



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 15
(IB)-1825(PB)/2019

IN THE MATTER OF:

Small Industries Development Bank of India ... Petitioner/Applicant
Vs.
M/s. Radhay Sham Tandon Manufacturing Pvt Ltd. ... Respondent

Order under Section 7 of Insolvency and Bankruptcy Code, 2016 (Liq.)

Order delivered on 16.05.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL AND VC MODE)

PRESENT:

For the Liquidator : Adv. Sanjeev Bindal
For the Respondent : Adv. Raunak Satpathy

ORDER

IA-4826/2022

This application has been filed seeking the following reliefs:

- i. allow the revival of the Corporate Insolvency Resolution Process of the Corporate Debtor;*
- ii. pass such other and further order(s) and direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

The reasons for filing this application is based on the order of the Hon'ble NCLAT in "Company Appeal (AT) (Insolvency) No. 13 of 2022 Nikhil Tandon Vs. Sanjeev Bindal & Anr." dated 01.09.2022.



The operative portion of the order reads as follows:

- 17. The decision of the CoC taken in the 5th CoC meeting to liquidate the Corporate Debtor also cannot be approved due to more than one reason. Firstly, CoC when in the next CoC meeting permitted the Appellant to file Resolution Plan, the decision to liquidate the Corporate Debtor itself was not proceeded with any further. The minutes of the 6th, 7th and 8th meeting of CoC, where plan was permitted to be filed for discussion is clearly in derogation with the earlier decision of the CoC to liquidate the Corporate Debtor which indicate that CoC itself did not adhere to its earlier decision of liquidation. Hence, the decision taken in the 5th CoC meeting to liquidate the CoC cannot be held to be sacrosanct.*
- 18. The Liquidator tried to support the decision of the CaC in the name of commercial wisdom of the CoC and has relied on judgments of Hon'ble Supreme Court in "**K. Shashidhar es, Indian Overseas Bank & Ors., (2019) 12 sec 150**"; **Committee of Creditors of Essar Steel India Ltd. us, Satish Kumar Gupta & Ore., (2020) sse 53**" and "**Kalpraj Dharamshi & Anr. us, Kotak: Investment Adv:sors Ltd. & Anr., 2021 sec Online SC 204**". All the above judgments cited by the Liquidator are decisions considering the commercial wisdom of the CoC in reference to approval*



of a Resolution Plan. In the present case, commercial wisdom of CoC regarding approval of Resolution Plan is not under consideration. CoC has refused to consider the Resolution Plan submitted by the Appellant for reasons as noted above. In the facts of the present case, decision to liquidate the Corporate Debtor was taken in the 5th CoC meeting held on 24.02.2020 by that time neither any Valuers were appointed nor there was any liquidation value. The Resolution Professional has not even prepared Information Memorandum. As noted above, the entire object and purpose of the I&B Code is to revive the Corporate Debtor and put it back on the track. The CoC had not taken any effort to issue any Form G to find out as to whether there can be resolution of the Corporate Debtor by any Resolution Applicant. Without even making one effort, CoC jumped on conclusion to liquidate. It is true that under the statute CoC is empowered to take a decision to liquidate the Corporate Debtor. Material irregularity has been committed in the process as already noticed above.

- 19.** *We are satisfied that sufficient ground exist within the meaning of Section 61(4) to assail the order directing for liquidation. The Adjudicating Authority in the impugned order only relying on the resolution of the CoC in 5th meeting has directed for liquidation without even taking into consideration minutes of subsequent 6th , 7th and 8th meetings of CoC, the*



steps taken by CoC to invite plan from the Appellant, discussion of the plan and ultimately decision thereon.

20. *When we look into the entire facts and circumstances of the present case and sequence of events, we are satisfied that decision of the CoC in the 5th meeting to liquidate the Corporate Debtor is unsustainable for the reasons as indicated above. In result, we allow the appeal, set aside the order of the Adjudicating Authority dated 26.08.2021 and reject the application filed by the Resolution Professional under Section 33(2).*

21. *In consequence to setting aside of order of liquidation further steps need to be taken in the CIRP. We are of the view that one opportunity has to be given to the CoC for finding out as to whether there can be any Resolution Plan to revive the Corporate Debtor. In result, while allowing the appeal we issue following directions:*

I. *An extension of period of 90 days is granted to the Resolution Professional and the CoC to take steps to prepare Information Memorandum and issuance of Form G and consideration of Resolution Plan, if any, and take appropriate decision regarding resolution in the CrRP process.*

II. *The Appellant may also in pursuance of issuance of Form G submit its Resolution Plan which also need to be considered by the CoC alongwith other plans, if any.*



- 22.** *We make it clear that we are not expressing any opinion on merits of the Resolution Plan which was earlier submitted by the Appellant or which may be submitted consequent to this order. It is for the CoC to consider the Resolution Plan of the Appellant alongwith other Resolution Plans in accordance with law. The Resolution Professional and the CoC shall endeavour to complete the entire process, as directed above, within 90 days from today.*
- 23.** *For any further steps in CIRP, it shall be open for the Resolution Professional and CoC to file appropriate application before the Adjudicating Authority, which may be considered in accordance with law.*

In view of the above this application has been filed.

Accordingly, **IA-4826/2022** stands **allowed**.

The CIRP stands restored and the CoC is directed to pursue the case in view of the directions passed by the Hon'ble NCLAT.

-Sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

ANAND DUBEY