**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**
**COURT - 2**

ITEM No.301

**IA 180 of 2019 in CP(IB) 66 of 2017**

**Order under Section 60(5)(C) IBC**

**IN THE MATTER OF:**

Amol Shripal Sheth ........**Applicant**

V/s

Anil Ltd & Ors ........**Respondents**

**Order delivered on 10/11/2023**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

## ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-Sd- -Sd-

**DR. V. G. VENKATA CHALAPATHY**
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**AHMEDABAD**
**DIVISION BENCH**
**COURT 2**

**IA No.180/NCLT/AHM/2019**
in
CP(IB) No.66/NCLT/AHM/2017

(Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016)

**In the matter between:**

Amol Shripal Sheth …. Applicant

Versus

Anil Ltd. &Ors. …. Respondents

**And in the matter of:**

Reliance Commercial Finance Ltd. … Financial Creditor

Versus

Anil Ltd. … Corporate Debtor

**Order pronounced on 10.11.2023**

**Coram:**
**MRS. CHITRA HANKARE**
**HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY**
**HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

Amol Shripal Sheth
Having Address:
Angan, 96/6, Koteshwar
Nr. Bhat Village,
Gandhingar-382424 … Applicant

**Versus**

1. Anil Ltd.
   Ail Starch's Premises
   Anil Road
   Ahmedabad-380025

2. Ramchandra D Choudhary
   The Resolution Professional and Liquidator
   Of the Corporate Debtor
   9B, Vardan Tower
   Nr. Vimal House
   Lakhudi Circle, Navrangpura
   Ahmedabad-380014

3. Bank of India Ltd.
   Oriental Building
   Espande Road
   Mumbai

4. IDBI Bank Ltd.
   NPA Management Group
   IDBI Complex
   Nr. Lal Bunglow, Off C G Road,
   Ahmedabad-380006

5. State Bank of India
   State Bank of India Stressed Asset Management Branch
   Ahmedabad-380006

6. Axis Bank Ltd.
Stressed Assets Group
Corporate office
Mumbai-40025

7. Co-operative Rabobank UA
20/F Tower A
Peninsula Business Park
Senapati Bapat Marg,
Lower Parel
Mumbai-400013

8. IFCI Ltd.
IFCI Tower
61, Nehru Palace
New Delhi -110 019
Punjab National Bank
LCB
Ahmedabad

9. Phonix ARC Pvt. Ltd.
5th Floor
Dani Corporate Park 158
Cst Road, Kalina
Santacruz (East)
Mumbai – 400098

10. SVC Cooperative Bank
SVC Tower
Jawaharlal Nehru Road
Vakola Road
Santaxruz (East)
Mumabi-400055

11. Reliance Commercial Finance Ltd.
Santacruz(East)
Reliance Centre, 6th Floor
South Wing
Off. Western Express Highway,
Santacruz (East)
Mumbai – 400055

12. Asiatic Oxygen Ltd.
    8, B.B.D. Bag (East)
    Kolkata
    WB-700001

13. Blau-I Merchandising Pvt. Ltd.
    Unit 714, 7th Floor, Solaris
    Prof N.S. Phadke Marg
    Nr. Andheri Bridge,
    Andheri(E)
    Mumbai-400069

14. Greenline Trade Links Pvt. Ltd.
    104 S P Mukherjee Road
    4th Floor
    Room No.404
    Kolkata – 700026

15. Indus Agro Service & Consultants
    Pvt. Ltd.
    48, Laxmi Insurance Building
    Sir P.M. Road, Fort, Mumbai
    Maharashtra – 400001

16. Jhunjhunwala Glass Ltd.
    4, Clyde Row, Hasting, Hastings
    Kolkata-400022

17. Kanoria Securities & Financial
    Services Ltd
    8 B B. D. Bag East
    Kolkata 700001

18. Kepler Commercial Services Pvt
    Ltd.
    18 BhagwanGanguly Lane Howrah
    Kolkata 700001

19. Lacto Cosmetics (Vapi) Pvt ltd
    Plot No.33
    Masat Industrial Estate
    Silvassa
    Union Territory of Dadra & Nagar
    Haveli.

20. Lekar Pharma Ltd
Sheth Govindra Smriti
83 B & Cdr A B Road
Worli Mumbai 400018

21. Embassy Silicones Pvt ltd
G 7 Creative Industrial Centre
N M Joshi Marg
Lower Parel (E)
Mumbai - 400011

22. Meenakshi Cerebrum Properties Ltd
21, Camac Street, 10th Floor
Kolkatta- 700071

23. Namaste Trade com Pvt Ltd
7, Mangoe Lane Room No- 309
3rd Floor
Kolkata 700001

24. PH Financial & Investment Consultants Pvt Ltd
Jaisingh Business Centre, 601
Plot No. CTS 119/120
Sahar Road
Parsiwada, Andheri (East)
Mumbai 40009

25. Pritex Fiscal Services Pvt Ltd
18,R N Mukherjee Road
6th Floor
Kolkatta 700001

26. Samir Diamonds Exports Pvt Ltd
9/910 Prasad Chambers
Opera House
Mumbai MH 400004

27. Streamline Shipping Co. Pvt Ltd
914, Raheja Centre
Plot No.214
Free Press Journal Marg
Nariman Point, Mumbai-400 021

28. Pan Distributors Pvt. Ltd
86, Naimesh Park
Law Gareden Ellisbridge
Ahmedabad-380 006
Gujarat

29. Sanjay Sales Private Limited
205/206, Anmol Plaza
Opp. Sahakari Hatt Bus Stand
Waghawadi Road
Bhavnagar-364002
Gujarat

30. Kunal Finance & Credit Pvt. Ltd.
34 Chittaranjan Avenue
Kolkata
WB 700012

31. Socrato Capital Pvt. Ltd.
60d, Colootola Street
1st Floor
Kolkata WB 700073

32. Parikh Consultants Pvt. Ltd.
4 Jayant Mahald Road
Churchgate
Mumbai MH 400020

33. Vasantipetro Chem Ltd.
9 Vasanti, Villapritam
Society No 1
Bharuch-392002
Gujarat

34. IFCI Venture Capital Funds
Limited, New Delhi
IFCI Tower
61 Nehru Place
New Delhi-110019

35. Ashtavinayak Ecometals Pvt Ltd
2, Vrindavan Bunglow
Farm Road
Deonar Mumbai, MH 400088

36. Bhutoria Valve Udhog Ltd
8a, Lindsay Street,
P/32-33
Calcutta-16 WB

37. Firestorm Finance & Investment
Pvt Ltd
507 Shivai Plaza
Marol Co-Op. Indl.Est
Bhd.Ravi Vihar Hotel Lane
Cts-748/749/750
A.K.Rd, Andheri(E)
Mumbai 400059

38. Hindi Tron Services Pvt Ltd
69 A L Jagmohandas Marg
Mumbai MH 400006

39. Jheel Properties Pvt. Ltd.
7 Mangoe Lane
Room No. 309
3rd Floor Kolkata WB 700001

40. Kvirji& Company Pvt Ltd
103-B L B Shastri
Marggandhi Nagar
Vikhroli Mumbai
MH- 400083

41. Kantilal Patel & Company
Consultancy Pvt Ltd
Paritosh 2ndFloor
Usmanpura River Side
Ahmedabad
Gujarat

42. Kontinental Steel & Power Ltd
18 R N Mukherjee Rd
6th Floor Kolkata
WB 700001

43. Lalita Steel Industries Pvt. Ltd
227 A J C Bose Rd. Kolkata
WB 700020

44. Lindsay Securities Pvt ltd
8A, Lindsay Street
New Market Kolkata
WB 700087

45. Medicare Equipments (I) Pvt ltd
1st Floor Sita Mauli
Above Bank of Maharashtra
Panch Pakhadi
Thane
West Mumbai
MH 400602

46. Meenakshi Tea Company Ltd
21, Camac Street
10th Floor
Kolkatta 700071

47. Option Exports LLP
G-7, Ground Floor, Plot 12
Creative Industrial Estate
N.M.Joshi Marg
Sitaram Mil Compound
Mumbai
Maharashtra-400011

48. PCS Technology Ltd
Office Premise No.1
Gat No. 478,
Alandi Markaal Road
Alandi,Tal. Khed Pune MH 412106
Navi Mumbai 400710

49. SCIL Capital India Pvt Ltd
21 Mittal Chambers 228
Nariman Point
Mumbai 400021

50. Uday Impex Ltd.
269, New Cloth Market
Ahmedabad – 380 002

51. Neelam Securities Limited
The Chambers, Suit No. 606-608
1865, Rajdanga Main Road
Kasba Kolkata
Kolkata – 7000107

52. Oarsman Credit Pvt. Ltd.
34, C.R. Avenue, 3rd Floor
Room No: 9,
Kolkata 700012
Kolkata – 700 073

53. K.C.J. Properties
10-3-316/2, I't Floor
Crystat Towers
Above Andhra Bank
Hyderabad – 500028

54. Shaila Polysacks Pvt. Ltd.
10-3-316/2,1st Floor
Crystal Towers Above Ab, Masab Tank,
S.D Eye Hospital Road Hyderabad
Hyderabad – 500028

55. Caroline Sales Pvt. Ltd.
7, Mangoe Lane Room No. 309
3rd Floor,
Kolkata – 700001

56. Pico Capital Private Limited
Bombay Cotton Mills Compound
Dattaramlad Path Kalachowky
Mumbai 400033

57. ShriArya Investment Pvt. Limited
2nd Floor,'Aniket' C. G. Road, Navrangpura
Ahmedabad – 380 009

58. Shivangini Properties Pvt Ltd
209, Ramanashree Chambers
No-37,Lady Curzon Road
Bangalore 560001

59. Indian National Press(P) Ltd
Free Press House 215 Free Press
Journal Marg
Mumbai 400021

60. M/s Premier Auto Finance Ltd.
14th Floor
Suite No. 1405
Om Towers
32 Chowringhee Road
Kolkata WB 700071

61. PAT Credit Limited
170 M G Roadknow As 89
J L Bajaj Street
Kolkata 700007

62. Diligent Investment Limited
Flat No.155, Maker Tower,
J15th Floor, Cuffe Parade
Mumbai 400005

63. Alkaloids Pvt. Ltd.
3 Bentincr Street
Kolkata 700001

64. A T O (I) Ltd
60 C Colootolla Street
Kolkata 700073

65. Apex (India) Limited
1/1 Meredith Street60
Bentinck St P S Baubazer
Kolkata 700069

66. Motwani Febricast Pvt. Ltd.
13 Unique Industrial
Estatechakala X Rd Andheri(East)
Mumbai-400099

67. Bhauwala Consultancy Pvt. Ltd.
56 N S Rd 4th Floor
Kolkata-700001

68. Sagar Properties Pvt. Ltd
Firdos B Mehta Road
Shahibaug
Ahmedabad 380004

69. Sagar Marketing Pvt. Ltd
803 Sahjanand Shahibang Road
Ahmedabad 380004

70. SagarPowertex Pvt. Ltd
Sagar House
Opp Indian Red Cross Society
Nr Old Vadaj Circle
Ashram Road
Ahmedabad-380013
Gujarat

71. Deepak Textile Corporation
Tribhuvandas Market
Kapasya Bazar
Ahmedabad-380002

72. Tibriwal Plastics Pvt. Ltd.
46 Dhirubhai Parikh Marg
3rd Floor R No 61
Mumbai -400002

73. Madhuvan Iron Private Limited
4th Floor Parisima Annexice
C.G. Road
Ahmedabad-380006

74. Amit Polycrome Pvt. Ltd
806 'Aniket' C G Road
Navrangpura Ahmedabad
Ahmedabad – 380 009

75. M/s Logisys Advisers Pvt. Ltd
901, Floor-9, Plot-211
Dalamal Tower

Free Press Journal Marg
Nariman Point, Mumbai 400021

76. Tejbhandas Mohandas Traders
Private Limited
225 Janjikar Street
Mumbai-400003.

77. Violet Picture Company Pvt. Ltd.
Mayfair, Flat No 501, Silver Beach
Chs 12th Gulmohar Cross Road,
Jvpd Scheme Mumbai

78. ShrikantFinstock Pvt. Ltd
204 Chinubhai Chamberschoice
Restaurant Lane
Navrangpura
Ahmedabad 380009

79. MN Finserve Private Limited,
3-A-18, Shyamal Rao House 3 - A
Shyamal Cross Rd.
Nr. Sanjay Tower
Anandnagar Road, Satellite
Ahmedabad 380015

80. Cholamandalam Investment and
Finance Company Limited
Dare House No. 2 N S C Bose
Road,
Parrys Chennai TN 600001 … Respondents

**Appearance:**

| | | |
|---|---|---|
| For the Applicant | : | Mr.Arjun Sheth, Adv. a.w<br>Mr. Rajiv Chawla, Adv |
| For the Liquidator | : | Mr.Dhruvit Shah, Adv., Mr.Parth Contractor, Adv. a.w<br>Mr.Pranjal Buch, Adv.,<br>Mr.Kalpesh Patel, Adv. a.w<br>Mr.Mandeep Singh Saluja, Adv. |

## ORDER

1. This application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') by Mr.Amol Shripal Sheth (hereinafter referred to as 'applicant') for setting aside the order dated 25.10.2018 passed in IA 291 of 2018 putting Respondent No.1 company into liquidation and to direct the Respondents to consider his settlement proposal and for other reliefs.

2. The applicant is suspended board of director of Respondent No.1 Company, i.e. Corporate Debtor. Respondent No.2 is the Liquidator while Respondents No.3 to 80 are members of Committee of Creditors (CoC).

**Brief facts**

3. Reliance Commercial Finance Limited had filed Insolvency Petition, i.e. CP (IB) No. 66 of 2017 under Section 7 of IBC which was admitted on 23.08.2017. Bluecraft Agro Pvt. Ltd. submitted one Resolution Plan dated 28.04.2018 with offer to pay Rs.525crores. During the CoC meeting dated 25.07.2018, by e-voting 80.89% CoC members voted for Liquidation of Corporate Debtor. By order dated 25.10.2018 passed in IA 291 of 2018, liquidation of the corporate debtor was allowed by this Tribunal. According to the applicant, this Tribunal has jurisdiction to decide whether the CoC has considered his settlement proposal

arbitrarily or not. In view of Section 29A of the Code, the persons interested in resolving the debts of corporate debtor were barred from placing any resolution plan. The applicant was unable to avail the benefit of Section 12A of the Code. Now the law is settled that the settlement proposal can be made even after the issuance of Expression of Interest (EoI). The applicant wishes to resolve the debts of the creditors. This law was settled after passing of liquidation order.

4. The applicant further states that the Resolution Plan which was paying Rs.525 crores was rejected, while the applicant proposes to pay Rs.940 crores pursuant to the settlement plan/proposal. The Respondent No.1 company is closed since April 2017 and there is no scope of continuing it. Respondent No.1 has only two parcels of land as its assets, out of which, one was auctioned. Respondent No.2 proposes to sell one land at reserve price of Rs. 49,497/- per sq. mtrs. which is unrealistic and extremely high as the value of the land is approx. Rs.25,000 per sq. mtrs. in that area. The object of the Code is to resolve the debt(s) of the corporate debtor and to maximise the value of its assets. In light of development of the law, it is possible to withdraw the insolvency petition under Section 12A of the Code. The applicant has developed a settlement plan to settle the debts of all the financial creditors and the operational creditors of the corporate debtor. The applicant, therefore, prayed for

setting aside and quashing the resolution dated 25.07.2018 passed by the CoC and the order dated 25.10.2018 passed in IA No. 291 of 2018 putting Respondent No.1 company into liquidation. The applicant also prayed for setting aside and quashing the auction notices issued by Respondent No.2 and 34 and for direction to the respondents to consider the settlement proposal made by him.

**Reply of Respondents**

5. Respondent No.1, 3-57, 59-79 have not filed their reply and they were proceeded ex-parte vide order dated 14.09.2022.

6. Respondent No. 2 / Liquidator (the erstwhile Resolution Professional) opposed the application on the ground that the application itself is not maintainable. He has stated that after admitting the corporate debtor into CIRP on 23.08.2017 further procedure was followed by him. Expression of Interest was invited from interested parties till 03.01.20218. As no resolution plan was received two more EoIs were invited. One Bluecraft Agro Pvt. Ltd. only submitted resolution plan which was rejected by the CoC as there was no viable and feasible resolution plan till the expiry of CIRP period by approval of 80.89% members of CoC voted for liquidation of the company. By an order in IA No. 291 of 2018 dated 25.10.2018 the company was put into liquidation.

7. He has further stated that being a member of the Suspended Management applicant has no role to play in liquidation proceedings. Once an order of liquidation is passed which shall be deemed to be a notice of discharge of the officers, employees and workmen of the corporate debtor. He has further submitted that the suspended management is unable to avail benefit of Section 12A of the IB Code. The law settled is that 90% of CoC members are of the view of settlement on the proposal of erstwhile management then only appropriate approval may be passed. The application is not maintainable as the applicant is seeking withdrawal of application admitted under Sections 7, 9 and 10 of the Code. The application is filed under the guise of Section 60 (5) of the Code for remedy under Section 12A of the Code. The application is also not maintainable under Section 32A of IBBI (Liquidation Process) Regulations, 2016. The settlement proposal of the applicant cannot be construed as an offer for the purchase of the corporate debtor as a going concern. If any compromise or arrangement is proposed under Section 230 of the Companies Act, 2013 as per liquidation regulations, Regulation 2B, it shall be completed within a period of 90 days of order of liquidation and prayed for giving appropriate directions.

8. Respondent No. 58 stated in his reply that he is whole time director of one Unsecured Financial Creditor.

According to him, the application is not maintainable and judgements relied upon by the applicant are cannot be relied upon. He has further stated that there is no provision under the Code which enables the applicant to present settlement proposal / plan of the corporate debtor after passing liquidation order. The settlement proposal submitted by the applicant is only an attempt to take the assets of the corporate debtor out of custody of the liquidator and dispose of them on as per his wishes. Hence, prayed for dismissal of the application.

9. Respondent No. 80 stated that the applicant has extended the scope and jurisdiction of Insolvency Regulation Proceedings. Even if the contention of the applicant is admitted then also Rs.64.85 crores is admitted for Unsecured Creditors claim. However, by RP total claim admitted for Unsecured Creditors is Rs.570 crores and Rs.1574 crores for Secured Creditors. Hence, the application cannot be considered as there is suppression of material facts. Also the applicant has offered 7 years settlement period for Rs.30 crores of claimed amount. However, there is no clarity as to how seven years time is sought and how the claim amount is reduced to 50%. This application is filed without discussing the settlement proposal firstly with the CoC. Without approaching CoC directly the applicant comes to the Tribunal which shows his conduct. The respondents have to wait for a long period to recover the amount and that too of 50% of the

actual claim, if the proposal of the applicant is accepted. Liquidation order should not be set aside without being discussed or voted in the SCC. Without following procedure, the applicant is attempting to quash the order. As the application is not maintainable, he prayed for dismissal of the same.

**Arguments**

10. Heard Ld. Counsel for the applicant and Ld. Counsel for the Liquidator also gone through the records also perused written submissions filed by Respondent No.2.

11. The applicant has lied upon the following judgments:-

i) Brillant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors. in Special Leave to Appeal (C) No. 31557/2018 vide order dated 14.12.2018.

ii) Krishna Kumar Mintri Vs. Kamlesh Kumar Sighania and Ors. in Company Appeal (AT) (Insolvency) No. 456 of 2018 decided on 27.02.2019.

iii). V. Navaneetha Krishnan Vs. Central Bank of India, Coimbatore & Another in Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018 decided on 09.08.2018

iv) Swiss Ribbons Private Limited And Another Vs. Union of India And Others in Writ Petitions (C) No. 99 of 2018 with Nos. 100, 115, 459, 598, 775, 822, 849, 1221 of 2018, 37 of 2019 and SLP (C) No. 28623 of 2018, decided on January 25, 2019

v) Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors &Anr. in Company Appeal (AT) (Insolvency) No. 601 of 2019

vi) K.K.Velusamy Vs. N.Palanisamy in Civil Appeal No.s. 2795-96 of 2011 decided on March 30, 2011

vii) Manibhadra Polycot Vs. Abhishek Corporation Ltd. & Ors. in Company Appeal (AT) (Insolvency) Nos. 241 and 347 of 2019

viii) Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. in Civil Appeal Nos. 9402-405 of 2018 with Nos. 9582 of 2018, 10204 of 2018 (Diary No.35253 of 2018) and 10208 of 2018 (Diary No.33971 of 2018) decided on October 4, 2018.

The aforesaid judgments relied upon by the applicant are not applicable in the present matter as the SCC has already rejected the proposed settlement plan.

12. The Respondent No. 2/Liquidator also placed on record the judgment of Vallal RCK Vs. M/s. Siva Industries and Holdings Limited & Ors dated 03.06.2022 in Civil Appeal Nod. 1811-1812 of 2022.

**Reasons**

13. The applicant himself admitted that CIRP was commenced against the Corporate Debtor on 23.08.2017, the last date of submitting plan and receipt of one resolution plan to pay Rs.525 crores on 28.04.2018. He has further admitted that after e-voting the CoC has put vote for liquidation of

corporate debtor by 80.89%. He has further admitted that on moving IA No.291 of 2018 by Respondent No.2, the liquidation of corporate debtor was allowed on 25.10.2018. Thus, all the procedure followed after initiation of CIRP till liquidation is admitted by the applicant.

14. According to him, the Hon'ble Supreme Court Case of ***Brillant Alloys Private Limited Vs. Mr. S. Rajagopal& Ors.*** in Special Leave to Appeal (C) No. 31557/2018 vide order dated 14.12.2018 observed that the withdrawal of insolvency petition can take place even after the inviting of Expression of Interest, since the concerned regulations are directory and not mandatory. He has also relied upon the observation of the Hon'ble Supreme Court in the case of ***Swiss Ribbons Private Limited Vs. Union of India & Ors***. Writ Petitions (C) No. 99 of 2018 with Nos. 100, 115, 459, 598, 775, 822, 849, 1221 of 2018, 37 of 2019 and SLP (C) No. 28623 of 2018, decided on January 25, 2019 wherein it was held that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and / or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside the decision under Section 60 of the Code. Thus, according to him Section 12A application can be filed even after publication of invitation of Expression of Interest (EoI). However, he could not avail that benefit because EoI was issued very early around 03.01.2018. Now he wishes to resolve the

debts of all the creditors by proposing to pay Rs.940 crores pursuant to the settlement plan. He has further mentioned the incidents that the wrong price is shown of auction of property. According to him, at this stage, the settlement proposal to settle the debts can be accepted to achieve the object of the Code.

15. It is found that the 80.89% voting by CoC, the liquidation process was commenced. It is also admitted position that thereafter till the corporate debtor was under CIRP the applicant has not submitted any resolution or settlement plan before the RP/CoC. Even till the commencement of liquidation process or even thereafter no such settlement proposal was submitted by the applicant. The applicant preferred to file his settlement plan before the Tribunal only. Though the applicant had not placed the settlement proposal before the SCC, this Tribunal granted liberty to him to place the settlement proposal before Stakeholders Consultation Committee (SCC) by directing the same to the liquidator for their consideration. Accordingly, liquidator had placed the settlement proposal two times before the SCC meetings dated 14.09.2020 and 02.12.2022. In the first meeting, the SCC mentioned that the settlement proposal was not workable while in the 2$^{nd}$ SCC meeting, the SCC had rejected the settlement plan by 68.86% voting.

16. The applicant only harps on the point that he is giving more amount to the creditors than the earlier plan gives. It is pertinent to note that the earlier resolution plan was also not accepted by the CoC and therefore the corporate debtor was put into liquidation. So the amount between the earlier plan and the settlement proposal cannot be compared. Respondent No.2 pointed out that the applicant itself mentions that the corporate debtor is not a going concern and there is no scope of continuing the corporate debtor as a going concern and the only option is to piecemeal sale of assets of the corporate debtor. According to Respondent No.2, the same can also be done by the liquidator. One of the replying respondents i.e. Respondent No.80, also pointed out that there is no clarity provided in the settlement proposal of applicant to show how the seven years time is sought and how the claim amount is reduced to 50%. The resolution professional in fact admitted claim of Rs.570 crores for unsecured creditors and Rs.1574 crores for the secured creditors, however, the applicant only admitted claim of Rs.64.85 crores for the unsecured creditors. The applicant only stated that he can file a settlement proposal at any stage of the proceeding. However, he failed to justify his proposal except the increase in payable amount. He has also not satisfied that how his settlement plan was arbitrarily rejected by the SCC. From the facts given by the replying respondents, it appears that the settlement

proposal given by the applicant was not arbitrarily rejected by the SCC.

17. The settlement plan was rejected by the SCC with requisite majority. It is well settled law that the commercial wisdom of the CoC/SCC has been given paramount status without any judicial intervention for ensuring completion of the processes in the timelines prescribed by the IBC. It is an intrinsic assumption that financial creditors are aware of the viability of the corporate debtor and the feasibility of any proposed settlement plan. After thoroughly examining the proposed plan and assessing it, they are making their decision. Already two times respondents were directed to consider the settlement proposal and it was rejected by them. No further order can be passed directing again to consider the settlement proposal of the applicant.

18. Further, it is observed that "Section 12 A is a proviso in the Act for withdrawal of application admitted under Sec 7,9 and 10 of the IBC". The applicant is not eligible to seek a withdrawal being the member of the board of suspended management as repayment has not been made in terms of the provisions to the other creditors nor has an appropriate plan submitted to the CoC (as per eligibility under Sec 29 A) within the time period of CIRP.

"Sec 29 A" specifies the eligibility of a resolution applicant which is not complied by the applicant. Such applications should have been filed before the RP and the CoC when there was an Expression of Interest. It is observed that when the relevant orders recommending liquidation was passed, the applicant was not present in the meeting of CoC.

19. "Section 33 (1)" of the IBC has been complied wherein the Adjudicating Authority has approved the recommendation of CoC and initiated liquidation by appointing the liquidator. The applicant has not placed facts before the authority as to whether his application was considered by the RP and CoC before the liquidation orders were passed. The Adjudicating Authority cannot be a deciding authority of a commercial decision to accept a plan and its feasibility, which has been specified under Section 30 and no such plan was approved and placed before the Adjudicating Authority. Liquidation process when initiated and approved in terms of Sec 33(2) of the IBC, the liquidator has derived the powers and duties in terms of Sec 35. The liquidator has performed his duties as provided in various submissions and has been given powers under Sec 35(2) to consult any stakeholders entitled to a distribution of proceeds under Section 53. It is also stated clearly that any such consultation shall not be binding on the liquidator.

20. The Resolution Plan submitted before the Tribunal after the approval of the liquidation, does not meet the total liabilities payable by the liquidator and may be better than the rejected Resolution Plan but with staggered and elongated payment for which the decision of the COC is binding on the Adjudicating Authority, unless there was any deviation in the act of approval to be rejected.

21. In such circumstances, resolution dated 25.07.2018 passed by the CoC putting Respondent No. 1 in liquidation and the order dated 25.10.2018 passed in IA 291 of 2018 cannot be set aside. Further, the settlement proposal is not approved by the SCC so there is no question of resorting the remedy available under Section 12A of the Code.

22. Hence, we pass the following order:-

**ORDER**

Application is rejected and disposed of.

| | |
|---|---|
| -Sd- | -Sd- |
| **DR. V. G. VENKATA CHALAPATHY**<br>**MEMBER (TECHNICAL)** | **CHITRA HANKARE**<br>**MEMBER (JUDICIAL)** |

sr