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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SPECIAL BENCH – I, CHENNAI**

**IA(IBC)/193(CHE)/2023 in CP/229/(IB)/2018**

*filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 along with  
Rule 11 of NCLT Rules*

*In the matter of M/s. Shri Veerganapathi Steels (P) Limited*

**Narayan Maheshwari,**  
Door No: 177/2, Legend Apartments,  
P H Road, Kilpauk, Chennai-600 010.

*... Applicant*

**Vs.**

- 1. Kavitha Surana**  
Liquidator of  
M/s. Shri Veerganapathi Steels (P) Ltd,  
No.2, Vimala Street, Ayyavoo Colony,  
Aminjikarai, Chennai-600 029.
- 2. Bank of India**  
Represented by its Assistant General Manager,  
Chennai Main Branch,  
Star House, 30 (Old No. 17), Errabalu street,  
Chennai – 600 001.

*... Respondents*

*Order pronounced on 19<sup>th</sup> July, 2023*



CORAM:

**SANJIV JAIN MEMBER (JUDICIAL)**  
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant* : Mr. T.K.Bhaskar, Advocate  
*For 1<sup>st</sup> Respondent* : Mr. S.Sathiyarayanan, Advocate

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

IA(IBC)/193/2023 has been filed seeking the following relief: -

*“Direct the 1<sup>st</sup> Respondent to file necessary application before this Hon’ble Tribunal for withdrawal of Liquidation proceedings as against the Corporate Debtor pursuant to the OTS.”*

2. The Applicant is the erstwhile Promoter Director of Shri Veeraganapathi Steels Pvt. Ltd (Corporate Debtor). The CIRP commenced vide order dated 26.04.2018. Thereafter, this Tribunal vide its order dated 12.04.2019 ordered liquidation of the Corporate Debtor.

3. Present application has been filed to direct the 1<sup>st</sup> Respondent / Liquidator to file an Application for withdrawal of liquidation



proceedings as against the Corporate Debtor pursuant to One Time Settlement (OTS) entered into between the 2<sup>nd</sup> Respondent (100% of voting rights) and the Promoters/Guarantors of the Corporate Debtor.

4. It is stated that during the on-going liquidation process of the Corporate Debtor, 2<sup>nd</sup> Respondent had approached the Promoters / Guarantors vide letters dated 07.05.2022 and 12.09.2022 respectively stating that the Promoters / Guarantors of the Corporate Debtor are eligible for OTS under the One Time Settlement Scheme. After various discussions, meetings and negotiations, 2<sup>nd</sup> Respondent, who holds 100% of voting rights during the CIRP, agreed for an OTS. Letters dated 07.05.2022 and 12.09.2022 are attached as Annexure-3.

5. It is stated that by letter dated 13.09.2022 one of the guarantors deposited a sum of Rs.17,00,000/- to the 2<sup>nd</sup> Respondent and the remaining amount of Rs.1,27,40,000/- was deposited on 15.09.2022

towards full and final settlement of dues in the account of the Corporate Debtor under the OTS.

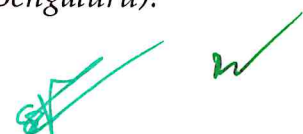
6. It is stated that 'No Due Certificate' was obtained from the 2<sup>nd</sup> Respondent and the same was received by the Promoters/Guarantors on 15.09.2022 which is annexed as Annexure - 6. Pursuant to the 'No Due Certificate' dated 15.09.2022 the 2<sup>nd</sup> Respondent has intimated the 1<sup>st</sup> Respondent (Liquidator) that the guarantors of the Corporate Debtor have approached the 2<sup>nd</sup> Respondent with an OTS offer and the same has been honoured with and consequently requested the Liquidator to withdraw the cases filed before the NCLT, Chennai. Copy of the e-mails dated 15.09.2022 and 20.09.2022 are attached as Annexure-7.

7. In reply to the same, the Liquidator vide e-mail dated 28.09.2022 stated that the Corporate Debtor is under liquidation and there is no concept of withdrawal of case from NCLT. The 1<sup>st</sup> Respondent further stated that there is no possibility of withdrawal

of the case when the company is under liquidation. Copy of e-mail correspondences dated 28.09.2022 is annexed as Annexure-8.

8. It is submitted by the Learned Counsel for the Applicant that the 1<sup>st</sup> Respondent has ignored the settled position of law under the IBC through various judgements passed by the Hon'ble Supreme Court, Hon'ble NCLAT and Hon'ble NCLTs that withdrawal under Section 12A of the Code can be done even during the liquidation of the Corporate Debtor. The following cases have been cited by the Applicant.

- i. *Navaneetha Krishnan –Vs- Central Bank of India, Coimbatore & Another (Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018).*
- ii. *Vallal RCK -Vs- M/s. Siva Industries and Holdings Limited and other (Civil Appeal Nos. 1811 – 1812 of 2022)*
- iii. *S.Rajendran –vs- Tata Capital Financial Services Private Limited IA(IBC)/514/(CHE)/2022 in CP/672/IB/2017 (NCLT Chennai)*
- iv. *V.S.Varun –vs- South Indian Bank IA/63/2022 in CP(IB)No.366/BB/2019 (NCLT Bengaluru).*



9. Learned Counsel stated that the 2<sup>nd</sup> Respondent had also submitted the Form-FA which is dated 01.11.2022 to the 1<sup>st</sup> Respondent and requested the 1<sup>st</sup> Respondent to file necessary application before this Tribunal. The Form-FA is attached as Annexure-9. However, no such application was filed by the 1<sup>st</sup> Respondent. Hence the present Application has been filed by the Applicant.

**REPLY OF THE 1<sup>ST</sup> RESPONDENT**

10. 1<sup>st</sup> Respondent has filed his reply vide Diary No.1237 dated 20.03.2023.

11. It is stated that the immovable property owned by the Corporate Debtor has been sold and the amounts have been realized and distributed in accordance with the provisions of IBC, 2016. It is stated that the Liquidator has also filed an application for handing over certain movable assets of the Corporate Debtor, which is pending. Further, avoidance Applications under Sections 43, 45 and

66 of the Code filed for the avoidance of certain transactions are also pending for adjudication.

12. In para-8 of the Reply, it is however admitted by the Liquidator that OTS settlement has been arrived between the Applicant and 2<sup>nd</sup> Respondent and that he has received e-mail dated 28.09.2022 from the 2<sup>nd</sup> Respondent seeking withdrawal of the Corporate Debtor from the liquidation process.

13. It is stated that Form-FA has since been received, <sup>4</sup> and the Form-FA submitted by the 2<sup>nd</sup> Respondent did not accompany any bank guarantee for the unpaid costs. The 1<sup>st</sup> Respondent had brought this <sup>to the</sup> notice of the 2<sup>nd</sup> Respondent who later agreed to rectify the same and also agreed to give bank guarantee for the unpaid liquidation cost, but the same has not been so far paid.

14. It is stated that certain dues on the Liquidation costs, so far remain unpaid. It is stated that the 1<sup>st</sup> Respondent Liquidator has

received the monthly remuneration till September 2020 and thereafter no remuneration was paid to the Liquidator till date. It is stated that several payments have not been made for the services availed from the consultants / advisors / lawyers since September 2020.

15. It is stated that the Code provides for withdrawal by invoking Section 12A of IBC, 2016, only when the Corporate Debtor is under CIRP and not during Liquidation period. Further, it is submitted that the Code does not provide for withdrawal at the stage of liquidation, except by way of a Scheme under Section 230 of the Companies Act, 2013.

16. The 1<sup>st</sup> Respondent cited the Order of this Tribunal in IA(IBC)/320(CHE)/2021 in CP/1156/IB/2018 in the matter of M/s. RA-NI Precast Private Limited, wherein vide order dated 14.10.2022 it has been held that *“there is no provision under IBC 2016 to come out of the liquidation process once a liquidation is ordered, except by way of a*

*scheme under Section 230 of the Companies Act, 2013 or by Sale as going concern and the provisions of IBC never envisaged for termination of liquidation process and such the prayer sought by the Applicant transcends beyond the scope of IBC."*

#### **FINDINGS OF THIS TRIBUNAL**

17. Heard the submissions made by the Learned Counsels for the Applicant and the Respondent and perused the pleadings including the documents placed on record.

18. Despite notice, none appears for the 2<sup>nd</sup> Respondent. We are of the view that the 2<sup>nd</sup> Respondent has nothing to say in the facts and circumstances of the present matter.

19. Section 12A of the IBC, 2016 finds place under Chapter – II of IBC, 2016 which deals with “Corporate Insolvency Resolution Process” of the Corporate Debtor. The Liquidation process of the Corporate Debtor is contained under Chapter – III of the IBC, 2016.

It is to be noted here that IBC, 2016 treats CIRP and Liquidation as



two different parts. All the provisions under Chapter – II of IBC, 2016 which deals with CIRP cannot be made applicable under Chapter – III of IBC, 2016 which deals with Liquidation of the Corporate Debtor. For instance, the moratorium under Section 14 of IBC, 2016 is lifted when an order of Liquidation is passed and a fresh moratorium under Section 33(5) is ordered. Further, it is significant to note here that the Regulator viz. IBBI has inserted Regulation 30A under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 with effect from 04.07.2018, which deals with withdrawal of Application under Section 12A of IBC, 2016. The said Regulation 30A deals only with the withdrawal of Application during the CIRP and not during Liquidation. Further, there is no such amendment made in the Liquidation Process Regulation by the Regulator viz. IBBI. In the absence of any express provisions either under the provisions of IBC, 2016 for withdrawal of Applications during Liquidation process or under the Regulations framed by IBBI, an Application for withdrawal cannot be filed during the Liquidation process.



20. As regards the case laws cited by the Learned Counsel for the Applicant, we find it apt to refer to para Nos. 4 and 5 of the Hon'ble NCLAT dated 09.08.2018 in the matter of *Navaneetha Krishnan – Vs- Central Bank of India, Coimbatore & Another (Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018)*, <sup>4</sup>are reproduced as below:-

“4. Taking into consideration the fact that the ‘resolution plan’ was submitted on 178<sup>th</sup> day and on the next day i.e. 179<sup>th</sup> day the ‘Committee of Creditors’ decided to go for liquidation as 180<sup>th</sup> day was to be completed and order under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) was required to be passed and in absence of any good reason for extension of time, we are not inclined to grant any relief.

5. However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A, satisfy the demand of ‘Committee of Creditors’ then such person may move before the Adjudicating Authority by giving offer which may be considered by the ‘Committee of Creditors’, and if by 90% voting share of the ‘committee of creditors’, accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order. Both the appeals are dismissed with aforesaid observations.  
No cost.”

21. From the above, more particularly from para 4 of the aforesaid order, it is clear that the Corporate Debtor was under CIRP and the order of Liquidation was passed during the said stage. It is also noted that in the aforesaid matter, the Application under Section 12A of IBC, 2016 was never filed during the Liquidation period and the suspended Director / ex-promoter of the Corporate Debtor had filed an Application under Section 230 of the Companies Act, 2013 to take over the Company by way of Scheme of Compromise. However, in the present case, the Liquidation was ordered as early as on 12.04.2019. Further from the submissions made by the Liquidator, it is seen that certain immovable property owned by the Corporate Debtor was sold and the amounts realized were distributed in accordance with the provisions of IBC, 2016. Hence the said proposition of *Navaneetha Krishnan (supra)* cannot be made applicable to the facts of the present case.

22. At this juncture, we find it apt, to refer to the Judgment of Hon'ble NCLAT in the matter of **Hemanth Meka Rao -Vs- Asset**

**Reconstruction Company (India) Ltd. in Company Appeal (AT)(Ins)**

No. 696 of 2018, wherein it has been held as follows;

*07.03.2019— This appeal has been preferred by 'Mr. Hemanth Meka Rao', Shareholder of 'M/s. Meka Dredging Company Private Limited'- ('Corporate Debtor') against the impugned order dated 20th September, 2018. By the said order, the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, passed order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) and ordered for liquidation in absence of any approved plan.*

2. *Learned counsel appearing on behalf of the Appellant submits that a sum of Rs. 14 Crores was due and out of which a settlement for Rs. 10.38 Crores has been made. Earlier also two 'Financial Creditors' paid total amount of Rs. 37 Crores to 'Asset Reconstruction Company (India) Ltd.' and Rs. 2.5 Crores to 'L&T Finance', who have given no dues certificate. However, on completion of the 'Resolution Process', we cannot allow any settlement with the promoters and the creditors.*

3. *Earlier, when the matter was taken up on 28th February, 2019, learned counsel for the Appellant pointed out that the 'Corporate Debtor' (Company) can be saved by passing appropriate order under Section 230 of the Companies Act, 2013.*

4. *It was in this background, an interim order was passed on 30th January, 2019 prohibiting the liquidator or the Adjudicating Authority to take step to sell or transfer or alienate or make third*

party encumbrance on the movable or immovable property of the 'Corporate Debtor' (Company).

5. Similar issue fell for consideration before this Appellate Tribunal in "S.C. Sekaran v. Amit Gupta & Ors.— Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018".

6. The aforesaid judgment was also reiterated in the case of "Y. Shivram Prasad Vs S. Dhanapal & Ors. — Company Appeal (AT) (Insolvency) No. 224 of 2018 etc." wherein a detailed order has been passed as to how the liquidator should proceed.

7. In the aforesaid background, no order of settlement can be passed by this Appellate Tribunal, even though the Appellant, promoter agrees to pay all the dues. However, we direct the liquidator to proceed in terms of the decision in "Y. Shivram Prasad Vs S. Dhanapal & Ors." (Supra).

8. The appeal stands disposed of with the aforesaid observations and directions. No cost.

(emphasis supplied)

23. The Hon'ble NCLAT in the year 2019 has categorically held that no order of settlement can be passed, eventhough the promoter agrees to pay all the dues. Hence, the exhorted arguments made by

the Learned Counsel for the Applicant are not valid in the eye of law.

24. At this juncture, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka - Vs- Jindal Steel and Power Ltd. & Anr., 2021 SCC OnLine SC 220** wherein the Hon'ble Supreme Court, after examining the judicial interventions and innovations made under the provisions of IBC, 2016 by the Adjudicating Authority and also by the Appellate Authority, has held as follows;

**103.** At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in *Y Shivram Prasad* (supra). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The

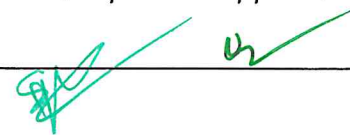
legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

**“An adjudicating authority ensures adherence to the process**

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator.”

104. Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

*(emphasis supplied)*



25. As regards the order passed by the coordinate Benches of NCLT, the same has only a persuasive value and cannot have any binding effect. Moreover, IBBI which is the Regulator of IBC, 2016 has still not proposed for withdrawal of cases during the liquidation process. Law and attended regulations are yet to be notified by the IBBI.

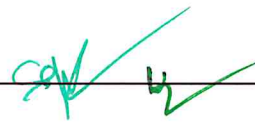
26. Question also arises to what extent opportunity should be given to the Promoters to close the CIRP. In our view the promoter had enough opportunities available with them to settle the matter with the Creditors. i.e.

- a. Before filing of the application under Section 7 of IBC, 2016.
- b. Before Order of Admission passed under Section 7(5) of IBC, 2016.
- c. Before the order of Liquidation under Section 33 of IBC, 2016 is passed by this Tribunal.



27. In the present case, if we allow for withdrawal of Applications under Section 12A during the Liquidation process, then every suspended Directors / Promoters or Ex-Promoters will wait till liquidation is ordered for the assets of the Corporate Debtor and wait for the assets to be put in for auction. Only at the last stage, the Promoter will enter into a settlement with the Financial Creditors at a throw away price. This is in stark contrast to the object of IBC, 2016. Further, as already stated, IBBI has so far not brought out the Regulations for withdrawal of Application during Liquidation proceedings and also Parliament has not modified the existing structure of IBC, 2016.

28. In so far as invocation of Rule 11 of NCLT Rules, 2016 to order for 12A during Liquidation period is concerned, we find it apt to refer to the Judgment of the Hon'ble NCLAT in the matter of **Kridhan Infrastructure Pvt. Ltd. (Now Known as Krish Steel and Trading Private Limited) & Anr. -Vs- Versus Venkatesan**



**Sankaranarayan & Anr. in Company Appeal (AT) (Insolvency) No.**

202 of 2020 wherein at Para 77 it has held as follows:-

*“It is well settled principle in Law that an ‘inherent power’ cannot be resorted to when there are specific provisions in Law to deal with the situations. In this connection, this Tribunal worth recalls and recollects the decision of Hon’ble Supreme Court in ‘Durgesh Sharma’ V. ‘Jayshree’ reported in Air 2009 Supreme Court at page 285 wherein it is observed and held that the inherent power cannot be exercised in contravention or in conflict or ignoring express provision of Law, since law relating to transfer is contained in Section 22 to Section 25 of the Code and they are exhaustive in nature.”*

29. Further, at Para 86 it records as follows;

*“this tribunal comes to an inevitable, irresistible and inescapable conclusion that an opportunity to revive the ‘Corporate Debtor’ as per terms of ‘Resolution Plan’ is not to be provided to the Appellant(s)/ ‘Resolution Applicant’ to prevent an aberration of justice and also to better preserve the ‘economic value of assets’ because of the reason that the instant case is not an exceptional or extraordinary one to invoke the ingredients of Rule 11 of ‘NCLAT’ Rules, besides the provisions of ‘I&B’ Code cannot be diluted in any manner whatsoever.”*

(emphasis supplied)

30. Thus, it is manifestly made clear that the inherent powers cannot be exercised in contravention or in conflict or ignoring express provision of Law.

31. Be that as it may, this Tribunal already in the matter of **Jayashree Mohan -Vs- Pathukasahasram Raghunathan Raman, Liquidator of RA-NI Precast Private Limited** in IA(IBC)/320(CHE)/2021 vide its order dated 14.10.2022 has held that there is no provision under IBC 2016 to come out of the Liquidation Process once liquidation is ordered.

32. Thus, in view of the reasons stated *supra* and also guided by the principle of Hon'ble Supreme Court in the matter of **Arun Kumar** (*supra*), the present Application filed by the Applicant is not sustainable and liable to dismissed and accordingly stands **dismissed**. No order as to costs.

— Sd —

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

— Sd —

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Raymond*