

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 29 of 2024**

(Arising out of the Impugned Order dated 03.10.2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench in I.A. No. 769(AHM)2021 in Company Petition (IB) No. 59/2019]

**IN THE MATTER OF:**

1. **Mr. Rakshit Dhirajlal Doshi**  
Suspended Director of  
M/s Doshion Private Limited  
Building No.9, Sigma Corporate  
Behind Rajpath Club, Off. S.G. Road  
Bodakdev, Ahmedabad  
Gujarat – 380054  
...Appellant No.1
  
2. **Mr. Ashit Doshi**  
Suspended Director of  
M/s Doshion Private Limited  
Building No.9, Sigma Corporate  
Behind Rajpath Club, Off. S.G. Road  
Bodakdev, Ahmedabad  
Gujarat – 380054  
...Appellant No.2

**Versus**

1. **Sumedha Management Solutions Pvt. Ltd.**  
Liquidator of M/s Doshion Pvt. Ltd.  
Having address at:  
8B Middleton Street  
6A Geetanjali Apartments  
Kolkata, West Bengal – 700071  
...Respondent No.1
  
2. **Committee of Creditors of Doshion Private Limited**  
Through Lead Members of Committee of Creditors  
IDBI Bank Ltd.  
IDBI Tower, WTC Complex, Cuffe Parade,  
Mumbai – 400005  
...Respondent No.2

**Present:**

**For Appellant : Ms. Vaishnavi Viswanathan, Advocate**

**For Respondent : Mr. Gaurav H. Sethi, Mr. Anand Joshi, Mr. Deeptanshu Chandra, Mr. Anant Bajpai and Mr. Rahul Pawar, Advocates for R-1**

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

### **(Hybrid Mode)**

#### **[Per: Arun Baroka, Member (Technical)]**

This is an appeal filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) filed by the Suspended Directors (Mr. Rakshit Dhirajlal Doshi and Mr. Ashit Doshi) of the Corporate Debtor M/s Doshion Private Limited (hereinafter referred to as DPL or CD) against the impugned order dated 03.10.2023 passed by the National Company Law Tribunal, Ahmedabad Bench (Adjudicating Authority), as per which the DPL has been admitted into liquidation under Section 33 Code in I.A. No.769(AHM)2021 in CP(IB) No. 59 of 2019.

#### **Brief Background relevant for the case**

2. IDBI Bank (hereinafter referred to as FC) had agreed to sanction financial assistance to the CD to the tune of Rs. 32.7 Crores. Later on in the year 2014, on the request of the CD the Financial Creditor agreed to restructure the loan of the CD under the consortium finance by way of enhanced overall credit limit of Rs.93.48 Crores.
3. On 19.12.2018, the FC filed an application under Section 7 of the IBC before the NCLT, Ahmedabad Bench.
4. On 30.1.2021, Adjudicating Authority admitted Section 7 Petition against the CD in CP(IB) No. 59 of 2019 and an IRP viz. Ramachandran Dallaram Choudhary was appointed.
5. Adjudicating Authority vide its order dated 03.10.2023 decided to liquidate the CD basis unanimous recommendations of the Committee of Creditors (CoC) in this case.

6. This Appeal has been filed against the said liquidation order.

**Grounds of relief:**

7. Appellant claims that the impugned order dated 03.10.2023 is erroneous and is in violation of the IBC. The CoC took the decision to liquidate the CD in its very first meeting before even appointing valuers or before the expression of interest could be published. Applicant claims that CoC assumed that the CD was non-functional since 2016 and therefore there were no chances of getting any EOI or no chances of revival of the CD. Further it was assumed that the resolution applicants bid only on the basis of the available tangible assets and hence the COC were of the view that there were minimal or no chances of getting a resolution plan. It was also noted that other group companies of the CD had failed to receive any resolution plan from prospective resolution applicants. It is submitted that the decision of the COC is arbitrary as it is based on misplaced assumptions. It is claimed that decision to liquidate was taken overlooking the express hesitation of the IRP, which is noted in the minutes of the first COC which is a material irregularity. The order of Adjudicating Authority is rooted in the incorrect premise that the decision of the COC is non justiciable when it has already resolved with requisite majority to liquidate the CD. Adjudicating Authority erred in not even considering the resolution plan that the appellants were desirous of submitting. CD claims to be an MSME and is entitled to revive itself. It is further claimed that Applicants ineligibility under Section 29-A(b) of the Code does not take effect if the classification of wilful default is de hors the RBI circular.

### **Main issues**

8. From the above grounds of relief, the main issues which emerge are as follows:

- a) Whether CoC's decision to liquidate was tainted with material irregularity and arbitrariness or not
- b) Whether the decision of the Adjudicating Authority is based on incorrect premise that once the CoC had decided with the requisite majority to liquidate the CD, such a decision would not be amenable to judicial scrutiny.
- c) Whether the Applicants' ineligibility under Section 29-A(b) of the IBC does not take effect if the classification of wilful default is dehors the RBI circular.

### **Analysis and Findings:**

9. The above three issues are discussed along with other minor issues in subsequent paragraphs.

### **Material irregularity and arbitrariness:**

10. On the first issue that whether CoC's decision to liquidate was tainted with material irregularity and arbitrariness, the sequence of events in the case in hand would make things clear.

11. CIRP was initiated on 31.08.2021. Public announcement was made on 12.9.2021 and the CoC was constituted on 04.10.2021. The first CoC meeting was held on 08.10.21.

12. It is claimed by the Appellant that the Adjudicating Authority erred in not even considering the resolution plan and that the Appellants were

desirous of submitting. CD was an MSME and is entitled to revive itself as per the object and purpose of the IBC Code. Despite the willingness of the Appellants to submit a resolution plan, the CoC resolved to liquidate the CD. Appellants were willing to submit a resolution plan for an amount which is about the estimated liquidation value of the CD i.e. around of Rs. 15 Crores, even then their proposal was not considered.

13. Relevant extracts of the minutes of the first CoC meeting, which convey the thinking and mind of the CoC and will be relevant for further analysis and conclusions, is as follows:

“....

*Further, the representative of the Standard Chartered Bank questioned whether bankers will have to continue the CIRP process for 180 days to which CA Dhaval Jitendrakumar Mistry, assisting IRP replied that there are certain credentials of the company that will fetch value only during the resolution process and as per the various judgement of the supreme court, "Every attempt has to be first made to revive the corporate debtor and make it a going concern, liquidation should be the last resort and thus every effort should be made to revive the corporate debtor. Thereafter, one of the member of the CoC stated that the Resolution Applicant will only pay for the assets of the corporate debtor and not for the carry forward losses so the members of the CoC were of the view that there are minimal/no chances of getting the resolution plan. Further, Mr Jigar Shah questioned to the suspended management that whether there are any ongoing contracts/ licenses of the corporate Debtor which might be beneficial for the resolution applicant as it is into EPC activity and is there any scope for the Resolution Applicant to reap the benefits and to get into the business/ contracts entered by the Corporate Debtor to which the member of the suspended board replied that there were few contracts entered by the corporate Debtor however, the same could not be completed due to financial constraints of the Corporate Debtor. Few contacts are completed up to 80-85% but for further completion it will require investments by the investor so possibility is low to get investment into these projects.*

*Further there is no license involved in this work as it is purely EPC activity and is more of a know how work and not related to technology. ...Further, Mr. Kishor Pankhaniya, authorised representative of Bank of Baroda stated that going through the EOI process is not mandatory and that there are cases in which the Hon'ble NCLT has approved and passed order directly for liquidation without following the EOI process in CIRP. **All the members of the CoC supported and agreed for initiation of liquidation as proposed by Mr Bhavesh Modi.** The IRP hesitantly took the note of the same. Further, the IP stated that various mandatory provision of IBC, 2016 to be followed like appointment of registered values, preparation of Information Memorandum, carrying out transaction audit etc. which are to be complied with irrespective of the status / position of the Corporate Debtor. Further, the IRP apprised that he needs to confirm whether the liquidation application of the Corporate Debtor can be filed before the Hon'ble NCLT without following the above mandatory provisions. The members of the CoC however, insisted the IRP on filing of liquidation application instead of going through the EOI process.”*

*[Emphasis supplied]*

14. The Adjudicating Authority has clearly noted that, in the first meeting of the CoC, it had unanimously resolved to go for the liquidation of the CD, without following the resolution process of inviting the expression of interest, since there were no manufacturing or business activities which were being carried out by the Corporate Debtor. CoC was of the opinion that there were no chances of getting any expression of interest or possibility of revival of the corporate debtor, as it is non-functioning since 2016. The members of the CoC had resolved to sell the estates of the CD as going concern as per Regulation 39C of the CIRP regulations. It was also noted by the Adjudicating Authority that Form H was filed on the e-portal on 18.09.2021 which reveals that 180th day of CIRP period of the CD was over on 26.10.2022 and in all 10 CoC meetings have been held so far. It was also noted by the Adjudicating

Authority that the seven Financial Creditors (5 Banks, 1 ARC and 1 NBFC) have filed an aggregate value of claim to the extent of Rs 1288 Crores approximately. Adjudicating Authority has also noted that during a hearing on 21.09.2023 the suspended management submitted in the Court in affidavit that they are ready to submit the resolution plan subject to receipt of information memorandum to be provided by the RP along with other requisite documents of the CD.

15. Adjudicating Authority has noted that the CoC had, with 100% voting, recommended that the CD should be liquidated and that there were no reasons on record for the adjudicating authority not to disagree with the recommendations of RP/CoC. Further, as per Section 33(2) of the IBC 2016, where the Adjudicating Authority has been intimated by the Resolution Professional about the decision of the CoC for initiation of liquidation, it has go to along with it. Adjudicating Authority has gone along with the recommendations of the COC and ordered for its liquidation. Therefore, it cannot be faulted for not reviewing the decision of the CoC when no such grounds are available.

16. Other arguments of the Appellant that CoC assumed that the CD was not functional since 2016 and there were no chances of getting any EoI or no chance of revival of the CD and also that the resolution applicants bid only on the basis of the available tangible assets and hence the CoC were of the view that there were minimal / no chances of getting their resolution plan and also that other group companies of the CD had failed to receive any resolution plan from prospective resolution applicants are all business inputs which go into the decision making of the CoC. We don't want to dwell into

commercial wisdom. But would be useful to see only few numbers, which we have noted earlier. As noted earlier claims filed are for about Rs 1288 crs and the OTS offered by the Appellant was around Rs 15 crs. Therefore, better that such commercial decisions are better left to the wisdom of the CoC and we are not inclined to review that.

17. The Appellants also brings the issue of the hesitation of the interim resolution professional, which is recorded in the first CoC meeting dated 08.11.2021. In the CIRP proceedings under the IBC, the decision of the CoC is supreme and IRP or RP's subjective views and feelings cannot dictate the outcome or change the direction of the proceedings. The members of the CoC decided to go for liquidation and IRP has to record like that without inserting his feelings.

18. In the above background, it cannot be said that there has been material irregularity in the decision of the CoC. The arguments relating to material irregularity cannot be accepted and are therefore rejected.

**Recommendation of CoC - Liquidation - amenable to judicial scrutiny:**

19. Appellant claims that the decision of the AA is based on incorrect premise that once the CoC had decided with the requisite majority to liquidate the CD, such a decision would not be amenable to judicial scrutiny. Both the above arguments are analysed herein.

20. The Appellant also claims that minutes of CoC goes to demonstrate the haste with which the CoC proposed to liquidate the CD without even assessing the possibilities of reviving it. This is against the object of the IBC and which has also been upheld in the case of Swiss Ribbons (P) Ltd. & Ors.



Vs. Union of India [Writ Petition (Civil) No.99 of 2018]. The Appellant claims that CoCs decision to liquidate the CD is violation of the object of the code.

21. It is noted by us that the decision of the Adjudicating Authority is strongly supported by the legal provisions of the Code particularly Section 33(2). Relevant Sections of the Code, are extracted here which have been relied upon by the Adjudicating Authority:

“...

**33. Initiation of liquidation. -**

*(1) Where the Adjudicating Authority, -*

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -*

*(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*

*(ii) issue a public announcement stating that the corporate debtor is in liquidation; and*

*(iii) require such order to be sent to the authority with which the corporate debtor is registered.*

**(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).**

*Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.*

*....” [Emphasis supplied]*

22. It will be appropriate to reiterate that the IBC provides that where the resolution professional, at any time during the corporate insolvency resolution process, but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order. Herein the CoC recommended with 100% votes for liquidation and the commercial wisdom of the CoC cannot be ignored. Adjudicating Authority has acted as per that.

23. Furthermore, this has been upheld even by the Hon’ble Apex Court. The situations where the recommendations of the CoC can be reviewed are also noted in the judgement of the Apex Court in the matter of **K Shashidhar versus Indian Overseas Bank and others in Civil Appeal No. 10673 of 2018**, wherein it been has held that the commercial decision of the COC is non justiciable. In the above-mentioned judgement it has been clearly noted in para 45 that:

*“...  
Since none of grounds available under Section 30(2) or Section 61(3) of I & B Code were attracted in fact situation of present case, Adjudicating Authority (NCLT) as well as Appellate Authority (NCLAT) had no other option but to record that, proposed resolution plan concerning respective corporate debtor (KS & PIPL and IIL) stood rejected. Further, as no alternative resolution*

*plan was approved by requisite percent of voting share of financial creditors before expiry of statutory period of 270 days, inevitable sequel was to pass an order directing initiation of liquidation process against concerned corporate debtor in manner specified in Chapter III of I & B Code...”*

24. Now we will examine whether the conditions Section 30(2) or Section 61(3) of IBC are attracted in the case in hand, which would have necessitated judicial review, we will first recapitulate them herein. The conditions as per Section 32 of the IBC state that the resolution plan received should provide for the payment of IRP cost, payment of debts of Operational Creditors, provision for the management of the affairs of the Corporate Debtor after approval of the resolution plan, the implementation and supervision of the resolution plan, it should not contravene any provisions of the law and should conform to such other requirements as may be specified by the board. Since in the present case, the CoC had decided to go ahead with the liquidation in the very first meeting, therefore, the above conditions are not attracted.

25. Further, the Appeal under Section 61(3) of the IBC lies on the grounds that (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force; (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board; (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or (v) the resolution plan does not comply with any other criteria specified by the Board. And in the present case, the CoC in its very first meeting had decided to go

ahead the liquidation and CoC and gave a clear finding and also noted that there were no chances of getting an Expression of Interest (EoI) or possibility of revival of the CD as it is non-functioning since 2016. We have seen the records and cannot find any material irregularity as claimed by the Appellant.

26. As argued by the Appellant, we do not find any grounds for the judicial scrutiny of the Resolution plan, as envisaged under Section 30(2) or Section 61(3) of the IBC or any other provisions of the IBC. Therefore, no error can be found in the orders of the Adjudicating Authority.

27. The Appellant has also tried to rely on the following judgements of this Tribunal to claim that the decision of the CoC is justiciable:

- a) ***Sreedhar Tripathy Vs. Gujarat State Financial Corporation & Ors. [Company Appeal (AT) (Ins.) No. 1062 of 2022]***
- b) ***Hero Fincorp Limited Vs. M/s Hema Automotive Private Limited [Company Appeal (AT) (Ins.) No. 1540 of 2022]***
- c) ***Nikhil Tandon Vs. Sanjeev Bindal & Anr. [Company Appeal (AT) (Ins.) No. 13 of 2022]***

28. In the first judgment of NCLAT's ***Sreedhar Tripathi Vs. Gujarat State Financial Corporation & Ors. in Company Appeal (AT) (Insolvency) No. 1062 of 2022*** it has been noted that:

*“7. The Explanation under Section 33 (2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear*

*by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of the each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I&B Code or not. With these observations, the Appeal is dismissed."*

*[emphasis supplied]*

Even in the above-mentioned judgment, it is noted that the CoC, in the Legislative Scheme, has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The observation as highlighted above alone cannot be used to review this decision of the liquidation. Facts in each case have to be seen independently. Here in this case, the facts are distinguishable. There are no circumstances for the decision taken by the CoC to be judicially reviewed by either the Adjudicating Authority or the Appellate Tribunal. Even otherwise as noted in the K Shashidhar versus Indian Overseas Bank [supra] the Hon'ble Apex Court has already noted that review of the decision of the CoC with respect to resolution plan is provided in the Code itself. As per the IBC, even the liquidation can be reviewed as per Section 30(2) or Section 61(3) of the IBC. And we examined earlier that the judicial scrutiny of the resolution plan as envisaged under Section 30(2) or Section 61(3) of the IBC does not get attracted in this case.

29. The other judgment of NCLAT referred to by the Appellant is with respect to ***Hero Fincorp Limited Vs. M/s Hema Automotive Private Limited in Company Appeal (AT) (Insolvency) No.1540 of 2022*** which is distinguishable. As noted in Sreedhar Tripathi [supra] judicial review of the decision of the CoC is not precluded and it depends on the facts of each case and in Hero Fincorp Limited the facts of the case are clearly mentioned in the concluded paragraph, which is quoted as below:

*“14. Coming to the facts of the present case, Form-G having been issued after preparation of the Information Memorandum and the last date fixed by the CoC being 24.10.2022 for receiving Expression of Interest, we are satisfied that Adjudicating Authority did not commit any error in rejecting for liquidation and asking the CoC to reconsider its decision. The order of Adjudicating Authority clearly empowers the CoC to reconsider its decision and take an appropriate decision taking into consideration further facts and events. We, thus, are satisfied that there is no ground to interfere with the impugned order. The Appeal is dismissed. No costs.”*  
*[emphasis supplied]*

Facts of the case in hand are distinguishable as the CoC in its very first meeting had decided to go for liquidation basis their commercial wisdom and therefore, this judgement is not helpful for the Appellant.

30. The Appellant has also relied upon NCLAT's judgment in ***Nikhil Tandon Vs Sanjeev Bindal Liquidator of Radhey Sham Tandon Manufacturing Pvt. Ltd. & Anr in Company Appeal (AT) (Insolvency) No. 13 of 2022***, wherein the order of liquidation was reviewed by the Appellate Tribunal. This case is also distinguishable because the CoC had invited the resolution plan in one of the meetings and later on did not consider it - the extract of the order is quoted herein:

*“16. We have noticed above that in the 6th CoC meeting the Appellant pleaded for submission of Resolution Plan and the CoC permitted the Appellant to file Resolution Plan. In the 5th CoC meeting already a decision was taken by CoC to liquidate the Corporate Debtor. In subsequent CoC meeting when CoC permitted the Appellant to submit a plan by 14th August, 2020, the indication is clear that the CoC has reconsidered its earlier decision and proceeded to consider the plan submitted by the Appellant which was a MSME but ultimately plan was refused to be considered only on the ground that no Resolution Plan was not invited. When in the CoC meeting Appellant was permitted to file a Resolution Plan, it cannot be said that Appellant was not invited to submit a Resolution Plan. It is another issue that CoC ought to have given opportunity to others to submit Resolution Plan by directing for issuance of Form G which was never done. As noted above, the Appellant was not considered as MSME during the proceedings of the CoC and the Liquidators view as reflected in the meeting of CoC and as submitted before us is clearly refuting the claim of the Appellant as Registered MSME. Non-acceptance of Corporate Debtor as a Registered MSME is a material irregularity which has been committed in the Insolvency Resolution Process.”*

31. It is argued by the Appellant that when faced with identical facts in the case of Nikhil Tandon (supra) case, this Appellate Tribunal distinguished the decision in K. Sridhar case and observed that commercial wisdom in reference to approval of resolution plan was not in question and that therefore that decision to liquidate was subjected to judicial scrutiny. This is also not helpful to the Appellant as facts of the case in hand are distinguishable as the CoC in its very first meeting had decided to go for liquidation basis their commercial wisdom unlike the case of Nikhil Tandon.

32. As examined by us in preceding paragraphs, none of the judgements relied upon by the Appellant help them. Therefore, the decision taken by the

CoC to liquidate a CD cannot be subjected to judicial review in the facts of this particular case.

**Ineligibility u/s 29-A(b) of the Code not takes effect if the classification of wilful default is dehors the RBI circular**

33. Another ground for relief is that the Applicants ineligibility under Section 29-A(b) of the IBC does not take effect if the classification of wilful default is dehors the RBI circular. It is claimed that the Applicants ineligibility under Section 29-A(b) of the IBC should not have been applied to classify the applicant as a wilful defaulter. Relevant Section 29-A(b) is quoted here for better appreciation:

***“[29-A. Persons not eligible to be resolution applicant. – A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person –***

*(a) is an undischarged insolvent;*

*(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);”*

*[emphasis supplied]*

34. The Applicants claims that, it being a prospective resolution applicant was declared a wilful defaulter dehors the RBI guidelines. From the records we find that neither IA nor impugned order refers to Appellant’s ineligibility being a wilful defaulter. It is between the Bank and the Appellant. Here in the facts of the case, it is the CoC’s decision recorded in the minutes – which are self-explanatory - and even they don’t refer to Applicants in-eligibility as per Section 29A of IBC. But records show that Appellants has been agitating its classification as a wilful defaulter in Hon’ble High Court of Gujarat at Ahmedabad on various occasions described as follows:



<b>Case No.</b>	<b>Status</b>
<b>SCA No.7598 of 2019</b> Petitioner: 1. Penta Aqua Private Limited 2. Ashit Dhirajlal Doshi 3. Rakshit Dhirajlal Doshi Respondent: 1. Doshion Water Solution Private Limited Thru. Resolution Professional Ketulbhai Ramubhai Patel 2. Bank of Baroda Thru. Asst. General Manager	Vide Oral Order dated 18.04.2019, the Petitioner was permitted to participate in the process by offering resolution plan to respondent no1.
<b>SCA No.12728 of 2020</b> Petitioner: 1. Doshion Private Limited 2. Ashit Dhirajlal Doshi 3. Rakshit Dhirajlal Doshi 4. Amit Dhirajlal Doshi Respondent: 1. Reserve Bank of India 2. IDBI Bank Limited	High Court set aside the order of declaration of wilful default by IDBI Bank and on the behalf of violation of provisions contained in the revised master circular and the matter was remanded back to the identification committee of the bank.
<b>SCA No.2428 of 2022</b> Petitioner: 1. Ashit Dhirajlal Doshi 2. Rakshit Dhirajlal Doshi 3. Fivebro Internation Pvt Ltd Respondent: 1. Reserve Bank of India 2. IDBI Bank Limited	Pending
<b>SCA No.11078 of 2023</b> Petitioner: 1. Ashit Dhirajlal Doshi 2. Rakshit Dhirajlal Doshi 3. Amit Dhirajlal Shah Respondent: 1. Reserve Bank of India 2. IDBI Bank Limited thru. Deputy General Manager 3. Doshion Private Limited thru. Resolution professional Ramchandra Dallaram Chaudhary	Pending. Bank shall not take any further steps in so far as the action of declaring the petitioners as wilful defaulter is concerned.

35. Perusal of the above records of the Hon'ble High Court of Gujarat indicate that this issue of wilful default has been raised multiple times. On the other hand the decision of the Adjudicating Authority and the

recommendations of the CoC don't refer to the ineligibility basis Section 29-A(b) of the IBC. Even then it is noted from the minutes of the first CoC meeting of 8.10.2021, which is post Oral Order dated 18.04.2019 of Hon'ble High Court of Gujarat, the Appellant was present and resolution of the CD was discussed with him and thereafter basis their commercial wisdom, it was decided to go for liquidation of the CD. CoC had given a clear finding that there were no chances of getting an EoI or possibility of revival of the CD basis the facts of the case.

### **Conclusions and orders**

36. We have heard the counsel of the Appellant and also perused the records. CoC is a time bound process and even then, after the filing of the IA for liquidation on 10.11.2021, the Adjudicating Authority had given sufficient time and opportunities for the contending parties and ultimately decided on 03.10.2023 for the liquidation of the CD. We don't find any haste in decision making.

37. The matter had also travelled to various Courts. Adjudicating authority has also noted that even though the suspended directors had gone in an appeal to NCLAT, before the issue of the orders for Liquidation by the Adjudicating Authority, and also to the Hon'ble Apex Court, but there is no relief in the matter. This Appellate Tribunal in the Appeal filed by the Appellant in Company Appeal (AT) (Ins) No.269 of 2022 had affirmed the decision of the Adjudicating Authority in CP(IB) No.59 of 2019. Later on, the Applicant took up the matter before Hon'ble Apex Court in Civil Appeal No.839 of 2023 on 06.02.2023, which affirmed the decision of the Adjudicating Authority in the CP(IB) No.59 of 2019. The Appellant had once again, on 18.04.2023 filed an I.A. No.528 of 2023 in CP(IB) No.19 of 2019,

praying that the Adjudicating Authority may direct the respondents to invite EoI and further call for the resolution plan of the CD in accordance with the provisions of the Code. Appellant has submitted before the Adjudicating Authority on 04.09.2023 that they are willing to submit a resolution plan for an amount which is above the estimated liquidation value of the CD i.e. around Rs.15 Crores. But the Adjudicating Authority admitted the CD into liquidation.

38. The findings of the Adjudicating Authority on 03.10.2023 are very clear. The relevant extracts of the order of the Adjudicating Authority would help to underscore the justification for liquidation and counter to all the arguments of the Appellant relating to violation of objects of the Code for resolution and also judicial scrutiny of the recommendations of the CoC and also material irregularity. Relevant extracts of the orders of the Adjudicating Authority dated 03.10.2023 are:

“...

*13. The CoC of the corporate debtor with 100% majority has already resolved to liquidate the corporate debtor in meeting held on held on 08.10.2021, the resolution of the CoC is extracted below: -*

*“The members of the CoC through e-voting dated 02.11.2021 approved the resolution No.004 for Initiation of Liquidation Process under Section 33 of the Insolvency and Bankruptcy Code 2016 and appointment of Liquidator with 100% voting in favour of the said resolution.”*

*14. The appeal made by the suspended directors before the Hon'ble NCLAT has already been dismissed*

*stated in Para 10 above however, none appearing before us as brought out the status of the Civil Appeal filed by the suspended directors before the Hon'ble Supreme Court, however, all parties have confirmed that there is no stay in the matter.*

*15. Hon'ble Supreme Court in the matter of K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.*

*16. As the CoC has already resolved that 100% majority to liquidate corporate debtor and as the CIRP Period is already over on 26.02.2022 and there is no CIRP period left, we are constrained to order for liquidation of the corporate debtor.....”*

39. The CoC has taken a commercial decision, basis their discussion within the lenders and also with the Appellant and they have come to a conclusion for liquidation of the CD. Commercial wisdom of the CoC has been exercised in a clear and forthright manner. The Adjudicating Authority has also relied upon that. We cannot find any irregularity on the part of CoC or Adjudicating Authority, so these averments of the material irregularity and arbitrariness cannot be sustained.

40. We find that liquidation was ordered by the Committee of Creditors with 100% majority vote. This was very clearly and un-ambiguously established in the very first meeting of CoC. The commercial wisdom of the COC has been converted into a decision of liquidation as per Section 33(2) of the IBC, instead of going for calling for resolution claim. When such a decision has been taken

and when no grounds have been made out as per Section 61(4) of the IBC and there is no grounds of material irregularity, we do not find any justification for review of the orders of the Adjudicating Authority, which are based on commercial wisdom of the CoC. Under these circumstances, we cannot interfere in the orders of the Adjudicating Authority. Accordingly, we dismiss this Appeal.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Mr. Barun Mitra]**  
**Member (Technical)**

**[Mr. Arun Baroka]**  
**Member (Technical)**

**8<sup>th</sup> February, 2024**  
*pks*