

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 147 & 148 of 2024**

[Arising out of order dated 04.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench (Court-II) in IA No. 2825 of 2023 and IA No. 2947 of 2023 in CP (IB) 4058 (MB) of 2019]

**IN THE MATTER OF:**

**Mayank Goyal**

**Having his address at**

**504, IA Versova Cosmic Tower,**

**New Mahada Complex,**

**Near Lokhandwala Circle,**

**Andheri West, Mumbai-400063.**

**...Appellant**

**Versus**

**1. G. Madhusudhan Rao**

**Resolution Professional of the Corporate Debtor**

**IBBI/IPA-001/IP-P00181/2017-18/10360**

**Having his address at**

**7-1-285, Flat No. 103, Sri Sai Swapnasampada**

**Apartments, Balkampet, Sanjeev Reddy Nagar,**

**Hyderabad, Telangana-500038**

**2. State Bank of India**

**Corporate Centre, State Bank of Bhavan,**

**Madame Cama Road,**

**Nariman Point, Mumbai,**

**Maharashtra-400021.**

**...Respondents**

**Present:**

**Appellant:** Mr. Krishnendu Datta, Sr. Advocate with Mr. Ravi Raghunath, Mr. Aniruth Purusothaman, Ms. Varsha Himatsingka and Mr. Utkarsh Kumar, Advocates.

**For Respondents:** Mr. Asav Rajan and Ms. Charu Trivedi, Advocates for R-1.  
Mr. Arvind Nayar, Sr. Advocate with Mr. Mayank Biyani, Advocate.

**WITH**

**Company Appeal (AT) (Insolvency) No. 182 of 2024**

[Arising out of order dated 04.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench (Court-II) in IA No. 2825 of 2023 and IA No. 2947 of 2023 in CP (IB) 4058 (MB) of 2019]

**IN THE MATTER OF:**

**Suresh More**

**Having Address At**

**31, 509 Mahatma Jyotibha Phule CHS Ltd.,**

**Turbhe Mandal, Nr. Maharashtra nagar,**

**Mankhurd East, Mumabi-400088**

**...Appellant**

**Versus**

- 1. Mr. Gonugunta Madhusudhan Rao**  
**7-1-285, Flat No. 103, Sri Sai Swapnasampada**  
**Apartments, Balkampet, Sanjeev Reddy Nagar,**  
**Hyderabad, Telangana-500038**
- 2. State Bank of India**  
**Corporate Centre, State Bank of Bhavan,**  
**Madame Cama Road,**  
**Nariman Point, Mumbai,**  
**Maharashtra-400021.**

**Also at:**

**Stressed Assets Management Branch,**

**“The Arcade”, 2<sup>nd</sup> Floor,**

**World Trade Centre, Cuffe Parade,**

**Colaba, Mumbai-400005.**

**...Respondents**

**Present:**

**Appellant: Mr. Dhruv Gupta, Advocate.**

**For Respondents: Mr. Asav Rajan and Ms. Charu Trivedi,  
Advocates for R-1.**

**Mr. Arvind Nayar, Sr. Advocate with Mr.  
Mayank Biyani, Advocate.**

## **J U D G M E N T**

**[Per: Barun Mitra, Member (Technical)]**

Present is a set of two appeals filed under Section 61 of Insolvency and Bankruptcy Code, 2016 (“**IBC**” in short) arising out of the common order dated 04.12.2023 (hereinafter referred to as “**Impugned Order**”) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II) in CP (IB)4058(MB)2019. By the impugned order, the Adjudicating Authority allowed I.A. No. 2947 Of 2023 filed by the Resolution Professional for initiating the liquidation of the Corporate Debtor under Section 33 of the IBC and dismissed I.A. No 2825 of 2023 filed by one of the prospective resolution applicants, Mayank Goyal praying for setting aside the resolution passed by the Committee of Creditors (“**CoC**” in short) of the Corporate Debtor in its 5<sup>th</sup> meeting for the initiation of liquidation process of the Corporate Debtor. Aggrieved by this common impugned order, one set of appeal vide Company Appeal

(AT) (Insolvency) No. 147-148 of 2024 has been preferred by one of the prospective resolution applicants, Mayank Goyal. The other set of appeal has been filed vide Company Appeal (AT) (Insolvency) No. 182 of 2024 by one Suresh More. Aggrieved by the said impugned order, the present appeals have been preferred by the Appellants.

**2.** Coming to the factual matrix at hand, the salient points are as outlined below:

- The Corporate Debtor-Bil Energy Systems Limited was admitted into CIRP on 09.12.2022 on a Section 7 application filed by present Respondent No. 2-State Bank of India (SBI).
- The Interim Resolution Professional (IRP) constituted the CoC with SBI as the sole member.
- The IRP was later replaced by present Respondent No. 1-Resolution Professional (“**RP**” for short) following voting in the 3<sup>rd</sup> CoC meeting with 100% voting.
- Form-G was published on 23.03.2023 following which 3 EOIs were received from Potential Resolution Applicants (PRAs) including from Mayank Goyal, the present Appellant in CA(AT) (Ins)No. 147-148 of 2024.
- However, the CoC in its 5<sup>th</sup> meeting took the view that PRAs will not be able to submit any effective resolution plan and decided to initiate liquidation process of the Corporate Debtor on 03.06.2023.
- The Adjudicating Authority allowed IA No. 2947 of 2023 filed by the RP seeking approval of liquidation of the Corporate Debtor. The Adjudicating Authority also dismissed the IA No. 2825 of 2023 filed

by Mayank Goyal praying for setting aside the resolution passed by the CoC in its 5<sup>th</sup> meeting for initiation of liquidation of the Corporate Debtor.

- Aggrieved by the same common impugned order, both the appeals have been preferred by the Appellant.

**3.** The Learned Senior Counsel for the Appellants contended that the RP had misrepresented facts before the CoC regarding the status of assets of the Corporate Debtor and its custody while seeking approval of the CoC for liquidation of the Corporate Debtor. It was submitted that the DM of Palghar had allowed SBI on 19.08.2015 to take possession of land of the Corporate Debtor in Wada, Palghar. These directions of the DM regarding possession of land to be given to SBI had been complied with and SBI had already taken possession of the land of the Corporate Debtor in 2016. On 23.04.2016, the SBI had also appointed valuers who submitted their report on the valuation and plant and machinery as well as the plot of land. It was further submitted that the immovable property of the Corporate Debtor which had been mortgaged in favour of SBI had already been handed over to the IRP. Even the plant machinery and equipment of the Corporate Debtor had been handed over to the IRP on 29.03.2016.

**4.** Submission was made that the RP misrepresented before the Adjudicating Authority that SBI could not take possession of the land of the Corporate Debtor. The Adjudicating Authority had erred in passing the impugned order by relying on such wrong and misleading submissions made by the RP. It was also submitted that the RP created

a wrong impression that the suspended management of the Corporate Debtor did not provide information with respect to the assets of the Corporate Debtor inspite of their assurance given to the IRP extending their full cooperation in the CIRP process. The RP had also misrepresented the Adjudicating Authority by stating that the Corporate Debtor did not hand over land, factory, plant and machinery to him. Even the annual accounts of the Corporate Debtor were handed over to the IRP. The failure on the part of RP to perform his duty of taking charge of the assets of the Corporate Debtor and tracing the other assets cannot be a valid ground for recommending liquidation. Thus, it was asserted that there was material irregularity in the conduct of CIRP by the IRP/RP which has been ignored by the Adjudicating Authority.

**5.** The Learned Counsel for the Respondent No. 1/RP refuting the contentions of the Appellants contended that the suspended management has no vested right to appeal against a liquidation order. The locus of the potential resolution applicant to be an 'aggrieved person' in terms of Section 61 of the IBC was questioned and his entitlement to assail the commercial wisdom of the CoC in recommending liquidation was raised. It was also contended that under Section 61(4) of the IBC, an appeal against a liquidation order under Section 33 of the IBC can be filed before this Tribunal only on grounds of material irregularity or fraud committed in relation to such a liquidation order. No such grounds have been established by the Appellant to show that the decision of the CoC suffered from any material irregularity or that it violated any statutory

provision of the IBC or any applicable law. Hence, it was vehemently contended that the appeals are not maintainable.

**6.** It is the case of the RP that the CoC is vested with wide powers to initiate liquidation under Section 33(2) of IBC. Rebutting the argument that liquidation could not have been initiated by the CoC without considering resolution plans from potential resolution applicants, the Learned Counsel for the Respondent No. 1 asserted that in terms of Section 33(2) of the IBC and the Explanation clause thereto, the CoC enjoyed unfettered right to liquidate a Corporate Debtor at “any point of time” which could happen to be before confirmation of the resolution plan or even prior to preparation of the Information Memorandum (“**IM**” in short). The Learned Counsel for the Respondent has submitted that this view has been clearly expressed in several judgements of this Tribunal including ***Air Travel Enterprises India Ltd. & Ors. V. Lukose Joseph, Liquidator of Green Gateway Leisure Limited & Ors. in CA (AT) (CH) (Ins) No. 464/2023; Rakshit Dhirajlal Doshi & Anr. V. Sumedha Management Solutions Pvt. Ltd. & Anr. in CA(AT) (Ins) No. 29 of 2024; ACRE-81 Trust through its trustee Assets Care & Reconstruction Enterprise Ltd. & Ors. V. Pawan Kumar Goyal IRP of SARE Realty Projects Pvt. Ltd. in CA(AT) (Ins) No. 447 of 2023.***

**7.** It was vehemently argued that in the present facts of the case, there existed sufficient grounds for the CoC to liquidate the Corporate Debtor. The Corporate Debtor had stopped functioning as a going concern for 3 years even prior to the commencement of the CIRP. Further given that the assets of the Corporate Debtor were neither in possession of the

Respondent No. 2 nor its custody with the RP and had been moved away by the suspended management, the Corporate Debtor was not capable of revival and hence CoC had rightly decided on its liquidation. Furthermore, since tracing the assets of the Corporate Debtor would have been a long-drawn process which would have entailed enhanced CIRP cost, the CoC was well justified in taking the decision to initiate liquidation.

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

The decision of both the Appeals are based on the same set of facts and documents and hence for reasons of convenience taken together.

**9.** The short points which have come up for our consideration are (i) whether the statutory provisions of IBC provides scope for the CoC to consider approval of liquidation of the Corporate Debtor before inviting resolution plans; (ii) whether in the present facts of the case there were good reasons for the CoC to initiate liquidation of the Corporate Debtor in the exercise of its commercial wisdom and (iii) whether there existed any cogent ground for the Adjudicating Authority to reject the recommendation made by the CoC to initiate liquidation of the present Corporate Debtor.

**10.** Before finding our bearings on the above delineated issues, we choose to reject the objections raised by the Respondents on grounds of locus and in the interest of justice proceed to examine the submissions made by the Appellants on merit.

**11.** To answer the question at Sl no. (i) as outlined above, it may be useful to glance at Section 33(1) and 33(2) of the IBC which deals with the initiation of liquidation which is as extracted below:

**“33. Initiation of liquidation.**

*(1) Where the Adjudicating Authority, -*

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

*it shall--*

*(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*

*(ii) issue a public announcement stating that the corporate debtor is in liquidation; and*

*(iii) require such order to be sent to the authority with which the corporate debtor is registered.*

*(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*[Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at*

*any time before the preparation of the information memorandum.]”*

**12.** A plain reading of the aforementioned sub section (2) of Section 33 of the IBC unambiguously shows that it is not incumbent upon the CoC to complete the steps for resolution of the Corporate Debtor before exercise of its jurisdiction to pass an order of liquidation of the Corporate Debtor. Such a decision can be taken “any time” during the corporate insolvency resolution process as long as it is before confirmation of resolution plan. The very fact that the words “any time” has again been used in the Explanation clause under Section 33(2) which was inserted later by an amendment vide Act No. 26 of 2019 manifestly reinforces the legislative intention empowering the CoC to take decision to liquidate the Corporate Debtor any time after its constitution and before confirmation of the resolution plan including at any time before the preparation of the information memorandum. Thus, in terms of the statutory framework of the IBC, the decision on liquidation having been taken by the CoC in the present case before taking up any resolution plan for consideration cannot be debunked by the Appellants as being dehors the statutory provisions.

**13.** Coming to the findings of the Adjudicating Authority in this regard, we notice that at para 8 of the impugned order, the following has been noted:

*“8. Section 33(2) together with the explanation makes it ample clear that CoC is fully empowered to take a decision to liquidate the Corporate Debtor. The decisions relied upon by the Counsels in Hero Fincorp (supra), and*

*Nikhil Tandon (supra) consistently took a view that the decision taken by the CoC for liquidation of the Corporate Debtor is open to judicial review by the Adjudicating Authority and Appellate Tribunal and accepting the CoC decision depends on the facts of each case.”*

**14.** We do not find any infirmity in the above findings of the Adjudicating Authority wherein it has rightly acknowledged that the legislative fiat of Section 33(2) read with the explanation clause fortifies the CoC with wide powers in respect of deciding as to when to initiate liquidation as long as it happens to precede approval of the resolution plan. The Adjudicating Authority has also rightly observed that the correctness of the decision taken by the CoC for liquidation of the Corporate Debtor depends on the facts of each case and is open to judicial review both by the Adjudicating Authority and Appellate Tribunal.

**15.** To answer the first question, we affirm the findings of the Adjudicating Authority that the statutory provisions of IBC allow the CoC to consider approval of liquidation of the Corporate Debtor before inviting resolution plans. However, it depends on the facts of each case as to whether the decision to liquidate is in conformity with the provisions of the IBC and to that extent open to judicial review by the Adjudicating Authority and this Appellate Tribunal.

**16.** This therefore brings us to the contention of the Appellants that it is a well settled proposition of law as laid down in **Swiss Ribbons (P) Ltd Vs Union of India (2019) 4 SCC17** that IBC is first and foremost a code for reorganisation and insolvency resolution of Corporate Debtors and

liquidation should be the last resort. Attention was also adverted to paras 27 and 28 of the said judgement where it has been held that:

*“27..... What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.*

*28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation.....”*

**17.** It is also the case of the Appellants that the decision of the CoC for liquidation of the Corporate Debtor was unsustainable in law since there were no good reasons for initiating liquidation. It was asserted that the CoC had initially decided that RP would file application to take possession of the assets of the Corporate Debtor including land, factory, plant and machinery; file PUFEE applications and also application under Section 19 to secure cooperation of the suspended management and also went ahead with publishing Form-G inviting resolution plans but then the CoC for unexplained reasons abruptly turned around this decision and recommended liquidation.

**18.** It is the counter contention of the RP that though DM, Palghar had allowed the request of SBI to take possession of the assets of the Corporate Debtor in Palghar, it was discovered by SBI at the time of conducting valuation that the said asset was not constructed on demarcated land and the valuers were not permitted to take proper measurements. The valuation report also showed that no assets were

found at the location. SBI had failed to gain possession of the Assets of the Corporate Debtor inspite of filing SARFAESI proceedings. It was also pointed out that though the IRP had sent several mails to the suspended management to be present and assist in the handover of the assets of the Corporate Debtor no such assistance was given in handing over the assets of the Corporate Debtor. Therefore, the CoC in the exercise of its powers endowed upon it by Section 33(2) of the IBC was entitled to liquidate the Corporate Debtor.

**19.** This therefore brings us to our query at Sl no (ii). To find an answer thereto, we may proceed to study the facts of the present case to analyse whether there were good grounds noticed by the CoC to recommend liquidation. We must add here that since our last query at Sl No (iii) as to whether there existed any cogent ground for the Adjudicating Authority to reject the recommendation made by the CoC in the instant case to initiate liquidation of the present Corporate Debtor stems from the same set of facts and therefore inter-related with Sl No. (ii), we will deal with both of them conjointly.

**20.** For this purpose, we feel that it would be constructive and worthwhile to first peruse the relevant minutes of the various CoC meetings to find out the underlying rationale behind the decision of the CoC culminating in the liquidation of the Corporate Debtor. The relevant minutes of the relevant CoC meetings are as extracted below:

**2<sup>nd</sup> CoC meeting held on 07/02/2023**

**“Item No. 8 – To take note of the opinion of the Resolution Professional regarding the transactions covered under Sec. 43, 45, 50 and 66.**

The IRP has examined the past Annual Reports of the Corporate Debtor available on the BSE stock exchange and has found that the **Corporate Debtor has reported write-offs, impairment of assets and provisions for bad debts, which are abnormal and may fall under the provisions of the avoidance transactions u/sec.43,45,50 & 66 of IBC, 2016.** The IRP asked the Suspended Director regarding any clarifications that he could provide regarding the above. **The suspended Director responded that he is not aware about the same and does not remember anything about these transactions. He further informed that the Managing Director, Mr. Lalit Laxmiram Agarwal (deceased) was looking into the affairs of the CD and therefore he does not have any information on the same. The IRP further informed that the records and books of accounts of the CD have not been handed over and that the same were also not available at the registered office of the CD located at Malad (west), Mumbai. IRP informed that he will be appointing of a transaction auditor for determination of avoidance transactions. The CoC took note of the same.”**

**“Item No. 9 – To take note of several plots shown in the name of the corporate debtor in the online resource:**

On conducting online search on <https://bhulekh.mahabhumi.gov.in/>, the IRP could identify certain plots shown in the name of M/s. Bil Energy Systems Ltd. The information regarding the same was shared in the CoC. ....

The Suspended Director ..... that he is not aware about the same and does not remember anything about these assets. He further informed that pursuant to the order of the CMM, he had handed over all the assets of the CD to SBI and that the IRP can take possession of the assets of the CD from SBI. **The IRP requested SBI to clarify on the status of**

**possession of assets of the CD. SBI clarified that they were never given any possession of the assets of the CD and that the suspended Director should produce copy of any Panchanama or List of Assets or any other record to show that SBI was given possession of the assets.** The suspended Director responded that he did not remember anything regarding the same. **The COC also advised the IRP that as suggested in the last meeting, the IRP should take the assistance of the local police and tehsildar to access the premises and to take possession of the assets.** It was decided to give the suspended Directors a time of one week for cooperating in the CIRP and doing the needful in this regard. SBI advised IRP to take up with the land revenue authorities for identifying the seven properties. The IRP informed that thereafter, action will be taken as per the provisions of the Code.”

### **3<sup>rd</sup> CoC meeting held on 10/03/2023**

**“Item No: 7 – To take note of the communication received from M/s. Aesthetic Stampings & Laminations Ltd. regarding Wada Unit of Bil Energy Systems Ltd.**

The IRP informed the members that **he had written to M/s. Aesthetic Stampings & Laminations Ltd. regarding the properties of Bil Energy Systems Ltd. in their possession.** The reply received from them was discussed in detail in the meeting and **CoC suggested the IRP to send a suitable legal notice to them.** The IRP took note of the same. **The COC also perused the last available Annual Report of FY 2020-21 and noted the disclosure of significant assets and sizeable business being conducted in FY 2020. It was therefore surprising to the COC that the suspended Directors have expressed opinion that there are no assets available to be handed over to the IRP.”**

### **4<sup>th</sup> CoC meeting held on 04/05/2023**

**Item No. 3: To Discuss Such Other Matters With The Permission Of Majority Of Members Of The Committee**

***Of Creditors As May Be Deemed Necessary For The Smooth Functioning Of The Corporate Insolvency Resolution Process.***

***2. SBI Officials informed that land at Wada and Plant and Machineries at Wada have been mortgaged to the bank (SBI) and SBI never taken Physical possession of the same due to demarcation issue in spite of DM/CMM Order received in the year 2016 and not permitted any entry into factory. 'Resolution Professional' informed that the IRP also not taken the possession of the factory, Land and Plant and Machineries as per the Minutes of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> COC Meetings as the suspended management not cooperated to the IRP. All the COC members discussed on the need for taking over of the factory, Land, Plant and Machineries and decided that to file an application with Hon'ble NCLT, Mumbai at the earliest and 'Resolution Professional' agreed for the same.***

***4. SBI officials informed that the CD created security Interest over plant and Machineries and they told that there are no plant and machineries at factory and 'Resolution Professional' informed that as per the Precious Minutes written by the IRP, machineries already sold by the CD long back. SBI Officials asked about the sale proceeds and SBI Officials told no permission given for sale and no sale proceeds received and in case permission taken and sold leads to fraudulent transactions and lead fraud.***

***6. 'Resolution Professional' informed that the IRP has not done the required activities such as placing the Evaluation Matrix, Request for Resolution Plan (RFRP) which resulted in spite the IRP issued the Provisional List of PRAs and Objections period is over also, IRP has been not sent the very important documents like IM, Evaluation matrix and RFRP to the PRAs. SBI officials informed that due to non completion of take over of the factories, the PRAs will not able to give good resolution plan so first concentration is on taking over of the Assets of the CD. RP agreed and informed that the approval for Evaluation of Matrix and RFRP will be taken from COC in subsequent COC Meetings and accordingly will be informed to the PRAs."***

**5<sup>th</sup> CoC meeting held on 03/06/2023**

**Item No. 3: To discuss to extend the corporate Insolvency Resolution Process (CIRP) as per Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Voting Item):**

“ .....

**Ms. Swati Bhaskar, State Bank of India informed that on 08.03.2022, she visited the factory but they are not allowed to visit the factory. The SBI officials and valuers are allowed during 2016. District Magistrate ordered under SARFAESI. The order is not tantamount to handover the properties of Corporate Debtor. Eventhough order is issued implementation is not happen. **The officials of state bank tried to take possession but the possession not happen due to non cooperation.** In the year of 2020, demarcation exercise is taken place. But what is current status is not know.**

**Item No. 4: To approve for liquidation of Corporate Debtor (Voting Item):**

**The COC members presented & RP discussed about approval of Liquidation process. The COC members presented suggested RP to put evoting for approval of Liquidation process and **COC members approved for Liquidation of the Corporate Debtor with 100% E Voting results.****

RP noted the same.”

*(Emphasis supplied)*

**21.** Against this backdrop of the minutes recorded in the CoC deliberations, we now take notice of the findings recorded by the Adjudicating Authority while validating the CoCs approval of the liquidation of the Corporate Debtor. The relevant excerpt of the impugned order is as extracted below:

“9. In the present case, it is observed that the Corporate Debtor was into the business of manufacturing transformers for electricity production. But the Corporate Debtor had not been doing business since 2020 i.e. 19.12.2022. The only traceable assets of the Corporate Debtor is the factory premises, that is in the possession of Aesthetic as there was no clear demarcation of the factory premises of the Corporate Debtor. The registered office of the Corporate Debtor is situate on rented premises as observed from the 7/12 extracts. The machinery owned by the Corporate Debtor appears to have been sold by the suspended management of the Corporate Debtor in 2015. The erstwhile management of the Corporate Debtor had not handed over any assets or accounts or other information relating to the Corporate Debtor nor is co-operating with IRP/‘Resolution Professional’. As per the ‘Resolution Professional’, tracing of other assets owned by the Corporate Debtor is a cumbersome exercise and is a long-drawn process. In such a scenario, CoC took a decision to recommend liquidation of the Corporate Debtor mainly to contain the CIRP expenses and costs. Pursuing the CIRP, without any corresponding advantage, in the opinion of CoC is not likely to yield any advantage.

10. It is also pertinent to note that the Applicant has not made out a case by demonstrating how Corporate Debtor is better suited for revival as there is negligible assets, that too, not in the possession of ‘Resolution Professional’ and therefore no valuation could be done. The Corporate Debtor also stopped operation three years prior to the Insolvency Commencement Date.”

*(Emphasis supplied)*

**22.** The CoC minutes have clearly recorded that the SBI had admitted that it could not take possession of the land as there was no clear demarcation of the land at Palghar between the Corporate Debtor and Aesthetics Stampings and Lamination Private Limited. We also find that the counter claim of the Appellants that SBI in their letter dated 02.03.2020 had admitted that the demarcation of the property was done

is incorrect. The said letter of 02.03.2020 has been placed at page 210 of the Appeal Paper Book and perusal of the same shows that in this letter SBI simply noted the charge on the properties mortgaged to it by the Corporate Debtor but does not admit that demarcation is done. The SBI officials had claimed that they had been denied access into the land and factory and that plant and machinery had also been sold by the suspended management even before the initiation of CIRP without seeking the permission of SBI. From the material available on record, we do not find that the erstwhile management of the Corporate Debtor had handed over these assets to the IRP or the RP or the SBI. There is no inventory or List of Assets or any other record to show that SBI was given possession of the assets. When there are no discernible assets, it is a logical corollary for the CoC to have concluded that there is not much scope for revival of the Corporate Debtor.

**23.** From the CoC minutes it is also clear that the RP had noticed that Corporate Debtor is not a going concern for 3 years prior to CIRP. This fact has not been contested by the Appellants either. In the present case, when the Corporate Debtor has not been functioning for three years prior to admission into CIRP, the objection raised by the Appellant to the decision of the CoC to liquidate the Corporate Debtor as arbitrary therefore lacks merit. Moreover, the IRP did not have requisite and certain information to draw up proper information memorandum. The CoC had also noted that the IRP had not provided requisite documents like Information Memorandum, Evaluation Matrix, RFRP to the PRAs to facilitate submission of plans. Hence the CoC rightly felt that in the given

circumstances it was unlikely that a viable and feasible resolution plan would come around. Continuation of CIRP would only have enhanced the CIRP cost without corresponding advantage.

**24.** The reliance placed by the Learned Counsel for the Appellants upon the judgment of this Tribunal in the matter of ***Nikhil Tandon Vs. Sanjeev Bindal Liquidator in CA (AT) (Ins.) No. 13 of 2022*** also cannot come to the aid of the Appellant since the facts are clearly distinguishable. In that case, resolution plan had been received from the Corporate Debtor which was a MSME but the plan was refused on the ground that no resolution plan was invited. It had been held that non-acceptance of Corporate Debtor as a registered MSME was a material irregularity committed in the CIRP process. The ratio of the judgment of this Tribunal in ***Gayatri Polyrub Pvt. Ltd. Vs Anil Kohli and Anr. in CA (AT) (Ins.) No. 650 of 2023*** which has also been relied upon by the Appellants also does not come to their aid since the facts of the above case are different in that here resolution plans had already been submitted by resolution applicants before the CoC but was not approved. The resolution applicants had come up with an offer of enhanced value but liquidation order had been approved by the Adjudicating Authority.

**25.** In the present case, the CoC took a decision for liquidation of the Corporate Debtor after holding 5 meetings. This decision was taken by 100% vote share. Thus, this decision of the CoC conforms to the requirements laid down in terms of Section 33(2) of the IBC. We find that the Adjudicating Authority has noted the deliberations of the CoC and thereafter concurred in the recommendations of the CoC to proceed with

liquidation proceedings. The Adjudicating Authority has therefore not committed any error in approving the recommendation of the CoC to liquidate the Corporate Debtor in such circumstances. We are also not persuaded by the assertion made by the Appellants that the decision of the CoC was made arbitrarily. Furthermore, the decision of the CoC to liquidate could not have been interfered with by the Adjudicating Authority because of the limited powers of judicial review. It is a well settled proposition of law that the Adjudicating Authority has been bestowed with limited jurisdiction as specified in the IBC while dealing with matters relating to liquidation of the Corporate Debtor and cannot enter upon adjudicating into the merits of a business decision taken by the CoC with requisite majority in its commercial wisdom to liquidate a corporate debtor. In the present case too, the Adjudicating Authority has abided by the discipline of the statutory provisions of the IBC.

**26.** This decision of the CoC to liquidate having been approved by the Adjudicating Authority, the same is not open to judicial review when no grounds have been made out as provided under Section 61(4) of the IBC of material irregularity or fraud committed in relation to such an order. As both these grounds do not arise in the facts in this case, hence the objections of the Appellants to set aside the resolution passed by the CoC to initiate liquidation has no merit. No infirmity is found in the order of the Adjudicating Authority approving the decision of the CoC to liquidate the Corporate Debtor.

**27.** We do not find any good ground to interfere with the impugned order passed by the Adjudicating Authority. There is no merit in both the appeals. The Appeals are dismissed. No costs.

**[Justice Ashok Bhushan]  
Chairperson**

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

**Place: New Delhi**

**Date: 23.02.2024**

Ram N.