

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 51 of 2024

[Arising out of order dated 22.11.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I, Mumbai in I.A. No. 266 of 2023 & I.A. 1290 of 2023 in CP (IB) No. 4071/MB/2018]

In the matter of:

Majestic Auto Limited,

Registered address :
10 Southern Avenue First Floor,
Maharani Bagh,
South Delhi, Delhi- 110065
grievance@majesticauto.in

...Appellant

Versus

1. Sharan Hospitality Private Limited

Registered address:
Ground Floor, Gys Infinity, Paranjpe 'B'
Scheme, Subhash Road, Vile Parle (East),
Mumbai, Maharashtra- 400057
comsec@priusgroup.com

....Respondent no.1

2. Axis Bank

Through Mr. Prakash U. Prabhakar Rao,
General Power of Attorney Holder and Authorised Person
Registered address:9+
Axis House C-2,
Wadia International Centre,
Panduranga Budhkar Marg,
Worli Mumbai- 400057
corporate.ib@axisbank.com

....Respondent no.2

Present :

For Appellant : Mr. Swapnil Gupta, Mr. Abhinav Mishra, Mr. Vaibhav Mendiratta, Advocates.

For Respondents : Mr. Abhinav Vashisht, Sr. Advocate with Ms. Akshita Sachdeva Jaitley, Mr. Ajay Bhargava, Ms. Trishala Trivedi, Ms. Phalguni Nigam, Advocates for R-1.

Mr. Abhijeet Sinha, Sr. Advocate with Ms. Shally Bhasin, Mr. Chaitanya Sagaya, Mr. Prateek Yadav, Ms. Rachna Dubey, Advocates for R-2.

J U D G M E N T
(Hybrid Mode)

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 22.11.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in I.A. No. 266 of 2023 filed by the Successful Resolution Applicant seeking exclusion of time from 13.12.2021 till date of filing the I.A. from the time period of eighteen months provided in the resolution plan and for extension of time for implementation of the resolution plan alongwith and I.A. 1290 of 2023 filed by the Financial Creditor-Axis Bank seeking liquidation of the Corporate Debtor in CP (IB) No. 4071/MB/2018. By the same impugned order, the Adjudicating Authority disposed of both the I.A.s in a combined manner declaring that the implementation of the resolution plan of the Successful Resolution Applicant has failed and ordered liquidation of the Corporate Debtor. Aggrieved by this impugned order, the Successful Resolution Applicant has preferred this appeal.

2. Outlining the sequence of events, Shri Swapnil Gupta, the Learned Counsel for the Appellant submitted that the Corporate Debtor-M/s Sharan Hospitality Pvt. Ltd. was admitted into insolvency on 08.05.2019. During the CIRP of the Corporate Debtor, Majestic Auto Ltd. emerged as the Successful Resolution Applicant (**'SRA'** in short). The Resolution Plan of the SRA-Appellant was approved by the Committee of Creditors (**'CoC'** in short) on 30.01.2020 and by the Adjudicating Authority on 15.04.2021. It is contended that it is a matter of record that the Resolution Plan of the SRA which was approved by the Adjudicating Authority on 15.04.2021 had taken due cognizance of the fact that there were certain ongoing litigations and this aspect was duly factorised into the implementation of the resolution plan which provided for 18 months' time-frame for commencement of the implementation of the resolution plan.

3. It is further submitted that even prior to the initiation of CIRP of the Corporate Debtor, M/s Daiichi Sankyo Co. Ltd. (**'Daiichi'** in short) had approached the Hon'ble Delhi High Court in connection with a decree held against the promoters of the Corporate Debtor. In one of the I.A.s bearing No. 14553 of 2018 filed by Daiichi seeking impleadment of garnishees for execution of decree, the Hon'ble Delhi High Court passed an order impleading 56 entities including the Corporate Debtor. This order was passed on 28.05.2019 which was subsequent to the initiation of CIRP of the Corporate Debtor. The other IA No. 14554 of 2018 was filed for seeking certain directions against the garnishees in which the Hon'ble Delhi High Court passed an order on 13.11.2018 *inter alia* restraining the Corporate

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Debtor-Respondent No.1 from transferring or creating any third-party interest in its immovable properties. This order was passed prior to the initiation of CIRP of the Corporate Debtor. In yet another subsequent order dated 27.09.2019, the Hon'ble Delhi High Court restrained the garnishees including the Corporate Debtor by ordering that they "*shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets*" except in the ordinary course of business.

4. Completing the chronological narrative further, it has been submitted by the Learned Counsel for the Appellant that since the Corporate Debtor had been admitted into CIRP, the Corporate Debtor filed E.A. No. 861 of 2019 to seek modification of the orders dated 13.11.2018 and 27.09.2019 to the extent that restraint placed on them from transferring their assets be eliminated so that resolution of the Corporate Debtor could take place. It was submitted that the Hon'ble Delhi High Court in its orders dated 15.01.2020, after acknowledging the ongoing moratorium, simply observed that no further orders are required to be passed.

5. However, as per the resolution plan of the SRA, it was possible for the SRA to effectively take over the assets of the Corporate Debtor to implement the resolution plan only after the orders of injunction by the Hon'ble High Court of Delhi was modified or vacated. Since the resolution plan provided that the plan was to be implemented after vacation of the orders of the Hon'ble Delhi High Court dated 13.11.2018 and 27.09.2019, the Resolution Professional ('**RP**' in short) of the Corporate Debtor filed E.A. No. 898 of 2021

before Hon'ble Delhi High Court seeking vacation of the above two orders. The Hon'ble Delhi High Court on 28.10.2021 vacated the said orders and stated that such restraint would not apply to the implementation of the resolution plan as approved by the Adjudicating Authority on 15.04.2021. It was also held that the Hon'ble Delhi High Court while executing a decree would not be in a position to disturb the decision arrived at by the CoC and the Adjudicating Authority since the statutory provisions of IBC and the Rules/Regulations framed thereunder stipulate strict time-lines to be adhered by all parties.

6. Elucidating on the developments further, it was submitted that aggrieved by the orders of the Hon'ble Delhi High Court of 28.10.2021, the same was challenged by Daiichi before the Hon'ble Supreme Court in an SLP No. 20041 of 2021. The interim prayers sought by Daiichi before the Hon'ble Supreme Court in Para 8 which is relevant to be noticed is as reproduced here-under :-

“A. Pass an ad-interim/ ex-parte order staying the Impugned Order dated October 28, 2021, passed by the Hon'ble High Court of Delhi at New Delhi in O.M.P. (EFA) (COMM) NO.6 OF 2016 Ex. Appl. (OS) 898/2021 titled as 'Daiichi Sankyo Company Ltd. v. Malvinder Singh Mohan & Ors.;

B. Pass an order staying any and all proceedings emanating from the Impugned Order dated October 28, 2021, pending final hearing and disposal of the present Special Leave Petition subject to such terms and conditions as this Hon'ble Court may deem fit and necessary; AND

C. Pass any other or further orders as may be deemed fit and proper in the interest of justice.”

7. The Hon'ble Supreme Court on 13.12.2021 granted the ad-interim stay as prayed by Daiichi and the said orders are as reproduced hereunder:

“Pending further consideration, there shall be ad interim stay in terms of paragraphs 8(a) and (b) of the Special Leave Petitions.”

It was vehemently contended by the Appellant that from a reading of the above orders, it is adequately clear that the Hon'ble Apex Court stayed “any and all proceedings” consequent to and arising out of the orders of the Hon'ble Delhi High Court dated 28.10.2021.

8. Consequent upon the stay order granted by the Hon'ble Supreme Court, it was asserted that the SRA-Appellant was not in a position to execute the resolution plan and therefore filed I.A No. 266 of 2023 seeking exclusion of the period from 13.12.2021 being the date on which interim stay was granted by the Hon'ble Apex Court until the date of filing of the I.A. No. 266 of 2023 from the 18 months' time frame provided for commencement of the implementation of the resolution plan. In the alternative, the SRA prayed for an extension of the period for implementing the resolution plan by extending it until 30 days from the final disposal of the matter pending before the Hon'ble Supreme Court.

9. It was also added that while on the one hand the SRA had approached the Adjudicating Authority vide I.A. No. 266 of 2023 seeking to exclude time for implementation of the resolution plan, on the other hand, the Respondent No. 2-Financial Creditor had approached the Adjudicating Authority vide I.A. No. 1290 of 2023 seeking liquidation of the Corporate Debtor stating grounds of non- implementation of resolution plan by the SRA. The Adjudicating **Company Appeal (AT) (Insolvency) No. 51 of 2024**

Authority dismissed I.A. No. 266 of 2023 and allowed I.A. No. 1290 of 2023 approving liquidation of the Corporate Debtor. Pursuant to orders passed in I.A. No. 1290/2023, the Liquidator appointed by the Adjudicating Authority took into custody and control all assets, properties being the custodian of the Corporate Debtor.

10. It is the case of the Appellant that non-implementation of the plan resulting from the imposition of stay by the Hon'ble Apex Court cannot be deemed to be a breach of the plan by SRA as this aspect has been clearly outlined in the resolution plan as approved by the Adjudicating Authority in its orders of 15.04.2021. Under such circumstances, when the SRA could not commence implementation of the resolution plan in deference to and in compliance with the orders of the Hon'ble Supreme Court, the I.A. No. 1290 of 2023 filed by Respondent No.2-Axis Bank seeking liquidation of the Corporate Debtor on account of non-implementation of the resolution plan could not have been allowed by the Adjudicating Authority. Assailing the impugned order, it has been contended that the Adjudicating Authority had committed an error in failing to recognise the necessity to allow extension of time-period for the implementation of the resolution plan in view of the stay order of the Hon'ble Supreme Court.

11. It was also emphatically asserted that the liquidation is to be contemplated as the last resort in the scheme of IBC. The scheme of IBC prioritises insolvency resolution over liquidation. In the present facts of the case, the Adjudicating Authority should have noted that the SRA is ready

and willing to fulfil its obligations for implementation of the resolution plan after vacation of the stay order granted by the Hon'ble Supreme Court. To prove their *bonafide*, the Appellant also submitted that they would ensure 100% recovery for Respondent No.2-Axis Bank of their dues as per terms of the resolution plan.

12. Further, it was submitted that orders of the Adjudicating Authority for initiation of liquidation proceedings during the subsistence of stay granted by the Hon'ble Supreme Court amounts to undermining the jurisdiction of the Hon'ble Apex Court. It was also added that the impugned order violates the well-settled principle of law that "the act of the court shall harm no man" as has been laid down by the Hon'ble Supreme Court in ***Arcelor Mittal Pvt. Ltd. v. Satish Kumar Gupta & Ors. (2019) 2 SCC 1.***

13. We have heard Shri Abhinav Vashisht, Learned Senior Counsel appearing on behalf of the Respondent No. 1-RP and Shri Abhijeet Sinha, Learned Senior Counsel appearing on behalf of the Respondent No.2. Since the arguments advanced by them are on the same lines, we have considered them together. Countering the submissions made by the Appellant, it has been contended by the Learned Senior Counsels for the Respondents that though the resolution plan was contingent upon vacation of the stay orders passed by the Hon'ble Delhi High Court and the Hon'ble Supreme Court, nevertheless, one cannot be unmindful that there was an overriding clause as outlined in paragraphs 6 and 8 of the 'Basic Assumptions' in the resolution plan of the SRA which provided for a hard-stop period of 18

months. Highlighting these clauses enshrined in the '*Basic Assumptions*' which provided for a time span of 18 months from the date of approval of the resolution plan to implement the same, it was submitted that the said time frame of 18 months was exhaustive and inclusive of the entire time-period that could be taken for vacation of the court orders to implement the plan. The very fact that the SRA had approached the Adjudicating Authority for seeking extension and/or exclusion of time for implementation of the resolution plan also shows that the Appellant was pretty much aware of the hard-stop period of 18 months contemplated under the resolution plan for its implementation in case of the possibility of the stay orders not being vacated.

14. It was further contended that the resolution plan also contemplated that timely action was imperative so as to preserve the value of assets for all stakeholders and hence a hard-stop period was stipulated to ensure the economic viability of the resolution process. However, in the present case, there has been a lapse of more than 21 months since approval of the resolution plan. Yet no constructive progress has been made in implementation of the plan. This had resulted in the Corporate Debtor continuing to incur losses and suffer deterioration in the value of assets. It was pointed out that the stalemate in the implementation of the resolution plan was only beneficial to the SRA while the Financial Creditor has not been able to recover its claims in spite of a lapse of 3 years. Under such circumstances, the Respondent No.2 as the sole member of CoC was justified in seeking directions from the Adjudicating Authority to initiate liquidation

process against the Corporate Debtor in terms of Section 33 of the IBC and for declaration that the approved resolution plan filed by the SRA stood lapsed. It was also emphasized that the commercial wisdom of the CoC must be given fullest respect.

15. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

16. Before we dwell upon the rival contentions of both parties to arrive at our considered findings, we would like to visit the relevant clauses of the “*Basic Assumptions*” contained in the resolution plan and how impugned order of the Adjudicating Authority in its orders approving the resolution plan on 15.04.2021 had dealt with these “*Basic Assumptions*” in the light of the ongoing litigations.

17. The relevant clauses of the “*Basic Assumptions*” of the SRA while submitting the Resolution Plan which has been adverted attention to by both the parties are as reproduced below:-

“The Resolution Plan, submitted herein below is based on the following premises that go to the root of the Resolution Plan submitted herein under:

4(a) The RP and COC are aware of the order dated 28.05.2019 passed by the Hon’ble High Court of Delhi in IA 14553/2018 in the matter of Daiichi Sankyo Company Limited v. Malvinder Mohan Singh & Ors. Being (O.M.P.(EFA)(COMM) 6/2016) (“HC Matter”), whereby the Corporate Debtor has been made a party as garnishee in the proceedings in the HC Matter. Also, in IA 14553/2018 in the HC Matter, the Hon’ble High Court of Delhi has, vide order dated 27.09.2019 restricted the Corporate Debtor from, inter-alia disposing off,

alienating, assets encumbering or otherwise parting with possession of any assets except in ordinary course of business. Further, the Hon'ble High Court of Delhi has in IA 14554/2018 In the HC Matter passed on order dated 13.11.2018 in IA 14554/2018 and has thereby: directed the Corporate Debtor/agents to "neither transfer, nor create any third-party interest in the immovable properties owned by the said entitles/agents."

(b) In the light of the aforesaid, there may be an impediment in implementing the resolution plan for the Corporate Debtor until the Interim orders dated 13.11.2018 and 27.09.2019 ("Stay Order") are vacated or modified appropriately, allowing the resolution plan to take effect or the proceedings reach final conclusion in favour of CD.

(c) It has been informed that the RP, on behalf of the Corporate Debtor, has already filed an application being EA No. 861/2019 in OMP (EFA) (Comm) No. 6/2016 before the Hon'ble Delhi Court seeking vacation or modification of Stay Orders.

(d) It is clarified that vacation or modification of the Stay Orders shall mean that the Stay Orders are either vacated or modified appropriately by the Hon'ble Delhi High Court in such a manner as to allow for the implementation of the Resolution Plan by lifting any restrictions on disposing off, alienation, encumbering of the assets of the Corporate Debtor.

(e) The vacation or modification of Stay Orders shall also include an order passed by a Higher Court in relation to the same subject matter. Provided that any appeal filed against the order of the Hon'ble Delhi High Court by Daiichi Sankyo Co. Ltd. or any other party to a Higher Court shall be preferred within the statutory period of limitation. Therefore, if no appeal is filed by Daiichi Sankyo Co. Ltd. or any other party within the prescribed statutory period of limitation, since there will be no injunction or stay operating against the assets, the resolution applicant will complete the implementation of the plan as per its implementation schedule. It is clarified that if an appeal is filed after the passage of permissible period with prayer to condone delay, the implementation period shall be put on hold on filing of such appeal. Upon favourable outcome

of appeal, if any, the remaining implementation period shall start or the plan shall be implemented in 30 days, whichever is more.

5. As such, the present Resolution Plan is based on and subject to the assumption and understanding that the Corporate Debtor and its assets are available for implementation of the Resolution Plan, subject to vacation or modification of the Stay Orders vis-i-vis the Corporate Debtor. Further, subsequent to vacation or modification of the Stay Orders and the Implementation of the Resolution Plan, in the manner provided herein, the HC Matter shall not Impact the running/operations of the Corporate Debtor/ Resolution Applicant and that there will no additional financial liability or impediment on usage or disposal of assets by the Corporate Debtor/ Resolution Applicant as an effect of the HC Matter.

It is understood that, the Resolution Applicant is desirous of resolving the Insolvency of the Corporate Debtor but all parties are bound by the orders passed by the Hon'ble High Court of Delhi and as such, while the Resolution Applicant guarantees its participation in the corporate insolvency resolution process for the Corporate Debtor and presses for approval of its resolution plan, the said Resolution Plan can only be implemented on the availability of assets for disposal to the RP/COC/Resolution Applicant either by way of vacation or modification of the Stay Orders or otherwise, in the manner specified in paragraph 4 above.

6. It is understood that accordingly, the implementation of the Resolution Plan will only follow vacation or modification of Stay Orders by the Hon'ble High Court of Delhi or any Higher Court in the manner provided in paragraph 4 above.

The Resolution Applicant submits that, if the Stay Orders are not vacated/ modified by the Hon'ble High Court of Delhi or any Higher Court, as the case may be, only then shall the present Resolution by Plan lapse and the Bid Bond Guarantee and/or performance guarantee furnished by the Resolution Applicant shall be duly returned to the Resolution Applicant. The Resolution Applicant shall not be held responsible for lapse of

such plan and the same will not be treated as a case of non-performance of the resolution plan by the Resolution Applicant.

8. In the event, the implementation of the plan does not start within 18 months from the date of approval of the Resolution Plan by NCLT, the RA will mutually discuss with RP and secured financial creditor of the Corporate Debtor regarding further action. Any proposal/agreement to not extend the term of the Resolution Plan at that stage shall not be treated as non-implementation of the Resolution Plan. In case of any disagreement between the RP, secured financial creditor of the Corporate Debtor and the Resolution Applicant, the secured financial creditor and/or the resolution applicant may at their sole discretion consider filing an application before the Hon'ble NCLT to seek directions.”

(Emphasis supplied)

18. If the above clauses of 'Basic Assumptions' which are integral to the resolution plan are read in a composite manner, it is manifestly clear that the CoC as well as the Adjudicating Authority while approving the plan of the SRA were fully alive to the fact that the resolution plan will lapse only when the stay orders are not vacated/modified by the Hon'ble Delhi High Court or any higher court and that implementation of the plan will only follow vacation or modification of the stay orders by the Hon'ble Delhi High Court or any higher court. It is noteworthy that Clause 4(e) of the 'Basic Assumptions' also provides that in case any appeal is filed against the stay orders, the implementation period shall be put on hold.

19. It is now pertinent at this stage to note the orders of the Adjudicating Authority dated 15.04.2021 as passed while approving the resolution plan of the SRA. The relevant excerpts of the order are as reproduced hereunder:

"12. It is submitted that the implementation of the Resolution Plan is dependent on vacation/modification of the stay orders dated 13 November 2018 and 27 September 2019 ('Stay Orders') passed by the Hon'ble High court of Delhi in IA Nos. 14554/2018 and 14553/2018 in the matter of Daiichi Sankyo Company Limited v. Malvinder Mohan Singh & Ors. (OMP (EFA)(COMM.) 6/2016) ('Daiichi proceedings'). The Corporate Debtor was made a garnishee vide a separate order dated 28 May 2019 passed in the Daiichi proceedings. Subsequently, under the Stay Orders, interim injunctions were passed against the Corporate Debtor in relation to its assets.

13. Pursuant to the above, the Applicant, on behalf of the Corporate Debtor had filed an application being EA No 861/2019 in the Daiichi proceedings seeking vacation and/or modification of the Stay Orders. However, in view of the ongoing CIRP, the Hon'ble High Court refused to pass any orders in the said Application noting that the execution proceedings cannot continue against the Corporate Debtor till the continuance of the moratorium by operation of law.

14. In view of the above, the Resolution Plan would be implemented once the stay orders are vacated or modified to allow such implementation. It is also understood that in case the implementation of the Resolution Plan does not commence within 18 (eighteen) months from the date of its approval by this Tribunal, the Resolution Applicant would discuss the further course of action with the Applicant and CoC. Any proposal/agreement not to extend the term of the implementation of Resolution Plan at that stage shall not be treated as non-implementation of the Plan."

(Emphasis supplied)

Having perused the above orders of the Adjudicating Authority approving the resolution plan we also notice that the same not having been challenged, the same had acquired finality thereby vesting a right in favour of the SRA to acquire the Corporate Debtor. The contention of the SRA therefore is that the same vested right therefore cannot be taken away except in accordance with law, that is only if non-compliance of requirements specified under Section 31 is shown which the Respondent No. 2 has failed to substantiate.

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20. It is further the case of the Appellant-SRA that they have been unable to implement the resolution plan solely and wholly on account of the interim orders of the Hon'ble Supreme Court. Moreover, this possibility of delay in implementation of the plan has been explicitly provided for and contemplated in the resolution plan as approved by the Adjudicating Authority. Hence the delay in the implementation of the plan being on account of the stay granted by the Hon'ble Supreme Court, it cannot be held to constitute a violation of the plan or wilful non-implementation of the resolution plan on the part of the SRA.

21. Per contra, it has been contended by the Respondents that the scope of the order of the Hon'ble Supreme Court cannot be extended to restrain the Financial Creditor from pursuing the I.A. 1290/2023 as the cause of action has arisen due to expiry of the expressly stipulated period of 18 months' timeline and therefore independent of the orders of the Hon'ble Delhi High Court. The IBC is a time-bound process and time bound resolution of insolvency constitutes the heart and soul of the provisions of IBC and to allow resolution proceedings to lapse into an indefinite delay will defeat the object of the statute. Moreover, the Respondent No. 2 not having been an impediment or cause for delay in the implementation of the resolution plan of the SRA, they cannot be denied the right to seek liquidation of the Corporate Debtor after the expiry of the hard-stop period.

22. When we look at the impugned order, we notice that the Adjudicating Authority has been persuaded to believe that there has been a logjam in the

whole resolution process due to the ongoing litigation which was jeopardising the interest of the Financial Creditor and hence in their considered view, liquidation order can be passed in these circumstances. The reasoning adopted in reaching this conclusion is as reproduced below:

“5.3. We find that both these applications are in pursuance to above stipulation in the approved Resolution Plan. We find that the proceedings initiated by Daiichi Sankyo Co. Ltd. are still pending before the Hon'ble Supreme Court, and more than 21 months have passed since the Order of vacation granted by Hon'ble Delhi High Court was taken in appeal before the Hon'ble Supreme Court by Daiichi Sankyo Co. Ltd. We are in agreement with Axis Bank Limited that the implementation of the plan is contingent upon the outcome of these proceedings or vacation of stay order, and this has caused stalemate in the whole Resolution process, which is jeopardising the interest of the Financial Creditor. Accordingly, we are of considered view that a Liquidation Order can be passed in the present matter in terms of Section 33(1)(a)/33(3) of the Code, as the Corporate Debtor can be sold as going concern in that process also. It will not serve the purpose to wait endlessly.”

(Emphasis supplied)

23. Quite clearly, the core ground for filing IA 1290 of 2023 by the Respondent No. 2 is not for any default or failure on the part of the Appellant in the implementation of the plan but on account of delay in the pendency of the proceedings before the Hon'ble Supreme Court. This is also borne out from I.A. No. 1290 of 2023 wherein it was pleaded by the Respondent No. 2 as extracted below:

“14. That there has been a lapse of over 21 months since the approval of the resolution plan by this Hon'ble Tribunal, and even after several applications filed for early hearing before the Hon'ble Supreme Court, no fruitful outcomes have accrued from such applications.”

The Adjudicating Authority while passing the impugned order supra has been clearly persuaded to conclude that implementation of the plan of the SRA was contingent upon the outcome of the litigation proceedings and/or vacation of stay order, and to avoid further jeopardy to the interests of the Financial Creditor arising out of the stalemate in the whole resolution process, liquidation was very much an exercisable option.

24. Coming to our considered findings, we notice that in the present facts of the case, the ad interim stay of the orders of the Hon'ble Delhi High Court by the Hon'ble Apex Court undisputedly continues to subsist. For this reason alone, indisputably the assets of the Corporate Debtor have not been effectively made over the SRA. That being the case, there is no doubt in our minds that the interim orders of the Hon'ble Supreme Court have led to a complete embargo and stalled the ongoing resolution proceedings. We also harbour no doubts in our minds that the SRA was correct in taking the stand that it was required to willy nilly await the outcome of the proceedings before the Hon'ble Apex Court before implementing the resolution plan. Once the Hon'ble Supreme Court is seized of the matter, any order issued by the Hon'ble Apex Court has to be viewed, seen and respected in its widest amplitude. It was therefore clearly beyond the jurisdiction of the Adjudicating Authority to have proceeded with the liquidation of the Corporate Debtor without the Hon'ble Supreme Court having passed appropriate final directions in the matter. It is clearly for the Hon'ble Supreme Court to eventually decide as to whether the assets of the Corporate Debtor would be available to Daiichi or would be available within the resolution process. Until

the said determination is made by the Hon'ble Supreme Court, the assets Corporate Debtor cannot be pre-emptively dealt with by the Adjudicating Authority thereby rendering the impugned order perverse and illegal.

25. Further, Clause 8 of the '*Basic Assumptions*' provides for discussion between the Appellant and RP and Respondent No. 2 regarding further course of action in case the plan is not implemented within 18 months. The discussion regarding the further course of action contemplated by the plan could only be interpreted to mean discussion regarding implementation of the plan and not liquidation of the Corporate Debtor. Merely, because extending the 18 months' period would allegedly go against the commercial interests of the Financial Creditor is not a convincing and persuasive ground for the Respondent No. 2 to unilaterally press for liquidation without any deliberations and discussions with the other stakeholders. It is also pertinent to note that the pendency of proceedings before the Hon'ble Supreme Court is not at the instance of the Appellant but at the instance of a third party, namely, Daiichi and therefore the Appellant cannot be made to suffer nor can the Corporate Debtor be placed under liquidation because final orders are yet to be passed by the Hon'ble Supreme Court in the matter.

26. This brings us to the contention of the Respondent No. 2 that in terms of Regulation 39(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that a creditor who is aggrieved by non-implementation of resolution plan may seek the "directions" of the Adjudicating Authority. We entirely agree that the said Regulations gives the

creditor the liberty to seek directions but we do not agree that the Regulations contemplate these directions to only mean ordering liquidation of the Corporate Debtor.

27. If we see the statutory construct of the IBC, it is Section 33 of the IBC which outlines the grounds for liquidation of a Corporate Debtor. In terms of Section 33(1)(a) of IBC, where the Adjudicating Authority, before the expiry of the CIRP period or maximum period permitted for completion of the CIRP under Section 12 of the IBC, does not receive a resolution plan under Section 30(6) of the IBC, initiation of liquidation can be allowed by Adjudicating Authority. This is not applicable in the present case since a resolution plan is already in place. Secondly, liquidation proceedings may be approved by the Adjudicating Authority under Section 33(1)(b) of IBC when the Adjudicating Authority rejects the resolution plan under Section 31 for non-compliance of the requirements specified therein. Admittedly, in the present factual matrix, there is no such non-compliance or default or failure attributable on the part of the SRA in the plan implementation for the Corporate Debtor to be subjected to liquidation. There is nothing on record which have been placed by the Respondents to show any breaches on the part of the SRA in implementing the plan. Hence, Section 33(1)(b) of IBC is also not attracted. Thirdly, under Section 33(2) of IBC, where the RP, at any time during the CIRP, but before approval of the resolution plan by the CoC, lets the Adjudicating Authority know of the decision of the CoC to liquidate the Corporate Debtor, approved by not less than 66% of the voting share, liquidation can be initiated. This clause also does not apply to the facts of

the present case since this stage has already been crossed as the resolution plan stands approved both by the CoC and the Adjudicating Authority. Lastly, Section 33(3) and (4) read together enjoins upon the Adjudicating Authority to initiate liquidation if there has been a contravention in the implementation of the resolution plan as approved by the Adjudicating Authority. In the present case, the implementation is yet to commence in view of the fetters placed by the ad interim stay orders of the Hon'ble Supreme Court for which no fault can be pinned on the SRA. Thus, when none of the pre-requisite conditions required to be fulfilled before undertaking liquidation process are met, in such circumstances, the Financial Creditor cannot use the forum of the Adjudicating Authority to force liquidation of the Corporate Debtor. In any case, when there is a stay ordered by the Hon'ble Apex Court on any transfer, direct or indirect, on the assets of the Corporate Debtor, we have serious doubts on whether the Corporate Debtor can be sold as a going concern in the liquidation process without the stay order being vacated/ modified. It is also settled law that when a higher court grants a stay which stalls the implementation of the resolution plan, the said period can well be excluded from the time period given for implementation of the resolution plan.

28. In the light of the foregoing discussions, we find merit in the appeal. We set aside the impugned order allowing liquidation of the Corporate Debtor. We further direct the Adjudicating Authority to allow exclusion of time from 13.12.2021 sought for implementation of the resolution plan as long as the interim order of the Hon'ble Supreme Court remains in operation.

Both parties shall have the liberty to also approach the Hon'ble Supreme Court to seek early hearing of the matter in the interest of timely resolution of the Corporate Debtor. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

Place: New Delhi
Date: 02.07.2024
Ashok Kumar/ Harleen Kaur