

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/320(CHE)/2021 in CP/1156/IB/2018

*filed under Section 12A & 60(5) of the Insolvency & Bankruptcy Code,
2016 r/w Regulations 30A of the IBBI (Insolvency Resolution
Process for Corporate Persons) Regulations, 2016*

In the matter of M/s. RA-NI Precast Private Limited

Jayashree Mohan

Erstwhile Director of Corporate Debtor,
No.6, Neelakandan Street,
Choolaimedu, Chennai-600 094.
E-Mail – jayashreemohan98@gmail.com

... Applicant

-Vs-

Pathukasahasram Raghunathan Raman

Company Liquidator – M/s. RA-NI Precast Private Limited
(Corporate Debtor)
No. 93, Ground Floor, Sivan Koil South Street,
Vadapalani, Chennai – 600 026.
E-Mail – prramancirp@gmail.com

... Respondent

Order pronounced on 14th October 2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : R. Kannan, PCS

*For Respondent : A.K. Mylsamy, Senior Advocate
For Jayanth Viswanathan, PCS*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an Application filed by one of the suspended directors of the Corporate Debtor which is under Liquidation namely RA-NI Precast Private Limited under Section 12A & 60(5) of IBC 2016 read with Regulations 30A of the IBBI Insolvency Resolution Process for Corporate Persons, Regulations 2016.

2. Shorn of unnecessary details brief facts of the case are as under;

2.1. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide Order dated 05.04.2019 and the Respondent herein was appointed as the Interim Resolution Professional.

2.2 In the first COC meeting held on 06.05.2019 Respondent herein was interim as the Resolution Professional of the Corporate Debtor. Thereafter the COC was constituted with two financial creditors viz. HDFC Bank and Deutsche Bank AG. It was submitted that there were Oppression and mismanagement proceedings pending before this Tribunal against the Corporate Debtor in CP/46/2018 and CP/42/2018.

2.3. The CIRP in respect of Corporate Debtor was extended for further period of 150 days with effect

from 01.10.2019. There after it could be seen that in the 5th COC meeting held on 03.01.2020 a decision was taken for extension of CIRP in relation to the Corporate Debtor for a period of 90 days, since 330 days already came to an end on 20.08.2020. However, this Tribunal vide order dated 04.03.2020 dismissed the said Application as it could not find exceptional circumstances to extend the CIRP period beyond 330 days. Hence, the Respondent has filed Application for Liquidation of the Corporate Debtor in IA/670/2020 and this Tribunal vide order dated 23.12.2020 has ordered for Liquidation of Corporate Debtor and appointed the Respondent herein as a Liquidator.

3. It was submitted that the Applicant herein has taken significant effort and succeeded in settling all the existing debts of the Corporate Debtor including the debt owed to the Financial Creditors. It was further submitted by both M/s. HDFC Bank and M/s. Deutsche Bank, constituted 40% and 60% of the Committee of Creditors COC, respectively have acknowledged the full and final repayment of the loans owed by the Company and have provided their No Objection Certificates. The details of the settlements arrived by the Applicant with the Creditors of the Corporate Debtor:



S.No.	PARTICULARS			AMOUNT [RS. IN LAKHS]	
1.	<u>FINANCIAL CREDITORS</u>			51.43	
	S.No	Particulars	Amount settled [Rs. In lakhs]		Status
	a.	M/s. Deutsche Bank	38.43		Settled
	b.	M/s. HDFC Bank	13.00		Settled
	<u>OPERATIONAL CREDITORS</u>			19.39	
	S.No	Particulars	Amount Settled [Rs. In lakhs]		Status
	a.	M/s. SV Crane	0.70		Settled
	b.	M/s. Sri Karpaga Vinayaga Services Crane	1.20		Settled
	c.	M/s. PVM Crane Services	1.00		Settled
	d.	M/s. Jaya Mangai Transport	2.00		Settled
	e.	M/s Rajasthan Tools & Hardware	1.80		Settled
	f.	M/s Nithish & Co	3.50		Settled
	g.	M/s International Steels	4.50		Settled
	h.	M/s. Cera Chem Pvt. Ltd.	0.40		Settled
	i.	M/s Sri Vaari Crane Services	1.53		Settled
	j.	M/s Thirupathi Stores	0.25		Settled
	k.	M/s Jeeva Crane Services	1.41		Settled
l.	M/s Bulwark Maintenance Engineers	4.57	Ready for settlement		

4. It was submitted that the Applicant vide her letter dated 25.03.2021 informed the Liquidator about the settlements of the debts and requested the Liquidator to approach this Tribunal with an appropriate application seeking withdrawal of the Liquidation proceedings, however in response to the same, it was submitted that the Liquidator vide his letter dated 31.03.2021 stated that withdrawal is not possible during the Liquidation process.

5. It was submitted that the Corporate Debtor had an extremely good order book in its pipeline before the initiation of CIRP despite the macro level financial crunch for over five years and the economic slowdown. In spite of the same the Corporate Debtor has settled all of its creditors. Further it was submitted the Applicant has liquidated her personal assets and has brought in external financing to reduce debt burden of the Corporate Debtor.

6. The Learned Counsel for the Applicant read upon the decision of the Hon'ble NCLAT in the matter of **Y. Shivram Prasad**, in order to buttress his arguments that there is always a possibility of reviving the Corporate Debtor through scheme of arrangement. However, in the present case this Applicant has settled all the creditors including Financial Creditors as well as Operational Creditors the need for submitting a scheme has been obviated. Hence, it was submitted there is no impediment in in bringing to an

end the liquidation process and allow the revival of the Corporate Debtor. Further, in order to bolster his arguments, the Learned Counsel for the Applicant also relied upon the decision of Hon'ble NCLAT in the matter of **V. Navaneetha Krishnan vs Central Bank of India** in *Company Appeal (AT)(Ins) No. 288 of 2018* wherein it has been held as follows;

However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A satisfy the demand of 'Committee of Creditors' then such person may move before the Adjudicating Authority by giving offer which may be considered by the 'Committee of Creditors', and if by 90% voting share of the 'Committee of Creditors', accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order. Both the appeals are dismissed with aforesaid observations. No cost.

Thus, based upon the observations made by the Hon'ble NCLAT above mention order Applicant sought termination of the liquidation process.

7. The Liquidator has filed its counter and it is submitted by the Learned Senior Counsel for the Liquidator that during the CIRP process Respondent has filed under Section 19(2) of the IBC, 2016 seeking co-operation from the erstwhile directors, key managerial personnel and the statutory Auditors and the said Application as numbered MA/1066/2019.

8. The Respondent has filed various Applications under Section 66 of the IBC against one Mr. Kolanchinathan and Shri Satyamurthy Balaju Sreedhar the other key managerial Personnel of the Corporate Debtor. It was submitted that after the liquidation process of the Corporate Debtor the Respondent has recovered a sum of Rs.16 lakh as part of the an Application filed under Section 66 of IBC it was submitted that there was non-cooperation on the part of the suspended directors of the Corporate Debtor even during the liquidation that one of the scheme proponent has approached the Liquidator for submission of the scheme and the Liquidator could not give them an opportunity for the reason that the assets and liabilities of the Corporate Debtor has not been ascertained at that time due to the non-completion of the books of accounts by the erstwhile management.

9. It was submitted the Liquidator made all the ground work for disposing of the only Valuable asset of the Corporate Debtor (which is a land measuring 7.46 Acres located at Pinayur Village, Kancheepuram District) and completed the valuation and the arrangements for conducting E-auction Sale. It was submitted that to his utter surprise, the Liquidator received intimation from the Applicant about the settlement made by her seeking withdrawal of the Liquidation proceedings. It was submitted that none of the Financial Creditors has confirmed the receipt of such settlement to

the Respondent Liquidator and they never sought for the withdrawal of their claims till date.

10. It was submitted that the Liquidator has filed IA/383/CHE/2021 for the recovery of the property belonging to the Corporate Debtor along with all relevant documents establishing the Corporate Debtor as the absolute owner of the said property to which the Applicant has claimed ownership of the said land. It was submitted by the Learned Counsel for the Liquidator that all the allegations made by the Applicant against the Liquidator are baseless and are made to cover up the Applicants selective settlement made through improper channel which does not find any place in IBC. It was further submitted by the Operational Creditor has accepted only 50% settlement of their dues and under extreme duress and the fact that some of the Operational Creditors who were settled 50% of dues have submitted their claims for the balance amount before the Respondent Liquidator proves that the dues are not settled.

11. The Learned Counsel for the Respondent Liquidator submitted that if the Applicant herein is not disqualified under Section 29A of IBC 2016 she could have submitted a Scheme under Section 230 of the Companies Act 2013 and instead of doing so, the Applicant has gone for selective settlements with the

Creditors which is nothing but a desperate attempt to escape from her personal liabilities. Further, it was submitted that it was also within the knowledge of the Applicant that one of the financial creditors viz. HDFC Bank has not filed their claim before the Liquidator during the Liquidation process and Applicant herein has settled the dues of the said financial creditor, which clearly proves her vested interest to protect her from the personal liabilities.

12. It was submitted that the settlements made by the Applicant are not sustainable for the simple reason the Applicant is not willing to settle any of the statutory dues like ESI, PF, & GST which she is well aware of. It was further submitted the Applicant who is the erstwhile director of the Corporate Debtor has all along been non-cooperative and claims to have no knowledge about the receivables and payables of the Corporate Debtor, has now been able to claim ownership of the assets of the Corporate Debtor and take out the liabilities selectively for making the selective and preferential settlements at this juncture.

13. Thus, under these circumstances Learned Counsel for the Liquidator submitted that the present Application filed by the Applicant seeking withdrawal of the Liquidation process finds no place in IBC and hence sought dismissal of the same.

FINDINGS OF THIS TRIBUNAL

14. We have heard the submissions made by the Ld. Counsels by both the parties.

15. It is seen here that the Corporate Debtor was ordered for Liquidation by this Tribunal vide order dated 23.12.2020 and the Liquidator took over the assets of the Corporate Debtor in terms of the Regulations specified under IBBI (Liquidation Process Regulation 2016). It is to be noted here during the Liquidation process of the Creditors / Stakeholders are require to file their claim a fresh as on the date of commencement of Liquidation.

16. A perusal of the averments made in the Application show that the Applicant has acted under the wrong notion that the Corporate Debtor is still under CIRP and they can settle their Creditors at any point of time and can come out by way of filing Application under Section 12A of IBC 2016. The provisions of the IBC, 2016 treat CIRP and Liquidation Process as two separate stages and the procedures to be followed in each stage have been delineated by way of framing a separate regulation by the regulator viz. IBBI.



17. The Corporate Debtor can be revived only at the stage during which it is undergoing in CIRP and it has been held by Hon'ble NCLAT in the matter of **Y. Shivaram Prasad** that even during Liquidation a Scheme can be given under Section 230 of the Companies Act, 2016 for the revival of the Corporate Debtor. Further, even during Liquidation, the Corporate Debtor can be sold as a 'going concern'. Apart from the above process stipulated *supra*, there is no other way which is recognised under the provisions of the IBC, in which the Corporate Debtor can be revived or come out of CIRP / Liquidation.

18. In the present case it is requires to be seen that already 90 days' time period for submission of Scheme under Section 230 of the Companies Act, 2013 granted for the Corporate Debtor already expired during the liquidation process and by operation of law the property of the Corporate Debtor is require to be liquidated by the Liquidator and proceeds out of the sale process and require to be distributed in terms of Section 52 and 53 of 2016.

19. In the present case it could be seen that the Applicant has settled the Creditor viz. HDFC Bank who has not even submitted the claim before the Liquidator during the liquidation process. Also, it is required to be noted that a non-cooperation Application under Section 19(2) of IBC, 2016 is still pending against the Applicant

herein and the Applicant has still not handed over the land documents which is belonging to the Corporate Debtor to the RP / Liquidator. This shows the defiant attitude of the Applicant towards the orders passed by this Tribunal. Further, there is no provision under IBC 2016 to come out of the liquidation process once a liquidation is ordered, except by way of a Scheme under Section 230 of the Companies Act, 2013 or by Sale as a going concern and the provisions of IBC never envisaged for termination of liquidation process and as such the prayer sought by the Applicant transcends beyond the scope of IBC.

20. At this juncture, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka -Vs- Jindal Steel and Power Ltd. & Anr.**, 2021 SCC OnLine SC 220 wherein the Hon'ble Supreme Court, after examining the judicial interventions and innovations made under the provisions of IBC, 2016 by the Adjudicating Authority and also by the Appellate Authority, has held as follows;

103. At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in *Y Shivram Prasad* (supra). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from

judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

“An adjudicating authority ensures adherence to the process

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator.”

104. Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

(emphasis supplied)

21. Thus, in view of the reasons stated *supra* and also guided by the principle of Hon'ble Supreme Court in the matter of **Arun Kumar** (*supra*), the present Application filed by the Applicant is

not sustainable and liable to dismissed and accordingly stands
dismissed. No costs.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

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