

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 751 of 2020**

**IN THE MATTER OF:**

**Siva Rama Krishna Prasad**

**...Appellant**

**Versus**

**S Rajendran, Official Liquidator of  
M/S Krishna Industrial Corporation Ltd. & Ors.**

**...Respondents**

**With**

**Company Appeal (AT) (Insolvency) No. 752 of 2020**

**IN THE MATTER OF:**

**Dr. Siva Rama Krishna Prasad**

**...Appellant**

**Versus**

**Krishna Industrial Corporation Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. B. B. Sawhney, Mr. Srikaanth S. Iyyer and  
Mr. Vishnu Kumar, Advocates.**

**For Respondents: Ms. Varsha Banerjee, Advocate for R-2.**

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

**(04.09.2020)**

**BANSI LAL BHAT, J.**

Both the appeals arise out of the Corporate Insolvency Resolution Process initiated by the Financial Creditor viz. 'Maximus Asset Reconstruction Company Limited' against the Corporate Debtor viz. 'M/s Krishna Industrial Corporation

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Limited' pursuant to passing of order of admission in application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the I&B Code). Same are proposed to be disposed of by a common judgment as impugned orders in both appeals dated 27<sup>th</sup> July, 2020 passed separately are interwoven and interconnected.

2. For better comprehension of the issue involved, we firstly deal with Company Appeal (AT) (Insolvency) No. 751 of 2020. Mr. S. Rajendran, Resolution Professional filed MA/376/2020 before the Adjudicating Authority (National Company Law Tribunal), Division Bench-I, Chennai under Section 33(2) of the I&B Code seeking liquidation of the Corporate Debtor on the ground that no resolution plan was received during the Corporate Insolvency Resolution Process period and the promoter group had failed to provide concrete information about the prospective investor qua its plan for resolution/settlement. Company Appeal (AT) (Insolvency) No. 752 of 2020 has been preferred by Shri Siva Rama Krishana Prasad – erstwhile Promoter/Director of Corporate Debtor, who had filed application under Section 60(5)(c) of the I&B Code seeking relief in the nature of keeping the liquidation application filed by the Resolution Professional in abeyance, pending disposal of application, on the ground that the debt-asset ratio in relation to the Corporate Debtor was very less and the Applicant was willing and able to settle the claims of Creditors of the Corporate Debtor. On consideration of the erstwhile Promoter's application, the Adjudicating Authority observed that the erstwhile Promoter had

not put forth any concrete proposal of settlement before the Financial Creditor and had also failed to provide required information in regard to the Investor. Thus, the prayer for deferring the consideration of Resolution Professional's application for liquidation of the Corporate Debtor was found to be devoid of merit and came to be dismissed in terms of impugned order. The Adjudicating Authority, taking note of the fact that the Committee of Creditors had unanimously decided to liquidate the Corporate Debtor as no Expression of Interest was received even after extension of time coupled with the fact that the outlook for the industry was negative, passed the liquidation order impugned in Company Appeal (AT) (Insolvency) No. 751 of 2020.

3. After hearing learned counsel for the parties in both the appeals in respect to both impugned orders of same date, we are of the considered opinion that the Expression of Interest floated by the Resolution Professional having not evoked response from any viable prospective Resolution Applicant even within the extended period and there being no resolution plan before the Committee of Creditors for consideration, there was no option left with the Adjudicating Authority but to allow pushing of the Corporate Debtor into liquidation notwithstanding the fact that the erstwhile Promoter/Ex-Director of the Corporate Debtor had proposed settlement plan and was persuading the Financial Creditor to consider the settlement proposal despite failing to provide the concrete information in regard to the proposed Investor. Admittedly, the proposed settlement would involve sale of assets of the

Corporate Debtor which depended upon a variety of factors including sound financial position of the proposed Investor and its ability to raise the funds, more so, when operations of the Corporate Debtor were lying defunct. Besides, the settlement proposal cannot be thrust upon the Committee of Creditors as decision in regard to its viability and feasibility exclusively lies within the domain of commercial wisdom of Committee of Creditors. That apart, in absence of a resolution plan, the Committee of Creditors would have no option but to recommend liquidation of the Corporate Debtor.

4. It is significant to take note of the explanation added to sub-section (2) of the I&B Code as inserted by Act 26 of 2019 w.e.f. 16<sup>th</sup> August, 2019 which provides that the Committee of Creditors may take the decision to liquidate the Corporate Debtor at any time after its constitution and before the confirmation of the Resolution Plan, including at any time prior to preparation of the information memorandum. Primacy in this regard lies with the Committee of Creditors who can even recall its recommendation for confirmation of Resolution Plan already approved by the Committee of Creditors but, undoubtedly, before confirmation of resolution plan by the Adjudicating Authority. The law as enshrined in Section 33(2) only enjoins upon the Resolution Professional to intimate the Adjudicating Authority that the Committee of Creditors has, by requisite majority, decided to liquidate the Corporate Debtor, provided the Resolution Plan earlier approved by the Committee of Creditors has not been confirmed by the Adjudicating Authority.

Thus, it is manifestly clear that even after recommending a Resolution Plan for approval of the Adjudicating Authority, the Committee of Creditors can retract it and withdraw the decision in regard to approval of such Resolution Plan by the Committee of Creditors.

5. The Adjudicating Authority has rightly observed that even after pushing the Corporate Debtor into liquidation, Promoter/Ex-Director of the Corporate Debtor can take recourse to Section 230 of the Companies Act, 2013 by submitting a scheme for revival of the Corporate Debtor, subject of course to eligibility of the applicant.

6. For the foregoing reasons, we find no merit in these appeals. Same being devoid of merit stand dismissed. No orders as to costs.

**[Justice Bansi Lal Bhat]**  
**Acting Chairperson**

**[V. P. Singh]**  
**Member (Technical)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

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