

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

Company Appeal (AT) (Insolvency) No. 1062 of 2022

IN THE MATTER OF:

Sreedhar Tripathy

...Appellant

Versus

Gujarat State Financial Corporation & Ors.

...Respondents

Present:

For Appellant: Mr. Rajesh Bohra, Advocate.

For Respondents:

ORDER

12.10.2022: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 23.06.2022 by which order the Adjudicating Authority has directed for liquidation of the Corporate Debtor. Learned counsel for the Appellant challenging the order contends that present is a case where decision of the CoC has been arbitrarily taken. It is submitted that the CoC never wanted to continue with the CIRP and after having been constituted, after admission of Section 10 application assets, were never handed over to the Resolution Professional, hence, Resolution Professional could not draw Information Memorandum and issue EOI.

2. We have considered the submissions of learned counsel for the Appellant and perused the record.

3. The Appellant himself has brought on record the Minutes of CoC meeting dated 05.04.2021 as Annexure A-12. The CoC initially, at Agenda

Item 1, took a decision for withdrawal under Section 12A and while taking decision following reasons were given:-

“Reasons shared by CoC for Resolutions: The representatives of the COC conveyed to RP that since the Corporate Debtor was non-functional and completely shut since the year 2002, its machinery has almost become scrap with some land and building which is also in a dilapidated condition, plus it is not a going concern since last about 19 years and there is also no possibility of it being a going concern in near future. Therefore, in such circumstances, continuation of CIRP would only involve more expenses and cost without any corresponding advantage.”

4. However, the withdrawal by the CoC is not permissible under Section 10 since it was application by the Corporate Debtor itself on which IBC proceeding was initiated, hence, the CoC in Agenda Item 2 took decision for liquidation of the Corporate Debtor. The decision of the CoC at Agenda Item 2 is as follows:-

“AGENDA: - 2

To pass Resolution for Liquidation of Corporate Debtor

The COC again unanimously with 100% voting share passed Resolution to liquidate the CD as follows:

“RESOLVED THAT the Committee of Creditors unanimously decide for the liquidation of Mon Acriglass Industries Limited in the event the Hon’ble Adjudicating Authority is pleased not to allow withdrawal from CIRP on an application to be filed pursuant to a separate resolution passed by the Committee of Creditors.

RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorised to make an appropriate application seeking an order of liquidation of the Corporate Debtor as per the provisions contained in Sec. 33(2) of the Insolvency and Bankruptcy Code, 2016”

5. The grievance of the Appellant is that CoC’s decision is arbitrary decision, it cannot be said to be decision taken in commercial wisdom of the CoC.

6. Section 33 Sub-section (2) of the I&B Code which deals with initiation of liquidation, is as follows:-

“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).

²[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.]”

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.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

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

Archana/nn