NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins.) No. 248 of 2021 (IA Nos. 521 & 522 /2021)
Under Section 61(4) of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the `Impugned Order' dated 22.09.2021 in IA(IBC) No.259/2021 in CP (IB) No.199/7/HDB/2019,
passed by the `Adjudicating Authority' National Company Law Tribunal, Special Bench, Court – I, Hyderabad)

In the matter of:

Triumph Commodities Pte. Limited
Address: 1, Raffles Place,
#27-61A, Singapore – 048616

Address of Service of the Appellant:
M/s. Ramarao, Avinash Krishnan Ravi & Harshini Jhothiraman
No. 43B, 1st Main Road,
SVS Nagar, Valasaravakkam,
Chennai – 600087.
Email: kravinash.akr911@gmail.com ….. Appellant

v.

Aster Private Limited
Represented by its Liquidator
Mr. Naren Sheth,
2-1813/3/5/A Road No.1,
Opp. SBI Bank, Czech Colony,
Sanath Nagar,
Hyderabad, Telangana – 500 081. ….. Respondent

Present:

For Appellant	:	Mr. Avinash Krishnan Ravi, Advocate.
For Respondent No.1/Liquidator	:	Mr. T. Ravichandran, Advocate.
For Respondent No.2	:	Mr. Dev Eshwaar, Advocate.

<u>WITH</u>

<u>Company Appeal (AT) (CH) (Ins.) No. 249 of 2021 (IA Nos. 523 & 524 /2021)</u>

<u>Under Section 61(1) of the Insolvency and Bankruptcy Code, 2016)</u>

<u>(Arising out of the `Impugned Order' dated 16.09.2021 in IA(IBC) No.446/2021 and IA Nos.336, 337 & 357/2021 in CP (IB) No.199/7/HDB/2019,</u>

<u>passed by the 'Adjudicating Authority' National Company Law Tribunal, Special Bench, Court – I, Hyderabad)</u>

<u>In the matter of:</u>

Triumph Commodities Pte. Limited
Address: 1, Raffles Place,
#27-61A, Singapore – 048616

Address of Service of the Appellant:
M/s. Ramarao, Avinash Krishnan Ravi & Harshini Jhothiraman
No. 43B, 1st Main Road,
SVS Nagar, Valasaravakkam,
Chennai – 600087.
Email: kravinash.akr911@gmail.com ….. Appellant

v.

1. Aster Private Limited
Represented by its Liquidator
Mr. Naren Sheth,
2-1813/3/5/A Road No.1,
Opp. SBI Bank, Czech Colony,
Sanath Nagar,
Hyderabad, Telangana – 500 081. ….. Respondent No. 1

2. IDBI Bank Limited,
Represented by its Authorized Signatory,
Retail Asset Centre, Ground Floor,
Mahavir House, Near Police Commissioner
Office, Basheerbagh, Hyderabad ….. Respondent No. 2

<u>Present:</u>

For Appellant : Mr. Avinash Krishnan Ravi, Advocate.

For Respondent
No.1/Liquidator : Mr. T. Ravichandran, Advocate.

For Respondent
No.2 : Mr. Dev Eshwaar, Advocate.

J U D G M E N T
(Virtual Mode)

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

Comp. App. (AT) (CH) (Ins.) No.249/2021

1. Aggrieved by the `Impugned Order' dated 16.09.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Special Bench, Court–I, Hyderabad), in IA (IBC) No. 446/2021, `M/s. Triumph Commodities, Pte Limited', the `Applicants' in IA446/2021 preferred this `Appeal' under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as `The Code'), challenging the observations of the `Adjudicating Authority', which is detailed as hereunder:

> ***"IA (IBC) No.446 of 2021:***
>
> *This application is filed by Triumph Commodities Pte. Limited seeking directions against the Resolution Professional and the CoC to consider the Plan. CIRP period of 330 days is over. We cannot direct the Resolution Professional or CoC, at this stage, after completion of CIRP. This application is, therefore, not maintainable. The same stands disposed of as not maintainable.*
>
> *The matter is adjourned to 17.11.2021."*

2. It is the case of the `Appellant' that it is a `Resolution Applicant' who had participated in the Corporate Insolvency Resolution Process (`CIRP') of the `Corporate Debtor', namely `Aster Private Limited' and had submitted a revised Resolution Plan dated 19.05.2019, subsequent to which `Application' IA446/2021 was preferred seeking a direction to the Committee of Creditors (`CoC') to consider their revised Resolution Plan. It is submitted that a revised Resolution Plan was also given to the Resolution Professional (`RP') vide email dated 16.08.2021. It is contended by the Learned Senior Counsel Mr. Arvind Pandian that vide email dated 14.09.2021 some suggestions were also made in the revised Resolution Plan and on 15.09.2021, the RP had filed a `Counter Affidavit' in IA446/21 wherein the RP had requested the `Adjudicating Authority' to dismiss the said IA and sought to liquidate the `Corporate Debtor', despite the fact that the CoC was of the opinion that the revised Resolution Plan dated 16.08.2021 was a `feasible' and a `viable' Plan for `maximization of the value of the Assets' of the `Corporate Debtor', but without adhering to the said fact, IA446/2021 was dismissed, on the ground that the 330 days period has expired.

3. *Comp. App. (AT) (CH) (Ins.) No.248/2021* is preferred challenging the `Impugned Order' dated 22.09.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Special Bench, Court–I, Hyderabad), in IA (IBC) No. 259/2021, in CP (IB) No.199/7/HDB/2019 whereby and whereunder the `Adjudicating Authority' has allowed the `Application' preferred by the RP of the `Corporate Debtor' filed under Section 33 of the Code, seeking for liquidation of the `Corporate Debtor'. Since both these `Appeals' deal with common facts, they are being disposed of by this `Common Order'.

4. Learned Senior Counsel appearing on behalf of the `Appellant' submitted that vide `Order' dated 19.11.2019, the `Corporate Debtor' was admitted into CIRP under Section 7 of the Code; that the RP issued an invitation for Expression of Interest (`EoI') on 30.01.2020 that vide email dated 06.03.2020, shortlisted the `Appellant' as a `Prospective Resolution Applicant' and the `Appellant' was given a copy of the Information Memorandum and the `Appellant' also deposit the EMD amount. The `Adjudicating Authority' had extended the period of CIRP on account of the pandemic up to 20.11.2020. In the 9$^{th}$ Meeting of the CoC, the Members decided to issue a fresh EoI and seek new `Resolution Applicants'. In furtherance to the said decision, it is submitted that the RP issued a second invitation for EOI on 19.11.2020. Based on the second EoI, the `Appellant' submitted its Resolution Plan on 09.01.2021 and a revised Resolution Plan, increasing the `Financial Bid', on 30.01.2021, 03.02.2021, 12.02.2021, 15.03.2021, 22.03.2021 and on 19.04.2021. It is state that these revisions demonstrate that the `Appellant' is seriously interested in taking over the `Corporate Debtor' and the `Resolution Applicant' has submitted the Plans to suit the `commercial requirements' of the Members of the COC.

5. It is submitted that the RP had asked the `Appellant' to consider `signing' an `addendum' to the said revised Resolution Plan dated 19.04.2021, but the `Appellant' vide email dated 21.04.2021 had stated that they would not be inclined to submit any `addendum' as sought by the CoC. Based on further discussions, the `Appellant' revised the financial terms of the Resolution Plan vide email dated 19.05.2021, however, the same could not be considered by the CoC which had already voted on the Resolution Plan as submitted on 19.04.2021 rejecting the said version of the Resolution Plan as it stood on 19.04.2021.

6. It is the case of the `Appellant' that owing to non-consideration of its revised offer dated 19.05.2021, IA446/2021 was preferred seeking a direction to the CoC to consider its revised Resolution Plan. Though the CoC was of the view that the revised Resolution Plan dated 16.08.2021 was a viable one, IA446/2021 was dismissed without assigning any reasons regarding the commercial wisdom of the CoC, and the `Adjudicating Authority' had proceeded to allow the `Liquidation Application' preferred by the RP.

7. It is the case of the `Appellant' that even after the 17th Meeting of the CoC was held on 14.09.2021, which is just prior to the `Impugned Order', the revised Resolution Plan was in active consideration of the CoC. The pandemic period of 125 days ought to have been deducted from the 330-day period, and the `Adjudicating Authority' ought to have extended the period based on the commercial wisdom of the CoC. Learned Counsel relied on the decision of the Hon'ble Supreme Court in ***'Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors.'*[1]**, wherein it was observed as follows:

> *"The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for*

[1] (2020) 8 SCC 531

the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind."

8. Learned Counsel also relied on the Judgement of the Hon'ble Supreme Court in ***'K. N. Rajkumar' Vs. 'Nararajan'***[2]**,** wherein it is observed as follows:

"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."

Thus, it is submitted that it is the very mandate of IBC that every possible attempt should be made to avert liquidation, which object of IBC stands defeated by the unreasoned `Impugned Order'.

9. Learned Counsel appearing for the `Liquidator' submitted that pursuant to the directions of the `Adjudicating Authority' dated 26.08.2021, the `Liquidator' brought the issue to the notice of the CoC and it was only on the instance of the CoC, that an email dated 14.09.2021 was sent to the `Appellant' herein. A perusal of the email

[2] Civil Appeal No.1792/2021

would reveal that the Members of the CoC was to consider if the `Resolution Applicant' was agreeable to carry out the changes mentioned herein. It was specifically stated in the email that the CoC had accepting the confirmation from the `Appellant' by 14.09.2021 evening so as to enable the RP to file a `Reply' in IA446/2021, which has elicited a response from the `Appellant' at 8:49 PM. As IBC is a time bound process, the RP filed the `Counter' on 15.09.2021. It is submitted by the Learned Counsel for the `Liquidator' that the `Appellant' had never comeback with a proposal for modification as suggested by the CoC and therefore the CoC had no option but to go for `Liquidation'. The Learned Counsel placed reliance on the Judgement of the Hon'ble Apex Court in ***'K. Sashidhar' Vs. 'Indian Overseas Bank & Ors.'***[3] and in ***'Ghanshyam Mishra & Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited'***[4].

Assessment:

10. It is the main case of the `Appellant' herein that the `Adjudicating Authority' ought not to have dismissed IA446/2021 on the ground that the CIRP period of 330 days is over and ought to have exercised its discretion and extended the period giving time to the CoC to consider its revised Resolution Plan. The `Appellant' has also challenged the direction of the

[3] (2019) 12 SCC 150
[4] (2021) 9 SCC 657

`Adjudicating Authority', allowing the `Application' filed by the RP seeking liquidation of the `Corporate Debtor' on the ground that the CoC ought to have considered its revised Resolution Plan and without the time-period of five days, having been lapsed, this `Application' was erroneously filed by the RP seeking liquidation.

11. A perusal of the Minutes of the Meeting in the 16th Meeting of the CoC shows that the Resolution Plan submitted by the `Appellant'/`M/s. Triumph Commodities Pte Limited' dated 19.04.2021 was rejected by a majority of 85.96% Voting Shares. As the CIRP period would end on 03.06.2021, the RP had also filed a memo for exclusion of the Covid-19 lockdown period from the CIRP timelines and sought a further period of 15 days for completion of the CIRP process. In the 17th Meeting of CoC held on 20.05.2021, Members of the CoC took note of the `addendum' to the Minutes of 16th Meeting of CoC and after due deliberations decided that no other Resolution Plan was available for consideration of the CoC and there is no approval of CoC for extension of timelines of the CIRP period and therefore the `Liquidation Process' of the `Corporate Debtor' may be initiated as per the provisions of Section 33(1) of the Code and accordingly authorized the RP for filing the IA with the `Adjudicating Authority' for the initiation of the `Liquidation Process'.

12. It is seen from the record that the CoC has discussed in detail the Plan of the `Resolution Applicant' in their various Meetings and suggested for modifications in the Resolution Plan. It is pertinent to mention that a total time of 281 days i.e., from 14.07.2020 to 20.04.2021 was given for submission of the revised Resolution Plan and a final call was given by the RP stating that if no signed Plan is received on or before on 20.04.2021, the CoC may consider the matter as if there is no Plan. A perusal of the email dated 21.04.2021 shows that the `Resolution Applicant' had refused to make the intended changes in the Resolution Plan and therefore in the e-Voting held for the period 22.04.2021 to 19.05.2021, the COC rejected the Resolution Plan submitted by the Appellant by a majority Vote of 85.96%. It is also significant to mention that 330 days period of the CIRP has lapsed. The contention of the Learned Counsel for the `Appellant' that the `Adjudicating Authority' ought to have extended the period of the CIRP as the CoC was considering its Resolution Plan, is untenable in the light of the fact that in the 16th CoC Meeting held on 20.04.2021 itself, the Resolution Plan submitted by the `Appellant' herein was rejected. The `Adjudicating Authority' in the `Impugned Order' dated 22.09.2021, before passing the `Order' for liquidation of the `Corporate Debtor', observed that all possible steps as required under the Code were taken during the period of

CIRP and the CoC did not receive any viable Plan/Proposals for revival of the Company.

13. This `Tribunal' is of the considered view that the issue whether 330 days is to be extended or not has to be seen comprehensively with the decision of the CoC whether any further time is to be granted and if the proposal of the `Resolution Applicant' was actually under serious consideration. In the instant case, the documentary evidence establishes that the CoC had rejected the Plan submitted by the `Appellant' herein and the `Appellant' itself vide email dated 21.04.2021 refused to make the changes as required by the CoC. It is significant to mention that IA259/2021 filed by the RP seeking liquidation was taken up by the `Adjudicating Authority' on 11.08.2021 and the matter was reserved `for Orders', and the `Appellant' herein submitted their revised Resolution Plan on 16.08.2021 subsequent to the filing of the IA259/2021 and sought that the `Liquidation Orders' may not be passed. The Learned `Adjudicating Authority' had observed in detail the time-period of `extension' and `exclusion' granted and observed in para 10 of the `Impugned Order' as follows:

S. No.	***Application filed by Resolution Professional for extension of CIRP Period/exclusion of lockdown period***	***Date of Order***	***Order Passed***
1.	*IA No.636/2020 for extension of CIRP period by 90 days*	*08.09.2020*	*Allowed extension of 90 days and 53 days were excluded from CIRP period which lost during lockdown. Accordingly, 143 days were granted for completion of CIRP.*
2.	*IA No.1134/2020 for exclusion of lockdown period from 01.07.2020 to 30.09.2020 and further extension of 60 days for completion of CIPR.*	*26.04.2021*	*Allowed 60 days extension of CIRP period and excluded 92 days from CIRP period which lost during lockdown. Accordingly, 152 days were added beyond 30.06.2020 and directed the applicant to complete CIRP by 21.04.2021.*
3.	*IA (IBC)/201/2021 for exclusion of lockdown period*	*23.06.2021*	*As the CoC has passed the resolution for initiation of liquidation of the Corporate Debtor there is no use of exclusion hence the application becomes infructuous and disposed of.*

14. Further, the Counsel appearing for IDBI, a `Secured Financial Creditor' comprising 33% of Voting Shares submitted before this `Bench' that no more opportunities need to be given to the `Appellant' herein as the `Committee of Creditors', had rejected the revised `Resolution Plan', given by the `Appellant' herein. Finally, this `Tribunal', addresses to the contention of the Learned Senior Counsel for the `Appellant' that without adhering to the `five days' time, which ended on 16.09.2021, based on the `Reply' filed by the Resolution Professional on 15.09.2021, the `Adjudicating Authority', had passed the `Orders'. It is relevant to note that admittedly, several opportunities were given to the Appellant to make the necessary revised changes, the `Appellant' itself had refused to make the changes as evident from the email dated 21.04.2021, and ultimately `five days' time was given. Further, it is not the case of the `Appellant' that any `Affidavit' was filed on 14.09.2021 or on 15.09.2021, either before the `Committee of Creditors' or before the `Adjudicating Authority' with respect to any changes sought to be made in the `Resolution Plan', as intended by the Members of the `Committee of Creditors'. Also, this `Tribunal', is quite alive and conscious of the fact that more than a year has lapsed and the I & B Code, 2016, is a `time bound process', and all the more, `Speed', is the `essence' enjoined, under the `Code'.

15. Therefore, for all the foregoing reasons, this `Tribunal', is of the considered view, that both these `Appeals' are devoid of `merit' and are accordingly `dismissed'. No costs.

16. The connected pending `Interlocutory Applications', if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

23/02/2023
HIMANSHU / TM