

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 468 of 2022**

(Arising out of Order dated 11.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III in C.P. No.2312/IBC/MB/2019)

**IN THE MATTER OF:**

Sandeep Kasare  
R/o C-14, Sadguru Krupa CHS Limited,  
Garibacha Wada, Vishunagar,  
Kalyan, Thane - 421202

.... Appellant

Vs

1. IL&FS Financial Services Ltd.  
IL&FS Financial Centre,  
Plot NO.C-22,  
G Block Bandra Kurla Complex,  
Bandra East, Mumbai-400051.
  2. Mr. Rajesh Jhunjunwala,  
Interim Resolution Professional  
A 15, Aashit Apartment,  
H B Gawde Marg, Juhu Koliwada,  
Mumbai-400049.
- .... Respondents

**Present:**

**For Appellant(s): Mr. Abhijeet Sinha, Mr. Rahul Arya, Mr. Ashish Chaudhury and Mr. Raktim Gogoi, Mr. Kartikeya Singh, Advocates.**

**For Respondent: Mr. Krishnendu Dutta, Sr. Advocate with Mr. Satendra K. Rai, Ms. Varsha, Advocates for R-1  
Mr. Shashank Agrawal and Aadil Khan, Advocates for R-2, Mr. Rajesh Jhunjunwala**

**Company Appeal (AT) (Insolvency) No. 1027 of 2022**

(Arising out of Order dated 06.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III in I.A. No.1557 of 2022 in CP(IB) - 2312/IBC/MB/2019)

**IN THE MATTER OF:**

Sandeep Kasare  
R/o C-14, Sadguru Krupa CHS Limited,  
Garibacha Wada, Vishunagar,  
Kalyan, Thane - 421202

.... Appellant

Vs

1. Mr. Rajesh Jhunjunwala,  
Liquidator of G.C. Property Pvt. Ltd.  
A 15, Aashit Apartment,  
H B Gawde Marg, Juhu Koliwada,  
Mumbai-400049.
2. IL&FS Financial Services Ltd.  
IL&FS Financial Centre,  
Plot NO.C-22,  
G Block Bandra Kurla Complex,  
Bandra East, Mumbai-400051. .... Respondents

**Present:**

**For Appellant(s): Mr. Abhijeet Sinha, Mr. Rahul Arya, Mr. Ashish Chaudhury, Mr. Raktim Gogoi, Mr. Kartikeya Singh, Advocates.**

**For Respondents: Mr. Shashank Agrawal and Aadil Khan, Advocates for R-1, Mr. Rajesh Jhunjunwala.**

**Mr. Krishnendu Dutta, Sr. Advocate with Mr. Satendra K. Rai, Advocate for R-2**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

These two Appeals have been filed by the same Appellant, who is suspended Director of the Corporate Debtor M/s G.C. Property Private Limited. The Company Appeal (AT) (Insolvency) No.468 of 2022 has been filed against the order dated 11.03.2022 passed by National Company Law Tribunal, Mumbai Bench, Court III, by which order C.P. No.2312/IBC/MB/2019 filed by the Respondent IL&FS Financial Services Ltd. (“**IL&FS**”) has been admitted. The Company Appeal (AT) (Insolvency) No.1027 of 2022 has been filed against the order dated 06.07.2022 in the

same CP(IB) - 2312/IBC/MB/2019 by which Application filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) for passing an order of liquidation has been allowed and the Adjudicating Authority directed for liquidation of the Corporate Debtor.

2. Brief facts of the case giving rise to these two Appeals are:

- (i) IL&FS vide its offer letter 27.12.2017 offered to extend to Smt. Anupama Agarwal (“**the Borrower**”) a Rupee Term Loan facility upto Rs.30,00,00,000/- (Rupees Thirty Crores Only). The Offer Letter itself, while noticing the terms and conditions noticed in “Security Package”, consisting of Primary Security, mortgage by way of deposit of original title deeds over residential premises namely – Flat No.6, Gold Croft, 39, Bahulabhai Desai Road, Mumbai-26 (“**Flat No.6**”) as well as other security. The Agreement was entered between IL&FS Financial Services Ltd. and the Principal Borrower dated 29.12.2017 by which Financial Facility of Rupee Term Loan of Rs.300 million (Rs.30 crores) was extended under the terms and conditions mentioned therein. On 29.12.2017 a Letter of Guarantee was issued by the Corporate Debtor, guaranteeing repayment of Rs.30 crores loan in pursuance of Agreement dated 29.12.2017. On 29.12.2017 on behalf of the Corporate Debtor title deed of residential property of Flat No.6 as noted above was deposited with the lender. The Corporate Debtor,

i.e., M/s G.C. Property Private Limited also got Charge registered with the Registrar of Companies, Mumbai under Section 77(1) and 78 of the Companies Act, 2013 between the Corporate Debtor and IL&FS Financial Services Ltd. with reference to creation of charge dated 29.12.2017.

- (ii) The Financial Creditor issued a Demand Notice dated 30.07.2018 asking for overdue payment with reference to term loan of Rs.30 crores. Notice dated 30.07.2018 was issued both to Principal Borrower as well as Personal Guarantor and Pledgors. By notice dated 31.10.2018 sent to Principal Borrower, Corporate Debtor, Personal Guarantor and Pledgors demand for repayment of overdue sums was made by Respondent No.1.
- (iii) Respondent No.1-Financial Creditor filed an Application under Section 7 of the Code dated 28.08.2019 claiming total amount of default of 36,36,16,503/-. Notice was issued in the Application and Corporate Debtor filed its reply objecting Section 7 Application.
- (iv) The Adjudicating Authority vide order dated 11.03.2022 admitted the Section 7 Application.

3. In the Appeal an interim order was passed that occupants of the flat No.6 shall not be asked to vacate the premises till 31.07.2022. The interim order was not extended after 31.07.2022. There being no interim order staying the CIRP, the Committee of Creditors (“CoC”) in its 3<sup>rd</sup> Meeting

passed Resolution for liquidation of the Corporate Debtor. In pursuance of the Resolution of the CoC, an IA No.1557 of 2022 was filed by the Resolution Professional, which was allowed vide order dated 06.07.2022 by the Adjudicating Authority directing the liquidation of the Corporate Debtor – M/s G.C. Property Private Limited.

4. Shri Abhijeet Sinha, learned Counsel for the Appellant challenging the order dated 11.03.2022 admitting Section 7 Application, raised following submissions:

- (i) That letter of Guarantee dated 29.12.2017 issued by the Corporate Debtor and relied by IL&FS is not a valid document in the eye of law. It is submitted that learned Adjudicating Authority failed to consider that the document is insufficiently stamped and cannot be received in evidence or acted upon. The Tribunal has erred in relying upon the Letter of Guarantee dated 29.12.2017 to establish the debt against the Corporate Debtor and an unstamped Letter of Guarantee could not have been relied upon for any purpose whatsoever.
- (ii) The Respondent No.1 does not come within the meaning of Financial Creditor as defined under Section 5(7) read with Section 5(8) and 5(5A) of the Code. The Corporate Debtor who is alleged as Guarantor does not fall within the definition of Corporate Debtor. Borrower being individual is not a 'Corporate Person', hence, Corporate Debtor by no stretch of imagination can fall within the meaning of 'Corporate Debtor'.
- (iii) Loan transaction between the Borrower and IL&FS is a Circular Loan Transaction, since Borrower immediately on the same day after receiving the disbursement has transferred the loan amount to M/s Vadraj Cement Ltd. The loan transaction between Borrower and Respondent No.1 was only to facilitate payment to M/s Vadraj Cement Ltd. Challenging the order

dated 06.07.2022, the Counsel for the Appellant submits that Resolution for liquidation of the Corporate Debtor has been passed hastily only with the intent to liquidate the only residential property of the Corporate Debtor, i.e., Flat No.6 as noted above. The Code is not a Forum for recovery proceedings and the order of liquidation has been passed only to recover dues. A solvent company has been put into liquidation. Also when Appeal No.468 of 2022 filed by the Appellant challenging the admission of Section 7 Application was pending consideration, Resolution for liquidation ought not to have been passed.

5. The learned Counsel appearing for Respondent (IL&FS) refuting the submissions of learned Counsel for the Appellant submitted that the Letter of Guarantee executed by the Corporate Debtor in favour of IL&FS is in capacity as Corporate Guarantor. The facts of the present case are fully covered by the judgment of the Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India and Another – (2021) SccOnline SC 267***. The submission of the Appellant that Guarantee Agreement is unstamped is incorrect. The document indicate that the Guarantee Agreement comprises of E-stamp certificate, which makes it evidently clear that requisite stamp duty has been paid at the time of signing of execution of the Guarantee Agreement. Further, even if it is assumed that an insufficient stamped duty is paid on the Agreement, the same is not bar to admitting Section 7 Application. Relying on the judgment of this Tribunal in ***Koncentric Investment vs. Standard Chartered Bank London – Company Appeal (AT) (Insolvency) No. 911 of 2021***, it is submitted that even if Facility Document is not stamped, other materials on record could

be relied on for finding debt and default. The mere fact that Principal Borrower has further transferred the amount to M/s Vadraj Cement Ltd. in no manner diminishes the liability of the Corporate Debtor to make the payment of debt. The IL&FS is not a party to the Agreement between the Borrower and M/s Vadraj Cement Ltd., hence, the same has no bearing on the liability of the Borrower and the Corporate Debtor under the Loan Agreement/ Guarantee Agreement.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. Before we proceed to consider the respective submissions of the parties, we need to first notice certain terms and conditions of the Offer Letter as well as the Agreement entered between the Borrower and ILFS, as well as other relevant materials pertaining to the impugned property owned by the Corporate Debtor, i.e., Flat No.6. The Offer Letter dated 27.12.2017 has been part of the reply filed by the Appellant, which was issued by IL&FS to Principal Borrower in reference to Term Loan Facility of up to Rs.300 million to Smt. Anupama Agarwal. The Security Package as referred to at Sl. No.13 under heading ‘Principal terms and conditions to Offer Letter’ is as follows:

<i>“Security Package</i>			
(13)	<i>Security</i>	:	<p><i>The Facility shall be secured by the following Security:</i></p> <p><b><i>Primary Security</i></b></p> <p><i>(a) Mortgage by way of deposit of original title deeds over residential premises namely “Flat No.6, Gold Croft, 39, Bhulabhai Desai Road, Mumbai – 26” having carpet area of ~ 3,150 sqft (builtup area of ~ 4109 sq. ft.) by Third</i></p>

			<p><i>Properties Pvt. Ltd. ("TPPL") and valued at ~ Rs.300 mn.</i></p> <p><i>This mortgage would be converted into a registered mortgaged within 30 days from the date of disbursement under the Facility, Title Search Report, Valuation report and IT certificate under Sec 281 to be provided by TPPL within 30 days from date of disbursement up to the satisfaction of Lender</i></p> <p><b><u>Other Security</u></b></p> <p><i>(b) Hypothecation of receivable by Borrower in case of any loss/ advances extended to investee companies</i></p> <p><i>(c) Pledge of 100% shares of Third Properties Pvt. Ltd.</i></p> <p><i>(d) Pledge of 100% shares of ABG Energy Himachal Pradesh Ltd.</i></p> <p><i>(e) Corporate Guarantee of the mortgagor Third Properties Pvt. Ltd.</i></p> <p><i>(f) Personal Guarantee of Mr. Rishi Agarwal</i></p> <p><i>(g) <b><u>Demand Promissory Note:</u></b> Demand Promissory note in favour of IFIN."</i></p>
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8. On 29.12.2017, Loan Agreement was entered between Principal Borrower and IL&FS. The letter of Guarantee was issued by the Corporate Debtor dated 29.12.2017 where Guarantor has undertaken its obligation to pay principal amount of not exceeding Rs.300 million along with the interest. On the same day, i.e., 29.12.2017 'Memorandum of Entry for the First Time' was noticed where the Title Deed of Flat No.6, Gold Croft, 39, Bhulabhai Desai Road, Mumbai – 26 was handed over to the Financial Creditor on behalf of the Corporate Debtor. The Corporate Debtor also got the Charge created on 29.12.2017 registered with the Registrar of Companies and Certificate of Charge was issued on 09.03.2018.

9. Now we come to the first submission of the learned Counsel for the Appellant that Letter of Guarantee having not been sufficiently stamped

could not be looked into for any purpose. The learned Counsel for the Respondent, although, contended that the Letter of Guarantee contains an E-stamp certificate, but have failed to prove that the Letter of Guarantee was sufficiently stamped as per requirement of the statute. The E-stamp, which is at Exhibit-C to the reply, only indicates that the Rs.150/- has been affixed. We, thus, proceed on the premises that Letter of Guarantee is not sufficiently stamped.

10. Learned Counsel for the Respondent has relied on the judgment of this Tribunal in ***Koncentric Investment vs. Standard Chartered Bank London*** (supra), in which case, an Appeal was filed challenging the order of the Adjudicating Authority admitting Section 7 Application. One of the arguments which was raised before this Tribunal was that Facility Agreement was not sufficiently stamped, hence, Application ought not to have been admitted. The said submission was dealt by this Tribunal in paragraph 34 to 37. Ultimately, this Tribunal recorded conclusion in paragraph 42 to the following effect:

*“42. We are thus of the view that the decision of the Adjudicating Authority that Corporate Debtor has committed default is not vitiated which was fully supported by the materials on record even if Facility Agreement dated 22<sup>nd</sup> May, 2013 and 19<sup>th</sup> August, 2013 are ignored. The Corporate Debtor has taken a Financial Benefits from Standard Chartered Bank and obtained disbursal in three tranches of 5 Million Dollar each, which disbursements have not been denied in a pleading before the Adjudicating Authority. The submission of the Appellant that facility agreement being not stamped*

*Section 9 Proceeding ought not to have proceeded has to be rejected.*

*We thus find no substance in any of the submissions of Learned Sr. Counsel for the Appellant. There is no merit in the Appeal. The Appeal is dismissed.”*

11. Now, when we look into the materials, which are available on the record, suffice it to say that actions of the Corporate Debtor in creating mortgage by deposit of Title Deed and further the Corporate Debtor himself got the Charge registered in respect of the above property, sufficiently prove that the immovable property, i.e., Flat No.6 was mortgaged towards security of loan. As noted above, even the Offer Letter itself contemplated in Primary Security, mortgage by way of deposit of original title Deed of Flat No.6, Gold Croft, 39, Bhulabhai Desai Road, Mumbai – 26. On 29.12.2017, ‘Memorandum of Entry for the First Time’, which was brought on record as Annexure-E to reply, indicate that Title Deed of the property by the Company was deposited on behalf of the Company, pursuant to the Resolution passed by the Board of Directors of the Company on December 29, 2017.

12. Section 58 of the Transfer of Property Act, 1882 ‘Of Mortgages of Immovable Property and Charges’, Section 58, sub-section (f), deals with ‘Mortgage by deposit of title-deeds’ and mortgage is also created by deposit of Title Deeds as is provided in Sections 58(f) of the Transfer of Property Act. Hence, it is clear that the immovable property, i.e., Flat No.6 was mortgaged to security to secure the loan.

13. Further, in the reply, Charge Certificate dated 09.03.2018 issued by Registrar of Companies, Mumbai has been brought on record, which certifies creation of Charge dated 29.12.2017 between G.C. Property Private Limited (First Party) and IL&FS Financial Services Limited (Second Party). Charge having been registered by the Corporate Debtor himself, the Corporate Debtor cannot escape from its liability for payment of loan as per its own act of creating mortgage by deposit of Title Deed and registration of Charge. It is further relevant to notice that in the Offer Letter dated 27.12.2017, as extracted above in 'Security Package', where Primary Security was Flat No.6 and it was noticed in the Offer Letter itself that the valuation of Flat is Rs.300 million, i.e., equivalent to the Financial Facility, which was to be extended to the Principal Borrower. We, thus, are of the view that the Corporate Debtor cannot escape from its liability from repayment of the loan sanctioned to the Principal Borrower on the ground that Letter of Guarantee was insufficiently stamped.

14. Now we come to the second submission of the learned Counsel for the Appellant that IL&FS cannot be treated as 'Financial Creditor' of the Guarantor Company. Reliance has been placed on definition given in Section 5(5-A), defining "corporate guarantor". Section 5(5-A) is as follows:

*"5(5-A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;*

15. The submission of the Appellant is that since Corporate Debtor is not surety in a contract of guarantee and Corporate Debtor is only Guarantor

in a Term Loan Facility taken by one Smt. Anupama Agarwal (Borrower), who is an 'individual' within the meaning of Section 2(g) of the Code and is not a 'Corporate Person', thus the Corporate Debtor by no stretch of imagination can fall within the meaning of 'Corporate Debtor' under Section 3(8) of the Code.

16. The above submission raised by learned Counsel for the Appellant has to be rejected in view of the law laid down by the Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India and Another – (2021) SccOnline SC 267***. The Hon'ble Supreme Court has laid down in the above case where an Application was filed under Section 7 by Financial Creditor against a Corporate Person who had offered guarantee to the two loans of Principal Borrower. In the above case, one of the question framed by the Hon'ble Supreme Court for consideration is :

*“(i) Whether an action under Section 7 of the Insolvency and Bankruptcy Code, 2016 can be initiated by the financial creditor (Bank) against a corporate person (being a corporate debtor) concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a “corporate person” within the meaning of the Code?*

Answer to the above question was given in paragraph 20, 25, 26, 30 and 31 where following has been laid down:

**“20.** *Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the*

*principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/ debtor (be it a corporate person or otherwise) commits default in payment of its debt.*

**25.** *Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 IBC against the corporate person who had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 IBC despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.*

**26.** *To get over this position, much reliance was placed on Section 5(5-A) IBC, which defines the expression “corporate guarantor” to mean a corporate person, who is the surety in a contract of guarantee to a corporate debtor. This definition has been inserted by way of an amendment, which has come into force on 6-6-2018. This provision, as rightly urged by the respondents, is essentially in the context of a corporate debtor against whom CIRP is to be initiated in terms of the amended Section 60 IBC, which amendment is introduced by the same Amendment Act of 2018. This change was to empower NCLT to deal with the insolvency resolution or liquidation processes of the*

*corporate debtor and its corporate guarantor in the same Tribunal pertaining to same transaction, which has territorial jurisdiction over the place where the registered office of the corporate debtor is located. That does not mean that proceedings under Section 7 IBC cannot be initiated against a corporate person in respect of guarantee to the loan amount secured by person not being a corporate person, in case of default in payment of such a debt.*

**30.** *In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action under Section 7 IBC could be legitimately invoked even against a (corporate) guarantor being a corporate debtor. The definition of “corporate guarantor” in Section 5(5-A) IBC needs to be so understood.*

**31.** *A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action under Section 7 IBC cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the appellant.”*

17. Now we come to the third submission of learned Counsel for the Appellant that transactions, which was entered with the Borrower and

IL&FS was Circular Loan Transactions. Submission is that Principal Borrower after receiving the loan of Rs.30 crores has immediately on the same day transferred Rs.29 crores to M/s Vadraj Cement Ltd. by a separate Loan Agreement. The challenge to admission to Section 7 Application is by the Corporate Debtor, who gave security to the loan sanctioned to the Principal Borrower by the IL&FS. IL&FS is not the party to Agreement, which took place between the Principal Borrower and M/s Vadraj Cement Ltd. for loan of Rs.29 crores. The disbursement of loan of Rs.30 crores to Principal Borrower is not in dispute. Further, the mortgaging of the property, i.e., Flat No.6 by the Corporate Debtor is also not in dispute. As noted above, the Letter of Offer itself contemplated the Primary Security and mortgage of residential property, i.e., Flat No.6, which was valued as Rs.300 million, i.e., equivalent to the Facility Loan, which was being extended to Respondent No.1 – Principal Borrower. The Corporate Debtor cannot be heard in contending that it has no liability of repayment for the financial facility, which was extended by the IL&FS to the Principal Borrower. The mere fact that Principal Borrower has further granted loan to M/s Vadraj Cement Ltd. out of the money received from loan sanctioned by IL&FS, cannot be a ground to come to the conclusion that Corporate Debtor has no liability towards payment of loan and no debt is due on Corporate Debtor. We thus do not find any substance in this submission.

18. Now coming to the last submission of learned Counsel for the Appellant that Section 7 Application has malafidely initiated for purpose other than resolution of the Corporate Debtor. As noted above, the

Corporate Debtor gave security to secure the loan of Rs.30 crores granted by IL&FS to Principal Borrower. Primary security as noted above was residential Flat of the Corporate Debtor and the same was mortgaged by depositing the Title Deed of Flat No.6 on 29.12.2017, with regard to which Charge was also registered. We do not find any malafide in initiation of Section 7 proceedings by the Financial Creditor. There is no denial to default committed in repayment of the loan. When default was committed in the repayment of the loan and debt became due on both Principal Borrower and Corporate Debtor, no error can be said to be committed by the Financial Creditor in filing Application under Section 7 against the Corporate Debtor. The Hon'ble Supreme Court in **Laxmi Pat Surana** (supra) has categorically laid down that Financial Creditor can legitimately invoke the proceedings under Section 7 when Principal Borrower commits a default. It has been held that Guarantor, who is a Corporate Person, metamorphoses into Corporate Debtor, the moment Principal Borrower commits default.

19. Now coming to the challenge to order of liquidation, we need to first notice the resolution of CoC, where the resolution for opting for liquidation was passed. The CoC in its 2<sup>nd</sup> Meeting, on items which were discussed through e-voting facility recorded following in the minutes:

*“The members discussed in detailed and informed Resolution Professional that they are not interested to publish EOJ for submission of resolution plan considering the fact that the corporate debtor is not a going concern with no visible cash flows, no office infrastructure,*

*manpower, only one director since last 2 years and non-availability of any records of last 7 years. In the opinion of the CoC, there is no possibility of resolution as the only asset available in the books of the corporate debtor is residential property. Further CoC members also discussed provisions of Section 33(2) of the Code, which empowers CoC of a corporate debtor to decide liquidation of corporate debtor any time before confirmation of resolution plan and even before preparation of the Information Memorandum.*

20. Subsequently, in the 3<sup>rd</sup> CoC Meeting held on 16.05.2022, resolution was passed on Item No.1 in the Minute to the following effect:

***“Item No.1***

***To discuss and approve Liquidation of the Corporate Debtor under Section 33(2) of the IBC, 2016 and appointment of the liquidator:***

*The chairman informed members that prior to 2<sup>nd</sup> CoC meeting, the Resolution Professional had shared with CoC members, draft Form G along with detailed EOI document containing proposed eligible criteria and also requested CoC to decide on the refundable participation deposit amount requirement from prospective resolution applicants. During 2<sup>nd</sup> CoC meeting held on 11<sup>th</sup> May, 2022, the CoC members informed Resolution Professional that they are not interest to publish EOI for submission of resolution plan considering the fact that the corporate debtor is not a going concern with no visible cash flows, no office infrastructure, manpower and non-availability of any records of last 7 years. The CoC members were also of the opinion that there is no*

*possibility of resolution as the only asset available in the books of the corporate debtor is residential property. Further CoC members also informed the resolution professional about provisions of Section 33(2) of the Code, which empowers CoC of a corporate debtor to decide liquidation of corporate debtor any time before conformation of resolution plan and even before preparation of the Information Memorandum and same was also upheld by the Hon'ble NCLAT in the matter of Sunil S. Kakkad Vs. Atrium Infocom Private Limited & Oths. Whereby the Appellate Authority has held that there is no illegality in the decision of CoC in liquidating the corporate debtor before taking any steps for inviting expression of interest for submission of Resolution Plan and upheld decision of Hon'ble NCLT.*

*Hence, the Committee of Creditors had decided to liquidate the company without inviting expression of interest by issuance of Form G, as per Section 25(2)(h) of IBC and directed Resolution Professional to call next CoC meeting and place resolution for liquidation of the corporate debtor under Section 33(2) of the Code.”*

21. Section 33, sub-section (2) clearly empowers the CoC to take the decision to liquidate the Corporate Debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan.

22. In the facts of the present case, we do not find any infirmity in the Resolution passed by the CoC for liquidating the Corporate Debtor. The Adjudicating Authority in order dated 06.07.2022 after perusing the material on record and after perusing the 3<sup>rd</sup> CoC Meeting has allowed the

Application filed by the Resolution Professional under Section 33. No infirmity is found in the order of the Adjudicating Authority directing for liquidation of the Corporate Debtor.

23. In view of the foregoing discussions, we do not find any ground to interfere with the order dated 11.03.2022 and 06.07.2022 passed by Adjudicating Authority. There is no merit in any of the Appeals, both the Appeals are dismissed. No order as to cost.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Justice M. Satyanarayana Murthy]**  
**Member (Judicial)**

**[Barun Mitra]**  
**Member (Technical)**

**NEW DELHI**

**20<sup>th</sup> September, 2022**

*Ashwani*