

**NATIONAL COMPANY LAW APPELLAT TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL (AT)(INSOLVENCY) No.171/2019**

**In the matter of:**

Affinity Finance Services Pvt Ltd,  
E-253 Saraswati Kunj,  
Apt. 25, I.P. Extension,  
Patparganj,  
Delhi.  
Vs

Appellant

Kiev Finance Ltd  
Room N.26,  
133, Canning Street,  
Kolkata 700001.

Respondent

Present: Mr. Dilip Kumar Niranjana, Advocate Mr Rishabh Gupta, CS for appellant.

**JUDGMENT**

**26.04.2019**- The appellant, operational creditor, filed petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of corporate insolvency resolution process against the Respondent, Corporate Debtor for committing default in paying of its debt. The petition was admitted by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in terms of order dated 28.02.2018. Interim Resolution Professional was appointed and Committee of Creditors came to be constituted. Subsequently appointment of IRP was confirmed as Resolution Professional. The COC had as many as six meetings but did not receive any resolution plan during the period of 180 days. Resolution Professional approached the

Adjudicating Authority for liquidation of the Corporate Debtor. The Adjudicating Authority passed the liquidation order qua the corporate debtor on the ground that since COC did not receive any resolution plan, the Adjudicating Authority had no alternative but to liquidate the corporate debtor. Resolution Professional was appointed as Liquidator. The order of liquidation dated 10<sup>th</sup> September, 2018 goes un-assailed. However, subsequently an application appears to have been filed by the Liquidator under Section 12(2) read with Section 60(2) of the Insolvency & Bankruptcy Code, 2016 seeking recall of the order dated 10<sup>th</sup> September, 2018 on the ground that after order of liquidation was passed, M/s Nigania Promoters Private Limited approached the Resolution Professional/Liquidator expressing its intention to submit a resolution plan for the corporate debtor. On consideration of the application the Adjudicating Authority was of the view that the order of liquidation of corporate debtor passed by it could not be subjected to review or revocation. It was also noticed by the Adjudicating Authority that corporate debtor could be sold as an ongoing concern during the liquidation process. The application seeking review was accordingly dismissed.

2. After hearing learned counsel for the appellant for a while we find no merit in the instant appeal. Admittedly no resolution applicant came forward with a resolution plan during the corporate insolvency resolution process and the Resolution Professional was left with no option but to seek an order of liquidation from the Adjudicating Authority. Learned Adjudicating Authority also did not have any option but to pass order for liquidation of the corporate

debtor. Even if it is accepted that any resolution applicant did intend to submit a resolution plan before the order of liquidation was passed, same could be evaluated for considering its feasibility, viability and financial matrix only during the period of Insolvency Resolution Process. The Resolution Professional, in terms of Section 30(3) is required to present to the COC for its approval such resolution plans which confirm the conditions referred to in sub-section (2) of Section 30. It is only thereafter that feasibility and viability of such resolution plan is considered by the COC and the resolution plan is subjected to vote. All this has not been done. In fact review was sought on the ground that the proposed resolution applicant intended to file a resolution plan which in fact could not be evaluated and subjected to scrutiny for determining its viability and feasibility by the COC unless the same had been submitted within the prescribed time frame. This, coupled with the fact that the order of liquidation goes un-assailed, did not justify recalling of the order of liquidation at the instance of appellant, operational creditor, who claims to be sole member of COC. The impugned order declining to recall the liquidation order does not suffer from any legal infirmity and we do not find any justifiable ground to interfere. The Adjudicating Authority has rightly pointed out in the impugned order that even during the liquidation process corporate debtor can be sold as an ongoing concern. That should allay the apprehension of the appellant, if any, with regard to fair value of the Assets of the Corporate Debtor.

3. For the aforesaid reasons, the appeal is dismissed. There shall be no order as to costs.

**(Justice Bansi Lal Bhat)**  
**Member (Judicial)**

**(Mr. Balvinder Singh)**  
**Member (Technical)**

**Bm**