

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 1104 of 2024 & I.A. No. 3977 of 2024

IN THE MATTER OF:

Subh Laxmi Investment Advisory Pvt. Ltd.

...Appellant

Versus

Committee of Creditors

of Sintex Plastics Technology Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Pradeep Kumar, Ms. Shipra, Mr. Gaurav Garg, Advocates.

For Respondents: Mr. Sunil Fernandes, Sr. Advocate, Mr. Chitranshul A. Sinha, Ms. Pallavi, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Advocates for R-1.

Mr. Deepayan Mandal, Mr. Naman Varma, Mr. Mridul Bansal, Advocates for R-2. Mr. Apar Gupta, Mr. Naman Kumar, Advocates for R3.

Mr. Navin Pahwa, Sr. Advocate, Mr. Himanshu Satija, Mr. Harsh Saxena, Advocates for R- 4 to 7.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the Unsuccessful Resolution Applicant against the order 03.05.2024 passed by the National Company Law Tribunal, Ahmedabad, Division Bench, Court – 1 (in short ‘ Tribunal’) by which an application bearing I.A No. 09 of 2024 filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short ‘ Code’) by the RP for the liquidation of the Corporate Debtor, namely, M/s Sintex Plastics Technologies Ltd. has been allowed and Mr. Bimal Ashok Desai has been appointed as the liquidator of the CD.

Company Appeal (AT) (Ins) No. 1104 of 2024

2. M/s Asset Reconstruction Company (India) Pvt. Ltd. filed a petition under Section 7 of the Code bearing CP (IB) No. 175/Ahm/2022 against the CD which was admitted on 21.02.2023 and Mr. Kshitiz Chhawchharia was appointed as the Interim Resolution Professional (IRP) of the CD.
3. IRP made public announcement in Form A on 01.03.2023 in financial express (English language), All India Edition and Financial Express (Gujarati language) Ahmedabad Edition for submission of proof of claims till 13.03.2023.
4. After collating the claims received from the creditors, the IRP constituted the Committee of Creditors (CoC) on 22.03.2023 of only one financial creditor, namely, RBL Bank Limited.
5. The CoC in its second meeting held on 03.07.2023 appointed Mr. Nimai Guatam Shah as the RP of the CD and an application in this regard filed before the Tribunal under Section 22(3)(b) of the Code was allowed on 24.07.2023 appointing Mr. Nimai Gautam Shah as the RP.
6. The RP published invitation for expression of interest (EOI) in Form G for submission of the resolution plans for the CD in Financial Express (English and Gujarati Language) Ahmedabad edition on 14.08.2023 in which the last date for submission of EOI was 30.08.2023.
7. The Appellant has alleged that it had submitted its EOI on 29.08.2023 which was confirmed by the email of the RP dated 30.08.2023. the name of the Appellant was included in provisional list of PRAs.

8. The RP issued a provisional list of eligible PRAs on 01.09.2023 which consisted of seven PRAs out of eight PRAs who had submitted their EOI.

9. The RP confirmed the inclusion of the Appellant in the final list of the PRAs and subsequently shared the information memorandum, evaluation matrix and a request for resolution plan to the Appellant on 07.09.2024.

10. According to the Appellant, the resolution plan was submitted through email on 17.10.2023 alongwith EMD of Rs. 25,00,000/- with a financial proposal of Rs. 4 Cr. with a term of one year from the date of approval of resolution plan by the Tribunal.

11. It is alleged that the RP invited the Appellant by email dated 21.10.2023 to the fourth meeting of the CoC which was scheduled to be held on 25.10.2023 for presentation of their resolution plan.

12. It is alleged that there was no response by the RP/CoC, therefore, the Appellant itself amended the financial bid to Rs. 7,75,00,000/- on 27.10.2023 to be paid within four months from the date of approval of resolution plan by the Tribunal.

13. It is further alleged that the RP subsequently sent an email dated 24.11.2023 to the Applicants for submission of revised financial proposal through email on or before 27.11.2023.

14. The Appellant alleged to have submitted addendum for revised financial proposal with an amount of Rs. 8 Cr. on 27.11.202 to be paid within four months from the date of approval of resolution plan by the Tribunal.

15. It is also alleged that the RP sent email to the PRAs asking them to submit final revised resolution plan on or before 30.11.2023. The Appellant alleged to have requested the RP to allow further two days time to ensure submission of comprehensive resolution plan and on 30.11.2023 the RP accepted the request of the Appellant and stated that plan may be submitted by it before 02.12.2023. The Appellant alleged to have submitted its final resolution plan on 02.12.2023 with a financial proposal of Rs. 8 Cr. to be paid within four months from the date of approval of resolution plan by the Tribunal.

16. It is also alleged by the Appellant that it once again took initiative and submitted another addendum to the resolution plan through an email dated 21.02.2024 and made two proposals (i) to acquire the CD with its brand named for an amount of Rs. 8 Cr. (ii) to acquire the CD without its brand name for an amount of Rs. 4,50,00,000/-.

17. It is alleged that the RP put all the three compliant resolution plans for voting through e-voting window which closed on 26.03.2024 wherein the CoC abstained from voting on either of the resolution plans which were neither approved nor rejected.

18. However, the RP on 26.03.2024 intimated the Appellant that resolution plan has not been approved by the CoC and asked to provide the bank account details for refund of EMD.

19. The Appellant has alleged that in response to the email received on 26.03.2024, requested the RP to apprise about the reason for not accepting

the resolution plan and requested to share the minutes of the meeting through letter dated 08.04.2024.

20. It is further alleged that the Appellant received a letter dated 30.04.2024 from the CoC that it has chosen not to vote for the plan and unsuccessful prospective resolution applicant cannot question the commercial wisdom of the CoC.

21. It is further alleged that the RP filed an application for initiation of liquidation process against the CD which was allowed by the impugned order dated 03.05.2025.

22. On the other hand, Counsel for Respondent No. 1/CoC has alleged that third CoC meeting was held on 11.08.2023 in which apart from passing various resolution, approving fees of RP, Evaluation Matrix, eligibility criteria etc. it was resolved with 100% of voting to file appropriate application for extension of the CIRP of the CD for 90 days from the completion of 180 days of the CIRP. Accordingly, I.A No. 944 of 2023 was filed by the RP which was allowed and CIRP period was extended till 20.11.2023.

23. It is further submitted that in the 4th CoC meeting dated 25.10.2023, it was resolved to file IA seeking exclusion of CIRP period of 90 days. The RP filed I.A No. 1303 of 2023 praying for exclusion of CIRP period which was dismissed by the Tribunal on 18.12.2023.

24. The order dated 18.12.2023 was challenged by way of two appeals CA (AT) (Ins) No. 82 and 89 of 2024 by the RP as well as the RBL Bank which

was allowed on 30.01.2024 and the period of CIRP was extended till 30.03.2024.

25. It is further submitted that in the 5th meeting of the CoC, voting was kept open till 31.12.2023 in which the sole member of the CoC abstained from voting on either of the three resolution plan. It is also submitted that in the 6th CoC meeting held on 22.03.2024 e-voting was kept open till 26.03.2024 and the CoC was informed that as per order of the NCLAT, the extended period of CIRP is expiring on 30.03.2024. It is alleged that in the said meeting, the resolution plans were placed before the CoC to cast their vote in which three resolutions were to approve or reject the resolutions plans so received from PRAs, one resolution for passing resolution for liquidation of the CD as the CIRP was getting over on 30.03.2024 and one resolution for approving the fee of the RP at the minimum permitted scale as per Regulation 34B.

26. It is alleged that the CoC was not in favour of the resolution plans, therefore, in its commercial wisdom it has abstained from voting. It is also submitted that on 27.03.2024 the RP informed the CoC that he was proceedings to file a petition for liquidation. He has also suggested CA Bimal Ashok Desai as the liquidator. He sought consent of the Bank/CoC latest by 27.03.2024. On the same day, the sole member of the CoC gave consent for the name suggested by the RP as the liquidator. Thereafter, since CIRP period had expired on 30.03.2024, therefore, the application was filed bearing I.A No. 6 of 2024, however, the said application was dismissed on 09.04.2024 granting liberty to file fresh application for liquidation with copy

of Form H. It is alleged that in compliance of order dated 09.04.2024, RP filed the application with Form H bearing IA No. 09 of 2024. The application was filed for liquidation because the CoC did not approve any of the resolution plans and the CIRP period of the CD was over on 30.03.2024 which was in conformity with the provisions of Section 33 of the Code. It is also alleged that vide order dated 24.04.2024 the Applicant sought time to amend the cause title as well as to file revised form H which was allowed and in compliance of order dated 24.04.2024, filed an additional affidavit on 29.04.2024 with revised form H alongwith revised memo of parties and also the email correspondence with sole CoC, giving consent to appoint Mr. Bimal Ashok Desai as the liquidator.

27. Counsel for Respondent No. 4 to 7 has submitted that after the impugned order was passed, the Respondent No. 3 issued the e-auction notice on 21.06.2024 as per which the assets of the CD were proposed to be sold in different blocks. The sale of the CD was proposed as a going concern under Block A in accordance with Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 (in short 'Regulations').

28. Pursuant to the e-auction notice, it is alleged that the Respondents deposited EMD of Rs. 1 Cr. by way of RTGS in respect of Block A. The e-auction was conducted on 21.06.2024, the Respondents submitted bid of Rs. 20,63,00,000/- for purchasing the CD as a going concern which was accepted and Respondents were declared as the successful bidders.

29. It is further alleged that on 22.06.2024 the Respondents received letter of intent by Respondent No. 3 as per which they were required to

pay the balance consideration of Rs. 19,63,00,000/- on 18.07.2024. It is further alleged that initially the Respondents were not a party to the appeal, however, by the order dated 05.12.2024 of this Court in I.A No. 3977 of 2024, successful auction purchasers were impleaded as parties.

30. Counsel for the Appellant has argued that the purpose for which the Code was introduced was to facilitate debt ridden companies to be taken over as going concern by avoiding liquidation. In this process, the CoC plays a key role in assessing and evaluating the resolution plans in the interest of the stakeholders alongwith maximization of the assets but in the present case, the CoC has misused the process because it has made liquidation as a recovery tool for securing payment of its debt and ignored the viable resolution plan submitted by the Appellant as it abstained from voting on the plans which were presented in the meeting because the CoC was not interested in revival of the CD.

31. It is further argued that absence of the CoC from voting on the resolution plan reflects the indecisiveness on its part. It is submitted that if the CoC was not satisfied with the proposal made by way of resolution plan it could have exercised the option of conducting swiss challenge method amongst the PRAs.

32. It is further submitted that absence of the CoC from the voting on the resolution plan cannot be deemed to be rejection and in this regard, referred to an order passed by the Karnataka High court in the case of Kirloskar Electric Co. Ltd. Vs. Unknown, C.P No. 97 of 2022 decided on 13.02.2023 to contend that a member present and voting may remain neutral, indifferent,

unbiased, or impartial i.e. not engaged on either side. One is not supposed to write anything except putting yes or no either in favour of or against the proposition. A vote casted without indicating the mind of the voter either for or against the resolution, is no voting at all.

33. It is submitted that the sole CoC abstained from voting neither decided to cast its vote in favour or against the resolution, therefore, it cannot be counted as voting at all. It is further submitted that even if the Bank is the sole member of the CoC having 100% vote right, who had abstained from voting, it cannot be considered to be commercial wisdom of the CoC against the resolution plan submitted by the Appellant.

34. In the end, it is also argued that the Appellant being unsuccessful resolution applicant is a person aggrieved in terms of the Section 61 of the Code in view of the decision of the Hon'ble Supreme Court in the case of Independent Sugar Corporation Ltd. Vs. Girish Sriram Juneja & Ors., Civil Appeal No. 6071 of 2023.

35. Counsel for Respondent No. 1 has submitted that 6th CoC meeting was convened on 22.03.2024 in which the erstwhile RP presented three resolution plans for consideration. Voting line was kept open for three days from 23.03.2024 to 26.03.2024 but the sole member of the CoC in exercise of its commercial wisdom, chose to abstain from voting to which he was entitled to in accordance with the Regulations.

36. It is further submitted that in the 6th CoC meeting itself a detailed discussion took place regarding the possibility of liquidation and CoC sought

recommendation for the nomination of liquidator. The CoC has also stated that name of the liquidator would be suggested upon finalization.

37. It is submitted that since no resolution plan was approved by the CoC, the RP sent an email to the CoC on 27.03.2024 seeking consent for filing the liquidation application and the nomination of liquidator which was consented to by the sole member of the CoC and accordingly, erstwhile RP filed an application on 12.04.2024 for liquidation which was allowed.

38. Counsel for Respondent No. 1 has further submitted that the impugned order has been passed under Section 33(1) of the Code because the Tribunal did not receive the plan for consideration prior to conclusion of the CIRP on 30.03.2024.

39. It is further submitted that if the application is to be filed for liquidation during the pendency of the CIRP then the decision of the CoC by at least 66% voting share has to be obtained for the purpose of liquidation which was not the situation in the present case because CIRP period expired on 30.03.2024. In this regard, he has relied upon a decision of this court in the case of Dinesh Gupta Vs. Vikram Bajaj, CA (AT) (Ins) No. 276 of 2021 in which this court has held that “once the CIRP period expires, as envisages under Section 33(1) of the Code, the RP has no option but to file an application for liquidation of the CD and held that the order directing liquidation in such a case are free from any error.”

40. He has also relied upon a decision of the Hon’ble Supreme Court in the case of Dr. Abraham Patani of Mumbai & Anr. Vs. The State of Maharashtra & Ors., (Civil Appeal No. 5929 of 2022) in which the Hon’ble Supreme Court *Company Appeal (AT) (Ins) No. 1104 of 2024*

expounded upon the doctrine of substantial compliance and held that a procedural requirement is not strictly adhered to yet the essential purpose underlying the requirement is fulfilled then the action in question may nonetheless be deemed valid. This argument has been raised on the submissions that the CoC gave consent on 27.03.2024 for filing the liquidation application and nomination of Respondent No. 3 as the liquidator.

41. He has also highlighted the subsequent events which took place in this case contending that when the appeal was listed for hearing on 31.05.2024 it was brought to the notice of the Court that e-auction notice had been issued on 23.05.2024 scheduling the e-auction of the CD as a going concern on 21.06.2024 with a reserve price fixed at Rs. 20.61 Cr. This Court did not grant any interim stay on the auction but recorded that the Appellant shall have the right to participate in the auction process, however, the Appellant did not participate in the auction process from which it is apparent that it has no genuine interest in acquiring the CD as a going concern.

42. It is further submitted that pursuant to the e-auction notice dated 22.06.2024, consortium comprising Durgesh Infrastructure Pvt. Ltd., Atreyi Vincom Pvt. Ltd. Unicorn Suppliers Pvt. Ltd. and Eastern Mercantiles Pvt. Ltd. (Collectively called 'acquirers') successfully secured the bid for the acquisition of the CD as a going concern at a price of Rs. 20.63 Cr. which exceeded the reserve price.

43. It is submitted that the CoC has effectively maximized the value of the CD within a time bound framework. The Appellant had submitted a financial

proposal only of Rs. 8 Cr. as opposed to Rs. 20.63 Cr. offered by the acquirers in the liquidation process.

44. In the end, it is submitted that the Unsuccessful resolution applicant does not qualify as an aggrieved person and relied upon a decision of this court in the case of M.K. Rajagopalan Vs. Rajendran & Anr., CA (AT) (Ins) No. 58 of 2023.

45. Counsel for Respondent No. 2 (erstwhile RP) has submitted that the contention of the Appellant that CoC has not approved the filing of the application under Section 33 (1) of the Code is misconceived because there is no legal bar on the RP to file such an application. In this regard, he has submitted that Section 28 of the Code specifically lists out actions of the RP which require a prior approval of the CoC in which application under Section 33 (1) is not included. It is further submitted that even otherwise the consent was given by the CoC on 27.03.2024 for filing the application for liquidation.

46. Counsel for Respondent No. 4 to 7 has submitted that e-auction was conducted on 21.06.2024 in which they have been adjudged as the highest bidder. Entire payment has been made on 18.07.2024 after which the sale certificate was issued on 25.07.2024. It is further submitted that the commercial wisdom of the CoC is paramount and in this regard, the CoC was not required to record reasons for approving or rejecting the plan and has relied upon a decision of the Hon'ble Supreme Court in the case of K. Sashidhar Vs. Indian Overseas Bank and Kalpraj Dharamshi Vs. Kotak Investment Advisors Ltd., (2021) 10 SCC 401.

47. It is also submitted that the CIRP period expired on 31.03.2024 after having been extended three times and in the 6th CoC meeting a detailed discussion took place regarding the possibility of liquidation and in the course of this discussion, the CoC also sought recommendation for the nomination of liquidator. It is also submitted that with the extended CIRP period ending on 31.03.2024 and no approved resolution plan was there, therefore, the R2 was duty bound to file the application seeking liquidation and in terms thereof, he sought consent of the CoC which was accordingly granted, therefore, it is argued that filing of the application for liquidation was not erroneous as has been projected by the Appellant.

48. It is further submitted that there is a huge difference in the liquidation value of the CD to the value offered by the PRAs in its plan because he had only offered Rs. 8 Cr. whereas the CD as a going concern has fetched Rs.21 Cr. which was much higher than the capital sought to be injected by the Appellant in the CD.

49. We have heard Counsel for the parties and perused the record.

50. There is no dispute to the fact that RBL Bank is the sole member of the CoC with 100% voting right. It is also not in dispute that there were three resolution plans before the CoC in which one of the resolution plan was submitted by the Appellant and the sole member of the CoC abstained from voting. The CIRP Regulations provides for different modes of voting. As per the regulations, the members of the CoC may either vote in favour, against or abstain from voting. In the present case, it is alleged that sole member of the CoC abstained from voting, therefore, the resolution plan submitted by the

Appellant was not rejected but the very fact that the sole member of the CoC did not vote in favour of the resolution plan submitted by the Appellant, therefore, it had exercised its commercial wisdom and chose to abstain from voting as has been held by the Hon'ble Supreme Court in the case of K. Sashidhar (Supra) that commercial wisdom of the CoC is paramount, therefore, the reason cannot be questioned by the Appellant.

51. In so far as, the application for liquidation, having been filed without consent of the CoC is concerned, argument of the Appellant is not tenable because in the 6th CoC meeting, there was discussion regarding the possibility of the liquidation and in the course of said discussion, the CoC sought recommendation for the nomination of liquidator. In this regard, erstwhile RP sent email to the CoC seeking its consent to file the liquidation application and the nomination of liquidator to which the sole member of the CoC gave consent by returning email on the same.

52. Besides this, it is also a matter of record that after three extensions, the CIRP expired on 30.03.2024, therefore, the RP had to file an application for liquidation under Section 33(1) which has been filed on 12.04.2024 and has been allowed on 03.05.2024 by the impugned order.

53. It is also a fact to be noticed that when the case was listed for hearing on 31.05.2024 before this Court, it was brought to the notice of this court that e-auction notice was issued on 23.05.2024 scheduling the e-auction of the CD as a going concern on 21.06.2024 at the reserve price of Rs. 20.61 Cr. Instead of granting stay, this court clearly said that the Appellant shall have the right to participate but it had failed to participate whereas in the auction,

Respondent No. 4 to 7 were held to be successful as they gave the bid of Rs. 20.63 Cr. which was over and above the reserve price. The said amount has already been paid by R4 to 7 and the sale certificate has been issued in their favour whereas the Appellant had only offered a sum of Rs. 8 Cr. to take over the CD as a going concern.

54. Keeping in view of the aforesaid facts and circumstances which have also been noticed by the Tribunal, we do not find any error in the impugned order for the purpose of interference, therefore, the present appeal is found to be without any merit and the same is hereby dismissed though without any order as to costs.

I.As, if any, pending are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
04th April, 2025
Sheetal