

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 682 of 2022

IN THE MATTER OF:

1. Rajiv Dhamija,

Suspended Director and Shareholder of
Manthan Broadband Services Pvt. Ltd.
Resident of 172, Block -G,
New Alipore, Kolkata – 700053

...Appellant No. 1

2. Gurmeet Singh,

Suspended Director and Shareholder of
Manthan Broadband Services Pvt. Ltd.
Resident of 1/B,
Ramani Chatterjee Road,
Kolkata - 700029

...Appellant No. 2

Versus

**1. Mr. Kuldeep Verma, Resolution
Professional of Manthan Broadband Services
Pvt. Ltd.,**

Working at 46 B B Ganguly Street,
Unit – 501, Kolkata – 700012

...Respondent No. 1

**2. Cisco Systems Capital (India) Private
Limited,**

Regd. Address – 2nd Floor,
Brigade South Parade 10,
M.G. Road Bangalore,
Karnataka – 560001

...Respondent No. 2

3. Hathway Cable & Datacom Ltd.

Regd. Address =- Rahejas 4th Floor,
Corner of Main Avenue and V.P. Road,
Santacruz (W) Mumbai,
Maharashtra - 400054

...Respondent No. 3

4. Indian Cable Net Company Ltd.

Regd. Address – Plot No. – X1-4,
Block EP & GP, Sector – V,
Electronics Complex, Salt Lake,
Kolkata Parganas North,
West Bengal - 700091

...Respondent No. 4

5. Alliance Broadband Services Pvt. Ltd.,

Regd. Address 53-A,

Dr. Lal Mohan Bhattacharyya Rd,
2nd Floor, Kolkata,
West Bengal – 7000014
R No 5

...Respondent No. 5

For Appellant: Mr. Ashish Dholakia, Sr. Advocate with Mr. S. Sampath, Mr. Rohan Chawla and Mr. Aditya Krishna, Advocates.

For Respondent: Mr. Rahul Auddy, Advocate for R-1.
Ms. Barkha Sharma, Advocate for R-2.
Ms. Surabhi Khattar, and Mr. Bishwajit Dubey, Mr. Prabhu, Advocates for R-3.
Ms. Ritwika Nanda, Mr. Petal Chandhok, Advocates for R4.
Mr. Ratnanko Banerji, Sr. Advocate, Ms. Swapna Choubey, Mr. Arijit Mazumdar and Ms. Kinjal Sheth, Mr. Kanishk Kejriwal, Mr. Debandra Raut-PCS, Advocates for R-5.

J U D G E M E N T

Ashok Bhushan, J:

1. This Appeal by a Suspended Director and Shareholder of the Corporate Debtor-Manthan Broadband Services Pvt. Ltd. has been filed against the Order dated 06.04.2022 passed by the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as “The Adjudicating Authority”) allowing I.A. 356/KB/2021 filed by the Resolution Professional praying for an Order of Liquidation and rejecting the I.A.379/KB/2021 and I.A. 193/KB/2022 whereby prayer was made to permit the Applicants to submit Resolution Plan.

2. Brief facts of the case giving rise to this Appeal are:

- An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “The Code”) was filed by Alliance Broadband Services Pvt. Ltd. against the Corporate Debtor (Manthan Broadband Services Pvt. Ltd.) in which Application, an Order was

passed on 18.09.2019 by the Adjudicating Authority initiating 'Corporate Insolvency Resolution Process' (CIRP in short). Respondent No. 1 was appointed as Resolution Professional.

- By an Order dated 10th November, 2020, the Adjudicating Authority allowed extension of CIRP period for further period of 90 days beyond 180 days with effect from 01st November, 2020. On 15th December, 2019, Form-G was published seeking 'EOI' from prospective Resolution Applicants. The Adjudicating Authority passed an Order on 09th February, 2021 further excluded a period of 50 days from calculation of 270 days CIRP Period.
- An Application I.A. No. 221 of 2021 was filed by one interested bidder namely M/s. Indian Cable Net Company Ltd. before the Adjudicating Authority and the Adjudicating Authority by an Order dated 22nd February, 2021 allowed 05 days' time to submit the Resolution Plan. The Resolution Professional shared information memorandum with Indian Cable Net Company Ltd. On 24th February, 2021, M/s. Indian Cable Net Company Ltd. withdrew its interest for submission of Resolution Plan. On 26th February, 2021, Hathway Cable & Datacom Ltd. sent an email to the Resolution Professional requesting two weeks' time for submission of Resolution Plan (Respondent No. 3 herein).
- The Committee of Creditors (CoC in short) held its 10th CoC Meeting on 01st March, 2021 where the Resolution Professional brought the fact of Hathway Cable and Datacom Ltd. sending the email on 26th February, 2021. It was noted in the minutes that after best effort Resolution Plan/Revival of Manthan Broadband Services Pvt. Ltd.

could not happen within the timeline of IBC hence Liquidation is the only option left. Subsequently on 08th March, 2021 in 11th CoC Meeting, a Resolution was passed with 100% majority recommending Liquidation of the Corporate Debtor. On 17th March, 2021, I.A. No. 356/KB/2021 was filed by the Resolution Professional seeking Liquidation of the Corporate Debtor. On 23rd March, 2021, I.A. No. 379/KB/2021 was filed by the Hathway Cable and Datacom Limited seeking an Order granting two weeks' time to submit Resolution Plan and seeking dismissal of I.A. No. 356/KB/2021. On 24th February, 2022, I.A. No. 193/KB/2022 was filed by Respondent No. 4- Indian Cable Net Company Ltd. seeking direction to permit to submit the Resolution Plan. An Intervention Application was also filed IVN No. 4 of 2021 by Alliance Broadband Services Pvt. Ltd. opposing the I.A. No. 379/KB/2021.

- The Adjudicating Authority vide Impugned Order dated 06.04.2022 allowed the I.A. No. 356/KB/2021 ordering Liquidation of the Corporate Debtor. I.A. No. 379/KB/2021 and I.A. No. 193/KB/2022 were rejected. Aggrieved by the Order dated 06.04.2022, the Suspended Director of the Corporate Debtor has come up in this Appeal.

3. Learned Counsel for the Appellant challenging the Order impugned submits that CIRP did not expire on 19th March, 2021 as was communicated by the Resolution Professional to the Committee of Creditors. The period of CoC was still there till August, 2021. Learned Counsel for the Appellant relying on the Order of the Hon'ble Supreme Court passed in *Suo Moto Writ*

Petition No. 03 of 2020 contends that period from 15th March, 2020 to 28th February, 2022 shall stand excluded for the purpose of computation of Limitation. It is submitted that during the course of the hearing of the Application filed by the Resolution Professional before the Adjudicating Authority, the Learned Counsel appearing for the CoC had appeared and submitted that it was in favour of allowing the Application filed by Hathway Cable and Datacom Limited to consider the Resolution Plan. It is submitted that there is material irregularity in order dated 06.04.2022 passed by the Adjudicating Authority. It is submitted that even if it is accepted that CIRP Period was expiring on 19th March, 2021 there was sufficient time with the CoC to permit the submission of the Resolution Plan by the Respondent No. 3. It is submitted that the object of IBC is to revive the Corporate Debtor and the Liquidation is corporate death which should be avoided on all cost.

4. Learned Counsel for the Resolution Professional has supported the Order impugned and submitted that the email received from Respondent No. 3 was after expiry of the last date for submission of Resolution Plan. However, it is submitted that the email sent by the Respondent No. 3 was brought into notice of the CoC which took note of the email in its 10th and 11th CoC Meetings but in its commercial wisdom decided to liquidate the Corporate Debtor. There is no illegality in the Order passed by the Adjudicating Authority directing for liquidation.

5. Learned Counsel appearing for Respondent No. 3 supported the submissions of Learned Counsel for the Appellant. It is submitted that Adjudicating Authority although relied on 10th CoC Meeting where Resolution for Liquidation was passed but ignored the subsequent opinion of

the CoC of 12th CoC Meeting held on 01.10.2021. It is submitted that CoC is fully empowered to reconsider its decision and timelines under the Code, can relax for the purposes of maximization of assets of the Corporate Debtor.

6. Learned Counsel appearing for the Respondent No. 4 submits that Respondent No. 4 is also desirous of submitting Resolution Plan and should have been granted one opportunity to submit EOI and the Resolution Plan. Earlier the Respondent No. 4 could not submit EOI of Resolution Plan for which email dated 24th February, 2021 was sent.

7. Learned Counsel appearing for Respondent No. 5 opposes the submissions of Appellant and submits that Order of Liquidation can be set aside only on the ground of material irregularity or fraud committed in relation to Liquidation Order. It is submitted that no ground exists for interfering with the Order of the Liquidation. The Adjudicating Authority and the Appellate Tribunal has very limited scope of interference with a decision of CoC taken in its commercial wisdom. Liquidation Order was passed on the basis of Resolution passed by the 100% Voting of CoC. Both Respondent No. 3 and Respondent No. 4 approached the Adjudicating Authority for re-submitting EOI much beyond the deadline for submissions of EOI. The period of CIRP was coming to an end on 19th March, 2021 hence the CoC after considering all the facts came to the decision to liquidate the Corporate Debtor. Both the Respondent No. 3 and 4 have not preferred an Appeal against the Order of Liquidation hence they cannot be said to be aggrieved by the Order. The Appellant-Suspended Director and Shareholder of the Corporate Debtor cannot pursue the cause of Respondent No. 3 and 4.

8. We have heard the Learned Counsel for the Appellant and Learned Counsel for the Respondents and have perused the record.

9. The first submission of Learned Counsel for the Appellant is that the period of CIRP was not expiring on 19th March, 2021 rather it was expiring in August, 2021.

10. The Order dated 10th November, 2020 passed by the Adjudicating Authority has been brought as Annexure A-6 to the Appeal by which Order the Application filed by the Resolution Professional for extension of CIRP period was allowed for further period of 90 days beyond 180 days with effect from 01st November, 2020. From 01st November, 2020, 90 days was to expire on 29th January, 2021, the Adjudicating Authority further passed an Order on 09th February, 2021 and allowed the Application filed by the Resolution Professional for exclusion of 50 days from the calculation of 270 days taking the CIRP period to 19th March, 2021.

11. Learned Counsel for the Appellant has relied on the Judgment of the Hon'ble Supreme Court passed in *Suo Moto Writ Petition No. 03/2020* and submitted that by virtue of the Order passed by the Hon'ble Supreme Court, the period of CIRP shall stand extended. The Order passed by the Supreme Court is part of the record. The Order was passed by the Hon'ble Supreme Court on 23rd March, 2020 which is to be following effect:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of

limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

12. The Order passed by the Hon’ble Supreme Court on 23rd March, 2020 was further extended by subsequent Order dated 23rd September, 2021 while disposing M.A. No. 665 of 2021 in SMW(C) No. 3 of 2020. Paragraph 8 contains further directions of the Hon’ble Supreme Court:

“8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance

period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

13. The Order of the Hon'ble Supreme Court provided for extension of period of limitation for any petitions/applications/suits/appeals/all other proceedings which is to be filed in respective Courts/Tribunals across the Country including the Supreme Court of India. The Order passed by the Hon'ble Supreme Court extended period of limitation as prescribed in the Limitation Act or Special Statutes for filing petitions/applications/suits/

appeals/all other proceedings in any Courts/Tribunals. The said Order cannot be applied for extension of CIRP Period as prescribed in the Code. The CIRP period is a period not prescribed for any Court or Tribunal hence the Order of the Supreme Court extending the period of limitation which is for the purposes of filing petitions/applications/suits/appeals/all other proceedings in Courts/Tribunals cannot help the Appellant in contending that period of CIRP stood extended till 02.10.2021. Learned Counsel for the Appellant has also relied on the Judgement of the Hon'ble Supreme Court in **“GPR Power Solutions Pvt. Ltd. through Mr. S. Damodaran, CEO of Appellant Vs. Mr. Supriyo Chaudhuri (RP of Rohit Ferror Tech Ltd.) & Ors.” [(2021) SCC OnLine 1328]**. The Hon'ble Supreme Court in the above judgement had occasion to consider the Appeal of a Claimant who filed claim in CIRP proceeding which was not accepted on the ground of delay. The Hon'ble Supreme Court took the view that claim ought not to have been rejected and allowed the Appeal. In the present case, the issue is not regarding the delay in filing the claim by the Applicant. Present is the case where we are considering the question of CIRP Period. Judgment of Hon'ble Supreme Court does not come to any aid of the Appellant in the present case.

14. Learned Counsel for the Appellant has also referred to and relied on a Judgment of the Hon'ble Supreme Court in the matter of **“Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.” [(2019) 4 SCC 17]**. Hon'ble Supreme Court in paragraph 28 of the Judgement made following observations:

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.....”

15. There cannot be a dispute with the proposition laid down by the Hon’ble Supreme Court in the above case. The revival and continuation of the Corporate Debtor is the main objective of IBC and it goes without saying that all efforts should be taken by all concerned to ensure that Corporate Debtor is revived and put back on its track and Liquidation should be resorted as last resort. Learned Counsel for the Appellant has also relied on the Judgement of this Tribunal in **Company Appeal (AT) Ins. No. 326 of 2022, in “Ankit Patni, Erstwhile Director of Rohit Ferro Tech Ltd. Vs. State Bank of India & Ors”** dated 06.04.2022 where this Tribunal made following observations in paragraph 5:

“5....It is well settled that the commercial wisdom of the CoC is to be given due regard. The CoC having decided to condone the delay in submission of Expression of Interest by Respondent No. 3 and to include the Respondent No. 3 in the list of Resolution Applicants, no exception can be taken by the Appellant to the decision of the CoC. The object of the IBC is to maximize the assets of the Corporate Debtor and as noted above, in the 19th CoC meeting, earlier Resolution Applicants were requested to revise the financial proposal. Thus, by the time Respondent Nos. 3 was permitted to submit a Resolution Plan neither

any Resolution Plan was accepted nor even put to e-vote. Hence, the commercial wisdom of the CoC to accept the Respondent No. 3 as Prospective Resolution Applicant cannot be faulted.....”

16. The above was a case where CoC condoned the delay in submission of EOI by an Applicant and included the submission in the list of Resolution Applicants with regard to which no exception can be taken. This Tribunal held that no exception can be taken to such course of action adopted by CoC. Present is not a case where CoC in its commercial wisdom permitted the Respondent No. 3 to submit EOI and Resolution Plan. In its commercial wisdom, the CoC has taken a decision to not accept the request sent by the Respondent No. 3 through Resolution Professional. Respondent No. 3 has also placed reliance on the minutes of the 12th CoC Meeting held on 01.10.2021 in support of his submission that CoC reconsidered its decision of liquidation passed in 11th CoC Meeting in the 12th CoC Meeting. The CoC while considering Item No. 4 took on record status and progress of all pending cases. In the minutes, following was noticed:

“...CISCO stated that it has passed resolution recommending liquidation. However, if Hon’ble NCLT allows Hathway’s application then attempt to have a resolution plan for Manthan can be explored which is the main object of IBC, 2016. In view of CISCO, maximization of value for the creditors of the Corporate Debtor would be best in resolution and not liquidation.

Sony strongly objected and stated that process as envisaged in IBC 2016 has been followed and operational creditors have also contributed costs to run the CIRP of Corporate Debtor. The Process will be

a never-ending process and they do not subscribe to the view of the CISCO and also clarified Sony (an operational creditor) is not in a position to contribute any further CIRP cost.”

17. It is to be noted that in Item No. 4 there was no decision of the CoC taken to reconsider its Resolution rather it was noticed if the NCLT allows Hathway’s Application then attempt to have a resolution plan can be explored. Thus the submission of Learned Counsel for the Respondent No. 3 that CoC reconsidered its decision of liquidation cannot be accepted. When we look into the minutes of the CoC 10th and 11th, it is clear that the request of Respondent No. 3 sent by email dated 26th February, 2021 was placed before the CoC. In 11th CoC meeting in Item No. 4 to discuss and consider passing of Liquidation of the Corporate Debtor, decision was taken to liquidate the Corporate Debtor which was approved by 100% voting of the CoC. In the discussion in Item No. 4, an ex-director of the Corporate Debtor pleaded on the basis of email received from Hathway and requested that Liquidation Resolution be not put to vote for 48 hours to see whether the Adjudicating Authority permits to submit the Resolution Plan or not. After noticing above, the resolution was passed with majority of 100% decision to recommend the liquidation of the Corporate Debtor. Thus, the decision taken by the CoC in 11th CoC Meeting dated 08th March, 2021 was after full deliberation including consideration of the request made on behalf of Respondent No. 3 and despite that resolution was passed with 100 % voting recommended liquidation. We cannot find any material irregularity in the decision of the liquidation taken by the CoC in its 11th CoC Meeting on 08th March, 2021.

18. Under Section 61(4) of the Code, the Appeal against the Liquidation Order can be filed on the ground of material irregularity or fraud committed in relation to liquidation order. We neither find any material irregularity committed in Liquidation Order passed by the Adjudicating Authority nor any fraud committed in the process. No grounds within the meaning of Section 61(4) of the Code exist in this Appeal.

We thus are of the opinion that no illegality has been committed by the Adjudicating Authority in passing the Impugned Order dated 06th April, 2022 allowing the Application filed by the Resolution Professional for liquidation and rejecting I.As filed by Respondent No. 3 and 4. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**NEW DELHI
20th September, 2022
Basant**