

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1125 of 2022

[Arising out of Order dated 17.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court IV in I.A. 1528/ND/2022 in C.P. No. IB-1526/ND/2019]

IN THE MATTER OF:

1. Govind Prasad Todi

C 757, New Friends Colony
New Delhi – 110025.

2. Siddhartha Todi

C 757, New Friends Colony
New Delhi – 110025.

...Appellants

Versus

1. Satya Narayan Guddeti

(Liquidator/ Erstwhile Resolution Professional of
Ajanta Offset & Packaging Limited)
Plot No. 23, First Floor,
Durganagar Colony, Punjagutta,
West Marredpally, Telangana, 500 082.

2. Canara Bank

Parliament Street Branch
Jeevan Bharti Building
New Delhi – 110 001.

3. Corporation Bank

Overseas (SAMV) Branch M-93
Connaught Circus,
New Delhi – 110 001.

4. State Bank of India

(SAM) Branch-II, 12th Floor,
Jawahar Vyapaar Bhawan,
Tolstoy Marg, New Delhi – 110 001.

5. Exim Bank

Cont'd.../

7th Floor, Office Block Tower 1,
Adjacent Ring Road,
Kidwai Nagar (East),
New Delhi – 110 023.

6. Todi Investors (India) Pvt. Ltd.

225D, A. J. C. Bose Road,
Kolkata, West Bengal – 700 020.

7. Vinayak Dealers Pvt. Ltd.

Ideal Plaza, 11/1, Sarat Boase Road,
South Block, S-207,
Kolkata – 700 020.

8. South City Projects (Kolkata) Ltd.

375 Prince Anwar Shah Road,
Kolkata – 700 068.

9. EDCL Infrastructure Ltd.

EDCL House, IA Elgin Road,
Kolkata – 700200.

10. Amritvani Exim Pvt. Ltd.

21-B, Gurusaday Road
Kolkata – 700 019.

...Respondents

Present:

**For Appellants: Ms. Aditi Sharma and Mr. Karan Valecha,
Advocates.**

**For Respondent: Mr. Vaibhav Gaggar, Mr. Dhruv Mwehta, Mr.
Mrityunjay M., Mr. Shashwat Anand and Mr. Dev
Karn, Advocates for R-1.**

**Ms. Richa Sandilya and Ms. Nita Sharma,
Advocates for R-2 to 5.**

Mr. Abhishek Parmar, Advocate for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 17.08.2022 passed
in I.A. 1528/ND/2022 in C.P. No. IB-1526/ND/2019 by which order the

Adjudicating Authority (National company Law Tribunal), New Delhi Bench, has dismissed the I.A. 1528/ND/2022 filed by the Resolution Professional for approval of the Resolution Plan and has directed for liquidation of the Corporate Debtor namely Ajanta Offset packaging Limited. Brief facts of the case giving rise to this Appeal are:

- (i) The Adjudicating Authority vide order dated 04.02.2020 initiated CIRP process against the Corporate Debtor.
- (ii) On 19.08.2020, the Resolution Professional issued Form G calling for Expression of Interest (EOI) from interested Resolution Applicants. In response to which two EOIs were submitted.
- (iii) Both the plans were discussed by the CoC in its 3rd meeting and were found to be not feasible and viable. The Resolution Applicants were called for negotiation.
- (iv) In the 4th meeting of the CoC, decision was taken to put the plans to e-voting, however, none of the plan can be approved.
- (v) On 01.06.2021, the Resolution Professionals filed an I.A. No. 1992/2021 seeking exclusion of 222 days. The Adjudicating Authority allowed certain extension.
- (vi) The CoC in the 5th meeting held on 05.06.2021 and 09.06.2021 unanimously passed a resolution for liquidation of the Corporate Debtor. I.A. No. 2710/2021 was filed by the Resolution Professional praying for liquidation, on which notices were issued by the Adjudicating Authority.

- (vii) On 06.09.2021, Suspended Directors of the Corporate Debtor appeared before the Adjudicating Authority and submitted that they are interested in submitting Resolution Plan for revival of the Corporate Debtor and they shall be filing an application for above purpose.
- (viii) I.A. No. 4388/2021 was filed by the Appellant seeking direction that the Resolution Plan submitted by the Appellant be placed before the CoC for consideration. The Appellant's case was that the Corporate Debtor has been registered as MSME on 30.08.2021 and Appellants are now eligible to file Resolution Plan by virtue of Section 240A of the Code.
- (ix) The Adjudicating Authority passed an order on 28.09.2021 allowing the I.A. No. 4388/2021 filed by the Appellant. The Resolution Professional to call for a lenders meeting for taking appropriate decision and to deliberate on whether more Resolution Applicants can be invited. The Adjudicating Authority also extended the period of CIRP for 150 days.
- (x) Appellants submitted Resolution Plan on 19.10.2021. CoC in 6th meeting held on 20.10.2021, deliberated and decided to consider the Resolution Plan submitted by the Promoters.
- (xi) The Resolution Plan was approved by the e-voting with the requisite majority on 30.12.2021.
- (xii) An application by the Resolution Professional for seeking further extension of CIRP was rejected. This Tribunal vide its

order dated 23.03.2022 allowed extension of 15 days to submit performance guarantee by the Resolution Applicant and for filing application for approval of Resolution Plan.

- (xiii) Performance guarantee was submitted and application for seeking approval of Resolution Plan being I.A. No. 1528/ND/2022 was filed by the Resolution Professional which was heard and rejected by the impugned order.

2. The Adjudicating Authority in the impugned order has held that Appellants were not eligible to submit the Resolution Plan under Section 29A read with Section 240A since the date when application for submitting EOI was issued, the Appellants were not eligible. It is further observed that registration of the Corporate Debtor cannot operate retrospectively making them eligible. It is further held by the Adjudicating Authority that although Adjudicating Authority vide its order dated 28.09.2021 directed for deliberation as to whether Resolution Applicants may be invited but the CoC did not invite other Resolution Applicants which has denied level playing field to other Resolution Applicants. After coming to the aforesaid conclusion, the Adjudicating Authority held that the Appellants' Resolution Plan is not in compliance with the Code and CIRP Regulations. After coming to the said conclusion, the approval of Resolution Plan was set aside and order of liquidation was passed.

3. In this Appeal notices were issued by this Tribunal on 14.09.2022, where an interim order was also passed directing the Liquidator not to take further steps in pursuance of the impugned order.

4. Learned counsel for the Appellant challenging the order impugned contends that the Adjudicating Authority having directed on 28.09.2021 to consider the Resolution Plan submitted by the Appellant which was duly considered by the CoC and approved, the said approval cannot have been set aside by the Adjudicating Authority. After registration of the Corporate Debtor as MSME on 30.08.2021 by virtue of Section 240A the Appellant has become eligible to submit a Resolution Plan. It is submitted that the Adjudicating Authority having directed to submit Resolution Plan on 28.09.2021, cannot take contrary view in the impugned order. It is submitted that there was no objection filed to the approval of the Resolution Plan by any of the parties. There being no objection to the Resolution Plan, the Resolution Plan could not have been rejected. In the CIRP process when no Resolution Plan was approved and the Promoter wanted to revive the Corporate Debtor by submitting a Resolution Plan, the Adjudicating Authority ought to have approved the decision of the CoC. The decision of the CoC approving the Resolution Plan was a decision taken in the commercial wisdom of the CoC which ought not to have been interfered with.

5. Learned counsel for the Liquidator has filed a reply, where it supported the resolution of the CoC approving the Resolution Plan. It is

submitted that the Resolution Professional has proceeded to consider the Resolution Plan submitted by the Appellant in pursuance of the order passed by the Adjudicating Authority on 28.09.2021. It is submitted that on e-voting the Resolution Plan was approved with 67.34% voting share.

6. Learned counsel appearing for Respondent No.10, one of the Financial Creditor who has initiated proceedings against the Corporate Debtor has opposed the submission of the Appellant. It is submitted that Appellant was not eligible to submit the Resolution Plan since his name was not included in the list of Prospective Resolution Applicants which was published by the Resolution Professional after issuance of Form G. It is submitted that MSME registration of the Corporate Debtor shall not give any benefit to the Appellant. In the reply which has been filed by the Respondent No.10, it is further submitted that after the order dated 28.09.2021 Resolution Professional ought to have issued fresh Form G and considered the Resolution Applicants who would have come to file plans to revive the Corporate Debtor. It is submitted that Respondent No.10 has also earlier filed Resolution Plan and is still desirous of submitting a plan.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. From the facts as noted above, it is clear that Form G was issued by the Resolution Professional on 19.08.2020 in pursuance of which two Resolution Applicants filed the Resolution Plan which were considered but were not approved by the CoC and Resolution was also passed by the CoC

on 05.06.2021 for liquidation and an application was filed for liquidation by the Resolution Professional on 02.07.2021, on which application notices were issued and it was only at that stage when Appellants have filed I.A. No. 4388/2021 seeking direction to permit the Appellants – Suspended Directors to submit Resolution Plan for revival of the Corporate Debtor. The Adjudicating Authority passed an order on 28.09.2021. It is useful to notice the order dated 28.09.2021, which is to the following effect:

“ORDER

Application filed by the proposed Resolution Applicant who is the ex- management of the Corporate Debtor seeking to allow the Resolution Plan of the ex-management to be placed before CoC for consideration and also seeking extension of CIRP by further 90 days or such from time which the Tribunal may deem fit. Learned Counsel for the applicant states that CIRP of 330 days has expired on 18.06.2021. At this stage, Learned Counsel for the Resolution Professional states that after the liquidation application was filed which is pending and listed today. The ex-management approached with this plan and Resolution Professional unless the adjudicating authority permits cannot entertain which plan after expiry of 330 days of CIRP. Since the CIRP is expired, no CoC Meeting can be held. Hence, the Plan cannot be put before the CoC. Learned Counsel for the ex-management states that the apart from money, the undertaking is given by Learned Counsel of proposed

Resolution Applicant not to transfer any of the employees and at present there are around seventy employees working for the Corporate Debtor.

In our view, Resolution should always be considered that at any stage and interest of employees and workers if is being taken on record by running company further should be considered as a prime concern.

We direct Resolution Professional to call a Lender's Meeting for taking appropriate decision and deliberate on whether more Resolution Applicants may be invited. While going through application, it is seen that the present application seeking 90 days' extension if granted from the date of expiry of 330 days also has expired on 16.09.2021 and present application is filed on 23.09.2021. Be that as it may, while considering the Resolution and probably the maximization of value and also the interest of employees and workmen, we direct that the extension of CIRP will be granted for 150 days from the expiry of 330 days which will now offer roughly 50 days period to complete the process and achieve Resolution. Prayer 'd' cannot be considered at this stage seeking dismissal of liquidation application as if the Resolution Plan is approved by CoC, then the same will be considered. Application is disposed of in terms of the above order.”

9. From the order passed by the Adjudicating Authority, it is clear that the Adjudicating Authority also extended the CIRP period and directed the Resolution Professional to call a lenders meeting for taking appropriate decision and deliberate on whether more Resolution Applicants can be invited. After the order of the Adjudicating Authority dated 28.09.2021, meeting of CoC took place on 20.10.2021, where it was decided to consider the Resolution Plan submitted by the Appellants. However, CoC did not decide to issue any fresh Form G and invite any other Resolution Applicants, which act of the CoC has been adversely commented by the Adjudicating Authority.

10. The Adjudicating Authority has rightly taken the view that the order dated 28.09.2021 of the Adjudicating Authority directing consideration of Resolution Plan of the Appellants was required but the CoC has to consider other Resolution Applicants also. We have already noticed that registration of MSME of Corporate Debtor obtained on 30.08.2020 that is much after issuance of Form G. We are of the view that the Adjudicating Authority vide order dated 28.09.2021 gave opportunity to the Resolution Professional and the CoC to take steps to revive the Corporate Debtor. The Adjudicating Authority is right in its observation that the CoC ought to have taken steps in accordance with provisions of CIRP Regulations. In Para 42 of the impugned order, the Adjudicating Authority made following observations:

“42. On perusal of Resolution Plan submitted by the Successful Resolution Applicant specifically clause 4.2 of the plan, we observe that with regard to the Compliance of Section 29A of Code, 2016, it was mentioned that the Resolution Plan has been considered under specific directions passed by the Hon'ble NCLT, New Delhi Bench vide order dated 28.09.2021. At the cost of repetition, we reiterate that this Tribunal vide order dated 28.09.2021 had directed the COC to consider whether more Resolution Applicants may be invited and no specific direction to consider the Resolution Plan proposed by the Suspended Directors was given. Therefore, the RP, COC as well as the promoters were duty bound to follow the procedure as laid down by the IBBI in the Code and CIRP Regulations.”

11. In the facts of the present case, we are of the view that the order dated 28.09.2021 was not followed in its true spirit resulting in non-approval of Resolution Plan approved by the CoC on 30.12.2021. The Respondent No.10 who was also one of the Financial Creditor, who had filed Resolution Plan in the CIRP which was not approved, in his reply has also stated that Respondent No.10 is still interested in submitting a resolution plan for the Corporate Debtor and make sincere efforts to revive its business. In Para 43 of the reply of the Respondent No.10 such submission has specifically been made to the following effect:

“43. It is stated that the Answering Respondent, being a PRA earlier, is still interested in submitting a resolution plan for the Corporate Debtor and make sincere efforts to revive its business. It is stated that by virtue of the increase in land prices in Faridabad, the value of the Corporate Debtor has increased a lot and the Answering Respondent is confident that if a fresh EoI is published, more PRAs, including the Answering Respondent, would express their interest in submitting a resolution plan.”

12. After considering the submissions of learned counsel for the parties and facts on record, we are of the view that the decision of the Adjudicating Authority not approving the resolution of the CoC dated 30.12.2021 approving the Resolution Plan cannot be faulted. We, thus, affirm the order of the Adjudicating Authority insofar as it disapproves the CoC decision dated 30.12.2021 and reject I.A. No. 1528/2022 seeking approval of the Resolution Plan. We, however, in the facts of the present case are of the view that one more opportunity be given for revival of the Corporate Debtor, for which Resolution Professional may issue a fresh Form G and take steps for considering willing Resolution Applicants including the Appellants before us, who has filed the Resolution Plan on the strength of registration of the Corporate Debtor as MSME dated 30.08.2021. Opportunity to the Resolution Professional and the CoC has to be time bound opportunity to make one more effort to revive the Corporate Debtor, the liquidation being

the last resort. We, thus, are inclined to keep the order of the Adjudicating Authority directing for liquidation of the Corporate Debtor in abeyance to make one effort for revival, failing which liquidation order shall stand revived.

13. In result, Appeal is disposed of in following manner:

- (i) The order of the Adjudicating Authority dismissing the I.A. No. 1528ND/2022 is upheld.
- (ii) The order of the Adjudicating Authority directing liquidation of the Corporate Debtor is kept in abeyance to make one effort to revive the Corporate Debtor as indicated above, failing which order of liquidation shall stand revived.
- (iii) Resolution Professional may proceed from the stage of issuance of Form G and complete the entire process upto decision of the CoC within 90 days from today.

14. The Appellant may also submit its Resolution Plan in response to the Form G issued by the Resolution Professional as indicated above. In event, the CoC approves a Resolution Plan, the Resolution Professional is directed to file an application before the Adjudicating Authority within a period of two weeks thereafter. In event, any Resolution Plan is approved the order of liquidation shall become inoperative.

15. In event, no Resolution Plan is approved by the CoC within the 90 days' time, as allowed, the Corporate Debtor shall be put into liquidation

and the Liquidator shall proceed in accordance with law. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

14th February, 2023

Archana