

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

**Company Appeal (AT) (Ins.) No. 480 of 2022**

**In the matter of:**

**Shrinathji Trading Company  
A partnership firm,  
Flat No. 504, "B" Wing, Coral Wood,  
Hoshangabad Road,  
Bhopal (M.P.) 402016** **....Appellant**

**Vs.**

**Sanwaria Consumer Limited,  
(formerly known as M/s. Sanwaria Agro Oils Ltd.)  
Registered Office at: E-1/1, Arera Colony,  
Bhopal. (M.P.) 462016  
Through appointed Resolution Professional,  
Shri Gautam Mittal,  
IBBI Regn. No: IBBI/IPA-001/IP-P01221/2018-19/12058  
AAA Insolvency Professional LLP  
E-10A, Kailash Colony,  
New Delhi – 110048.** **... Respondent No. 1**

**Committee of Creditors  
of M/s. Sanwaria Consumer Limited**

Through the members of Committee of Creditors,

- a. Punjab National Bank**  
PNB BOI: Shahpura, Bhopal,  
E-7/635, Arera Colony,  
Bhopal.
- b. State Bank of India**  
Stressed Assets Management Branch,  
Plot No. 1, Arera Hills, First Floor,  
State Bank Building, Bhopal-462011.
- c. Central Bank of India**  
Arera Hills Branch,  
Bhopal, MP-462011.

- d. **Bank of India,**  
4, Shopping Complex,  
TT Nagar, Bhopal – 462003.
- e. **Bank of Baroda**  
Habibganj Branch, Plot No. 9,  
Zone – II, M.P. Nagar, Bhopal-462011.
- f. **IDBI Bank Limited**  
IDBI Complex, 1<sup>st</sup> floor,  
Off CG Road, near Gulbai Tekra,  
Ahmedabad-380006. Gujarat.
- g. **Andhra Bank (Now Union Bank of India)**  
Specialized Asset Recovery Management Branch,  
A/5, Model town CHS Ltd.,  
Gulmohar Road, JVPD Scheme,  
2<sup>nd</sup> Floor, Andhra Bank (Now Union Bank of India)  
JVPD Branch, Mumbai – 400049.
- h. **Canara Bank**  
Arera Colony Branch, E-5, Plot No. 9,  
Commercial Area, Ravi Shankar Nagar,  
Bhopal – 462016.

.... Respondent No. 2

**Present**

**For Appellant: Mr. Akshat Agrawal, Advocate.**

**For Respondents: Mr. Gautam Mittal & Mr. Manish Jain, for R-1/RP, Mr. Prakash Shinde, Mr. Nishit Dhruva, Ms. Meghna Arvind, Ms. Aalisha Sharma & Ms. Astha Ojha, for R-2/CoC**

**Judgment**

**(Dated: 27.07.2022)**

**(Virtual Mode)**

**(Per.: Dr. Alok Srivastava, Member (Technical))**

This appeal arises from the order dated 9.12.2021 passed by National Company Law Tribunal, Indore Bench (Adjudicating Authority) whereby IA No. 192/2021 filed by the Appellant seeking consideration of his resolution plan submitted on 10.9.2021 was rejected.

2. In brief the Appellant's case is that Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor M/s. Sanwaria Consumer Limited (formerly known as M/s. Sanwaria Agro Oils Ltd.) on 29.5.2020. Thereafter, on invitation of Expressions of Interest (EOI) for submitting resolution plan for insolvency resolution of the corporate debtor, the Appellant submitted a resolution plan on 22.1.2021, which was revised on 27.3.2021. This revised resolution plan was considered in the meeting of the Committee of Creditors (in short 'CoC') held on 30.3.2021 and based on the comments received in the meeting the Appellant again submitted a revised resolution plan dated 8.4.2021, which was considered by the CoC and the Appellant was informed vide e-mail dated 23.4.2021 that the resolution plan submitted by him was not approved after being rejected in voting by requisite vote

share in the CoC. Thereafter, the Appellant filed an application bearing No. IA No. 133(MP)2021 before the Adjudicating Authority seeking indulgence for consideration of his revised resolution plan, and vide order dated 6.8.2021, the Appellant was permitted to submit the latest revised plan within 3 days to the Resolution Professional, which was to be thereafter considered by the CoC. Consequently, the Appellant submitted another revised resolution plan to the Resolution Professional on 9.8.2021 which was considered by the CoC and was put to vote from 18.8.2021 till 16.9.2021. The Appellant submitted another plan on 3.9.2021 in which he improved the financial bid upwards and also reduced the time schedule for payment. The RP forwarded this latest revised resolution plan to the CoC on 4.9.2021.

3. After the e-voting, the RP informed the Appellant on 17.9.2021 that his resolution plan was not approved by the CoC. The Appellant has claimed that according to the information available to him, the latest resolution plan submitted by the Appellant on 10.9.2021 was not considered by the CoC and therefore, he preferred IA No. 192/2021 before the Adjudicating Authority praying for direction to the CoC for consideration of his latest revised resolution plan. This application IA no. 192/2021 was rejected by the Adjudicating

Authority vide order dated 9.12.2021 on the ground that the CoC had already considered a resolution plan of the Appellant and CIRP period of 330 days is over and application for liquidation is already filed before the Adjudicating Authority. Therefore, the Adjudicating Authority declined to direct the CoC to further consider any resolution plan.

4. We heard the arguments put forth by the Learned Counsels of all the parties and perused the record.

5. The Learned Senior Counsel for Appellant has argued that the Appellant is the only resolution appellant left whose resolution plan was under consideration. He has claimed that after the direction of the Adjudicating Authority in IA No. 133(MP)/2021 delivered vide order dated 6.8.2021, the Appellant submitted a resolution plan, which was considered by the CoC in its meetings held on 2.8.2021 and 16.8.2021 wherein the Appellant was asked to revise his resolution plan. He has claimed that Appellant re-submitted a revised resolution plan on 17.8.2021 in accordance with directions given by the Adjudicating Authority vide order dated 6.8.2021. The joint lenders meeting considered his resolution plan and on the basis of comments given by the lenders in the meeting, he submitted

a revised plan, further revised from the resolution plan which was submitted on 17.8.2021 and on 10.9.2021. He has claimed that since the revised resolution plan submitted on 10.9.2021 was in accordance with the comments given by the lending banks, it would have passed muster, but the CoC did not take up this revised plan for consideration and therefore the Appellant approached the Adjudicating Authority through IA No. 192 of 2021 seeking direction to the CoC/Resolution Professional to consider his revised resolution plan submitted on 10.9.2021, whereupon the Adjudicating Authority, vide its order dated 9.12.2021, rejected his application.

6. The Learned Senior Counsel for Appellant has further argued that the corporate debtor is a going concern and as held by the Hon'ble Supreme court in its judgment in **Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. 2021 SCC Online SC 313**, liquidation should be the last resort as it would mean certain death of the corporate debtor. Therefore, since the Appellant had already submitted a much improved resolution plan, it would have been in the interest of the corporate debtor as well as the creditors that such a plan was considered by the CoC. He has, therefore, challenged the Impugned Order in the appeal.

7. The Learned Counsel for the CoC (Respondent No. 2) has provided a chronology of events in the CIRP of the corporate debtor to argue that sufficient opportunity and time was given to the Appellant to submit satisfactory resolution plan and revise it to meet with the expectations of the CoC members, but his plan, which was revised many times did not meet with the expectations of the CoC. He has argued that the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor was initiated on 29.5.2020 and after invitation of Expression of Interest for Resolution Plan, the first version of the resolution plan was submitted by the Appellant on 1.1.2021, which was rejected after due consideration by the CoC. He has argued that thereafter a revised plan was submitted by the Appellant, which was again rejected by the CoC in its 8<sup>th</sup> meeting on 24.4.2021 through e-voting. He has further argued that in accordance with the directions given by the Adjudicating Authority in IA No. 130 of 2021 vide order dated 6.8.2021, the revised resolution plan submitted on 9.8.2021 was discussed in detail by the CoC on 16.8.2021 and the Appellant was requested to submit a revised plan incorporating the suggestions given by the CoC members. This revised plan was re-submitted on 17.8.2021, which was considered by the CoC and in the e-voting, which took place

between 17.8.2021 and 16.9.2021, this revised plan was rejected by 100% vote share. He has claimed that since the revised resolution plan was not approved by the CoC, the application for liquidation was considered by the CoC in the same meeting and was approved, and consequently RP filed application for liquidation before the Adjudicating Authority.

8. He has further argued that the joint lenders in the NPA account of M/s. Sanwaria Consumer Limited discussed the issue of obtaining the improved resolution plan in its meetings on 27.10.2021 and 26.11.2021 when the majority of lenders strongly presented the view that despite repeated opportunities the prospective resolution applicant has neither shown seriousness nor modified the plan in accordance with the directions of the lender banks by submitting desired documents for comfort, and hence no further opportunity should be given the prospective resolution applicant (the Appellant Shrinathji Trading Company) for submitting any revised plan. He has stated that in accordance with the decision of the joint lenders in meeting held on 26.11.2021, the views of the CoC were placed before the Adjudicating Authority during consideration of IA No. 192(MP)/2021, whereupon the Adjudicating Authority rejected IA No. 192/2021 vide the Impugned

Order taking the view that the CoC had rejected the resolution plan presented to it and the CIRP period of 330 days was already over, and further since the application for liquidation was filed on the directions of CoC.

9. The Learned Counsel for RP agreed with the arguments put forth on behalf of the CoC and submitted that Hon'ble Supreme Court has held in the matter of **Ebix Singapore Private Limited v. Committee of Creditors of Educom Solutions Limited & Anr. 2021 SCC OnLine SC 707** that if statutory timelines are over and no resolution could be obtained, the matter should be allowed to take due course in accordance with the provisions of IBC without unnecessary delay.

10. It is noted that the CIRP was initiated against the corporate debtor on 29.5.2020, whereafter resolution plans were invited from the prospective resolution applicants. Admittedly the Appellant submitted his resolution plan on 1.1.2021, which after due examination was considered in the 8<sup>th</sup> meeting of the Committee of Creditors held on 23.3.2021 and again held on 30.3.2021 after adjournment. These revised plans, submitted by three prospective resolution applicants including the appellant, were considered by

the CoC on 30.3.2021 when the representative of the Appellant along with representatives of other prospective resolution applicants were invited to make presentation of their respective plans. In this meeting, the representative of appellant informed the CoC members that there is no scope of increasing the proposal financial bid and the bid being offered is the best amount proposed. Thereafter, on the statement of the Appellant's representative that there can be no increase in the bid amount, the three resolution plans were put to vote. The resolution relating to e-voting is attached at pg. 53 of the affidavit-in-reply of the CoC, whereby it is mentioned that the resolution is not approved by the CoC members. More specifically, the resolution for approval of the plan submitted by Appellant Shrinathji Trading Company is disapproved by the CoC members i.e. 100% (Resolution 1B). Subsequently, in the same meeting of CoC, the issue regarding initiation of liquidation of corporate debtor was also put to vote (after the CoC had disapproved all the resolution plans under consideration), whereby the resolution for authorizing the RP, to submit liquidation application before the Adjudicating Authority, was approved by vote share of 100% (refer page 55 of the affidavit-in-reply of the CoC).

11. Thereafter, upon receipt of the order of the Adjudicating Authority in IA/133/MP/2021 dated 6.8.2021 (attached at pp.65-66 of the appeal paperbook), the Adjudicating Authority directed as follows:-

*“Let the plan be submitted to the RP within three days. The Learned Counsel for the RP states that the CoC is going to held the meeting tomorrow. The CoC to defer its meeting to three days. Let meeting be held on 13<sup>th</sup> August, 2021 or any suitable date nearby and let the both plans placed before the CoC for its consideration.”*

12. In response to these directions and the opportunity given to the Appellant to submit a revised/modified resolution plan, the appellant submitted revised plan on 9.8.2021, which was discussed in accordance with the directions of the Adjudicating Authority in the meeting of the CoC held on 16.8.2021 and after due consideration, the appellant was advised to increase the bid amount and further submit the revised plan by 17.8.2021, which the Appellant agreed to. This revised plan was considered and deliberated upon in the meeting of CoC and put up for e-voting during the period 17.8.2021 till 3.9.2021, which was extended till 16.9.2021 upon the request of some members of the CoC and the revised resolution plan was rejected by a vote share of 100% in the

9<sup>th</sup> meeting of the CoC. The table depicting e-voting result is attached at pg. 90 of the affidavit-in-reply of the CoC. In the same meeting, the CoC members took note of the progress of liquidation application bearing IA No. 90/2021 pending before the Adjudicating Authority.

13. We consider the claim of the Learned Senior Counsel for Appellant that the meeting of joint lenders took the view that the resolution plan submitted by the appellant on 10.9.2021 was an important one, which satisfied the lenders banks, we note from the minutes of the meeting of joint lenders dated 26.11.2021 (attached at pp.99-100 of the affidavit in reply of CoC) as follows:-

*“State Bank of India then submitted that –*

- PRA has revised the plan for the third time, only amount has been changed in the plan; and*
- No change in plan regarding source of funds, no seeding of party on security, requirement of bank guarantee for confirmation of dissolution, etc. as was discussed.*

*As such no despite commitment by the PRA during the last month’s meeting, the PRA could not submit desired confirmations/documents, despite lapse of a month’s time, State Bank of India reaffirmed that PRA is not serious an just buying time and they are of the view that the revised plan for Rs.105.00 crores should not be considered for discussion.”*

14. After such views were expressed by the representative of State Bank of India, the representatives of Bank of Baroda, Bank of India, Central Bank of India, Canara Bank and Punjab National Bank endorsed the views expressed by the State Bank of India's representative, which is recorded in the minutes of joint lenders meeting held on 26.11.2021. The representative of IDBI also questioned why the present meeting is called and wanted the Hon'ble NCLT to decide the matter. Thereafter, the CoC authorized the leader of lenders to submit the common view before the NCLT that the CoC is of the final view that no further opportunity should be given to prospective resolution applicant (PRA), as he has failed to provide desired comforts to the lenders for the acceptable terms in resolution plan, which could be successfully implemented.

15. We note that the Impugned Order dated 9.12.2021 rejected IA No. 192/2021 on the basis that the plan submitted by the Appellant/Applicant had been considered by the CoC and that the CIRP period of 330 days is already over and application for liquidation is filed before the Adjudicating Authority.

16. Looking at the total circumstances of the case, including the views of joint lenders and also at the fact that the CoC did not wish to consider any further revised resolution plan as he had failed to provide required comfort to the lender banks by submitting/revising the resolution plan despite being provided with enough opportunities to do so, we are of the clear opinion that such decision is within the ambit of commercial wisdom of the CoC.

17. The Learned Senior Counsel for Appellant has referred to the judgment of Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons (P) Ltd. through the authorized signatory vs. Edelweiss Asset Reconstruction Co. Ltd. through the Director and Ors. [2021 SCC Online SC 313]**, wherein it is held as follows:-

*"53. After discussing the relevant provisions of I&B Code, this Court observed thus:*

33. ....

***The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate***

***body is able to pay back its debts and get back on its feet.*** All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins.”

*[emphasis supplied]*

18. On the other hand, the Learned Counsel for Respondent has referred to Hon'ble Supreme Court's judgment in the matter of **Ebix Singapore Private Limited v. Committee of Creditors of Educom Solutions Limited & Anr. 2021 SCC OnLine SC 707**, wherein it is held as follows:-

*“202.....A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC.”*

19. While noting both the above judgments of Hon'ble Supreme Court, we find that the statutory scheme given in the IBC regarding the time period of CIRP in section 12 of IBC stipulates that a total of 330 days could be spent in obtaining prospective resolution plan. In the present case, approximately 559 days are over since the initiation of CIRP till the date of Impugned Order and enough opportunities have already been given to the prospective resolution applicant to provide resolution plan without success. We, therefore, follow the view of Hon'ble Supreme Court in the matter of **Ebix Singapore Private Limited v. Committee of Creditors of Educom Solutions Limited & Anr. (supra)** wherein timely completion of resolution process has been considered necessary without delaying the stage of liquidation, if circumstances so require.

20. In view of the aforementioned discussion, we are of the clear view that the Adjudicating Authority has not erred in passing the Impugned Order, and while passing the order it has considered the views of the CoC as well as the lapse of stipulated time period of more than 330 days in the CIRP. Furthermore, the CoC has already resolved for liquidation of the assets of the corporate debtor and the application for approval of liquidation of the corporate debtor is

under consideration of the Adjudicating Authority. We, therefore, find no merit in the appeal and accordingly dismiss it.

21. In view of the circumstances of the appeal, there is no orders as to costs.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Mr. Kanthi Narahari]  
Member (Technical)**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi  
27<sup>th</sup> July, 2022**

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