

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 500 of 2019

[Arising out of order dated 27th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in MA 1096/2019 in CP(IB)1319(MB)/2017]

IN THE MATTER OF:

1. Milind Dixit,

Promoter, Shareholder and Ex Director of
Enviuro Bulkk Handling Systems Pvt. Ltd.
Residing at Plot No. 100
Pratham, Near Wakad, Telephone Exchange Wakad,
Pune – 411 057.

2. Prashant Puppal,

Promoter and Shareholder of
Enviuro Bulkk Handling Systems Pvt. Ltd.
Address: “Dwarka” Bungalow, Sector 27, Plot No. 332,
Nigadi Pradhikaran,
Pune – 411 044.

...Appellants

Vs

1. M/s Elecon Engineering Company Ltd.,

Address: Anand Sojitra Road,
Vallabh Vidyanar,
Gujarat – 388 120.

**2. Invent Assets Securitization and Reconstruction
Pvt. Ltd.,**

Registered Office at:
107, Jolly Maker, Chamber No. 2,
225, Nariman Point,
Mumbai – 400 021.

3. Saraswat Co operative Bank,

Address: C-2 Kohinoor Estate Co-op Housing Society,
Plot No. 12, Mula Road, Sangarnwadi,
Pune – 411 003.

**4. R. L. Mogra, Interim Resolution Professional
w.e.f. 18/06/2017**

Address: 24, 3rd Floor, Bombay Mutual Annexe,
17 Rustom Sidhwa Marg, Fort,
Mumbai – 400 001.

5. Vipul Choksi, Substituted Resolution Professional,

Address: 38, Bombay Mutual Building,
Dr. D. N. Road, Fort,
Mumbai – 400 001.

6. Rajat Mukherjee, Liquidator, w.e.f. 27/03/2019

Address: Office No.30, 2nd Floor, Lawyer Chamber,
Picket Road, Marin Lines.
PIN – 400 002.

....Respondents

Present:

For Appellants: Ms. Anannya Ghosh, Mr. Aayush Singhvi and
Mr. Udayaditya Banerjee, Advocates.

For Respondents: None.

J U D G M E N T

BANSI LAL BHAT, J.

Appellants, claiming to be Promoters/ Shareholders and erstwhile Directors of 'Enviiro Bulkk Handling Systems Pvt. Ltd.' (Corporate Debtor) have preferred the instant appeal impugning the order dated 27th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in MA 1096/2019 in CP (IB) 1319 (MB)/2017 by virtue whereof MA 1096/2019 filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B

Code’) for liquidation of the Corporate Debtor based on approval of Committee of Creditors (hereinafter referred to as ‘COC’) was allowed and the Corporate Debtor was ordered to be liquidated. The impugned order has been assailed on a variety of grounds including alleged irregularity in appointment of Resolution Professional, collusion between the Resolution Professional and the COC, bias and fraud.

2. Heard learned counsel for Appellant at the pre-admission stage and waded through the record. It appears that on an application filed under Section 9 of I&B Code by M/s Elecon Engineering Company Ltd.’ (Operational Creditor) the Adjudicating Authority initiated Corporate Insolvency Resolution Process by passing order of admission dated 4th December, 2017. However, the Interim Resolution Professional came to be appointed vide order dated 18th June, 2018. Since the Corporate Insolvency Resolution Process could not be completed within the statutory period of 180 days, the Adjudicating Authority extended time by 90 days in terms of order dated 19th December, 2018. It is not in dispute that the extended statutory period expired well before the impugned order of liquidation was passed by the Adjudicating Authority at the instance of the Resolution Professional.

3. It emerges from record that the COC constituted by the Resolution Professional held as many as ten meetings between 16th July, 2018 and 8th March, 2019. After deliberations the resolution plan submitted by ‘Jyotiba

Developers' was rejected with 100 percent vote share as in the opinion of COC its value was less than the average liquidation value as assessed by the valuers. The COC recommended that the Corporate Debtor be liquidated as a going concern. Since the Resolution Professional – Mr. Vipul K. Choksi conveyed his unwillingness to continue and act as a Liquidator, Shri Rajat Mukherjee came to be appointed as the Liquidator with the consent of stakeholders.

4. Learned counsel for Appellant vehemently argued that collusion between the Resolution Professional and the COC paved the way for liquidation of the Corporate Debtor. However, he was unable to demonstrate any material irregularity of substance to substantiate his argument. Admittedly, statutory Corporate Insolvency Resolution Period of 180 days further extended by 90 days computed from the date of appointment of Interim Resolution Professional has elapsed and there is no legal scope for extension of the period. Any irregularity or illegality right from order of admission till passing of the order of liquidation, if any, should have been challenged before the competent forum at the appropriate stage. The Corporate Insolvency Resolution Process is time bound and the timelines set out by I&B Code, Rules and the Regulations framed thereunder have to be adhered to scrupulously. It is not open to the Promoter/ Director/ Shareholder of Corporate Debtor to assail the very edifice of the process or subsequent events when the entire process is over and has culminated in

Liquidation. There can be no dispute with the proposition that I&B Code primarily seeks to achieve the objective of insolvency resolution of Corporate Persons and liquidation is the last resort. However, such resolution process is time bound. The object of maximization of value of assets of Corporate Persons can be achieved only by strict adherence to the time schedule provided under the I&B Code. Once the Corporate Insolvency Resolution Process period has expired before the order of liquidation is passed, as in the instant case, no authority or forum created under I&B Code is vested with the jurisdiction to order extension of such period or start a *denovo* process thereby frustrating the object of I&B Code. It is not open to the Appellants to assail the order of admission of application under Section 9 of the I&B Code or the subsequent orders culminating in passing of impugned order of liquidation. If no feasible or viable resolution plan was forthcoming and the only resolution plan found worth consideration by COC was placed by the Resolution Professional before COC for consideration which came to be rejected with 100 percent vote share on the ground that the same was not feasible and viable besides being below the average liquidation value, no fault can be found with the decision of the COC recommending liquidation of Corporate Debtor. Such decision of COC being purely a commercial/business decision of an expert body of Financial Creditors having expertise in the relevant field is not amenable to judicial scrutiny. The dictum of law laid down by the Hon'ble Apex Court is loud and clear on the aforesaid aspect. We may profitably refer to their lordship's observations in ***Civil Appeal No.***

**10673 of 2018 titled ‘K. Shashidhar Vs. Indian Overseas Bank and Ors.’
decided on 5th February, 2019.**

“33. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which

has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. 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. That is made non-justiciable.”

5. In view of the settled proposition of law and for the reasons recorded in the foregoing paras, we find no ground for interference with the impugned order of liquidation. However, the direction enumerated in clause (g) of para 11 of the impugned order is repugnant to law and virtually conflicts with the recommendation of CoC for liquidation of Corporate Debtor as a going

concern. The Adjudicating Authority landed in error in directing that the liquidation order shall be deemed as a notice of discharge to the officers, employees and workmen of the Corporate Debtor. This cannot be supported either in law or on the facts of this particular case. The aforesaid direction is accordingly set aside. The appeal is disposed of with aforesaid observations.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Mr. Balvinder Singh]
Member (Judicial)

NEW DELHI

3rd July, 2019

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