NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1110 of 2020

[Arising out of order dated 28.09.2020 in IA No. 1381/2020 in IB-889(ND)/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Court No. III), New Delhi]

IN THE MATTER OF:

Mohd. Nazim Khan
Erstwhile IRP
M/s. International Trenching Private Limited,
G-41, Ground Floor, West Patel Nagar,
New Delhi - 110008
Mobile: +91-9818156340
Email: nazim@mnkassociates.com

....Appellant.

Versus

1. HDFC Bank Limited
J-12/21, J Block Rajouri Garden,
New Delhi - 110027 **....Respondent No. 1**

2. M/s International Trenching Private Limited
Through Resolution Professional
301, Third Floor Vardhman Plaza - I,
J Block, Rajouri Garden
New Delhi - 110027 **....Respondent No. 2**

Present:

For Appellant:	**Mr. Krishnendu Datta, Sr. Advocate with Mr. Nilotpal Shyam, Advocate.** **Mohd. Nazim Khan (In person)** **Ms. Babita Jain (CS)**
For Respondent:	**Mr. Kunal Tandon and Ms. Richa Sandilya, Advocates for R-1 and 2.** **Ms. Deepika Bhugra Prasad, Mr. Dhananjaya Sud, Mr. Aditya Gauri, Mr. Gaurav Mitra and Ms. Shriya Raychaudhuri, Advocate for R-3.**

J U D G M E N T
(6th August, 2021)

Justice Anant Bijay Singh;

This appeal has been preferred by Mohd. Nazim Khan who was the Interim Resolution Professional of the Corporate Debtor (Respondent No. 2) – M/s International Trenching Private Limited being aggrieved and dissatisfied by the order dated 28.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Court No. III), New Delhi in IA No. 1381 /2020 in IB-889(ND)/2019 was heard along with Company Appeal (AT) (Insolvency) No. 1040 of 2020 preferred by Mohd. Nazim Khan, but both the Appeals are disposed of by two separate Judgments.

2. This appeal has been preferred by Mohd. Nazim Khan who was the Interim Resolution Professional (**for short IRP**) of the Corporate Debtor (Respondent No. 2) – M/s International Trenching Private Limited being aggrieved and dissatisfied by the order dated 28.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Court No. III), New Delhi in IA No. 1381 /2020 in IB-889(ND)/2019 whereby the Ld. Adjudicating Authority has passed the following order is as under:

> " I.A. No. 1381/2020 filed in IB-889/ND/2019 :
>
> The Counsel for HDFC Bank is present. The Bank is one of the constituents of the COC and prayed for extension of the CIR Process. At this stage, the IRP along with the Counsel caused appearance and submitted that on an earlier point of time, the

HDFC Bank had declined to seek the extension of the CIR Process.

In the circumstances, it is deemed appropriate to direct the IRP to send short notice to all the members of the COC for convening the meeting for deliberating on the issue with regard to extension of the CIR Process. The meeting shall be convened on 13th October, 2020 through visual hearing and the report shall be filed on 16th October, 2020.

List on 16.10.2020.**”**

3. The facts giving rise to the instant Appeal is as under:

i) That one M/s International Trenching Pvt. Ltd.- Corporate Debtor was incorporated with authorized share capital of Rs. 1 Crore.

ii) That an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) was filed against the Corporate Debtor by one Mr. Sonal Anand, which was allowed by the Ld. Adjudicating Authority being CP No. (IB)-889 (ND)/2019 against M/s International Trenching Pvt. Ltd.- Respondent No. 3 (herein)

iii) The aforesaid Application was allowed by the Ld. Adjudicating Authority under order dated 08.08.2019 whereby the Appellant (herein) was appointed as the Interim Resolution Professional of the Corporate Debtor.

iv) The Appellant after collation of the claims received, constituted the Committee of Creditors (**for short COC**) of the Corporate Debtor and accordingly convened the First Meeting of Committee of Creditors on 21.09.2019.

v) As no proposal with regard to appointment of Resolution Professional (**for short RP**) from any Financial Creditor including Respondent No. 1 - HDFC Bank Limited, J-12/21, J Block Rajouri Garden, New Delhi-110027 was put forth as per the Code, accordingly the Appellant put forward his name for appointment as the Resolution Professional of the Corporate Debtor.

vi) However, the said resolution was rejected by the Respondent No. 1 being sole member of the Committee of Creditors having 100% voting shares. By Item No. 13 of the 1st meeting of Committee of Creditors held on 21st September, 2019, Minutes of the 1st meeting as Annexure-4 at page 62 to 73 of the Appeal Paper Book.

vii) At page 68 of the Appeal Paper Book whereby confirmation of the Appointment of Interim Resolution Professional as Resolution Professional or to replace Interim Resolution Professional by another Resolution Professional as per Section 22(2) of the IBC. The Respondent No. 1 - HDFC Bank Limited being the sole member of Committee of Creditors proposed to replace Mohd. Nazim Khan, IRP (herein the Appellant) by Ashok Kumar Juneja as a Resolution Professional as per Section 22(2) of the IBC, 2016, without assigning any reason thereof.

viii) Further it was resolved that pursuant to Section 22(2) of the IBC appointment of Mohd. Nazim Khan (the Appellant herein) having IBBI Registration No. IBBI/IPA-002/IP-N00076/2017-18/10207, Interim

Resolution Professional as Resolution Professional was approved by members of Committee of Creditors of M/s International Trenching Private Limited.

ix) Further C.A. 50/C-V/ND/2019, C.A. 80/C-V/ND/2019 in (IB) 889 (ND)/2019 was filed under Section 22(2) of the IBC, 2016 on behalf of HDFC Bank - Respondent No. 1 who is the sole member of the Committee of Creditors with 100% voting share made following prayers which read hereunder:

> **"**a) Allow the present application and appoint Mr. Ashok Kumar Juneja as the Resolution Professional. Further in the interest of justice and fair investigation to not to replace the present IRP.
>
> b) Pass further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.**"**

x) That pursuant to the aforesaid directions of the Ld. Adjudicating Authority, the Appellant conducted the 5th Committee of Creditors Meeting on 29.01.2020 which was again presided by Mohd. Nazim Khan, (IRP) as Chairman (the Appellant herein). By <u>Item No. 8</u> it was resolved that pursuant to the provisions of Section 12 (2) of the IBC, 2016 read with Regulation 40 of the Insolvency and Bankruptcy Board of India (for short IBBI) Regulation 2016 and all other applicable provisions of the IBC, 2016 the Interim Resolution Professional be and is hereby authorised to file an application to the Hon'ble NCLT, New Delhi to extend the period of Corporate Insolvency Resolution Process beyond period of 180 days for further 90 days. The copy of the Minutes of the 5th Meeting as Annexure-7 at page 124 to 135 of the Appeal Paper Book. From the perusal of the Minutes also indicate that HDFC Bank Limited by voting share of 80.64% in Agenda Item No. 8 was declared as disapproved by 80.64% voting in terms of Section 21(8) of the IBC, 2016.

xi) Further case is that one C.A. No. 1381 of 2020 in (IB)-889 (ND)/2019 was filed by HDFC Bank under Section 60(5) & Section 12 of the IBC, 2016 read with Regulation 40 of the IBBI for exclusion of period or in the alternative extension of CIRP (at page 168 to 175 of the Appeal Paper Book) with prayer read as under:

> **"** a) Allow the present application and exclude the total period of 114 days from the CIRP of the Corporate Debtor;
>
> b) In the alternative extend the CIRP by a period of 90 days in terms of Section 12(3) of IBC;
>
> c) Pass directions to the Resolution Professional of the Corporate Debtor to file the appropriate application in the above regard; and / or
>
> d) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.**"**

xii) The Ld. Adjudicating Authority under order dated 28.10.2020 which is at page 176 of the Appeal Paper Book passed the following orders as under:

> **"** <u>I.A. No. 1381/2020 filed in IB-889/ND/2019:</u>
>
> Counsel for the Applicant i.e. HDFC Bank is present. Counsel for the Resolution Professional is present. As per the previous order, the meeting of COC has been conducted on

13.10.2020 and the resolution came to be passed for seeking extension of the CIR Process and the Resolution Professional is permitted to file the appropriate application in view of the Resolution passed by the COC. The RP is directed to file the appropriate Application along with the Minutes of the meeting of COC on or before 04.11.2020.

In the light of the above, the present Application stands disposed of.**”**

4. Based on these facts, the Appellant has challenged the impugned order dated 28.09.2020 (at page 47 of the Appeal Paper Book) passed by the Adjudicating Authority (National Company Law Tribunal, Court No. III), New Delhi in IA No. 1381 /2020 in IB-889(ND)/2019.

5. This instant Appeal was heard along with Company Appeal (Insolvency) No. 1040 of 2020 filed by same set of Appellant and Respondents on 15.07.2021and judgment was reserved.

Submissions on behalf of the Appellant

6. The Learned Sr. Counsel for the Appellant during the course of argument and his Written Submissions have submitted that the impugned order dated 28.09.2020 is bad in law.

7. Learned Sr. Counsel for the Appellant further submitted that the Application bearing I.A. No. 1381 of 2020 in IB-889(ND)/2019 filed by Respondent No. 1 – HDFC Bank on which impugned order dated 28.09.2020 was passed by Adjudicating Authority in the face of Committee of Creditors of

Resolution seeking liquidation of the Corporate Debtor, wherein Respondent No. 1 voted in favour of the said resolution and the same was filed without seeking any authorization from the Corporate Debtor.

8. It is further submitted that Respondent No. 1 in the garb of their higher numerical voting percentage (around 80%) tried to obliterate the difference between the individual Financial Creditor and collective wisdom of the Committee of Creditors. The Respondent No. 1 acted in the disregard to the procedure and law laid down under the Code.

9. It is further submitted that the Appellant filed an Application bearing I.A. No. 1003 of 2020 under Section 33(1) read with Section 33(2) of IBC, 2016 for passing an order for Liquidation of Corporate Debtor – M/s International Trenching Private Limited (at page 136 to 164 of the Appeal Paper Book) whereby made following prayer is hereunder:

> **"**i) Pass an order for liquidation of Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016.
>
> ii) Appoint the present Interim Resolution Professional Mohd. Nazim Khan as Liquidator of the Corporate Debtor and approve the fees in accordance with Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
>
> iii) Pass any other or further order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the matter.**"**

10. It is further submitted that no order was passed on the aforesaid Application.

11. It is further submitted that rather an Application bearing I.A. No. 1381 of 2020 was filed by Respondent No. 1 – HDFC Bank for extension of the CIR Process. The Ld. Adjudicating Authority was directed the IRP **"**to send short notice to all the members of the COC for convening the meeting for deliberating on the issue with regard to extension of the CIR Process. The meeting shall be convened on 13th October, 2020 through visual hearing and the report shall be filed on 16th October, 2020**"**. This order has been impugned in the instant Appeal.

12. It is further submitted that the aforesaid Application was moved by Respondent No. 1 not by the Appellant, therefore, based on these facts, the impugned order is fit to be set aside and Appeal be allowed.

Submissions on behalf of the Respondent No. 1.

13. The Learned Counsel for the Respondent No. 1 during the course of argument and his Reply Affidavit have submitted that the present appeal preferred by the Appellant is barred by limitation as the same has been filed beyond the time period as stipulated under Section 60 of the Code.

14. It is further submitted that taking the submissions, the Learned Counsel for the Appellant impugned the order dated 28.09.2020 which was uploaded on the website on 07.10.2020 and the present Appeal has been filed after delay of 26 days after the statutorily prescribed period of 45 days.

15. It is further submitted that the support of the submissions and relied on the judgment of the Hon'ble Supreme Court passed in ***Civil Appeal Nos. 3007-3008 of 2020 (Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.)*** the Appeal be dismissed and hit by limitation.

Submissions on behalf of the Respondent No. 2.

16. The Learned Counsel for the Respondent No. 2 who is the present Resolution Professional during the course of argument and his Reply Affidavit as well as Written Submissions have submitted that the IRP duly convened the 4th meeting of the CoC dated 17.12.2019 whereby Agenda Item No. 14 the CoC resolved to appoint the Respondent No. 2 as the Resolution Professional of the Corporate Debtor which is Annexure –R/2-2 of the Reply Affidavit (at page 50 to 61).

17. It is further submitted that the I.A. No. 766 of 2020 was filed by CoC on 06.01.2020 under Section 22(3) (B) of the IBC, 2016 for appointment of Mrs. Deepika Bhugra Prasad as Resolution Professional (at page 62 to 73 of the Reply Affidavit filed by Respondent No. 2) but due to outbreak of Covid-19, the aforesaid Application could not be taken up before the Hon'ble NCLT.

18. It is further submitted that the 180 days of the CIRP period expired on 04.02.2020. The Respondent No. 1-HDFC Bank filed an Application bearing I.A. No. 1381 of 2020 on 17.02.2020 for extension of the CIRP period before the Hon'ble NCLT. However, due to the lockdown in the country, the same was listed for the very first time on 28.09.2020 whereby the Hon'ble NCLT directed the Appellant to conduct a CoC Meeting on 13.10.2020 to deliberate on the

issue of extension of the CIRP period and replacement of the IRP of the Corporate Debtor which is at Annexure- R/2-7 of the Reply Affidavit (at page 125 to 132).

19. It is further submitted that the Appellant convened a CoC Meeting on 13.10.2020 whereby Resolution was passed by the members of the CoC with respect to the extension in the CIRP Period but discussion on the agenda for the appointment of the Respondent No. 2 as the Resolution Professional was adjourned by the Appellant to the next meeting of the CoC, copy of the agenda Item No. 4 at page 151 to 157 of the Reply Affidavit of Respondent No. 2.

20. It is further submitted that I.A. No. 766 of 2020 and I.A. No. 1381 of 2020 came up for hearing on 28.10.2020 (at page 158 of the Reply Affidavit of Respondent No. 2) whereby Ld. NCLT passed following orders which is read hereunder:

> **“ I.A. No. 1381/2020 filed in IB-889/ND/2019 :**
>
> Counsel for the Applicant i.e. HDFC Bank is present. Counsel for the Resolution Professional is present. As per the previous order, the meeting of COC has been conducted on 13.10.2020 and the resolution came to be passed for seeking extension of the CIR Process and the Resolution Professional is permitted to file the appropriate application in view of the Resolution passed by the COC. The RP is directed to file the appropriate Application along with the Minutes of the meeting of COV on or before 04.11.2020.

In the light of the above, the present Application stands disposed of.**”**

“ <u>I.A. No. 766/2020 filed in IB-889/ND/2019</u> :

It is noted that the previous order could not be complied with by the RP due to technical reasons. It is also brought to our notice that meeting of the COC has already been convened on 26.10.2020 with regard to the Agenda of removal of the RP. The RP is directed to place on record the approved minutes of the COC meeting through supplementary affidavit in the present CA on or before the next date of hearing.

List on 06.11.2020.**”**

21. It is further submitted that the Appellant was filed another I.A. No. 4959 of 2020 on 04.11.2020 before the Hon'ble NCLT seeking extension in the CIRP period as resolved in the 6th meeting of the CoC. The Hon'ble NCLT under order dated 11.12.2020 excluded a period of 252 days i.e. form 04.02.2020 to 13.10.2020 and granted an extension of 90 days in the CIRP period w.e.f. 14.10.2020. The order dated 11.12.2020 (at page 239 to 240 of the Reply Affidavit of Respondent No. 2) which relevant part is read hereunder:

> **“**The reasons record in the application are plausible and the period sought to be excluded has not been utilized for making progress in the CIR Process. Therefore, we exclude the period w.e.f. 04.02.2020 up to 13.10.2020 from the maximum period of the CIRP and allow an extension of 90 days with the direction to the Resolution Professional to expedite the process for

seeking Resolution Plan from the prospective Resolution Applicants for pleading before the CoC for consideration and file a status report prior to the expiry of the extended period of time before this Authority.

In terms of the above, the application is allowed.**"**

22. It is further submitted that the Respondent No. 2 published Form-G on 15.12.2020 inviting Expression of Interest (**For short EOI**) and further submission of Resolution Plans from the Prospective Resolution Applicants as Annexure R/2-15 (at page 241 to 245 of the Reply Affidavit of Respondent No. 2).

23. It is further submitted that pursuant to the EOI the Respondent No. 2 had received EOIs from 2 Prospective Resolution Applicants. Thereafter, the said Prospective Resolution Applicants again submitted their Revised Resolution Plans on 11.03.2021 to the Respondent No. 2 whereby in the 12th Meeting of the CoC, the said Resolution Plans were thereby rejected by the members of the CoC.

24. It is further submitted that subsequently, the Respondent No. 2 convened the 13th Meeting of the CoC dated 12.03.2021 whereby it was resolved to initiate the Liquidation of the Corporate Debtor. Pursuant to the same, the Respondent No. 2 filed an Application under Section 33(1) of the IBC, 2016 before the NCLT seeking the Liquidation of the Corporate Debtor.

25. It is further submitted that in view of the judgment of the Hon'ble Supreme Court in the case of ***K. Shashidhar Vs. Indian Overseas Bank &Ors. reported in 2019 (12) SCC 150*** paragraph no. 52 wherein held that

"*<u>The commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by IBC</u>***."** Further, on the aspect of legislative intent the Hon'ble Supreme Court reiterated that **"***<u>the legislature, consciously, has not provided any ground to challenge the "Commercial wisdom" of the individual financial creditors or their collective decision before the Adjudicating Authority</u>***"** as such decision taken by the Committee of Creditors is not open for any judicial intervention or adjudication by the Adjudicating Authority.

26. It is further submitted that in this matter no stay was granted and things are preceded ahead for this Appeal become infructuous and fit to be dismissed.

<u>**FINDINGS**</u>

27. After hearing the parties and going through the pleadings and Written Submissions, we are of the view that the main Appeal i.e. Company Appeal (AT) (Insolvency) No. 1040 of 2020 which was heard along with this instant Appeal and the above said Appeal i.e. Company Appeal (AT) (Insolvency) No. 1040 of 2020 which has already been dismissed.

28. Although, this Appeal has been preferred against the order dated 28.09.2020 on 18.12.2020 after the Appellant have preferred Company Appeal (AT) (Insolvency) No. 1040 of 2020. There is no substance in the argument advanced by Learned Counsel for the Respondent No. 1 and 2 that this is hit by limitation in as much as the judgment of the ***Hon'ble Supreme Court***

dated 23.03.2020 in Suo Motu Writ Petition (Civil) No(s). 3/2020 the cognizance for extension of limitation is covered by this decision.

29. In view of the submissions on behalf of the Respondent No. 2 whereby it is crystal clear that this Tribunal while issuing notice in the instant matter not granted stay and the CIRP have been *march ahead* now despite efforts of the IRP and the CoC, it has been decided in the 13th Meeting of the CoC on 12.03.2021 that the process of liquidation of the Corporate Debtor be initiated and the claim of the Appellant became stale and further taking in view of the Company Appeal (AT) (Insolvency) No. 1040 of 2020 has been dismissed by this Tribunal.

30. We do not find any merit in the instant Appeal. The appeal is hereby dismissed. No order as to costs.

31. Registry to upload the Judgment forthwith on the website of this Appellate Tribunal.

32. Registry is directed to send the copy of this Judgment to the Adjudicating Authority, (National Company Law Tribunal, Court No. III), New Delhi, forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

6th August, 2021
R. Nath.