

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

Company Appeal (AT) (Insolvency) No. 842 of 2022

[Arising out of order dated 10.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V in I.A. No. 1217 of 2022 in CP (IB) No. 1170/I&B/MB/2019]

IN THE MATTER OF:

Amit Ahirrao

Resident of 7, Ravikiran, Tilaknagar,
Aurangabad
Mobile No: 9922945110
Email id: chimpz2906@gmail.com

...Appellant

Vs.

Anagha Anasingharaju

1-2, Aishwarya Sankul,
G.A. Kulkarni Path,
Pune, Maharashtra – 411 038
Mobile No: 9881129990
Email id: rp.anagha@kanjes.com

Sakharam Tambolkar

126, Manas, Jyoti Nagar,
Aurangabad, Maharashtra – 431 005
Mobile No. 986009777
Email id: sdtambolkar@sanjeevgroup.com

...Respondents

Present:

For Appellant: Mr. Rahul Totala, Mr. Rajat Malu, Advocates

For Respondents: Mr. Avinash R Khanolkar, Advocate for R1/Liquidator.

Mr. Sandeep Bajaj, Mr. Rautam Singh, Advocates for R-2.

Mr. Manvendra Kumar, Mr. Swetab Kumar, Mr. Ayush Tyagi, Advocates.

Ms. Priyanka Vora, Advocate for Intervenor, I.A. No. 1427 of 2023.

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J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Promoter of the Corporate Debtor challenging the order dated 10.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-5 by which order I.A. No. 1217 of 2022 filed by the Resolution Professional seeking liquidation of M/s Virtue Infra and Entertainment private Limited has been allowed and the Adjudicating Authority has directed for liquidation of the Corporate Debtor and also passed consequential orders.

2. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on an application filed by Respondent No.2, the Financial Creditor under Section 7 by order dated 29.09.2021. The appellant filed an appeal challenging the order admitting CIRP which appeal being Company Appeal (AT) (Ins.) No. 970 of 2021 was dismissed by this Tribunal. The Committee of Creditors passed resolution and Form G was issued by the Resolution Professional, however, no resolution plan could be submitted in the process. The Committee of Creditors in its 7th meeting held on 10.03.2022 with 100% vote resolved to liquidate the Corporate Debtor, in pursuance of which the Resolution Professional filed an I.A. which was allowed by the impugned order the appellant aggrieved by the said order has come up in this Appeal.

3. In the appeal, when appeal was taken up on 29.07.2022, the Appellant made a statement before this Tribunal that the Appellant is ready to make the entire payment to the Financial Creditor by way of Bank Draft. On 11.10.2022, Appellant also made statement that appellant shall be making payment with interest @ 9%. One more opportunity was sought on 28.11.2022 and on 05.12.2022 following order was passed:

“O R D E R

05.12.2022: *Learned Counsel for the Appellant submits that amount of Rs. 1,09,00,000/- has already been deposited on Wednesday in the Registry. He submits that he is ready to deposit the interest amount at the rate of 09 % as was earlier noticed in the Order dated 11.10.2022. With regard to Intervener, who is another Financial Creditor, amount of Rs. 1,26,00,000/- as principal amount, Appellant submits that he shall also deposit Rs. 1,26,00,000/- with 09% interest up to date. Learned Counsel for the Appellant prays and submits that said amount will be deposited within one hundred days.*

Time as prayed above is allowed. List this Appeal on 20th March, 2023. Before that date, the entire amount as indicated above shall be deposited by the Bank Draft in the name of ‘Pay and Accounts Officer, Ministry of Corporate Affairs’. The aforesaid deposit shall be without any prejudice, rights and contention of both the parties.”

4. On 20.03.2023, statement was made by learned counsel for the Appellant that Appellant has made deposit as directed by the Tribunal.

5. In this Appeal Intervention Applications have been filed by two Operational Creditors namely; A. M. Patel Infrastructure Pvt. Ltd. and Sanjeev Auto Parts Manufacturers Pvt. Ltd., praying for intervention.

6. Learned counsel for the Appellant submits that Appellant endeavour to settle with the Financial Creditor and another intervening Financial Creditor, however, the Financial Creditors are not interested and not accepting the amount, their only interest is to liquidate the Corporate Debtor. It is submitted that only Financial Creditor of the Corporate Debtor is Respondent No. 2. It is submitted that the genesis of dispute is matrimonial dispute between Appellant and the daughter of Respondent No. 2, who was the wife of the Appellant. It is submitted that valuation of the Corporate Debtor is not being correctly given effect to by the liquidator who want to auction properties on lesser valuation. It is submitted that Appellant was never shared with the valuation reports and it was only after several requests made by the Appellant that valuation reports were shared by the Resolution Professional. It is submitted that the Corporate Debtor should be sold as an ongoing concern, if at all.

7. Learned counsel appearing for the Financial Creditor submits that order admitting CIRP has already been upheld by this Tribunal. Appellant made several statement before this Tribunal both in the Appeal challenging CIRP order and present appeal that Appellant is ready to make entire payment

to the Financial Creditor, however, payment to Respondent No. 2 along with up to date interest has not been deposited by the Appellant. The Committee of Creditors has rightly passed the resolution for liquidation of the Corporate Debtor. There is no error in the order of the Adjudicating Authority directing for liquidation. The Corporate Debtor has only one valuable asset i.e. immovable property situated at Aurangabad, Maharashtra. The Corporate Debtor is not a going concern, it is not carrying any business, hence, there could not have been any decision except the liquidation of the Corporate Debtor.

8. Learned counsel for the Liquidator submits that claim of the Financial Creditor - Respondent No. 2 and another Financial Creditor has already been admitted and the claim of Operational Creditors are under verification. It is submitted that order of Adjudicating Authority directing for liquidation is in accordance with law. The Resolution Professional has obtained two valuation reports which has already been shared with the Appellant. It is submitted that the Liquidator has also obtained one valuation report at the instance of Stakeholders Consultation Committee. It is submitted that there is no error in the order impugned.

9. Learned counsel for the Operational Creditors also submitted that they have huge claims against the Corporate Debtor.

10. We have heard learned counsel for the parties and perused the record.

11. The Committee of Creditors in its meeting held on 10.03.2020 took a decision with 100% vote to liquidate the Corporate Debtor. In the CoC meeting it was noted that last date for submitting the resolution plan was 26.02.2022, which date was extended till 09.03.2022, however, the Resolution Professional did not receive any plan till the time of the meeting. In Agenda Item No. 4 at paragraph 4 following has been recorded:

“The COC member was of the opinion that sufficient opportunity had been granted to the Resolution Applicant to submit the resolution plan. The COC noted that the date of completion of CIRP is 27 March 2022, the corporate debtor is not a going concern and carries on no business. The COC requested the RP to explain the process of liquidation and the steps involved. The RP explained the process about passing of resolution, appointment of liquidator and the application to NCLT.”

12. The Committee of Creditors noted that the Corporate Debtor is not a going concern and no plan having been received resolution was passed to liquidate. The Adjudicating Authority has allowed the application filed by the Resolution Professional for accepting the liquidation resolution. We are of the view that no error can be said to have been committed by the Committee of Creditors in taking decision of liquidation when no resolution plan was received by the Resolution Professional inspite of extending the date.

13. Now we come to the submission of learned counsel for the Appellant regarding the valuation of the Corporate Debtor. It is submitted by learned

counsel for the Appellant that the Resolution Professional has shared the two valuation reports received in the Corporate Insolvency Resolution Process that too after repeated requests to the Resolution Professional. By I.A. No. 2459 of 2022, Appellant has brought on record both the valuation reports. Valuation report dated 26.02.2022 given by Ashok D. Kadam states following as market value and liquidation value:

*“Market Value : Rs.59,42,07,000.00
(Rs. Fifty Nine Crore Forty Two Lakh Seven Thousand Only.)”*

*Liquidation Value : Rs.29,71,03,000.00
(Rs. Twenty Nine Crore Seventy One Lakh Three Thousand Only.)”*

14. Another valuation report was submitted by Er. Milind C. Ankalgi, where market value and distress value is as follows:

<i>Description</i>	<i>Fair Market Value</i>	<i>Distress Value</i>
<i>Estimated Value In Year 2022</i>	<i>Rs.59,42,08,000/-</i>	<i>Rs.32,68,14,400/-</i>

15. Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short the CIRP Regulation, 2016) provides for fair value and liquidation value. The Resolution Professional has obtained the aforesaid two valuation reports as per Regulation 35 of the above Regulations. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 also Regulation 35 provides for valuation of assets intended to be sold. Regulation 35 of the Liquidation Regulation, 2016 is as follows:

“35. ¹⁸[Valuation of assets intended to be sold. -

(1) Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) ¹⁹[In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

Provided that the following persons shall not be appointed as registered valuers, namely: -

- (a) a relative of the liquidator;*
- (b) a related party of the corporate debtor;*
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or*
- (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.*

(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.]

16. The present is a case where the valuation has been conducted under the CIRP Regulation, 2016. Liquidator is obliged to consider the average of the value arrived as per Regulation 35 of the CIRP Regulation, 2016. Present is not a case where Liquidator has directed fresh valuation under Regulation 35 Sub-regulation (2). Although learned counsel for the Liquidator submits during course of submission that at the instance of Stakeholders' Consultation Committee one valuation was obtained. Liquidator under Sub-regulation (2) of Regulation 35 is empowered to appoint two Registered Valuers when Liquidator is of the opinion that fresh valuation is required. Present is not a case where Liquidator has exercised its jurisdiction under Sub-regulation (2) of Regulation 35. Furthermore, in the present case, two valuation reports are already on the record, as brought on the record by the Appellant, as noted above. When the case is covered by Regulation 35(1), the Liquidator has to take the average of the estimate of the value arrived by the two Valuers.

17. Insofar as submission of learned counsel for the Appellant that Liquidator shall take steps to sell the asset as going concern, suffice it to say that the Committee of Creditors in its resolution dated 10.03.2022 has categorically noted that the Corporate Debtor is not a going concern. It is further on the record that immovable property which has been valued by the Valuers is the only asset of the Corporate Debtor. The submission of the Appellant that sale should be conducted as going concern cannot be accepted. We, however, are of the view that the Liquidator while proceeding to sell the assets in accordance with Liquidation Process Regulation, 2016 has to take the reserve value as per Schedule-I of the Liquidation Regulation. The reserve price has to be value of assets arrived at as per Regulation 35 (1), as noted above. We, thus, are of the view that the Liquidator while proceeding to sell the assets has to take reserve price on the basis of average of two valuation reports received in the CIRP process.

18. The Appellant although had deposited the amount due to the Financial Creditors but the Financial Creditors having submitted that the amount deposited is not along with up to date interest, we are of the view that the amount deposited by the Appellant in this appeal in pursuance of the orders passed, deserve to be refunded to the Appellant.

19. In view of the foregoing discussion, we dispose of this appeal in following manner:

- (i) The order of Adjudicating Authority dated 10.05.2022 ordering for liquidation is upheld.

- (ii) The amount deposited by the Appellant in pursuance of orders passed in this appeal be refunded to the Appellant.
- (iii) The Liquidator while proceeding to sell the assets of the Corporate Debtor shall fix the reserve price as per the average of two valuation reports received as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Regulation 35 Sub-regulation (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

16th May, 2023

Archana