutes (relevant regarding Appellant) reads as under:-

“ITEM No. 9: Presentation on Resolution Plan by Resolution Applicants:

- I. Unicon Buildtech; and***
- II. Lala Munni Lal Mange Ram Charitable Trust***

I. Unicon Buildtech

The Resolution Professional informed the Committee that Unicon Buildtech by writing their mail dated 27 January 2021 at 8.40 PM requested to postpone their presentation for next week due to farmer agitation and internet connectivity. However, the committee decided to consider their resolution plan submitted and connect Mr. Suresh Kumar Gupta, Partner of Unicon Buildcon over the phone call (Mobile Number +91 9818752752) made by the Resolution Professional.

The committee discussed this Resolution Plan clause by clause. The committee rejected the resolution plan after discussion recording the following reasons:

- a. It is a conditional Resolution Plan.*
- b. The resolution applicant introducing a revenue model under which it will earn revenue and therefrom proposes to pay creditors from revenue so generated;*
- c. In case of no revenue or failure of their model, no creditors will receive any amount.*
- d. There was nothing to make sure of the performance.*
- e. There is no experience of the Resolution Applicant to run a hospital.*
- f. In the partners of this resolution applicant, there is no doctor. All three partners are business persons dealing in real estate.*
- g. It is mentioned that one Dr Chandra Shekhar will have 10% shareholding in the corporate debtor, but there are no documents to show consent of said Dr Chandra Shekhar.*
- h. There is no proposal of upfront payment to creditors and there is no clarity of the period in which the resolution applicant proposes paying an upfront payment.*
- i. There is no security proposed to provide for creditors.*

j. In clause 6 of the implementation schedule, the resolution applicant seeks the hospital on a Lease during the term of the Resolution Plan.

k. The resolution applicant introducing a revenue model under which it will earn revenue and therefrom proposes to pay creditors from revenue so generated;

l. The resolution applicant does not satisfy the condition of financial capability.

m. The resolution plan was not in the prescribed format.

n. In the above manner, this resolution plan does not confirm the requirement of the Code and regulations made thereunder.

o. In the evaluation matrix, this resolution applicant received very low marks.

p. This resolution applicant seeks additional time to clarify and update his resolution plan and even failed to utilise two months available during the stay on the consideration of the resolution plans.

q. It was not clear for what purpose they are proposing to pay an amount to existing shareholders of the corporate debtor.

r. The resolution plan is a mere ploy to shift the creditor controlled insolvency resolution to debtor controlled corporate debtor leaving creditors at the mercy of corporate debtor and resolution applicant.”

In the same Minutes, Item No.11 reads as follows:-

“ITEM No. 11: In case of the eventuality of failure of all the resolution plan so submitted, to discuss and consider the filing of an application with the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench under Regulation 33(2) of IBC, 2016, for

the initiation of liquidation and/or dissolution of the corporate debtor and to appoint the existing resolution professional as the liquidator and to fix the fee of liquidator thereof.

The committee discussed the liquidation and liquidation process. The committee also discussed the impact of the liquidation on the Corporate Debtor and possibility of realization of assets of the Corporate Debtor.

The following resolution was placed before the committee of creditors to be voted through E-Voting:

“RESOLVED THAT in pursuant to Section 33 (2) of IBC 2016 and the rules made thereunder, the consent of members of the Committee of Creditors be and is hereby accorded to approve the filing of an application with Hon'ble Adjudicating Authority, regarding the initiation of liquidation of Corporate Debtor and to appoint the existing Resolution Professional, subject to given his consent to act as liquidator, as the liquidator of the Corporate Debtor.

RESOLVED FURTHER THAT in pursuant to Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016, the liquidator shall be entitled to a fee of Rs.1,25,000/- (Rs. One Lakh Twenty Five Thousand only per month).

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to submit an application before the Hon'ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”

6. The Appeal itself shows that the Appellant had been participating in the CIRP and had on earlier occasion also filed revised plan. The CoC in the

Minutes considered e-mail claimed by the Appellant to have been sent on 22nd January, 2021 and having considered e-mail decided to proceed to consider the Resolution Plan which had been submitted clause by clause. The CoC in its wisdom did not find it appropriate to give more time to the Appellant and discussed the Resolution Plan and rejected the same for reasons recorded. These are commercial decisions and we cannot hear the Appellant claiming that he was offering bigger amount and so the CoC should be directed to consider his plan. In Judgment in the matter of “*Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors.*” [Civil Appeal No. 9402-9405 etc. of 2018] Judgment of the Hon’ble Supreme Court dated 4th October, 2018 (MANU/SC/1123/2018), the Hon’ble Supreme Court in para 79 of the judgment has observed that there is no vested right or fundamental right in the Resolution Applicant to have its Resolution Plan approved. In the present matter, the CoC considered and in its wisdom did not grant further time and rejected the Resolution Plan. As such, we do not find any reason to interfere in the impugned order only on the basis that the Appellant had filed an I.A before the Adjudicating Authority and the Adjudicating Authority without deciding the I.A passed order of liquidation.

7. In this matter, Section 7 Application was admitted on 8th November, 2019 and the order of liquidation came to be passed on 31st May, 2021. Keeping Section 12 of the IBC in view and the time frame within which CIRP should be completed, we do not find the Appellant making out any case for us to entertain the Appeal if liquidation order has been passed.

8. For reasons mentioned above, we decline to entertain the Appeal. The Appeal is disposed of, accordingly.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[V.P. Singh]
Member (Technical)

Anjali/g