

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (CH) (INS.) No. 359/2023

(IA Nos. 1089, 1090, 1091, 1092/2023)

(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Against the Impugned Order dated 23/01/2023 in

C.P.(IB) No. 102/7/HDB/2019 passed by the 'Adjudicating Authority',

National Company Law Tribunal, Hyderabad Bench-II)

In the matter of :

Mr. Jagadish Prasad Sarda

(suspended Director & Promoter of M/s. Sarda Agro Oils
Ltd.)

Office at:

Plot No. 655, Satamraj Village
Gaganpahad, R.R. Dist.
Telangana-501323

Residential Address:

Villa No. 35, Pearl County Attarpur
Hyderabad 48, Telangana.

... Appellant

Versus

1. **Indian Bank**
(Erstwhile Allahabad Bank)

Branch Office at:

Himayathnagar Branch, 3-6-435
Ground floor, Main Road,
Hyderabad-500290, Telangana

...Respondent No. 1

2. **Mr. Madhusudhan Rao Gonugunta**
(IP Reg. No. IBBI/IPA-001/IP-P00181/2017-
18/10360)
(Former Resolution Professional of M/s. Sarda
Agro Oils Ltd.)

Address:

1209, 11th Floor, Vasavi MPM Grand
Yella Reddy Guda Rd, Opp. South India
Shopping Mall
Ameerpet, Hyderabad, Telangana-500073.

...Respondent No.2

Present :

For Appellant : Ms. Tanu Priya Gupta &
Ms. Kushi Sharma, Advocates
For Respondent No. 1 : Mr. Sundar Raajan, Advocate
For Respondent No. 2 : Mr. Madhusudhan Rao Gonugunta, Advocate

J U D G M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 09/01/2023 read with the Corrected Order dated 23/01/2023, passed by the ‘Adjudicating Authority’ / ‘National Company Law Tribunal, Hyderabad Bench – II’, in C.P.(IB) No. 102/7/HDB/2019, the Suspended Director and Promotor of the Corporate Debtor Company, preferred this Appeal, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’).
2. By the Impugned Order, the Adjudicating Authority has allowed the Application filed by the Resolution Professional (“RP”) of the Corporate Debtor Company seeking direction to liquidate the Corporate Debtor and to appoint the Applicant as the Liquidator to administer the Liquidation Process. It is noted by the Adjudicating Authority that the CoC in its commercial wisdom, approved the Liquidation of the Corporate Debtor, with a 100 % majority. In view of the fact that the CIRP Period of 270 days was concluded on 28/08/2020, the Adjudicating Authority thought it fit to allow the Application.

3. The Learned Counsel for the Appellant submitted that the Corporate Debtor Company was affected by the misappropriation of huge sums of money by a former Director, against whom an FIR was also lodged at Central Crime Station, Hyderabad and that the forfeiture of funds due to non-operation of the Respondent's Banks in terms of non-renewal of limits, freezing the Company's accounts, not allowing the roll-over of import bills within the limits had caused immense financial distress to the Company and hence the loan account of the Corporate Debtor Company was declared as a 'Non Performing Asset' ("NPA") and the company went into CIRP. It is submitted that during the CIRP Proceedings, ten Applicants had showed their interest but only two Applicants had submitted their Resolution Plans. It is argued that despite objections raised by the Appellant, regarding collusion of the RP with the Resolution Applicants, the CoC had taken into consideration the offer made by the Resolution Applicants. The Learned Counsel drew our attention to the Minutes of the 10th CoC Meeting in which Meeting the Resolution Plan offered by the Appellant was rejected and the RP had kept two Resolution Plans for re-voting purpose. Apart from raising various allegations against the RP, it is submitted that in the 11th CoC Meeting held on 25/10/222, the RP had sought to file an Application seeking direction for Liquidation.

4. It is submitted by the Learned Counsel for the Appellant that the Appellant was kept in the dark about the initiation of Liquidation Proceedings and also

regarding the Resolution of the e-voting of the two Resolution Applicants. It is contended that the RP ought to have taken adequate steps for recovering the Applicant's huge receivables but instead did not make any effort to revive the Company and went ahead to file an Application for Liquidation. In the 11th CoC Meeting, it was deliberated and also recorded in item 7.2 that all the CoC Members discussed in detail and decided to explore the possibility of 'Compromise or Arrangement' before passing any Liquidation Order, but the RP did not take any steps in this direction. It is strenuously argued by the Learned Counsel for the Appellant that prior to ordering Liquidation, the Resolution Plan of the Appellant ought to have been considered by the CoC and all possibilities ought to have been explored to keep the Corporate Debtor Company as 'a Going Concern' instead of ordering for Liquidation.

5. It is seen from the record that in the 6th CoC Meeting, only two Resolution Plans have been received and the last date for submission of the Resolution Plan was extended upto 22/06/2020. In the 7th CoC Meeting dated 24/06/2020, Prospective Resolution Applicants' Plans were examined. In the 8th CoC Meeting dated 21/07/2020 and in the 9th CoC Meeting dated 25/07/2020, some more time was given to the PRAs to improvise on their Plans. In the 10th CoC Meeting dated 29/07/2020, the improved Plans were once again reviewed and since the CIRP period of 270 days would end on 28/08/2020, the CoC with 100 % voting right approved the Liquidation of the Corporate Debtor Company. It is seen from the

record that this Tribunal vide Order dated 28/08/2020 in Company Appeal (AT) (Ins) No. 183/2020 set aside the Admission Order of the Adjudicating Authority initiating CIRP and therefore, the Proceedings were closed vide Order dated 11/09/2020. Subsequently, the NCLAT Order was set aside by the Hon'ble Supreme Court vide Order dated 13/09/2022 in Civil Appeal No. 3849/2020 and the Order of the Adjudicating Authority admitting the Corporate Debtor Company into CIRP on 27/08/2019, was restored. In the meantime, the CoC in its 11th Meeting decided to explore the possibility of sale of the Corporate Debtor Company as 'a Going Concern' as per Regulation 39 of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016. Section 33 which deals with 'Initiation of liquidation' reads as under :-

Section 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 purposes 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.]

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54-L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a Liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section(1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

6. It is an admitted fact that there was no Resolution Plan which was approved by the CoC, prior to the expiry of the CIRP Period and therefore, the Adjudicating Authority passed the Liquidation Order as mandated under Section 33 (2) of the Code. Having regard to the fact that the CIRP period of 270 days was over and the CoC had voted in favour of Liquidation of the Corporate Debtor Company with a 100 % majority, we do not see any substantial reasons in the argument of

the Learned Counsel for the Appellant that their Plan ought to have been considered. The material on record establishes that Section 33 (1) (a) (i) and Section 33 (2) of the Code have been satisfied, IBC is a time bound process and the commercial wisdom of the CoC is to be given paramount importance for approval/rejection of a Resolution Plan. The Hon'ble Supreme Court in a catena of Judgments namely, '*Kalparaj Dharamshi v. Kotak Investment Advisors Ltd.*' reported in [(2021) 10 SCC 401], '*K. Sashidhar Vs. Indian Overseas Bank*' reported in [(2019) 12 SCC 150] has laid down that the Judicial review of the Tribunals is limited in terms of impeding the commercial wisdom of the CoC except when a Plan is not in adherence to Section 30 (2) of the Code.

7. In the instant Case, there is no Resolution Plan in the offing, and the CoC has approved the Liquidation with a 100 % Voting as mandated under Section 33 of the Code, and there being no possibility of sale of the Corporate Debtor as 'a Going Concern', we see no substantial grounds to interfere with the well-considered Order of the Adjudicating Authority and hence, this Company Appeal (AT) (CH) (Ins) No. 359/2023 is dismissed accordingly. No Order as to Costs. All Connected Pending Interlocutory Applications, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

23/11/2023
SPR/TM