

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Comp. App. (AT) (CH) (Ins.) No. 109 of 2023

(I.A. Nos.396 & 397/2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the 'Impugned Order' dated 18.04.2023 in

IA(IBC) No.96/2021 in CP (IB) No.166/7/HDB/2019, passed by the

'Adjudicating Authority', National Company Law Tribunal,

Hyderabad Bench – II)

In the matter of:

Arun Agarwal,

Suspended Director of
Suryajyothi Spinning Mills Ltd.,
S/o Ravinder Kumar Agarwal,
R/o Plot No.341, Road No.23/A,
Jubilee Hills, Hyderabad – 50003
Email: arun@sjinfotech.com

..... Appellant

V.

1. Mr. Ram Ratan Kanoongo

No. IBBI/IPA-001/IP-P00070/2017-18/10156
Liquidator of Suryajyothi Spinning Mills Ltd.
No. 708, Raheja Centre, 7th Floor,
Nariman Point, Mumbai – 400 021.
Email: rrkanoongo@gmail.com

..... Respondent No. 1

2. K V Srinivas

Liquidator of Suryajyothi Spinning Mills Ltd.
#402, 4th Floor, 6-3-249/6,
“Alcazar Plaza & Towers”,
Road No. 1, Banjara Hills, Hyderabad,
Telangana – 500034
Email: kvsrinivas12@gmail.com

..... Respondent No. 2

Present:

For Appellant : Mr. P.H. Arvinth Pandian, Sr. Advocate
For Mr. Avinash Krishnan Ravi &
Mr. Jerin Asher Sojan, Advocates.

For Respondent No. 1 : Mr. Y. Suryanarayana, for Liquidator.

J U D G M E N T

[Per; Ms. Shreesha Merla, Member (Technical)]:

1. This Appeal is filed against the 'Impugned Order' dated 18.04.2023, passed in IA(IBC)96/2021 in C.P. (IB) No.166/7/HDB/2019 by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench – II), whereby and whereunder the 'Adjudicating Authority' has allowed the IA seeking Liquidation of the 'Corporate Debtor Company'. Aggrieved by this direction, the suspended Director of the 'Corporate Debtor Company' preferred this Appeal.

2. Facts in brief are that the Corporate Insolvency Resolution Process ('CIRP') was initiated by the 'Adjudicating Authority' vide 'Order' dated 05.09.2019 against the 'Corporate Debtor Company' in a Section 7 Application filed by M/s. State Bank of India ('SBI'), subsequent to which, invitation for Expression of Interest ('EOI') was issued on 30.11.2019, which was later extended to 26.12.2019, the last date for submission of the Resolution Plan being 30.01.2020. On the approval of

the Committee of Creditors ('CoC'), a second extension was given for EOI on 09.01.2020 the last date for submission of the Resolution Plan being 04.03.2020. Thereafter on request of the Resolution Applicant, the CoC approved for extension of 45 days and the Resolution Plan was finally received on 31.07.2020, but the CoC did not accept the Plan as it was not compliant with the conditions under the RFRP as it was a 'Conditional Plan'.

3. While so, the CoC Members informed the Resolution Professional ('RP') that they have received a One Time Settlement ('OTS') proposal for one of the 'Corporate Guarantors' of the 'Corporate Debtor', which is under consideration and the Application was moved under Section 12-A of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'). It is averred that during the 18th CoC Meeting, the SBI informed that the OTS proposal was under active consideration and directed the RP to seek another extension of 60 days of the CIRP period. The 'Adjudicating Authority' disposed of the Application as not maintainable as there were no Resolution Plans pending before the RP and the CoC and also on the ground that an OTS proposal was a matter between the 'Corporate Debtor' and SBI.

4. The 'Adjudicating Authority' has observed that as the CIRP period had already expired on 13.01.2021 and there were no Resolution Plans in the offing, the Application seeking liquidation under Section 33(1) was allowed.

5. Learned Sr. Counsel, Mr. PH Arvindh Pandian submitted that IA 97/2021 was filed by SBI seeking extension of the CIRP, which was allowed and the CIRP was extended till 31.03.2022. IA 96/2021 was filed in February, 2021 on the premise that maximum period of CIRP had come to an end and therefore in terms of Section 33(1) of the Code, the 'Corporate Debtor' would be liquidated. The basis of this Application had challenged vide the 'Order' of the 'Adjudicating Authority' in I.A.97/2021, wherein vide 'Order' dated 05.01.2022, the CIRP was extended *Suo Motu* upto 31.03.2022. The Application was rendered infructuous and the RP ought to have proceeded to take steps in accordance with the tenets of IBC. It was also pointed out by the Learned Sr. Counsel that I.A.184/2021 was filed by the group entity of the 'Appellant' seeking implementation in the CIRP Proceedings, which is also connected with I.A.96/2021 and was dismissed on the same grounds vide 'Order' dated 05.01.2022. It is submitted that the same principle ought to have been applied to the facts of this I.A.96/2021 and a departure

from the Doctrine of *stare decisis* would render this 'Order' also to be infructuous.

6. It is further submitted that there is a material difference in the valuation before Covid and post-Covid and that the 'Appellant' and the 'Corporate Debtor' have been making all efforts to keep alive the approvals for 'financial assistance' of Rs.100Cr./- to settle the date of the 'Corporate Debtor' on OTS basis for an aggregate sum of Rs.86.04Cr./-, payable to the three Banks. Out of the said sum of Rs. 86.04Cr./- a sum of Rs.14.84Cr./- has already been deposited by the 'Appellant' in no lien account with SBI. It is contended that the letters dated 17.10.2022 and 12.12.2022 corroborate the fact that despite withdrawal of OTS approval, SBI continue to have trust and approve additional 'financial assistance' of Rs.10Cr./-, vide their 'Term Sheet' dated 01.07.2022. It is submitted that Cantor Fitzgerald, Europe remains agreeable to fund the OTS proposal and if the 'Order of Liquidation' is set aside, the 'Appellant' would be able to complete the legal documentation and made the OTS funding. The Hon'ble Supreme Court in '**K.N. Rajakumar' Vs. 'V. Nagarajan & Ors.**'¹, has observed as follows:

¹ Civil Appeal No.1792/2021

“16. It could thus be seen that one of the principal objects of the IBC is providing for revival of the Corporate Debtor and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort.”

7. The Hon’ble Supreme Court in *‘Kridhan Infrastructure Pvt. Ltd. (Now Appellant(s) Known as Krish Steel & Trading Pvt. Ltd.’ Vs.*

*‘Venkatesan Sankaranarayan & Ors.’*², has observed as hereunder:

“9. Liquidation of the Corporate Debtor should be a matter of last resort. The IBC recognizes a wider public interest in resolving corporate insolvencies and its object is not the mere recovery of monies due and outstanding.”

8. Mr. Y. Suryanarayana appearing for the Liquidator submitted that during the hearing of I.A.96/2021 on 22.03.2022, the ‘Appellant’/‘Shareholder’ was present before the ‘Adjudicating Authority’ and requested for one opportunity for OTS, subsequent to which, the Bench granted additional time till 30.03.2022 for settlement of the matter. On 29.03.2022, an email was received from SBI stating that there is no scope of any compromise or settlement between the parties and that the OTS proposal was cancelled vide letter dated 11.02.2022. On 31.03.2022, once again, the Erstwhile Promoter/the ‘Appellant’ herein appeared in present and informed the Bench that an amount of Rs.5Cr./-

² Civil Appeal No.3299/2020

was paid and they were trying to settle the matter with SBI. Once again, the Bench had granted another period of 15 days for making payment to SBI. The matter was listed again on 18.04.2022 and was simpliciter adjourned to 06.06.2022. It is submitted that on 06.06.2022 also another opportunity was given by way of a last opportunity to the 'Appellant' herein and 'Conditional Order' was passed by the 'Adjudicating Authority' that if the settlement fails a 'Liquidation Order' would be passed.

9. It is submitted by Mr. Y. Suryanarayana that the Bench had granted additional four weeks' time, as the Bench was a 'Special Bench' and the matter stood slated for 16.08.2022. Thereafter, an I.A.688/2022 was filed on 08.07.2022 by the ERP to have the Liquidation pursued. On 01.09.2022, the Counsel appearing for SBI pressed for Liquidation of the 'Corporate Debtor', as despite several opportunities, the settlement could not be arrived at. Learned Counsel submitted that several opportunities were given and there was no settlement arrived at and therefore the 'Adjudicating Authority' was perfectly justified in passing the 'Order of Liquidation'.

10. Learned Sr. Counsel for the Appellant also drew our attention to the Minutes of the 18th CoC Meeting wherein it was observed as follows:

CoC members, discussed that considering the object of the Code to keep the CD as going-concern and to maximise the value for all stakeholders, it would be in the interest of all stakeholders to put in all efforts for the above mentioned OTS approval process, considering that the CD is employing approx. 380 workmen/employees and generating adequate resources to meet its operating expenses. The CoC members, in their commercial wisdom have found that OTS proposal to be the best way of maximization of value and keep the CD as a going concern.

Furthermore, member from SBI also highlighted that in the event the CD goes into liquidation, it may de-rail the OTS process and the incoming external investor, namely "Cantor Fitzgerald", may withdraw their commitment.

With the above background, all the CoC members (100% voting share) requested RP to file an application before the Hon'ble NCLT, Hyderabad Bench, on or before 13th Jan 2021, to seek further exclusion of 60 days in the CIRP period, from 13th Jan 2021 on account of delay in the OTS approval due to COVID-19 restrictions in Maharashtra by making the CoC as the respondent. This exclusion would enable the CoC sufficient time to complete the above mentioned OTS proposal and save the CD from going into liquidation. Accordingly, the resolutions proposed by RP u/r 39B, 39C and 39D of CIRP Regulations have been deferred by the CoC.

RP explained to the CoC that in the event the Hon'ble NCLT, does not accede to the above prayers of granting further exclusion of 60 days, the Liquidation process of the CD u/s 33(1) of the Code shall commence w.e.f 13th Jan 2021, in line with the Order date 31st Dec 2020. CoC noted the same.

With no other items to be discussed, the meeting was concluded with a vote of thanks to the Chair.

Date: 11th January 2021
Place: Mumbai


Ram Ratan Kanoongo
Chairman



11. From the aforementioned Minutes, it is clear that it is dated way back on 11.01.2021 and the following sequence of events is being detailed hereunder for better understanding of the subsequent events.

12. Apart from the sequence of events submitted by the Learned Counsel, Mr. Y Suryanarayana, it is seen from the record that though the 'Order' in I.A.96 of 2021 was heard and reserved on 05.01.2022, and was listed for pronouncement, it was only on account of the 'Appellant' having been personally present before the Bench and having sought for additional time for settlement of the matter, that the Bench had granted additional time on the following dates;

- i. On 31.03.2022, the 'Adjudicating Authority' had granted further period of 15 days to make payment to the SBI;
- ii. On 18.04.2022, the matter was adjourned to 06.06.2022;
- iii. On 06.06.2022, one opportunity was given, again to the promoter to settle the matter and the case was adjourned to 06.07.2022;
- iv. On 06.07.2022, SBI sought for Liquidation of the Company as no settlement was arrived at. The matter was adjourned to 16.08.2022 on the ground that the Bench was a Special Bench;
- v. On 16.08.2022, the matter was adjourned to 01.09.2022, on which date, the Counsel for SBI pressed for Liquidation;
- vi. On 01.09.2022, the Bench once again granted additional time and the matter was posted on 26.09.2022;

- vii. On 26.09.2022, the Counsel of SBI submitted that the 'Appellant' herein approached them with a proposal to deposit a sum of Rs.86Cr./- in settlement and undertook the deposit of Rs.10Cr./- by 15.10.2022. Based on this submission, the Bench again granted time till 18.10.2022;
- viii. On 18.10.2022, it was informed to the Bench that Rs.2.5Cr./- was deposited on 18.10.2022, and once again three weeks' time was sought for to deposit the balance amount. The Hon'ble Bench granted a further three weeks' time and the matter was posted for 18.11.2022;
- ix. On 18.11.2022, the 'Appellant' sought for some more time on the ground that the ex-Promoter was ill and as Rs.2Cr./- was deposited by them. The Bench once again granted time till 07.12.2022 as a last chance;
- x. On 07.12.2022, the 'Appellant' herein deposited an amount of Rs.50Lakhs/- and sought for three more weeks' time to pay the balance amount. Based on his submission, Bench again granted time as last opportunity till 19.12.2022 to deposit Rs.5Cr./-;

- x. On 19.12.2022, it was submitted by the 'Appellant' herein Rs.2Cr./- were deposited and sought for two more weeks to deposit the balance amount of Rs.3Cr./-;
- xii. SBI is strongly opposed in granting of further time. But on request of the Sr. Counsel appearing for the 'Appellant', the Bench once again posted the matter to 10.01.2023;
- xiii. On 10.01.2023, the matter was adjourned at the request of the Counsel for the 'Appellant' to 17.01.2023 and again from 17.01.2023 to 24.01.2023;
- xiv. On 24.01.2023, once again the matter was adjourned to 15.02.2023, on which date, the 'Appellant' mentioned about the Meeting with the Senior Officials of SBI and on this ground, the matter was once again adjourned to 03.03.2023;
- xv. On 03.03.2023, both the parties were present and it was submitted by the Counsel for the SBI that the OTS has failed, subsequent to which submission, the matter was heard and on 18.04.2023, the IA seeking for liquidation of the 'Corporate Debtor Company' was allowed.

13. At this juncture, Learned Counsel drew our attention to the letter dated 18.04.2023 issued by Cantor Fitzgerald that they are ready and willing to pay the funds of SBI;



Cantor Fitzgerald Europe
12th Floor
5 Churchill Place
Canary Wharf
London, E14 5HU
United Kingdom
44 (0) 20 7894 7000
44 (0) 20 7894 7225 Fax

Date : 18th April 2023

Suryajyoti Infotech Ltd.
Surya Towers
SP Road
Secunderabad

Attn.: Mr. Arun Agarwal, Director

This is with reference to the meeting held in Delhi during the last week. As discussed, we hereby reconfirm our willingness to fund the OTS of SBI and other lenders provided the Escrow Agreement is signed on the same day by all the Parties without any further delay well before the end of this month.

Subject to above, we hereby confirm that the required funds for meeting the OTS will be remitted by us in the Escrow Account within 5 business days in accordance with the terms and conditions of the Escrow Agreement.

The Draft of Escrow Agreement has already been sent to you. Pl recirculate this draft to SBI and other lenders and in case of any clarification, pl feel free to contact the undersigned or send a mail outlining the issues needing any clarification.

Pl recall that we have issued our original Final Term Sheet on 25th March 2021, which was further revalidated by us on 12th March 2022. Despite the withdrawal of the OTS approval letter in February 2022 by SBI, we continued our trust and confidence in this Transaction and also approved additional financial assistance of Rs. 10 crores vide our Term Sheet dated 1st August 2022.

We have been informed that the company has been put to liquidation by the NCLT, Hyderabad Bench. We state that we are ready and willing to fund any settlement even during the liquidation process, if necessary leave and permission is obtained from appropriate authorities, including the NCLAT, within 10 days from any such order.

Many thanks,

For Cantor Fitzgerald, Europe

A handwritten signature in blue ink, appearing to be "H. Chandra", with a small blue dot to the right of the signature.

Hari Chandra

Senior Managing Director

14. On behalf of the Appellant, 'Notice' is drawn to the Order of the Hon'ble Supreme Court dated 31.05.2023 in the matter of 'Arun

*Agarwal' Vs. 'Ram Ratan Kanoongo & Arn.'*³, whereby and whereunder

the Hon'ble Apex Court in paras 4 and 5 have noted as follows:

“4. Appearing on behalf of the appellant, Ms. Meenakshi Arora, learned senior counsel presses for an order of status quo till such time the judgment on the appeal is rendered by the NCLAT, Chennai. According to her, the appeal would be rendered infructuous should the Liquidator act adverse to the interest of the appellant.

5 In course of hearing, we have been informed that after summer vacation, the NCLAT, Chennai reopens on 5th June, 2023. In such view of the matter, we grant liberty to the appellant to approach the NCLAT, Chennai on 5th June 2023 and seek such relief as may be available to him in law. It is expected that till 5th June, 2023, the Liquidator shall not take any action adverse to the interest of the appellant.”

15. It is stated in the letter that M/s. Cantors Fitzgerald is ready and willing to fund any settlement '*even during the Liquidation Process*'. In the event, any such settlement is able to be executed, with funds infused, keeping in view the spirit and intent of the Code, the '*Adjudicating Authority*' shall proceed in accordance with law giving 14 days time peremptorily, ofcourse from the date of this '*Order*' failing which, this Tribunal does not find any tangible ground(s) to interfere with the '*Order of Liquidation*' as '*more than sufficient time*' was granted by the

³ Civil Appeal No(s).3823/2023

`Adjudicating Authority’/`Tribunal’ to the `Appellant’ herein to settle the matter.

16. With the aforesaid observations and directions, this *Company Appeal (AT) (CH) (Ins.) No.109/2023* stands disposed of. No costs. The connected pending `Interlocutory Applications’, if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

07/06/2023
HA / TM