

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1156 of 2023
& I.A. No. 4170 of 2023, 1129 of 2024

(Arising out of Order dated 07.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-IV, in IA No.64/2023 in C.P. (IB)/1442(MB)2020)

IN THE MATTER OF:

1. Pankaj Dayaprasad Tiwari,
Survey No.10/11, A/35,
Sunshine Villa Society, Jagat Diary Road,
Behind Shivar Garden, Aundh Annexe, Pune-411017.
3. Madhuri Pankaj Tiwari,
Survey No.10/11, A/35,
Sunshine Villa Society, Jagat Diary Road,
Behind Shivar Garden,
Aundh Annexe, Pune-411017. ... Appellants

Versus

1. Sunil Gajanan Nanal
(Liquidator of Supertharm Engineers Pvt. Ltd.)
Kanj and Associates, 3-4, Aishwarya Sankul,
17 G.A. Kulkarni Path, Opp. Joshi,s Railway Museum,
Kothrud, Pune-411038.
2. Vidya Sahakari Bank Ltd.
S.No.1355, Plot No.72, Natu Baugh,
Shukrawar Peth, Pune-411 002. ... Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Santosh Kumar, Advocate.

For Respondents: Mr. Nakul Grover, Advocate for R-1.
Ms. Samiksha Godiyal, Mr. Govind Manoharan,
Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 07.08.2023 passed by National Company Law Tribunal, Mumbai Bench, Court-IV, allowing IA

no.64 of 2023 filed by Resolution Professional (“**RP**”) seeking liquidation of the Corporate Debtor. By the same order, IA No.3887 of 2022 filed by the Appellant was also disposed of.

2. In this Appeal, the Appellant has filed IA No.4170 of 2023 seeking amendment in the prayer clauses “*to set aside and quash the Impugned Order dated 07.08.2023 passed by the Hon’ble National Company Law Tribunal, Mumbai Bench-IV in 3887/2022 & IA No.-64/2023...*”. The order dated 07.08.2023 was passed in IA No.64 of 2023.

3. By order dated 04.09.2023, this Appellate Tribunal granted leave to the Appellant to file, IA for amending Memo of Appeal to challenge order passed in IA No.3887 of 2022. Order dated 04.09.2023 passed by this Tribunal is as follows:

“04.09.2023: Counsel for the Appellant has submitted that the Adjudicating Authority has decided two applications in which one application bearing IA No. 3887 of 2022 has been dismissed and another application bearing IA No. 64 of 2023 has been allowed.

2. It is submitted that due to oversight only the order passed in IA No. 64 of 2023 has been challenged through this appeal but subsequently an application has been filed for amending the memorandum of appeal to challenge the order passed in IA No. 3887 of 2023 as well.

3. It is submitted that the said application has though been e-filed but physical copy has yet to be filed for which he seeks permission.

4. Permission is granted.

5. Registry is directed to list the said application on the next date of hearing.

Adjourned to **11th September, 2023.**”

4. By order dated 07.08.2023, the Adjudicating Authority has allowed and disposed of both the Applications, i.e., IA No.3887 of 2022 and IA No.64 of 2023. In the impugned order in paragraph 11(j), following has been directed:

“11.j. With the above directions, the IA-3887/2022 and I.A. No.64/2023 filed u/s 33(10) by the applicant is hereby **allowed and disposed of.**”

5. It is relevant to notice that although in the beginning of the order dated 07.08.2023, in the Memo of Order, only IA No.64 of 2023 was mentioned, whereas in direction in paragraph 11(j), both, apart from IA No.64 of 2023, IA No.3887 of 2022 was also disposed of. We, thus, are of the view that order dated 07.08.2023 being common to both the Application, IA No.4170 of 2023 filed by the Appellant in this Appeal is allowed and the Appellant is permitted to amend the Memo of Appeal as prayed in the Application. We, thus, permit the Appellant to challenge order dated 07.08.2023 passed in IA No.3887 of 2022 and IA No.64 of 2023 in this Appeal.

6. Brief facts, necessary to be noticed for deciding this Appeal are:

- (i) The Corporate Debtor – Supertharm Engineers Pvt. Ltd. is registered MSME, of which the Appellants are Promoters/Directors. By order dated 07.06.2022, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (“**CIRP**”). Respondent No.2 – Vidya Sahakari Bank Ltd. is the

only Financial Creditor, constituting 100% of the Committee of Creditors (“**CoC**”).

- (ii) In the CIRP of the Corporate Debtor, Financial Creditor filed its claim for an amount of Rs.4,92,81,826/-. There were no other creditors in the CIRP apart from Respondent No.2. Form-G was issued on 19.08.2022. The Appellants as a Promoters/ Directors of the Corporate Debtor submitted Resolution Plan. Resolution Plan was submitted by the Appellant, on which certain clarification was asked for by the Financial Creditor by letter dated 03.11.2022. Reply was submitted by the Appellant on 01.12.2022.
- (iii) The CoC held its 4th Meeting and decided to not accept the Resolution Plan submitted by the Appellant and decided to liquidate the Corporate Debtor.
- (iv) Immediately after 4th CoC Meeting held on 01.12.2022, where Resolution Plan of the Appellant was not accepted and decision of liquidation was taken, an IA No.3887 of 2022 was filed by the Appellant.
- (v) In the Application filed by the Appellant, it was pleaded that the Appellant has proposed to pay 100% principal outstanding plus simple interest @ 12% p.a. towards the debt of Financial Creditor. The Appellant only prayed for exclusion of penal interest and other charges levied over the NPA account.

- (vi) After the resolution dated 01.12.2022 of the CoC, RP also filed an IA before the Adjudicating Authority for liquidation, being IA No.64 of 2023. It is to be noted that IA No.3887 of 2022 was filed by the Appellant, much before filing of the IA No.64 of 2023.
- (vii) The Adjudicating Authority vide order dated 27.02.2023 directed the Appellant to pay 25% of the amount due to the Financial Creditor by 31.03.2023 and balance 75% by 31.04.2023. Vide order dated 08.05.2023, the Adjudicating Authority permitted the Appellant to file revised Resolution Plan along with earnest money of Rs.1 crore. The Appellant, however, could not deposit the amount of Rs.1 crore and in total deposited only amount of Rs.25 lakhs.
- (viii) When IA No.3887 of 2022 and IA No.64 of 2023 came up for consideration on 07.08.2023, the Counsel for the Appellant produced the Demand Draft of Rs.75 lakhs towards the remaining balance of initial deposit, which request was not accepted by the Adjudicating Authority and IA No.3887 of 2022 dismissed. The Adjudicating Authority proceeded to decide IA No.64 of 2023 and by the impugned order dated 07.08.2023 allowed IA no.64 of 2023, directing liquidation of the Corporate Debtor. The Appellant aggrieved by the said order has come up in this Appeal.

7. When the Appeal was taken up by this Tribunal, following order was passed on 11.09.2023:

“11.09.2023: Learned Counsel for the Appellant submits that on the date when the Order was passed, the Bank Draft of Rs. 70 Lakhs was shown to the Court but Court did not permit the amount to be given and directed for liquidation. It is submitted that Appellant is ready to make Rs. 70 Lakhs payment by Bank Draft to the Bank plus interest from 01st April, 2023 to show its bona fide.

2. Let the Appellant make the payment to the Bank of Rs. 70 Lakhs plus interest from 01st April, 2023 within three days from today.

List this Appeal on **18th September, 2023**. In the meantime, Liquidator shall not proceed any further in the liquidation.”

8. The Appellant paid amount of Rs.70 lakhs on 01.04.2023 to the Financial Creditor and sought time to deposit rest of the amount out of Rs.4,92,81,826/- within 30 days, which as recorded in the order dated 18.09.2023. The Appellant, however, could not deposit the balance amount as prayed and resultantly, the interim order stand discharged on 08.01.2024. IA No.1129 of 2024 was filed by the Appellant on 13.02.2024, seeking liberty to make payment of entire amount within 30 days. In IA No.1129 of 2024, following prayers have been made:

- “a.) allow present application,
- b.) allow Applicant/ Appellant to make payment of the entire residual amount of outstanding to Respondent No-2 and for that kindly allow 30 day time;
- c.) stay the impugned order and liquidation of the corporate debtor, pending present appeal;

- d.) stay the public notice dated 2/2/2024 issued by the Respondent No.-1/ Liquidator;
- e.) Pass any such order or further orders as this Hon'ble Appellate Tribunal may deem fit and proper in the interest of justice.”

9. On 27.02.2024, when the Appeal was listed, learned Counsel for the Bank submitted that correct amount to be paid by the Appellant is Rs.6.09 crores, which claim has already been submitted before the Liquidator. The learned Counsel for the Appellant submitted that the Appellant has obtained a Bank Draft of Rs.2.11 Crore and ready to handover the Bank Draft and other amount within one day. The order dated 27.02.2024 is as follows:

“27.02.2024: The Learned Counsel for the Appellant submit that the Bank has informed that the amount of Rs. 4.15 Crore is due.

The Learned Counsel for the Bank submitted that the aforesaid amount is not correct, the correct amount is Rs. 6.09 Crore which Bank is entitled to which amount is also submitted to the Liquidator.

The Learned Counsel for the Appellant submit that the Appellant has now obtained the Bank Draft of Rs. 2.11 crore after selling his house and he is ready to handover the Bank Draft to the Liquidator and another Rs. 2.04 Crore will be deposited with the Corporate Debtor account by tomorrow.

Subject to deposit of the aforesaid amount, the Liquidator shall not open the bid however, the issue about correct amount shall be decided later.

Deposit is without prejudice to rights and contentions of both the parties. The Appellant to handover the Draft to the Liquidator.

List again on 29.02.2024.

10. The Appeal was heard thereafter. The learned Counsel for the Appellant in support of the Appeal contends that Corporate Debtor being a MSME, the Appellant is entitled to revive the Corporate Debtor and the Appellant has always been ready and willing to liquidate 100% debt of the Financial Creditor. It is submitted that the Appellant to keep the Corporate Debtor as going concern has incurred expenses of more than Rs.40 lakhs during the CIRP. The Bank is resorting the CIRP as a mode of recovery and inspite of the Appellant ready to liquidate the entire debt, the Bank has never given any assistance to the Appellant to liquidate the debt. The Appellant has filed an IA No.3887 of 2022, much before the filing of liquidation Application, where the Appellant prayed for giving opportunity to submit a modified Resolution Plan and Adjudicating Authority was requested not to pass any order for liquidation. It is submitted that the Appellant also filed an affidavit before the Adjudicating Authority, undertaking to pay 100% debt of the Financial Creditor, i.e., total admitted claim of Rs. 4,92,81,826. The learned Counsel for the Appellant has also referred to an email received from the Financial Creditor, as late as on 18.10.2023, where amount of Rs.4,15,12,570/- was communicated. It is submitted that the Appellant has made bonafide endeavour and has already deposited amount of Rs.1.02 Crore approx. with the Bank and is ready to liquidate the entire debt. It is submitted that although there has been delay on the part of the Appellant in making the payment of

outstanding, but the Appellant has now sold his residential house and also arranged an investor, who is ready to clear the entire debt, hence, an opportunity be given to the Appellant to clear the debt of the Financial Creditor and revive the Corporate Debtor. It is submitted that revival of the Corporate Debtor is the object of CIRP and liquidation being the last resort is the corporate death.

11. The learned Counsel for the Bank refuting the submissions of learned Counsel for the Appellant submits that the Resolution Plan of the Appellant having not been approved by the CoC in its meeting dated 01.12.2022, the Appellant has no right to submit any modified Resolution Plan. It is submitted that even though, the Adjudicating Authority granted an opportunity to the Appellant to deposit the amount of Rs.1 crore as EMD along with modified Resolution Plan, the said amount could not be deposited by the Appellant, inspite of opportunity being given by the Adjudicating Authority. It is submitted that the offer of the Appellant to deposit Rs.75 lakhs on the date when the matter was decided, i.e., on 07.08.2023 has rightly been rejected by the Adjudicating Authority. It is submitted that even in this Appeal, several opportunities have been granted to the Appellant to deposit the entire amount, which amount could not be deposited by the Appellant and he failed to deposit the amount. Hence, the interim order was also discharged by this Tribunal on 08.01.2024. It is submitted that amount due against the Corporate Debtor is Rs.6.09 cores, which is an amount claimed by the Bank to the Liquidator. The liquidation order having been passed on 07.08.2023 and the Bank has submitted a

claim to the Liquidator of Rs.6.09 crores, hence, the Appellant is liable to pay the amount of Rs.6.09 crores. The appellant's offer to liquidate the amount of Rs.4,92,81,826/-, cannot be accepted as on date when the claim has already filed in the liquidation by the Bank. It is submitted that no grounds have been made out within the meaning of Section 61(4) of the code to challenge the order of liquidation.

12. We have considered the submissions of learned Counsel for the parties and have perused the records.

13. The 4th CoC Meeting held on 01.12.2022, is the Meeting in which the CoC did not accept the Resolution Plan submitted by the Appellant for offer amount of Rs.4.15 Crores and the entire CIRP cost, apart from payment to all stake holders. The Minutes of 01.12.2022 indicates that Financial Creditor has referred to the policy of the Bank that when value of the assets is more than the amount due, the bank is not ready to accept any haircut. On the proposal submitted by Resolution Applicant, i.e., the Appellant, the response of the Financial Creditor – Bank has been noticed in the Minutes, which is relevant to notice, is as follows:

“Therefore, based on the above submissions, requested the CoC to consider the Resolution Plan as feasible, commercially viable and in accordance with the provisions of IBC, where the object is to resolve the Corporate Debtor's insolvency, as the payment of Rs. 4.15 Crores proposed to the secured financial creditors and the entire CIRP cost apart from payment to all other stakeholders.

Mrs. Mankar while responding to the submissions made by the RA mentioned that Vidya Sahakari Bank had already filed its claim on

initiation of CIRP and the admitted claim amount was Rs.4,92,81,826/-.

She further mentioned that it was made very clear during the last CoC meeting that Vidya Sahakari Bank has the policy that when the value of secured assets is more than twice the amount due from the borrower, the Bank is unable to accept any haircut. Time to time, the Bank has informed that they cannot deviate from their own policy.

Further, in case of dissenting financial creditor to any resolution plan, the dissenting creditor is entitled to receive the value at least to the extent of the liquidation value. In the present case, the Bank would have received its entire claim amount, considering the fair value and liquidation values of the assets of the Corporate Debtor.

In view of this, it would not be proper for Vidya Sahakari Bank to deviate from its policy and allow hair cut when the value of the property is more than twice the amount due.

The CoC also raised concerned about the financing arrangement from KB Finance in absence of any clarity on its status as NBFC/Financial Institution and corporate status. And this creates a doubt with respect to the ability of RA to honor its payment obligations mentioned in the Resolution Plan.

Mr. Pankaj Tiwari mentioned that during the CIRP only the promoters have taken efforts to provide necessary financial assistance to the CD to maintain its going concern status and meet the expenses of CD such as salaries, wages, essential supplies, GST payments etc. and no positive and effective steps were taken by the CoC to keep the CD live, as it seems CoC's object was only to recover the money.

After all the deliberations, the CoC maintained its stand and informed that the resolution plan as proposed by RA in the present form is not acceptable.”

14. The above minutes clearly mentions that Bank having already field its claim of Rs.4,92,81,826/-, it cannot accept any haircut.

15. As noted above, after the decision of the CoC held on 01.12.2022, immediately the Appellant filed IA No.3887 of 2022, where following prayers were made:

- “(a) To pass an order directing the Respondent No.1 & 2 to permit the Applicants to submit their modified Resolution Plan.
- (b) To pass an order directing the Respondent No.1 and 2 to consider the modified Resolution Plan before making an application for liquidation for the Corporate Debtor.
- (c) To not to pass any order for liquidation until the resolution of the Corporate Debtor is fully exhausted.
- (d) Any other or further order(s) direction(s) as this Hon’ble Adjudicating Authority may deem fit in the facts and circumstances of the case.”

16. It is relevant to notice that before the Adjudicating Authority, an affidavit was filed by the Appellant stating that they are ready to make full and final payment of the entire claim of the Bank of Rs.4,92,81,826/-. In paragraph-3 of the affidavit, following has been stated:

“AFFIDAVIT BY APPLICANT NO.1

I, Pankaj Dayaprasad Tiwari, the Applicant No.1 herein the captioned I.A. (IBC) 3887/2022, residing at Survey No.10/11, A/35, Sunshine Villa Society, Jagat Diary Road, Behind Shivar Garden, Anudh Annexe, Pune, 411 017, do solemnly affirm and state as under:

1. That I am the only Resolution Applicant of Supertharm Engineers Private Limited who along with the Applicant No.2 have jointly submitted our Resolution Plan to the Respondents.
2. That on the rejection of our Resolution Plan, the captioned Application bearing I.A. No.3887/2022 under the provisions of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 has been jointly preferred by us seeking direction upon the Respondents for permitting us to submit the revised Resolution Plan.
3. That in furtherance to the Order dated 15.02.2023 of the Hon'ble NCLT, Mumbai Bench in IA 3887/2022, I do hereby file the present Affidavit, in my capacity as the Applicant No.1 in IA 3887/2022. I do hereby state that being well conversant with the facts of the case, I am competent to swear and affirm to the present Affidavit. I do hereby solemnly affirm and state on oath as follows:
 - (i) That I am ready to make the full and final payment of Vidya Sahakari Bank Ltd.'s entire claim of Rs.4,92,81,826 (Rupees Four Crores Ninety – Two Lacs Eight – One Thousand Eight Hundres and Twenty – Six Only), as already proposed in I.A. 3887/2022, subject to us being permitted to submit a Revised Resolution Plan before the Committee of Creditors and on the approval of the Revised Resolution Plan by the Committee of Creditors and the Hon'ble Adjudicating Authority.
 - (ii) That I further, do hereby undertake to make full payment to all the creditors including the financial creditors which shall be proposed in the Revised Resolution Plan.
 - (iii) That I do hereby undertake to make the full and final payment in accordance with the timelines as proposed to be set out in the Revised Resolution Plan as approved by the Committee of Creditors and the Hon'ble Adjudicating Authority.
4. That all the statements made herein are true and correct to my knowledge.

Solemnly affirmed at Pune)

Dated this 25th day of February, 2023)

Sd/-

Pankaj Dayaprasad Tiwari
APPLICANT No.1”

17. As noted above, the Adjudicating Authority in the order passed on the Application permitted the Appellant to deposit an amount of Rs.1 crore and out of the said deposit, the Appellant could deposit only Rs.25 lakhs and balance Rs.75 lakhs was not paid. There is no denying that amount of Rs.75 lakhs was not paid within the time allowed to the Appellant. However, when the matter was taken by the Court on 07.08.2023, the learned Counsel for the Appellant has produced the Demand Draft of Rs.75 lakhs towards the remaining balance of the initial deposit. In paragraph 4 of the order, following has been noticed by the Adjudicating Authority:

“4. Today, the Ld. Counsel for the Applicant produced a demand draft of Rs.75 Lakhs as towards remaining balance of initial deposit. This Bench noted that the applicant initially came with a proposal to settle on 07/12/2022 through this IA and this bench allowed the prayer vide order dated 27.02.2023. Thereafter, the counsel kept on taking time and finally came with new proposal to place a revised plan for consideration of CoC. This prayer is also allowed by this bench on 08.05.2023, however, the applicant took three months to mobilize the 20% of proposed resolution money. This bench is of the considered view that the Counsel for the applicant in IA-3887/2022 has been allowed sufficient time and opportunity to show their bona-fide and capacity to mobilize requisite amount for implementation of plan, if it came to be approved. The failure to deposit even 20% of

proposed resolution money, despite having been allowed from 27.02.2023 to deposit the same, clearly demonstrates that the request for reconsideration of its plan was nothing but an attempt to further delay the CIRP process, and the Counsel for the applicant in IA-3887/2022 may not have sufficient resources to implement the plan, even if it is considered and approved by CoC as the circumstances lead us to conclude. Accordingly, this bench dismisses IA-3887/2022 and proceeds to decide IA-64/2023.”

18. The Adjudicating Authority, however, observing that sufficient opportunity was given to the Appellant to deposit the amount, dismissed the IA-3887 of 2022 and proceeded to allow IA No.64 of 2023 directing for liquidation.

19. As noted above, the Appellant has filed an affidavit before the Adjudicating Authority stating that he is ready to deposit the entire outstanding dues of the Bank and producing the Demand Draft of Rs.75 lakhs on the date of hearing before the Adjudicating Authority, was a bonafide effort made by the Appellant, who is a Promoter of MSME.

20. The IBC itself recognises the right of MSME to revive a Corporate Debtor and even if certain ineligibility under Section 29A are not attracted. The object of Corporate Insolvency Resolution Process is always to revive the Corporate Debtor and liquidation being the last resort, which is nothing but a corporate death. The Hon’ble Supreme Court in **Swiss Ribbons Pvt. Ltd. and Anr. vs. Union of India and Ors. – (2019) 4 SCC 17**, laid down following in paragraphs 27 and 28:

“27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. 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. (See *ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1] at para 83, fn 3).

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. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the

corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

21. The amount of Rs.75 lakhs was also permitted to be paid by the Corporate Debtor to the Bank by order of this Tribunal dated 11.09.2023. The Appellant undertaking to pay rest of the amount of Rs.4,92,81,826/- has also been noticed in the order dated 18.09.2023. The Appellant has filed an IA No.1129 of 2024, undertaking to pay the entire balance amount within 30 days.

22. The learned Counsel for the Respondent has raised submissions that Appellant has not made the payments inspite of the opportunity granted by this Tribunal, hence, no further opportunity be granted. The learned Counsel for the Bank has also contended that amount due on the Corporate Debtor is Rs.6.09 crores, which is the amount, which has been claimed by the Financial Creditor in accordance with the liquidation order passed by the Adjudicating Authority dated 07.08.2023. It is submitted that Financial Creditor has filed its claim before the Liquidator on 02.09.2023 Rs.6,03,67,192/-.

23. The present is a case where the Appellants – Promoters of the Corporate Debtor have undertaken to liquidate the entire debt of the

Financial Creditor, who is the only Financial Creditor consisting of 100% CoC. It is relevant to notice that there are no other creditors of the Corporate Debtor. It is also relevant to notice that Appellant is making efforts from very beginning to revive the Corporate Debtor. The Appellant's case is that it is the Appellant, who has been bearing the expenses for Corporate Debtor being run as a going concern and an amount of Rs.40 lakhs have been spent by the Promoter themselves to keep the Corporate Debtor as a going concern. When the Appellant is ready to liquidate the entire debt of the Financial Creditor/, we see no reason to deny an opportunity to revive the Corporate Debtor on its feet. There is no doubt that Financial Creditor is entitled to entire debt and it cannot be directed to take any haircut. The present is a case where the Appellant has undertaken to clear the entire claim, which was admitted in the CIRP.

24. In view of the above facts and circumstances, we are of the view that Adjudicating Authority committed error in not accepting the Bank Draft of Rs.75 lakhs shown to the Court on the date when the matter was heard. The Adjudicating Authority ought to have given an opportunity to deposit the Bank Draft to complete the payment of Rs.1 crore as was directed by the Adjudicating Authority. However, the Adjudicating Authority rejected the said offer and dismissed IA 3887 of 2022 and allowed the Application for liquidation being IA No.64 of 2023. We, thus, are of the view that Adjudicating Authority committed error in rejecting IA 3887 of 2022. Hence, the order passed by Adjudicating Authority in IA 3887 of 2022 is unsustainable. Consequentially, order passed in IA 64 of 2023 also cannot

be sustained. It is clear that order on IA 64 of 2023 was passed consequent to dismissal of IA 3887 of 2022. In event the Adjudicating Authority would have allowed the IA 2887 of 2022, and accepted the offer of the Appellant to deposit Rs.75 lakhs with the Bank, there would have been no occasion for directing for liquidation. We, thus, are of the view that IA 3887 of 2022 deserves to be allowed and consequently IA 64 of 2023, ought not to have been allowed.

25. One of the submissions of the learned Counsel for the Bank is that claim of the Bank in the liquidation now stand Rs.6.09 crores and hence, the amount to be deposited by the Appellant is Rs.6,03,67,192/-. We are not persuaded to accept the submission of the Bank. We having taken the view that order of liquidation, which is a consequential order to rejection of IA 3887 of 2022 being unsustainable, we see no reason to issue any direction to the Appellant to make payment of an amount of Rs.6,03,67,192/- as has been claimed by the Bank in the liquidation proceedings.

26. We have already noticed that Appellant has sold his residential house and has filed document to prove that he is now in the capacity to make the deposit of entire amount received from the sale of residential house and a Investor is ready to pay the balance amount. We are satisfied that one opportunity be given to the Appellant to clear the entire admitted claim of the Bank along with entire CIRP cost. In result, we dispose of the Appeal in following manner:

- (I) The order passed by Adjudicating Authority in IA No.3887 of 2022 dated 07.08.2023 is set aside. IA 3887 of 2022 is disposed of as per following direction (III).
- (II) Consequently, the order dated 07.08.2022 passed in IA 64 of 2023 directing the liquidation is set aside.
- (III) The Appellant is permitted to deposit the entire balance amount of Rs.4,92,81,826/- within 30 days from today by the Bank Draft or RTGS to the Bank. The Appellant shall bear entire CIRP costs.

IA No.1129 of 2024 stand disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Indevar Pandey]
Member (Technical)

NEW DELHI

22nd March, 2024

Ashwani