

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 908 of 2024

IN THE MATTER OF:

Sh. Sudhir Kumar Awasthi

...Appellant

Versus

**Avinash EM Projects Pvt. Ltd. & Ors.
(Through its Liquidator)**

...Respondents

Present:

For Appellant : Present but appearance not marked.

For Respondents : Ms. Udit Singh, Advocate for R-1.

Ms. Jagriti Ahuja, Mr. Vijay Dutt, Advocates for R-2.

ORDER
(Hybrid Mode)

03.07.2024: Heard learned counsel for the Appellant as well as learned counsel for the Respondent. This Appeal has been filed against the order dated 18.03.2024 by which order the Adjudicating Authority has allowed the application I.A. No. 6451 of 2023 filed by the Resolution Professional seeking liquidation. The Adjudicating Authority by the impugned order has allowed the application. Aggrieved by the said order, this appeal has been filed by the Appellant who is Suspended Director of the Corporate Debtor.

2. Learned counsel for the Appellant submits that there are no reasons given in the third CoC meeting with regard to decision to liquidate. He submits that the Corporate Debtor is also not been sold as going concern. He submits that there are chances of revival.

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3. Learned counsel for the Respondent submits that the CoC has discussed in the third CoC meeting as well as in fourth CoC meeting and resolution was passed in fourth CoC, Item 11 was passed for liquidation. It is submitted that there are no assets and Corporate Debtor has already been blacklisted.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. In so far as submissions of learned counsel of the Appellant that there are no reasons given in the minutes of the meeting of CoC for taking decision to liquidate the Corporate Debtor, we have looked into the third and fourth CoC meeting, the CoC has elaborately discussed the future course of action and consciously took decision that no Form G shall be published and after decision that no Form G be published, decision was taken to liquidate. The reasons are contained in the discussions in the CoC meeting which reflect that CoC has deliberated on all aspects of the matter and taken decision to liquidate the Corporate Debtor. Under the statutory scheme, the CoC is empowered to take decision to liquidate although judicial review is permitted to said decision but there have to be adequate ground to interfere with said decision by the Court in exercise of judicial review. In facts of the present case, the Adjudicating Authority rightly allowed the application for liquidation.

6. In so far as submission of the learned counsel for the Appellant that Corporate Debtor should be sold as going concern, it is always open for the

Appellant to file appropriate application before the Adjudicating Authority seeking such relief as advised.

7. With these observations, we dispose of the Appeal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn