

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 620 of 2020

IN THE MATTER OF:

M. P. Agarwal

...Appellant

Versus

Shri Lakshmi Cotsyn Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Darpan Wadhwa, Sr. Advocate with Ms Tanya and Mr. Shankari Mishra, Advocates.

For Respondents: Mr. Sarfaraz Karim and Mr. Shashwat Anand, Advocates for R-1

Mr. Pervinder and Ms. Ranjana Roy Gawai, Advocates for R-2.

J U D G M E N T

27.07.2020: Vide impugned order dated 1st July, 2020, the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench allowed application filed by the Resolution professional under Section 33(1)(a) r/w Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code') in CP(IB) NO. 142(ALD)/2018 seeking order of liquidation and appointment of Liquidator qua the Corporate Debtor – 'Shri Lakshmi Cotsyn Ltd.'. It sent the Corporate Debtor into liquidation. Same has been challenged in appeal preferred by one M. P. Aggarwal, Promoter and Member of the suspended Board of Directors primarily on the ground that the Committee of Creditors had failed to take into account the Settlement Offer/ Proposal of the Appellant and the recommendation for Liquidation was based on stale valuations. It is contended on behalf of the Appellant that the I&B Code at its core is to be used for reorganization and resolution of

the Corporate Debtor and unless such reorganization is effected in a time bound manner, the value of the assets of such persons will deplete.

2. After hearing learned counsel for the Appellant for a while we find that initially three Expressions of Interest were filed in response to the invitation by the Resolution Professional, by three prospective Resolution Applicants. However, none of them submitted Resolution Plans by the last date. It further appears that two more bids were made to secure Resolution Plans but the same proved abortive. Since even the extended period of Corporate Insolvency Resolution Process was expiring, on 18th February, 2019 the Committee of Creditors in its 9th Meeting resolved to go for Liquidation of the Corporate Debtor.

3. The Appellant's contention is that its Settlement Proposal of Rs.650 Crores far exceeds the liquidation value of the assets of the Corporate Debtor fixed at Rs.500 Crores and there was no justification on the part of the Committee of Creditors in rejecting the Settlement Proposal. It emerges from Record that even after filing of the application for Liquidation, the Resolution Professional has convened five meetings of the Committee of Creditors to consider the Proposal of Settlement under Section 12A of the I&B Code. Admittedly, the highest offer was made by the Promoter – Appellant for Rs.650 Crores but the same was rejected as the Committee of Creditors had fixed a benchmark of Rs.1000 Crore and Committee of Creditors in its wisdom rejected the aforesaid Settlement Proposal for not

complying with the conditions set out for consideration of such OTS/ Settlement Proposal. The Committee of Creditors appears to have taken a commercial call on the OTS Proposal of the Ex-management/Promoter/ Appellant but it found that the investors supposedly giving the funds to the ex-management had been frequently changing and in two proposals even the names of the investors were not revealed. Subsequently, when the name of a foreign investor was disclosed, even the upfront amount was not deposited. Thus, the Committee of Creditors decided to go for liquidation of the Corporate Debtor as it was convinced that the Suspended Management was only delaying the process and could not mobilize resources and arrange the requisite funds for supporting its OTS Proposal/ Settlement Offer.

4. It is the settled law of the land that the Committee of Creditors enjoys primacy in matter of approval or rejection of Resolution Plan/ Settlement Proposal and the Adjudicating Authority as also this Appellate Tribunal would be exceeding its jurisdiction in questioning the commercial wisdom of the Committee of Creditors in approving or rejecting such plan/proposal which is essentially based on business decision. In this regard it would be apposite to extract relevant portion of para 48 of the judgment rendered by the Hon'ble Apex Court in **'K. Sashidhar' Vs. 'Indian Overseas Bank and Ors.'**, reported in **MANU/SC/0189/2019:-**

"48. Indubitably, the legislature has consciously not provided for a ground to challenge the justness of the

*“commercial decision” expressed by the financial creditors
– be it to approve or reject the resolution plan. The opinion
so expressed by voting is non-justiciable.”*

5. The proposition of law enunciated by Hon’ble Apex Court is loud and clear. In absence of a Resolution Plan emanating from an eligible Resolution Applicant within prescribed timelines and not being satisfied with the capacity of the Promoter/Ex-management/Appellant to garner and mobilize an adequate and satisfactory finance provider/investor in support of its OTS Proposal, the Committee of Creditors in its wisdom decided to push the Corporate Debtor into Liquidation. This being the business decision based on commercial wisdom of the Committee of Creditors and no material irregularity in Corporate Insolvency Resolution Process culminating in passing of Liquidation Order having been brought to notice of this Appellate Tribunal, we find no justifiable ground for judicial intervention. The appeal is accordingly dismissed. No costs.

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

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

**[Shreesha Merla]
Member (Technical)**

am/gc