

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

**IA/418/2020 in CP/1053/IB/2018**

*(Filed under Sec. 60(5)(c) of the IBC, 2016)*

In the matter of ***M/s. Krishna Industrial Corporation Limited***

**SIVA RAMA KRISHNA PRASAD**

S/o. P.R. Ramakrishnan,  
Residing at Site 8,9 and 10, Rajeswari Nagar,  
Udayampalayam post,  
Sowripalayam post,  
Coimbatore – 641 028

.. .. Applicant

-Vs-

1. **KRISHNA INDUSTRIAL CORPORATION LIMITED**

Represented by Resolution Professional of  
of *M/s. Krishna Industrial Corporation Limited*  
"Ramakrishna Buildings",  
No.239, Anna Salai,  
Chennai – 600 002

2. **MAXIMUS ARC LIMITED**

59A-18/1-5A, Sri Plaza,  
Teachers Colony,  
Patamata,  
Vijayawada – 520 008

3. **ANDHRA PRADESH STATE FINANCIAL CORPORATION**

5-9-194, Andhra Division, Industrial Park, Auto Nagar,  
Vijayawada

.. .. Respondents

**Present:**

*For Applicant* : *Arvinth Pandian, Senior Advocate  
Along with Sandeep Kumar*

*For Respondent* : *Yajura Devi, Advocate for R1  
Srinath Sridevan, Advocate &  
Bhagavath Krishnan, Advocate for R2*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 27<sup>th</sup> July 2020*

**ORDER**

***Per: ANIL KUMAR B, MEMBER (TECHNICAL)***

1. The instant Application has been filed by one Mr. Siva Rama Krishna Prasad, (hereinafter referred to as the "Applicant"), the erstwhile Promoter / Director of the Corporate Debtor viz. M/s. Krishna Industrial Corporation Limited, under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") , seeking relief as follows;

- i) To keep the liquidation Application in IA/376/2020 in CP/1053/IB/2018 in abeyance, pending disposal of the instant Application.

- ii) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of equity and in the circumstances of this case and thus render justice.

2. Shorn of unnecessary details, the brief facts of the case are as follows;

- i). Upon an Application filed by the 2<sup>nd</sup> Respondent in CP/1053/IB/2018 under Section 7 of IBC, 2016, this Tribunal vide its order dated 16.12.2019 initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed the 1<sup>st</sup> Respondent as the Interim Resolution Professional (IRP).
- ii) Subsequent to the same, paper publication was made and the meeting of the First Committee of Creditors (CoC) was conducted on 13.01.2020, wherein the 1<sup>st</sup> Respondent was confirmed to act as the Resolution Professional (RP) of the Corporate Debtor. Further, it is stated that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent alone are the Financial Creditors of the Corporate Debtor and they hold 100% voting rights in the CoC as ascertained by the RP.
- iii) It is stated that the Applicant, in the first CoC meeting had discussed with the CoC in relation to the withdrawal of the CIRP under Section 12A of IBC, 2016, however the same never fructified.



- iv) Thereafter, certain dissension arose between the Applicant and the RP and the Applicant filed a complaint to the Insolvency and Bankruptcy Board of India (IBBI) on 26.02.2020, however the IBBI vide its order dated 15.04.2020 has rejected the complaint of the Applicant. Subsequently, the Applicant has filed a Writ Petition in WP No. 7609 of 2020 before the Hon'ble Madras High Court challenging the said order of IBBI, which is pending disposal.
- v) It is stated that the 1<sup>st</sup> Respondent has filed an IA/289/2020 under Section 19(2) of IBC, 2016 alleging that the Applicant is not cooperating with the RP for providing the details of the Corporate Debtor and the said Application is pending adjudication before this Tribunal.
- vi) It is stated by the Applicant that, the 1<sup>st</sup> Respondent has filed IA/376/2020 under Section 33 of IBC, 2016 to liquidate the Corporate Debtor on the basis of the Resolution passed by the CoC and this Tribunal has heard and reserved the said IA/376/2020 for orders on 05.06.2020.
- vii) Under such circumstances, the Applicant has moved the present Application for the reliefs as mentioned *supra*.

3. The Ld. Senior Counsel for the Applicant submitted that the CIRP in relation to the Corporate Debtor was initiated on 19.12.2019



and the CoC was constituted only on 13.01.2020 and before the expiry of 180 days period, the 1<sup>st</sup> Respondent has moved an Application for the Liquidation of the Corporate Debtor. Further, it was submitted that the Applicant has always intended to settle the creditors of the Corporate Debtor and thereby sought to withdraw the CIRP, however, they could not impress the CoC to withdraw the CIRP due to the following reasons;

- i. Negotiation with the creditors of the Corporate Debtor could not be conducted due to the prevailing corona virus pandemic issue and the Applicant was not in a position to meet the creditors of the Corporate Debtor during the said period.
- ii. Altercation between the Applicant and the RP of the Corporate Debtor, which is pending adjudication before the Hon'ble Madras High Court in WP No. 7609 of 2020.

4. Further, the Ld. Senior Counsel for the Applicant put forth a proposal for the Financial Creditors of the Corporate Debtor, which is as follows;

S. No.	Financial Creditor	Amount Proposed (₹)	Timeline
1	Maximus ARC Limited	12,00,00,000/-	16.08.2020 - ₹2 Crores 31.08.2020 - ₹2 Crores 16.09.2020 - ₹2 Crores 30.09.2020 - ₹2 Crores 07.10.2020 - ₹2 Crores

			15.10.2020 - ₹2 Crores
2	Andhra Pradesh State Financial Corporation	4,50,00,000/-	20.08.2020 - ₹1 Crore 05.09.2020 - ₹1 Crores 20.09.2020 - ₹1 Crores 05.10.2020 - ₹1.5 Crore

5. The Ld. Senior Counsel for the Applicant submitted that the Applicant has already come to an agreement with the 2<sup>nd</sup> Respondent for a sum of Rs.12 Crores and has also paid a sum of Rs.2 Crores in relation to the same. Further, it was submitted that the debt of the Corporate Debtor is only a sum of Rs.25 Crores, whereas the assets of the Corporate Debtor is valued at a sum of Rs.30 Crores, which elucidates the fact that the debt-asset ratio in relation to the Corporate Debtor is very less and thereby the Applicant is very much willing and able to settle the Creditors of the Corporate Debtor. In order to bolster his argument, the Ld. Senior Counsel for the Application pressed into service the decision of the NCLT, Ahmedabad Bench in **Sunil Kumar Agarwal, Rp of Digjam Ltd. -Vs- Suspended Board of Directors of Digjam Ltd.** in *IA/144/2020 in Cp(IB)/594/NCLT/AHM/2018* wherein it has been stated that Liquidation should be only an exception and Resolution should be the norm. Thus, it was submitted that the Applicant will sustain huge loss, if the Corporate Debtor is liquidated and henceforth in the

interest of justice and equity, the proposal as extracted in the table above should be considered by the CoC.

6. The Learned Counsel for the 1<sup>st</sup> Respondent has filed reply and *inter alia* submitted that the decision to Liquidate the Corporate Debtor was taken at the 2<sup>nd</sup> CoC meeting held on 05.03.2020 wherein the Authorized Representative of the Applicant one Mr. Swaminathan had attended the meeting. Further, it was submitted that the promoters were in discussion with an interested buyer; however no concrete information about the alleged prospective investor was provided by the promoter group. The Learned Counsel for the 1<sup>st</sup> Respondent further submitted that the Applicant did not approach the RP with any material information to settle the creditors at any point during the CIRP nor subsequent to the 2<sup>nd</sup> CoC meeting, and thus, submitted that a settlement proposal at this stage, wherein this Tribunal has heard and reserved the order in the Liquidation Application filed, may not be entertained by this Tribunal, as the present application filed by the Applicant is an abuse to the process of law. Further, it was also submitted that the Corporate Debtor is not in operation for more than two years and the Applicant has not provided any revival plan so as to revive the Corporate Debtor as stated by the Applicant.



7. The Learned Counsel for the 2<sup>nd</sup> Respondent has also filed reply and submitted that the present application has been made with the intention to delay and prolong the process of insolvency of the Corporate Debtor by employing dilatory tactics. It was further submitted that the Applicant has never attended the 1<sup>st</sup> CoC meeting and there was no discussion on settlement and withdrawing the CIRP by invoking Section 12A of IBC, 2016. The Learned Counsel for the 2<sup>nd</sup> Respondent has categorically submitted that the 2<sup>nd</sup> Respondent is not interested in the Applicant's OTS proposal, as the same are neither a fair settlement of the outstanding, nor do reflect the value of the underlying security.

8. The Learned Counsel for the 2<sup>nd</sup> Respondent submitted that more than 66% of the creditors have voted for sending the Company into liquidation and as such the same cannot be affected due to the alleged pendency of the proceedings before the Hon'ble Madras High Court, which pertains to the alleged conduct of the RP. It is also averred in the reply filed by the 2<sup>nd</sup> Respondent that the secured creditor has not noticed even an iota of impropriety in the actions of the RP. Further, it was submitted that as per Section 33(2) of IBC, 2016, it is sufficient if the CoC during the CIRP decides to liquidate the Corporate Debtor with necessary statutory voting requirements



and in the present case, 87.57% votes were casted in favour to liquidate the Corporate Debtor.

9. It was also submitted by the Learned Counsel for the 2<sup>nd</sup> Respondent that the loan availed by the Corporate Debtor from the 2<sup>nd</sup> Respondent from the Assignor viz. Andhra Bank, was classified as NPA way back on 28.02.2015 and under the guise of settling the matter, the Applicant has made several submissions before this Tribunal during the pendency of Section 7 Application, however has never re-paid the same as per the said terms of settlement.

10. The Applicant has filed rejoinder to the reply filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, wherein the Applicant has rebutted the contentions made by the 2<sup>nd</sup> Respondent.

11. Heard, both sides and perused the documents, including the pleadings placed on file. From the rejoinder filed by the Applicant, this Tribunal deems it fit to extract para 6 of the Rejoinder, which is as follows;

It is submitted that inspite of the prevailing Covid - 19 situation, the Applicant herein has also approached financiers / buyers to provide financial assistance to settle the dues of the creditors. In fact one of the Financiers / buyer has agreed to provide financial assist to the Applicant herein for



the purpose of settlement of the Creditors, out of which a sum of Rs.11.50 Crores shall be paid to the 2<sup>nd</sup> Respondent in addition, the Applicant herein is now ready to meet the 2<sup>nd</sup> Respondent representatives along with the financier / buyer and the Committee of Creditors to negotiate and agree upon an improved offer for settlement of the dues of the 2<sup>nd</sup> Respondent in addition to the said sum of Rs.11.50 crores which shall be paid as to be agreed upon during the meetings. The above said fact clearly proves the intention of the Applicant to settle the dues of the creditors and thereby revive the Corporate Debtor.

12. Thus, from the averments made in the rejoinder, it is clear that the Applicant has not put forth any concrete proposal of settlement before the 2<sup>nd</sup> Respondent, who is a Financial Creditor, and thereby making a statement that the Applicant has identified a financier / buyer who would provide financial assistance to the Corporate Debtor and the Applicant would want the 2<sup>nd</sup> Respondent to negotiate the terms with the said financier / buyer. In this context, it is relevant to refer to the decision of the Hon'ble NCLAT in the matter of **Abhishek Aggarwal -Vs- Mr. Alok Kumar Agarwal & Ors.** in *Company Appeal (AT) (Insolvency) No. 568 of 2020*, wherein the Appellant in the said case has challenged the Liquidation order on the ground that the settlement discussions were going on and the same was not apprised with the Adjudicating Authority. The Hon'ble NCLAT has held as follows;



"Given Section 33(2) of the Code, at any time during the CIRP, but before the confirmation of the Resolution Plan, when the Resolution Professional, intimates the Adjudicating Authority of the decision of the Committee of Creditors (approved by not less than 66% of voting share) to liquidate the Corporate Debtor, the Adjudicating Authority shall have to pass an order of liquidation.

13. Further, as to the issue raised by the Applicant that before the expiry of 180 days, the CoC ought not to have liquidated the Corporate Debtor is answered above by the above extracted decision of the NCLAT. In this regard, it is also pertinent to point out here that, by virtue of the Insolvency and Bankruptcy (Amendment) Act, 2019 (Act No.26 of 2019) an Explanation to sub – section (2) of Section 33 of IBC, 2016, was inserted, which came into force on 16.08.2019, in and by which, it has been stated in the said Explanation 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.

14. It is also significant to refer to the decision of the Hon'ble Supreme Court in the matter of **Mr. K. Sasidharan –Vs– Indian Overseas Bank** (2019) SCC OnLine SC 257, wherein in relation to

the decision taken by the Committee of Creditor, the Hon'ble Apex Court has held as follows;

The legislature has not endowed the Adjudicating Authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non justiciable.

15. The Ld. Senior Counsel for the Applicant while dilating his arguments has emphatically contended that this Authority can exercise its discretionary power vested with it under Rule 11 of NCLT,

Rules 2016 and grant time to the Applicant to settle the matter with the Financial Creditor, as the main object of IBC is to revive the Company and not to push into liquidation. Eventhough, this argument seems to have force at first blush, the intent of the legislature and the judicial precedence of the Apex Court is somewhat different. In this context, it is relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited –Vs- Satish Kumar Gupta & Ors. in Civil Appeal No. 8766 – 67 of 2019**, wherein at para 91 it has held as follows;

91. What is important to note is that when one reads the abovementioned judgment, it is a majority of 66% of the Committee of Creditors who has exercised the discretion vested in it under the Code in this particular manner, which has then correctly not been disturbed by the NCLT and NCLAT. Far from helping Shri Sibal's client, the principle that is applied in such a case is that ultimately it is the commercial wisdom of the requisite majority of the Committee of Creditors that must prevail on the facts of any given case, which would include distribution in the manner suggested in Orissa Manganese (supra). It is, therefore, not possible to accept the argument that the Adjudicatory Authority and consequently the Appellate Authority would be vested with the discretion to apply what was applied by the Committee of Creditors in the Orissa Manganese case (supra). This submission is also devoid of merit and is, therefore, rejected.

16. Thus, from the aforementioned decision of the Apex Court, it is manifestly made clear that this Authority cannot venture in the commercial decision taken by the CoC and as such, the opinion to liquidate the Corporate Debtor is being made after due deliberations



in the CoC meetings through voting, and hence the same is a collective business decision. As already stated in the Judgment *supra*, the legislature has consciously not provided any ground to challenge the “commercial wisdom” of the individual financial creditor or their collective decision before the Adjudicating Authority.

17. Needless to say, that even during the Liquidation process, subject to Section 29A of the IBC, 2016 and as per Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, a 90 day time period is provided to the Applicant to submit a Scheme as contemplated under Section 230 of the Companies Act, 2013, and if the Applicant is otherwise found eligible can very well submit a Scheme for the revival of the Corporate Debtor.

18. Thus, in view of the reasons stated *supra*, the Application filed by the Applicant stands **dismissed**. No order as to costs.

-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Raymond*