

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 621 of 2018**

[ arising out of Order dated 14<sup>th</sup> May, 2018 by NCLT, Mumbai Bench, in  
Company Petition No. (IB) – 156/MB/2018 ]

**IN THE MATTER OF:**

**Mr. Umesh Aggarwal,**

1966, Outram Line, GTB Nagar,  
Delhi – 110 009.

... Appellant

**Versus**

**RICOH India Ltd.,**

801, 8<sup>th</sup> Floor, Ackurti Star, MIDC,  
Central Road,  
Near Marol Telephone Exchange,  
Andheri East,  
Mumbai – 400 093.

... Respondent

**Present :**

**For Appellant :**

**Mr. Sachin Datta, Senior Advocate assisted by  
Ms. Prity Sharma and Mr. Sidhartha, Advocates**

**For 1<sup>st</sup> Respondent:**

**Mr. Krishnendu Datta, Mr. Vikram Sobti, Ms.  
Apartna Trivedi, Ms. Pooja Mahajan and Ms. Mahima  
Singh, Advocates**

**For 2<sup>nd</sup>, 10<sup>th</sup> and  
11<sup>th</sup> Respondent :**

**Ms. Vaishnavi Rao and Ms. Ragima R., Advocates**

**For 3<sup>rd</sup> Respondent:**

**Mr. Arun Kathpalia, Senior Advocate assisted by  
Mr. Diwakar Maheshwari and Ms. Pratiksha Mishra,  
Advocates**

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

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘Ricoh India Limited’ (Corporate Applicant) filed an application under  
Section 10 of the Insolvency and Bankruptcy Code, 2016 (for short, the ‘I&B

**Code'**) before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench without impleading any lender as party. By *ex parte* impugned order dated 14<sup>th</sup> May, 2018 the Adjudicating Authority having admitted application under Section 10 of the I&B Code, the present appeal has been preferred by shareholder. The learned counsel appearing on behalf of the Appellant submitted that the application in Form 6 under Section 10 of the I&B Code was filed without the decision of the shareholders. No Annual General Meeting (AGM) nor any Extra-ordinary General Meeting (EoGM) was conducted for taking decision to file an application under Section 10 of the I&B Code for declaring insolvent of the 'corporate applicant'.

2. It was alleged that the 'Board of Directors' in its meeting only decided to file an application under Section 10 of the I&B Code though it was not required.

3. Reliance has been placed on decision of this Appellate Tribunal in '*Gaja Trustee Company Private Limited & Ors. vs. Haldia Coke and Chemicals Private Limited*' – 2018 SCC OnLine NCLAT 331' wherein this Appellate Tribunal held that in absence of any decision taken in the Annual General Meeting or Extra-ordinary Meeting in terms of the 'Articles of Association', the application under Section 10 was not maintainable.

4. It has been brought to our notice that Insolvency and Bankruptcy Code has also been amended since 6<sup>th</sup> June, 2018 wherein it is laid down that without any decision of the AGM of the shareholder, no application u/s 10 of the I&B Code is maintainable. However, it is accepted that the amendment was made on 6<sup>th</sup> June, 2018, which is subsequent to the admission of the

application under Section 10 of the I&B Code which was admitted on 14<sup>th</sup> May, 2018.

5. Learned counsel appearing on behalf of the Appellant relied on Article 164 of the 'Articles of Association of 'Ricoh India Ltd (Corporate Debtor), which reads as under :

“164. *If the Company shall be wound up, the Liquidator may with the sanction of a Special Resolution of the Company and any other sanction required by the Act, divide amongst the members in specie or in kind, the whole or any part of the assets of the Company whether they shall consist of the property of the same kind or not.*”

6. Learned counsel for the Respondent has referred to Article 127, which relates to cover all the decisions to be taken in the meeting, which reads as under:

“127. *Questions arising at any meeting shall be decided by a majority of votes, provided however that no resolution shall be passed or decision taken by the Board either at a meeting of the Board or any committee thereof or by circulation in respect of any of the following significant matters unless and until one of the Directors representing RICOH or his alternate shall have voted in favour of such resolution or decision:-*

*xxx*

*xxx*

*xxx*

*xiii) Pass any resolution for winding up and/or presenting a petition for winding up of the Company.”*

7. We have heard the learned counsel appearing on behalf of the Appellant and learned counsel for the Respondent and perused the record.

8. In the case of '*Gaja Trustee Company Private Limited*' (Supra), the Articles of Association (Article 1.1.3; 9.1 and 9.2) specifically provided for an 'affirmative vote' which by any meeting of the shareholders for liquidation. As per Article 179 of the said case, the Board of Directors was not authorised to move an application for 'Liquidation' without 'affirmative vote' of the shareholders.

9. In the present case under Article 127 (xii) the Board of Directors have been empowered to pass any order for winding up and/or presenting a petition for winding up of the Company.

10. Like the case of '*Gaja Trustee Company Private limited*' (Supra) no specific provision has been made to obtain 'affirmative vote' in the AGM of the shareholders. Article 164 of '*Ricoh India Ltd.*' (Corporate Debtor) specifies when the 'liquidator' requires sanction of a 'Special Resolution' of the company at the time of winding up. Therefore, the said Article 164 is not applicable and cannot be relied upon to hold that the decision of the shareholders in the AGM is maintainable for moving the application u/s 10 of the I&B Code.

11. We have already noticed that the prior approval of the shareholders in the AGM has been substituted by the amendment made on 6<sup>th</sup> June, 2018, which is not applicable in the present case as it was admitted earlier in May,

2018. This apart, we find that subsequently the matter was placed before the AGM in August, 2018 which also approved the decision for filing the application under Section 10 of the I&B Code.

12. In view of the aforesaid position, no interference is called for. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

New Delhi

14<sup>th</sup> May, 2019

/ns/