

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

**Company Appeal (AT) Insolvency No. 568 of 2020**

**IN THE MATTER OF:**

**Abhishek Aggarwal**

**...Appellant**

**Versus**

**Mr Alok Kumar Agarwal & Ors.  
Liquidator for Kansal Building  
Solutions Private Limited**

**...Respondents**

**Present:**

**For Appellant : Mr Krishnendu Datta and Mr Karan Gandhi,  
Advocates for Appellant**

**For Respondent : Mr Abhishek Anand, Advocate for Respondents**

**O R D E R**

**(Through Virtual Mode)**

**26.06.2020** The Appellant has filed this Appeal against the impugned order of liquidation passed under Section 33(2) of the Insolvency & Bankruptcy Code, 2016, based on the resolution passed by the Committee of Creditors with 100% vote share challenging the impugned order only on the ground that the settlement discussion with the Financial Creditor, Dena Bank, holding 99% share in the CoC was not apprised to the Learned Adjudicating Authority.

The Appellant contends that the settlement with the Financial Creditor Dena Bank came to be agreed upon only after passing of the impugned order for the liquidation of the Corporate Debtor.

Heard, the arguments of the Learned Counsel for the parties and perused the record.

It appears that the Company Petition was admitted by order of the Adjudicating Authority dated 25<sup>th</sup> March 2019. After that, during the CIRP Committee of Creditors was constituted. Several meetings of CoC took place on 23<sup>rd</sup> May 2019, 15<sup>th</sup> July 2019, 20<sup>th</sup> August 2019, 20<sup>th</sup> September 2019, 14<sup>th</sup> October 2019, 15<sup>th</sup> November 2019 and on 19<sup>th</sup> December 2019. During the CIRP only one Expression of Interest was received from the Promoters of the Kansal Group, but they did not submit the Resolution Plan. As the first invitation for Expression of Interest was not fructified, the RP proceeded for the second round of invitation for Expression of Interest, then also no Expression of Interest was received. The Promoters, although being eligible to submit the Resolution Plan, did not submit any Resolution Plan. Therefore, the CoC finally decided to liquidate the Corporate Debtor in its meeting dated 14<sup>th</sup> October 2019 with 100% vote share. Based on the resolution passed by the CoC, the Adjudicating Authority passed an order of liquidation of Corporate Debtor under Section 33(1) of the Insolvency & Bankruptcy Code, 2016.

Given Section 33(2) of the Code, at any time during the CIRP, but before the confirmation of Resolution Plan, when the Resolution Professional, intimates the Adjudicating Authority of the decision of the Committee of Creditors (approved by not less than 66% of voting share) to liquidate the Corporate Debtor, the Adjudicating Authority shall have to pass an order of liquidation.

Admittedly, in this case, the Adjudicating Authority has noticed that the CoC has put all its efforts to see some plan is approved, but nobody came forward to submit the resolution plan. Therefore CoC with 100% vote share

passed the resolution to liquidate the corporate debtor. Section 33(2) mandates the order of liquidation of corporate debtor if the CoC with 66% vote share approve the resolution. The Appellant has challenged the order of liquidation only on the ground that settlement discussion and developments were not apprised with the Adjudicating Authority. After passing the order of Liquidation, the settlement with the Financial Creditor holding 99% share of the CoC came to be agreed upon. The Appellant has not filed any document to show the finalization of settlement with the CoC. However, when CoC approved the resolution 100% vote share to liquidate the Corporate Debtor when no resolution plan was submitted even after every effort of the Resolution Professional, and CoC.

In the circumstances, as stated above, we are of the considered opinion that the issue raised in this Appeal lacks merit. We find no legal infirmity with the impugned order. The Appeal is dismissed at the very threshold.

[Justice Bansi Lal Bhat]  
Acting Chairperson

[V.P. Singh]  
Member (Technical)

[Alok Srivastava]  
Member (Technical)

*pks/gc*