

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 21 of 2023

Aishwarya Mohan Gahrana

... Appellant

versus

Rajesh Narang & Another

... Respondents

O R D E R

- 1 This appeal arises from a judgment dated 9 December 2022 of the Principal Bench of the National Company Law Appellate Tribunal¹ in Company Appeal (AT) (Insolvency) No 612 of 2021.
- 2 An appeal against the impugned judgment which was filed by LIC Housing Finance Limited, the financial creditor (Civil Appeal No 543 of 2023) was dismissed by an order dated 9 February 2023.
- 3 The present appeal has been instituted by the Resolution Professional ², confined to certain directions which were issued by NCLAT against her on the basis of certain observations contained in the judgment in regard to her conduct.
- 4 Hence, it is clarified at the outset that the order, in the present appeal has no bearing on the earlier order of this Court dated 9 February 2023 which has affirmed the directions contained in the order of the NCLAT setting aside the order for liquidation of the Corporate Debtor.
- 5 The Corporate Debtor is a company by the name of Durha Vitrak Private Limited. LIC Housing Finance Limited sanctioned and disbursed a loan of Rs 33 Crores to

1 “NCLAT”

2 “RP”

the Corporate Debtor between March 2016 and February 2017. The Corporate Debtor conducts a hospital by the name of Febris Multi Speciality Hospital in West Delhi.

- 6 The account of the Corporate Debtor was declared as a non-performing asset on 7 April 2018. As on 31 January 2019, there was a default in the payment of outstanding dues to the Financial Creditor amounting to Rs 39.97 Crores.
- 7 On 8 November 2019, acting on an application under Section 7 of the Insolvency and Bankruptcy Code 2016³, which was instituted by the Financial Creditor, the National Company Law Tribunal⁴ issued an order of admission thereby initiating the Corporate Insolvency Resolution Process⁵. The appellant was appointed as Interim Resolution Professional⁶.
- 8 The IRP convened the first meeting of the Committee of Creditors⁷ on 9 December 2019. On 3 January 2020, the Resolution Professional filed an application against the suspended Board of Directors seeking directions for the provision of documents/information pertaining to the Corporate Debtor.
- 9 On 14 January 2020, 25 January 2020, 29 July 2020 and 7 September 2020, the Resolution Professional convened the second, third, fourth and fifth meetings of the COC.
- 10 On 16 September 2020, the NCLT extended the CIRP period by 90 days while granting an extension of the period from 24 March 2020 till 31 July 2020 due to the COVID-19 pandemic.

3 “IBC”

4 “NCLT”

5 “CIRP”

6 “IRP”

7 “COC”

- 11 On 28 January 2021, the sixth meeting of the COC was convened. On 11 February 2021, the appellant moved an application under Section 33(2) of the IBC seeking the initiation of liquidation against the Corporate Debtor.
- 12 On 20 May 2021, the NCLT passed an order for liquidation. The earlier order was subsequently reopened due to a mistake in the constitution of the Bench. Eventually on 31 May 2021, a fresh order for liquidation was passed.
- 13 By its order dated 9 December 2022, NCLAT allowed the appeal filed by a Director of the Corporate Debtor and set aside the order of liquidation while remanding the proceedings back to the NCLT. However, while doing so, the NCLAT has entered certain findings of fact in regard to the conduct of the appellant and directed IBBI to conduct an enquiry. IBBI has also been directed to examine as to whether any cognizable offence has come to the fore and if so, to proceed to lodge a First Information Report.
- 14 Primarily, three findings have been recorded by the NCLAT against the appellant:
 - (i) As a Resolution Professional, the Appellant chose to visit the premises of the Financial Creditor and convened the meetings of the COC there, which gives rise to doubts about the independence of the appellant;
 - (ii) The Resolution Professional furnished an incorrect picture of the working of the hospital to the COC;
 - (iii) The Resolution Professional turned down proposals for re-starting the hospital; and
 - (iv) The Resolution Professional disregarded the order of the Delhi High Court which had directed the RP to take a decision on the offer of the respondent to run the hospital during the COVID-19 Pandemic.

15 The submissions which have been urged on behalf of the appellant by Mr Shyam Divan, senior counsel, are as follows:

- (i) Meetings of the COC were arranged in the Meeting Room of LIC Housing Finance Limited for the purpose of cost cutting. LIC Housing Finance Limited held a 93.37% share of the voting share in the COC and no other lender had objection to the convening of the meetings at the venue;
- (ii) The CIRP commenced on 8 November 2019 while the 6th COC Meeting took place on 28 January 2021 after the lapse of more than 330 days. At the meeting, two plans received by the Resolution Professional were duly considered by the COC and were rejected. One of the rejected plans was the subject matter of challenge by the Resolution Applicant, which was rejected by the NCLT and NCLAT;
- (iii) The erstwhile promoters of the Corporate Debtor had not cooperated with the Resolution Professional leading her to move an application for providing information and documents;
- (iv) The total amount which was available in the four accounts of the Corporate Debtor on the date of the CIRP stood at Rs 32,296/-. As a consequence, the financial affairs of the hospital were in a poor state and even the salaries of the staff at the hospital had not been paid for several months; and
- (v) The Resolution Professional had no funds available to conduct the hospital which had 109 beds. Ultimately, the decision which was taken by the COC to liquidate the Corporate Debtor was in its commercial wisdom.

- 16 On the other hand, it has been asserted on behalf of the promoters of the Corporate Debtor that the appellant as a Resolution Professional failed to carry out the duty of conducting the hospital as a going concern. Hence, it was urged that NCLAT was justified in coming to the conclusion that there was a failure on the part of the Resolution Professional to discharge her duties as RP. It has been submitted that NCLAT has merely directed the IBBI to conduct an enquiry into the conduct of the appellant as a Resolution Professional, which should not warrant interference in appeal.
- 17 As already noted above, the appeal which was filed by the Financial Creditor against the impugned order of the NCLAT has been dismissed by this Court on 9 February 2023. Consequently, the order of the NCLAT setting aside the liquidation of the Corporate Debtor and remitting the proceedings back to the NCLT has attained finality.
- 18 Counsel appearing on behalf of the Financial Creditor has raised a serious grievance about the conduct of the promoters and urged that the promoters have not been able to come out with any offer for repayment of the dues or, for that matter, for the revival of the Corporate Debtor.
- 19 We are of the considered view that the findings which were arrived at by NCLAT against the appellant in her capacity as a Resolution Professional failed to notice the steps which were taken by the appellant. The observations of the NCLAT substantially proceed on the basis of conjecture and surmises without there being any cogent material in support of the findings. The explanation which has been furnished by the appellant as Resolution Professional cannot be lightly brushed aside. Hence, we are of the view that the findings contained in the impugned order against the appellant as a Resolution Professional and the direction to the IBBI to conduct an enquiry are unsustainable and should be set aside.

- 20 We order accordingly.
- 21 However, we clarify that, as already observed earlier, this shall not affect the earlier direction which has been issued by NCLAT for setting aside the order of liquidation and for the consequential actions which are to be pursued in pursuance, thereof.
- 22 We also record the statement which has been made by Mr Shyam Divan, senior counsel appearing on behalf of the appellant, that having regard to the antecedent background, the appellant shall not continue any further as a Resolution Professional.
- 23 The appeal is accordingly disposed of.
- 24 The appellant is permitted to move the NCLT for seeking suitable directions for her discharge and substitution by an alternate Resolution Professional.
- 25 Pending application(s), if any, stands disposed of.

..... CJI.
[Dr Dhananjaya Y Chandrachud]

..... J.
[J B Pardiwala]

ITEM NO.34

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 21/2023

AISHWARYA MOHAN GAHRANA**Appellant(s)****VERSUS****RAJESH NARANG & ANR.****Respondent(s)****(IA No. 818/2023 - STAY APPLICATION)****Date : 01-05-2023 This appeal was called on for hearing today.**

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) **Mr. Shyam Divan, Sr. Adv.**
 Mr. Ankur Mittal, AOR

For Respondent(s) **Mr. Rajat Bhardwaj, AOR**
 Ms. Ankita M Bhardwaj, Adv.
 Mr. Kanishk Raj, Adv.
 Mr. Yogesh Kumar, Adv.

Mr. Ashok Panigrahi, AOR
Ms. Geetanjali Das Krishnan, Adv.
Mr. Nabab Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 The appeal is disposed of in terms of the signed order.
- 2 Mr Shyam Divan, senior counsel appearing on behalf of the appellant states that having regard to the antecedent background, the appellant shall not continue any further as a Resolution Professional.
- 3 The appellant is, thus, permitted to move the NCLT for seeking suitable directions for her discharge and substitution by an alternate Resolution Professional.
- 4 Pending application(s), if any, stands disposed of.

(MANISH ISSRANI)
COURT MASTER(SH)

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(SIGNED ORDER IS PLACED ON THE FILE)