

Insolvency and Bankruptcy Board of India

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30th June, 2023

Subject: Judgment¹ dated 23rd June 2023 of National Company Law Appellate Tribunal, Chennai in the matter of V.Duraisamy IRP of M/s. H G S Diaries and Agro Ltd. Vs. Jeyapriya Fruits and Vegetables Commission Agent, [Company Appeal (AT)(CH)(Ins) No.25/2022]

I. BRIEF BACKGROUND

On an application of a operational creditor (OC), Adjudicating Authority (AA) vide orders dated 20.01.2020 admitted M/s H.G.S.Diaries and Agro Ltd. Corporate Debtor (CD) to corporate insolvency resolution process (CIRP). With a view to commencing the processes under the Code, the interim resolution professional (IRP) had sent a letter to the CD to handover the possession of the asset, but the same was returned with an endorsement ‘unclaimed’. The IRP had visited the premises of the CD and the found the same locked. On verification of the records from MCA, the name of CD was found to be struck off from the portal. However, in response to the public announcement, the IRP received claim from only one OC. Accordingly Committee of Creditors (CoC) was constituted with lone OC.

Thereafter, IRP had filed application under section 60(5) of the Code praying for dismissal of CIRP with the AA. However, the said application was dismissed holding that the it had no power to review or recall its own order. Further it was observed that IRP must take steps for restoring the name of CD in the records of Registrar of Companies. Aggrieved by the orders of AA, the IRP filed appeal before National Company Law Appellate Tribunal (NCLAT).

II. ISSUE

Whether an application praying for dismissal of CIRP can be filed by the IRP?

III. OBSERVATIONS

The NCLAT observed that there is no provision in the Code for the constituting CoC with a single OC. While allowing the appeal of IRP, NCLAT observed, *“As the CoC itself is not constituted and in the light of the fact that not a single ‘Claim’ was received by the IRP even after the public announcement, as well as the fact that the Corporate Debtor Company has been struck off from the Registrar of Companies, this tribunal is of the considered view that the CIRP may be closed....*

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