

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 481 of 2025

&

I.A. No. 1726 of 2025

IN THE MATTER OF:

Daulat Ram Jain

...Appellant(s)

Versus

ASL Enterprises Ltd.

...Respondent(s)

Present:

For Appellant : Mr. Anoop Prakash Awasthi, Mr. Shubham Dubey,
Ms. Shruti Vaibhav, Ms. Rushikanta Dash, Advocates.

For Respondents : Mr. Shaunak Mitra, Mr. Riyanshu Agarwal,
Advocates.

With

Comp. App. (AT) (Ins) No. 491 of 2025

&

I.A. No. 1796 of 2025

IN THE MATTER OF:

Daulat Ram Jain

...Appellant(s)

Versus

ASL Enterprises Ltd.

...Respondent(s)

Present:

For Appellant : Mr. Anoop Prakash Awasthi, Mr. Shubham Dubey,
Ms. Shruti Vaibhav, Ms. Rushikanta Dash, Advocates.

For Respondents : Mr. Shaunak Mitra, Mr. Riyanshu Agarwal,
Advocates.

O R D E R
(Hybrid Mode)

06.05.2025: These two appeals have been filed by the liquidator of Adi Ispat Pvt. Ltd. challenging the order 17.12.2024 passed by National Company Law Tribunal, Division Bench, Court No. II Kolkata in IA (I.B.C)/1687(KB)2023 filed by the liquidator as well as the IA (I.B.C.)/1562(KB)2024 filed by the liquidator.

2. The liquidator has challenged order of the same date passed in two applications filed by the liquidator rejecting the applications. The liquidator has come up in these appeals challenging the said order.

3. Brief facts necessary to be noted for deciding the appeal are:

4. In the liquidation proceedings the liquidator has issued a e-auction sale notice on 28.10.2022 for sale of assets of AdiIspatPvt. Ltd. “As is Where is Basis” and “As is What is Basis” and “Whatever there is Basis” and “No Recourse Basis”, in pursuance of the auction notice ultimately the Respondent No. 1, emerged as Successful Auction Purchaser.

5. Subsequent to the Respondent paid the auction money and liquidator issued an agreement after receipt of the full consideration possession letter was issued. The Respondent thereafter filed an application praying for certain reliefs and concessions which was allowed on 10.05.2024. An application for dissolution was filed by liquidator for dissolving the CD which was initially allowed on 18.06.2024 which order was set aside by this Tribunal. Application for dissolution was reserved for orders on 04.01.2024.

6. Dissolution order was set aside in CA (AT) (Ins) No. 1294 of 2024 filed by the Respondent. Vide order dated 02.09.2024, subsequent to that application for dissolution came to be considered by the adjudicating authority IA No. 1687 of 2023 was IA by the liquidator for seeking a dissolution under Section 54 of the IBC, 2016. Another IA 1562 of 2024 was filed by the liquidator praying for recalling of the order 10.05.2024 by which adjudicating authority has allowed reliefs and concession to the successful auction purchaser.

7. Both the applications have been rejected by the order dated 17.12.2024 by the adjudicating authority, aggrieved by which order these appeals have been filed.

8. We have heard Shri Anoop Prakash Awasthi, Ld. Counsel for the liquidator and Shri ShaunakMitra appearing for Respondent No. 1.

9. Shri Awasthi, appearing for the appellant submits that the sale was not made of the CD as a going concern rather sale notice mention the sale of assets of the CD. And hence the Respondent No. 1 was not entitled for any relief and concessions and the liquidator has rightly filed the application for dissolution of the CD. It is submitted that the Respondent No. 1 was not entitled for any relief and concessions hence the application was filed to recall of the order. Shri Awasthi, further submits that even in the agreement of sale of the assets which was granted, earlier the words sale as a going concern was written which was scored out and it was made sale of assets. It was Slump sale and the CD sold as a Slump sale hence liquidator has

rightly filed the application for dissolution and recall of the order dated 10.05.2024.

10. Shri Mitra, appearing for the Respondent submits that Respondent No. 1 after obtaining the assets of the CD including the plant and machinery has revived the CD and has filed the application for reliefs and concession so as to run the CD to generate employment and other resources which is the object of the IBC. Liquidator is raising only technical objections to oppose the same whereas after purchasing the CD by the Respondent No. 1. It is fully revived and amount of Rs. 70 Crores have been deposited by the Respondent No. 1 as a sale consideration and the liquidator's endeavour to dissolve the CD is not in accordance with the object and purpose of the IBC and it is submitted that adjudicating authority has rightly taken a view that the auction sale notice neither mention slump sale nor sale as a going concern hence the adjudicating authority had rightly granted the relief and concession, the plant is ready to function.

11. We have considered the submissions of the Counsel for the parties and perused the record.

12. Adjudicating Authority while deciding IA No. 1687 of 2023 has noticed the sale notice published by the corporate debtor in paragraph 7.1, 7.2 and submissions of the liquidator was also noted.

13. Adjudicating Authority has further noticed that slump sale basis has not come clearly in the advertisement when the entire factory is sold, in paragraph 7.1. to 7.5. following has been observed:

“7.1. We find from the sale notice published the corporate debtor was to be sold "as is where is basis" "as is what is basis" "whatever there is basis" and "no recourse basis".

7.2. The advertisement includes land, buildings, plant and machinery of the corporate debtor in its entirety. The advertisement has neither indicated that it is a slump sale or sale as a going concern.

7.3. It is not the case of the liquidator that the entire plant along with its plant and machineries was not sold to the respondent. The case of the liquidator is only that the plant was not functioning for the past 6 years, and therefore, the plant and machinery are not in working condition to be sold as a going concern.

7.4. We are of the view that the intention and the decision taken by the SCC to sell the corporate debtor on slump sale basis has not come out clearly in the advertisement when the entire factory is sold along with the plant and machinery. In such a scenario it is open for the auction purchaser to treat the sale on going concern basis, particularly when the entire plant, along with land, buildings, machineries has been sold. It is the successful auction purchaser who is in a position to decide whether he will be in a position to run the Company as a going concern or not with or without carrying out necessary repairs/refurbishing.

7.5. We see no allegation from the liquidator that the Successful Auction Purchaser (Respondent) is planning to misuse the reliefs and concession or not going to run the company as a going concern”.

14. Adjudicating Authority has further noticed that buyer of the plant is interested in running the corporate debtor as a going concern and the plant has been purchased in its entirety which observation has been made in paragraph 7.8., which is as follows:

“7.8. In this case, it is evident that the buyer of the plant is interested to run the corporate debtor as a going concern and the plant has been purchased in its entirety”.

15. Further the adjudicating authority has also observed that the decision of the stakeholder's consolation committee to sell the corporate debtor as a slump sale basis was without exploring the options provided in Regulation 32(d) and 32(e) which is against the objectives of the Code, which has been observed in paragraph 7.9 to the following effect:

"7.9. When that being the case, the Stakeholders' Consultation Committee decision to sell the corporate debtor as a slump sale basis without exploring the options provided in Regulation 32(d) and 32(e) is against the objectives of the Code. In any event, neither the sale notice nor the sale certificate has indicated that the sale was slump sale except that both the documents contained the words "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse basis".

16. Ld. Counsel for the liquidator has submitted that liquidator has never issued any notice for sale as a going concern.

17. Be that as it may, when the statute requires endeavour to sell the CD as a going concern and adjudicating authority has observed that decision of the stakeholder's consultation committee to sale as slump sale was against the objective of the IBC, by making which observation the adjudicating authority has rejected the application for dissolution of the CD filed by the liquidator, no exception can be taken to the order of the Adjudicating Authority.

18. In the facts of the present case we are of the view that orders passed by adjudicating authority rejecting the dissolution application as well as application for liquidator to recall the order granting relief and concession thus need no interference in the exercise of appellate jurisdiction by this Tribunal.

19. We thus affirm the order of the adjudicating authority and dismiss both the appeals.

20. We make it clear that in this order we have not made any adverse observation against the liquidator.

21. In view of the aforesaid, now the liquidator shall take steps for closure of the liquidator. The parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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