

Mr Kuldeep Verma Resolution ... vs State Bank Of India And Ors on 16 March, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 98 of 2021

In the matter of:

Kuldeep Verma,
Resolution Professional K.S Oils Ltd.
46bb Ganguly Street, 5th Floor
Unit No.501, Kolkata - 700 012

....Appellant

Vs.

1.State Bank of India

Kind Attn: Shri N N Mathur, AGM
11th Floor, Stressed Assets Management Branch,
Jawahar Vyapaar Bhawan,
1, Tolstoy Marg, New Delhi- 110001

....Respondent No.1

2. Phoenix ARC Private Limited

(Acting in its capacity as Trustee of
Phoenix Trust FY 14-3& Phoenix Trust FY 15-15)
5th Floor, Dani Corporate Park, 158 CST Road,
Kalina, Santacruz E, Mumbai - 400 098

...Respondent No.2

3.SREI Infrastructure Finance Limited

Vishwakarma 86C, Topsia Road (South),
Kolkata - 700 046

...Respondent No.3

4.IDBI Bank Limited

IDBI Tower, 1st Floor, Plot No.C-7,
G-Block, Opposite NSE,
Bandra, Kurla Complex,
Bandra (East), Mumbai - 400 051

...Respondent No.4

5.Central Bank of India

Jail Road, Areara Hills, Bhopal,
Madhya Pradesh - 462 011

...Respondent No.5

6.Union Bank of India,

(Erstwhile Andhra Bank)
Specialised Asset Recovery Management Branch)
1st Floor, M-35, Connaught Circus,
New Delhi - 110 001

...Respondent No.6

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7.Punjab National Bank
PNB Asset Recovery Management Branch,
20 Sneh Nagar, Sapna Sangita Road,
Indore - 452 001, Madhya Pradesh ...Respondent No.7

8.The Jammu & Kashmir Bank Ltd
Impaired Assets Recovery Branch,
4th Floor, 5/1 Prestige Terraces,
Union Street, Off Infantry Road
Bengaluru - 560001 ...Respondent No.8

9.Life Insurance Corporation of India
LIC of India, Central Office, 6th floor,
East Wing, Jeevan Bima Marg, Mumbai - 400 021 ...Respondent No.9

10. PEC Ltd
Hansalaya, 15 Barakhamba road,
New Delhi - 110001 ...Respondent No.10

11.The Federal Bank Ltd
134, 13th Floor, Jolly Maker- II
Vinay K Shah Marg
Nariman Point, Mumbai 400 021 ...Respondent No.11

12.Bank of India
Gwalior Branch, Sanjay Complex,
Jayendraganj, Gwalior, MP ...Respondent No.12

13.Cooperative Rabo Bank U.A
20/F, Tower, A Peninsula Business Park,
Senapati Bapat Marg, Lower Parel,
Mumbai- 400013 ...Respondent No.13

14.Mr. Ramesh Chandra Garg
Chairman & Managing Director (Suspended)
C/o. K S Oils Limited, Jiwaji Ganj, Morena,
Madhya Pradesh - 476 001 ...Respondent No.14

15.Mr. Davesb Agarwal
CFO and Executive Director (suspended)
C/o. K S Oils Limited
Jiwaji Ganj, Morena, MP - 476 001 ...Respondent No.15

Present: Appellant: Mr. Vivek Sibal, Mr. Rahul Sharma, Advocates Mr.
Kuldeep Verma (RP in person).

Respondents: Ms. Pooja M Saigal, Mr. Shantanu Chaturvedi, Mr. Anshul
Bajaj, Advocates for R14 & 15.

Company Appeal (AT) (Insolvency) No. 98 of 2021

Mr. Sumant Batra, Mr. Sanjay Bhatt, Ms. Niharika Sharma, Advocates for
R1-13

Mr. Ramji Srinivasan, Senior Advocate with Mr. Ashutosh Ghade, Mr.
Shashvata Shukla, Ms. Rajshree Chaudhary, Mr. Shivkrit Rai, Advocates
for Intervenor ('Om Shri Shubh Labh Agritech Pvt. Ltd.)

JUDGEMENT

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER.

1. The present Appeal is filed by the Appellant - Mr. Kuldeep Verma, Resolution Professional ('RP') of M/s. K.S Oils Ltd, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against the Impugned order dated 01.01.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench at Ahmedabad Court No.1) in IA No. 165/2018 in CP(IB) No. 32 of 2017 (TP No. 60/2019).

2. The grievance of the Appellant - RP is that as on 01.01.2021 i.e. the date of hearing by the Adjudicating Authority as above, despite lapse of 981 days from the date of filing (23.04.2018/26.04.2018) of the Application i.e. IA No. 165/2018 seeking broadly to consider passing orders for liquidation of the Corporate Debtor i.e. M/s. K.S Oils Ltd., as no Resolution Plan has been approved by the Committee of Creditors (CoC) before the maximum period permitted for the Corporate Insolvency Resolution Process ('CIRP') under Section 12 of the Code:

instead the Adjudicating Authority has dismissed the Interlocutory Application ('IA') as not maintainable and being infructuous. Company Appeal (AT) (Insolvency) No. 98 of 2021

3. The Appellant has accordingly sought the following reliefs:

a. Allow the instant appeal and set aside/quash the impugned order dated 01.01.2021 passed by the Ld. Adjudicating Authority, NCLT, Indore Bench at Ahmedabad in IA No. 165/2018 in CP(IB) No. 32 of 2017 (TP No.60/2019).

b. Pass an order initiating liquidation of the Corporate Debtor M/s.

K.S.Oils Ltd., under section 33(1) of IBC,2016; and c. Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.

4. Learned Counsel for the Appellant has made a detailed submission which includes followings:

a. Section 12 of the Code requires completion of CIRP within a period of 180 days from the date of submission of the Application whereas in this case even on completion of 270 days from the date of CIRP commencement the Appellant filed the said IA No.165/2018 for appropriate order to be passed by Adjudicating Authority under Chapter -III of the Code, the Adjudicating Authority has erred in not passing

Liquidation order but has dismissed the IA as not maintainable & infructuous.

b. The said IA was listed and heard on 31 hearings commencing from 11.05.2018, 21.06.2018, 19.07.2018, 04.09.2018, 03.10.2018, 30.10.2018, 11.12.2018, 04.02.2019, 18.03.2019, 03.04.2019, 12.04.2019, 26.04.2019, 28.06.2019, 19.07.2019, 08.08.2019, Company Appeal (AT) (Insolvency) No. 98 of 2021 06.09.2019, 25.09.2019, 25.10.2019, 22.11.2019, 13.12..2019, 19.12.2019, 03.01.2020, 23.01.2020 (Order Reserved), 03.07.2020 (List the matter for further consideration), 10.09.2020 (Order Reserved), 16.09.2020 (Further consideration on 28.09.2020), 28.09.2020, 08.10.2020, 27.11.2020, 10.12.2020 and 01.01.2021 (dismissed being infructuous).

c. History of the case is that an Application under Section 7 of the Code was filed by SREI Infrastructure Finance Limited (SREI) and on 21.07.2017 the Adjudicating Authority has admitted the Petition filed in respect of M/s. K.S.Oils Ltd- Corporate Debtor and ordered for CIRP. SREI is also a Financial Creditor who submitted a Resolution Plan dated 09.04.2018 as Resolution Applicant and the same was put to vote in the 7th CoC Meeting held on 13.04.2018 and the Resolution Plan was rejected by a vote of 71.34%. Since the maximum statutory period of 270 days concluded on 16.04.2018 without a Resolution Plan approved by CoC, the RP filed an application IA No. 165 of 2018 to consider passing of orders for liquidation of the Corporate Debtor under Chapter -III of the Code. However, the Adjudicating Authority asked the RP to consider addendum -III dated 04.05.2018 submitted by SREI to the Resolution Plan as stated above for placing before the CoC. The RP placed the said addendum before the CoC on 13.06.2018; the same was rejected by e-voting of 76.50%. The RP filed affidavit on 27.06.2018 apprising the Adjudicating Authority. The Adjudicating Authority again asked the RP to consider the Addendum -IV dated Company Appeal (AT) (Insolvency) No. 98 of 2021 09.07.2018 to the said Resolution Plan and place before the CoC. The CoC members filed individual affidavit confirming that Addendum -IV has been rejected by 69.14% voting. SREI again submitted Addendum -V dated 11.04.2019 and RP was asked by Adjudicating Authority to place before the CoC. The RP convened the meeting of the CoC on 12.07.2019 and Addendum -V was rejected by 64.16% of the voting. The Adjudicating Authority vide its order 08.08.2019 again directed CoC to consider positive workable solution for the Corporate Debtor by considering any of the 5(Five) Addendum. The RP called 10th meeting of the CoC on 29.08.2019 and CoC rejected all Addendum upto V with 77.96% of the voting shares. The RP filed additional affidavit dated 03.09.2019 that CoC has rejected all the Addendums and also resolved for liquidation of the Corporate Debtor. The Appellant also filed his consent to act his Liquidator of the Corporate Debtor.

d. State Bank of India, one of the CoC Member, on behalf of Joint lenders forum who collectively holds 76.53% of the voting rights of the CoC filed an appeal before the Appellate Tribunal bearing No. Company Appeal (AT) (Ins) No. 1015 of 2019 on the ground that Adjudicating Authority has not adhered to the timelines of CIRP and has not passed liquidation order even after completion of maximum period allowed under CIRP requiring Adjudicating Authority under Part-III of the Code for initiation of Liquidation. The order passed by this Tribunal is extracted below:

Company Appeal (AT) (Insolvency) No. 98 of 2021 18.11.2019- The Appellant - 'State Bank of India' is one of the member of the 'Committee of Creditors'. It has challenged the order dated 6th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, which reads as follows: "The parties are represented through learned counsels. On the request of the proposed Resolution Applicant, the matter is adjourned. List the matter on 25.09.2019." The main plea taken by the Appellant is that the 'resolution plan' was revised 5 times and the Adjudicating Authority adjourned the matter from time to time even after the impugned order. Till date, no final order has been passed. Learned counsel for the 'Resolution Applicant' submits that the matter relates to 'Madhya Pradesh' for which 'Indore Bench' had been notified initially but there was no Bench constituted and now the Hon'ble Members of the 'Ahmedabad Bench' have been allowed to take up 'Indore Bench matters' at Ahmedabad. Learned counsel for the Appellant submits that the 'revised plan' has already been filed, which may be considered by the 'Committee of Creditors'. In the facts and circumstances, we allow the 'Committee of Creditors' to consider the 'revised plan', if any, filed or is to be filed within a week. The 'Committee of Creditors' is allowed to consider the same within 2 weeks from the date of this order or receipt of the 'revised plan' and in case the 'proposed resolution plan' is not filed within a week, the Adjudicating Authority will take up the application under Section 33 of the 'I&B Code' and pass Company Appeal (AT) (Insolvency) No. 98 of 2021 appropriate order in accordance with law. The appeal stands disposed of.

e. Even after this Appellate Tribunal order, the Petition before the Adjudicating Authority was heard on 22.11.2019, 13.12.2019, 19.12.2019, 03.01.2020, 23.01.2020, 03.07.2020, 10.09.2020, 16.09.2020, 28.09.2020, 08.10.2020, 27.11.2020, 10.12.2020 and finally 01.01.2021 dismissed being not maintainable & Infructuous. f. In the meantime, IA No. 357 of 2021 has been filed on 25.02.2021 vide Diary No. 25695 by Om Shri Shubh Labh Agritech Private Limited, Gwalior seeking intervention in the matter under the provisions of Rule 11 of NCLAT Rules, 2016. Learned Senior Counsel has argued that the Applicant proposes to infuse Rs. 310 Crore (Page 3 para 4 of the IA No. 357 of 2021) in the Corporate Debtor (which at the time of hearing was shown to increase to Rs. 625 Crore Page 79 of the IA No. 357 of 2021) within a period of 270 days from the date of approval of the Resolution Plan by Adjudicating Authority with a view to revive its operations. However, it is to be mentioned here that the RP published Expression of Interest ('EOI') on 14.11.2017 against which SREI submitted its EOI Addendum-IV of Rs.451 Crore to its Resolution Plan dated 09.04.2018 which was rejected by CoC. g. Learned Senior Counsel representing Respondent No.1 to 13 basically banks and financial institution, he was very categorical that the time was come when the Appellate Authority has to pass the liquidation order under Chapter-III of the Code. Time is the essence of the Code & its core objects is provide Resolution in a time Company Appeal (AT) (Insolvency) No. 98 of 2021 bound manner for maximization of value of assets of the Corporate Debtor and the Adjudicating Authority has erroneously failed to consider this aspect inspite of 31 hearings and finally dismissing the petition as infructuous and not maintainable.

5. We have carefully gone through the pleadings and the submissions made by the learned Sr. Counsels / Counsels and are observing the followings:-

a) The Code has come into force with the basic objective of Resolution in a time bound manner. Available literature on the subject suggests that in pre-IBC period Resolution used to take more than 4(Four) years in India while it was around 1(one) year in other European Countries and USA. If the Adjudicating Authority takes such a considerable time it will defeat a very purpose of the Code.

b) No doubt, reorganisation and Insolvency Resolution is the prime purpose of the Act but with a rider in a time bound manner as well as maximization of the value of assets of such Corporate Debtor. Section 12 of the Code has already laid down a period of 330 days on the outer side, although it is directory in nature. This also suggests that the need for giving multiple opportunities to the sole Resolution Applicant is not warranted to defeat the very purpose of the Act.

c) If this Appellate Tribunal consider the intervention Application i.e. IA No. 357 of 2021, it will again move in a wrong direction and will violate the principles of natural Company Appeal (AT) (Insolvency) No. 98 of 2021 justice as the Code and the Regulator IBBI has prescribed a process for selection of Resolution Applicant which initially starts with Invitation for Expression of Interest (EOI) followed by Information Memorandum, Evaluation Matrix and a request for Resolution Plan in accordance with Chapter -X of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Hence, such midway interruptions of allowing a party to enter the fray after 3 years of issue of EOI is neither warranted by the Regulations nor by the Code.

Learned Senior Counsel representing Respondent No.1 to 13 has already vehemently objected the intervention application. Considering the above said aspect, we are no way inclined to allow the Intervention Application and accordingly, the Intervention Application is rejected at the very threshold. However, the Intervener is free to move for a compromise or arrangement under IBBI Liquidation Process Regulations, 2016 if advised and permitted under its Regulation 2-B.

d) It is unfortunate to observe that even after the lapse of 981 days and repeated compliance by the RP of the direction of the Adjudicating Authority; the Adjudicating Authority has not yet considered initiation of Liquidation as per Section 33 / Chapter -III of the 'Code'. Neither the Adjudicating Authority nor the Appellate Authority is supposed to look into the commercial wisdom of CoC or to reverse the Commercial wisdom of CoC as repeatedly observed by Hon'ble Supreme Company Appeal (AT) (Insolvency) No. 98 of 2021 Court in Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & ors.in Civil Appeal No.8766-67 of 2019 dated 15.11.2019 and K Sashidhar Vs. Indian Overseas Bank & Ors Judgment dated 05.02.2019 in Civil Appeal No. 10673 of 2018.

e) While we appreciate that the year 2020 has faced unprecedented global pandemic Covid-19 and it might have acted as a bottleneck to the Adjudicating Authority but Adjudicating Authority may not have allowed repeated reference of Resolution Applicant for the consideration of CoC when CoC was repeatedly rejecting their variants of proposals.

6. Chapter -III of the Code deals with Liquidation Process and Section 33 of the Code deals with initiation of liquidation. Section 33 is reproduced below for convenience:

"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 Company Appeal (AT) (Insolvency) No. 98 of 2021

(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 1[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.] (3) Where the resolution plan approved by the Adjudicating Authority 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 Company Appeal (AT) (Insolvency) No. 98 of 2021 and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

7. It is abundantly clear that the Object of the Code, 2016, IBBI Regulations, this Appellate Tribunal Judgments, Hon'ble Apex Court Judgments all this suggests that time is the essence of the Code. The Adjudicating Authority naturally, is to keep this factor in mind, liquidation sale can be in the format of anyone of the followings as per Regulations 32 of IBBI (Liquidation Process) Regulations, 2016:

a. An asset on a standalone basis;

b. the assets in a slump sale;

c. set of assets collectively;

d .the assets in parcels;

e. the Corporate Debtor as a going concern; or f. the business (s) of the Corporate Debtor as a going concern. Even Provisions of Section 230 & 232 of the Companies Act, 2013 can also be invoked.

8. All this suggests that the Appellate Tribunal has to perforce consider the relief sought by the Appellant-Resolution Professional approved by the CoC for setting aside the impugned order and initiation of Liquidation Process. The Adjudicating Authority has failed to implement the order of the Appellate Tribunal dated 18.11.2019. It is settled law that whatever power vests in the Adjudicating Authority is always available to Appellate Authority.

9. In view of the above elaborate observations, it is in the fitness of situation to allow the appeal and set aside the impugned order dated Company Appeal (AT) (Insolvency) No. 98 of 2021 01.01.2021

passed by the Adjudicating Authority (NCLT, Indore bench at Ahmedabad Court No.1) in IA No. 165/2018 in CP(IB) No. 32 of 2017 (TP No. 60/2019) and initiate Liquidation of the Corporate Debtor M/s. K.S.Oils Ltd under Section 33(1) of the Code. Hence, the Appeal is allowed and the impugned order dated 01.01.2021 passed by the Adjudicating Authority is set aside and at the same time the order for initiation for liquidation of the Corporate Debtor M/s. K.S.Oils Ltd is also allowed.

The Corporate Debtor- M/s.K.S.Oils Ltd shall liquidate in the manner as laid down in Chapter-III of the Code;

a. Mr Kuldeep Verma IP Registration No. IBBI/IPA-001/IP- P00014/2016-2017/10038 an Insolvency Professional is appointed as the Liquidator. He shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code. b. He shall issue public announcement stating that Corporate Debtor is in liquidation.

c. The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.

d. Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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. Company Appeal (AT) (Insolvency) No. 98 of 2021 e. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

f. The liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

g. Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

h. Copy of the Order shall be furnished to the IBBI, to the Regional Director (North Western Region), Ministry of Corporate Affairs; Registrar of Companies, the Liquidator and the Adjudicating Authority (NCLT Indore Bench at Ahmedabad Court No.1).

No order as to costs. Pending Application(s), if any, stands disposed of.

[Justice Bansilal Bhat] Acting Chairperson [Dr. Ashok Kumar Mishra] Member (Technical) 16th March, 2021 New Delhi Raushan.K Company Appeal (AT) (Insolvency) No. 98 of 2021