

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI
Company Appeal (AT) (INS) No. 449 of 2021**

IN THE MATTER OF:

Irshad Khan

....Appellant

V

Ajai Kumar Singh & Ors.

....Respondents

Present:

For Appellant : Mr. Ruchin Midha, Advocate

**For Respondents : Mr. Dhananjay Sud, Ms. Shalya Agarwal and
Mr. Aditya Gauri, Mr. Amar Vivek,
Mr. Chaitanya Bansal, Advocates for R-2.**

ORDER

(Through Virtual Mode)

05.05.2022:

The 'Appellant/Applicant' being dissatisfied with the 'impugned order' passed by the 'Adjudicating Authority' ('National Company Law Tribunal'), New Delhi Bench V has focussed the instant IA No. 1043/2021 in CP (IB) No. 296/ND/2020 in Comp App (AT) (Ins.) No. 449 of 2021 dated 08.06.2021 before this Tribunal is an 'Aggrieved' person.

2. The 'Adjudicating Authority' while passing the 'impugned order' on 08.06.2021 at paragraph 30 and 31, had observed as under:

30. *“Here in the case in hand, admittedly, the CoC has not been constituted but from the material available on record, it is crystal clear, that claim of the financial creditor and other creditors (Operational Creditors) were received prior to the submission of the Form FA and as per the averment made in the application, the IRP instead of verifying the claims of the creditors, had waited for settlement, which was going to be arrived between the Applicant and Corporate Debtor, which in our considered view is not the letter and spirit of Section 12A and Regulation 30A of the IBBI (Insolvency Resolution of Corporate Persons) Regulation, 2016 as well as the decisions upon which the applicant has placed reliance.*

31. *Since, the IRP has received a claim of one of the financial creditor, which is more than One Crore. Therefore, it is the duty of the IRP, before considering the Form FA, verify the claim and if the claim is found to be genuine then constitute the CoC and if the claim is not genuine then reject the same. And only thereafter, submit the Form FA before the Adjudicating Authority, within three days, as required under the law but IRP has not followed the law in the letter and spirit. Rather he interpreted the law, according to his own convenience, which is not permissible.”*

and ultimately rejected the ‘Interlocutory Application’ submitted by the ‘Interim Resolution Professional’ to permit the ‘Applicant/Appellant’ to withdraw the ‘Application’.

3. This ‘Tribunal’ has heard the Learned Counsels for the ‘Appellant’ and ‘2nd Respondent’ and noticed their contentions.

4. There is no dispute that the CIRP in the instant subject matter was initiated on 04.02.2021 and that the 'Public Announcement' was made on 09.02.2021 and the last day for submission of claim(s) was 19.02.2021. On 20.02.2021, the parties had arrived at settlement between the 'Corporate Debtor' and the 'Operational Creditor' and the entire dues according to both sides were settled.

5. It comes to be known that the 'Withdrawal Application' under 'Section 12A' of the 'I & B' Code, 2016, coupled with 'Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, was filed before the 'Adjudicating Authority' on 22.02.2021 and it comes to be known that the last date of 'Committee of Creditors' was on 26.02.2021. As a matter of fact, the 'Adjudicating Authority' had opined in the 'impugned order' that the 'Committee of Creditors' was not constituted and the claim of the 'Financial Creditor' and other 'Creditors' ('Operational Creditors') were received prior to the submission of 'Form FA' and as per the averments made in the 'Application', the 'Interim Resolution Professional' instead of verifying the 'Creditors Claim' for the settlement to be arrived at between the 'Applicant' and the 'Corporate Debtor' and from the point of view of the 'Adjudicating Authority', the same was not in letter and spirit of

Section 12A and Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, etc.

6. Apart from the above, the 'Adjudicating Authority' in the 'impugned order' had proceeded to observe that the 'Interim Resolution Professional' had received the name of one of the 'Financial Creditor', being more than Rs. One Crore and further that it is the duty of the 'IRP' before considering it to verify the 'claim' and if the 'claim' is found to be genuine, then constitute the 'Committee of Creditors' and if the claim is not genuine, then reject the same etc., and finally rejected the 'Application' projected by the 'Applicant/Appellant'.

7. There is no two opinion of a primordial fact that 'Speed' is the gist / essence for an 'effective', 'efficacious' functioning / performance of the 'I & B', Code, 2016. While the 'calm period' can assist in keeping a 'Company'/'Organisation' afloat, without full clarity of ownership and control, significant decisions cannot be made without an 'effective 'Head/Leadership', the firm will tend to 'Atrophy' and 'Fail'. When delays induced 'Liquidation', there is certainly a 'Value Destruction', in the considered 'Opinion' of this 'Tribunal'.

8. It cannot be gainsaid that the object and purpose of the 'I & B' Code, 2016 is one of 'Resolution' and not that of 'Corporate Debtor's death'. The

`Adjudicating Authority' under the `I & B' Code, 2016, is to promote `Resolution' and the term `Liquidation' is the last resort.

9. No wonder, a timely resolution of `Insolvency and Bankruptcy' will certainly support development of `Credit Markets', etc. Further, it will facilitate the aspect of carrying on `Business' and facilitate more investments, leading to higher economic growth and development in the considered opinion of this `Tribunal'.

10. On a careful consideration of the contentions advanced by both the parties, this `Tribunal' is of the considered view that the fact of initiation of `CIRP' was on 04.02.2021 and the settlement being arrived at on 20.02.2021 and ultimately, Section 12A of the `I & B' Code, 2016 `Application' filed on 22.02.2021, the whole conspectus of events clinchingly and unerringly points out that the view taken by the `Adjudicating Authority' in dismissing the IA No. 1043/2021 in CP(IB) No.296/ND/2020 in Comp. App (AT) (INS) No. 449 of 2021, based on the surrounding facts and circumstances of the instant case, which float on the surface, is clearly unsustainable in the `Eye of Law'.

11. Viewed in above perspective, this 'Appellate Tribunal' is performed to interfere with the 'impugned order' of rejection of IA No. 1043/2021 dated 08.06.2021 in CP (IB) No. 296/ND/2020 and accordingly 'sets aside' the said order and the 'Appeal' succeeds.

12. In fine, the instant Comp. App (AT) (INS) No. 449 of 2021 is allowed. No costs. The 'impugned order' dated 08.06.2021 in CP (IB) No. 296/ND/2020 is 'set aside' by this 'Appellate Tribunal' for the reasons assigned in this 'Appeal'. Furthermore, the observations made by the 'Adjudicating Authority', wherein the 'Applicant/Appellant' was granted liberty to move 'fresh application' in accordance with the provision of law is also set aside to prevent, an 'aberration of justice' and to secure the 'ends of justice'.

13. The matter is remitted back to the 'Adjudicating Authority' who is directed to restore IA No. 1043/2021 in CP (IB) No. 296/ND/2020 to its file within one week from the date of receipt of this order, and after providing due opportunities to both sides are to proceed further in the subject matter in issue, to dispose of the matter 'de novo', of course, in the manner known to Law and in accordance with Law, within three weeks from the date of receipt of copy of this order (uninfluenced and

unimpeded) with any of the observations made by this `Tribunal' in this
`Appeal.

[Justice M. Venugopal]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

shashi/sr/gc