



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-1, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **30.05.2024** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : Small Industries Development Bank of India  
Vs  
Tirupur Plaza Hotel Pvt. Ltd.

**MAIN PETITION NUMBER** : CP(IB)/107(CHE)2021  
**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/1247(CHE)2024

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**ORDER**

Present: Shri. A.G. Sathyanarayana, Ld. Counsel for the Applicant/Liquidator.

Shri. Pranav V Shankar, Ld. Counsel for the Suspended Directors.

Ld. Counsel for the Suspended Directors/Scheme Proponent submits that the Suspended Directors have already submitted a scheme under Section 230 of the Companies Act but the SCC instead considering the scheme, went with 12A proposal given by the Suspended Directors/Corporate Debtor.

2. It is seen that the company is already in liquidation. Section 12A provides that "*the Tribunal may allow withdrawal of the application admitted under Section 7 or 9 or 10 of IBC, on an application made by the Applicant with the approval of 90% voting share of the Committee of Creditors in such a manner as specified.*"



3. Section 12A of the IBC, 2016 finds place under Chapter – II of IBC, 2016 which deals with “Corporate Insolvency Resolution Process” of the Corporate Debtor. The Liquidation process of the Corporate Debtor is contained under Chapter – III of the IBC, 2016. It is to be noted here that IBC, 2016 treats CIRP and Liquidation as two different parts. All the provisions under Chapter – II of IBC, 2016 which deals with CIRP cannot be made applicable under Chapter – III of IBC, 2016 which deals with Liquidation of the Corporate Debtor. For instance, the moratorium under Section 14 of IBC, 2016 is lifted when an order of Liquidation is passed and a fresh moratorium under Section 33(5) is ordered. Further, it is significant to note here that the Regulator viz. IBBI has inserted Regulation 30A under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 with effect from 04.07.2018, which deals with withdrawal of Application under Section 12A of IBC, 2016. The said Regulation 30A deals only with the withdrawal of Application during the CIRP and not during Liquidation. Further, there is no such amendment made in the Liquidation Process Regulation by the Regulator viz. IBBI. In the absence of any express provisions either under the provisions of IBC, 2016 for withdrawal of Applications during Liquidation process or under the Regulations framed by IBBI, an application for withdrawal cannot be permitted during the Liquidation process.

4. At this juncture, we find it apt, to refer to the Judgment of Hon’ble NCLAT in the matter of **Hemanth Meka Rao -Vs- Asset Reconstruction Company (India) Ltd.** in *Company Appeal (AT)(Ins) No. 696 of 2018*, wherein it has been held as follows;



**07.03.2019**—This appeal has been preferred by 'Mr. Hemanth Meka Rao', Shareholder of 'M/s. Meka Dredging Company Private Limited'- ('Corporate Debtor') against the impugned order dated 20th September, 2018. By the said order, the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, passed order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) and ordered for liquidation in absence of any approved plan.

2. Learned counsel appearing on behalf of the Appellant submits that a sum of Rs. 14 Crores was due and out of which a settlement for Rs. 10.38 Crores has been made. Earlier also two 'Financial Creditors' paid total amount of Rs. 37 Crores to 'Asset Reconstruction Company (India) Ltd.' and Rs. 2.5 Crores to 'L&T Finance', who have given no dues certificate. However, on completion of the 'Resolution Process', we cannot allow any settlement with the promoters and the creditors.

3. Earlier, when the matter was taken up on 28th February, 2019, learned counsel for the Appellant pointed out that the 'Corporate Debtor' (Company) can be saved by passing appropriate order under Section 230 of the Companies Act, 2013.

4. It was in this background, an interim order was passed on 30th January, 2019 prohibiting the liquidator or the Adjudicating Authority to take step to sell or transfer or alienate or make third party encumbrance on the movable or immovable property of the 'Corporate Debtor' (Company).

5. Similar issue fell for consideration before this Appellate Tribunal in "S.C. Sekaran v. Amit Gupta &Ors.— Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018".

6. The aforesaid judgment was also reiterated in the case of "Y. Shivram Prasad Vs S. Dhanapal&Ors. — Company Appeal (AT) (Insolvency) No. 224 of 2018 etc." wherein a detailed order has been passed as to how the liquidator should proceed.

7. In the aforesaid background, no order of settlement can be passed by this Appellate Tribunal, even though the Appellant, promoter agrees to pay all the dues. However, we direct the liquidator to proceed in terms of the decision in "Y. Shivram Prasad Vs S. Dhanapal & Ors." (Supra).



8. *The appeal stands disposed of with the aforesaid observations and directions. No cost.*

*(emphasis supplied)*

5. The Hon'ble NCLAT in the year 2019 has categorically held that no order of settlement can be passed, eventhough the promoter agrees to pay all the dues. Hence, the exhorted arguments made by the Learned Counsel for the suspended Directors are not valid in the eye of law.

6. It is also required to be noted that IBBI which is the Regulator of IBC, 2016 has still not proposed for withdrawal of cases during the liquidation process. Law and attended regulations are yet to be notified by the IBBI in this regard.

7. Be that as it may, this Tribunal already in the matter of **Jayashree Mohan -Vs- Pathukasahasram Raghunathan Raman, Liquidator of RA-NI Precast Private Limited** in IA(IBC)/320(CHE)/2021 vide its order dated 14.10.2022 has held that there is no provision under IBC 2016 to come out of the Liquidation Process once liquidation is ordered.

8. In the present case, if we allow for withdrawal of Applications under Section 12A during the Liquidation process, then every suspended Directors / Promoters or Ex-Promoters will wait till liquidation is ordered for the assets of the Corporate Debtor and wait for the assets to be put in for auction. Only at the last stage, the Promoter will enter into a settlement with the Financial Creditors at a throw away price. This is in stark contrast to the object of IBC, 2016. Further, as already stated, IBBI has so far not brought out the



Regulations for withdrawal of Application during Liquidation proceedings and also Parliament has not modified the existing structure of IBC, 2016.

9. 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)*

10. 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 be dismissed and accordingly IA(IBC)/1247(CHE)/2024 stands **dismissed**. No order as to costs.

**Sd/-**  
**VENKATARAMAN SUBRAMANIAM**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**SANJIV JAIN**  
**MEMBER (JUDICIAL)**

vs