

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1406 of 2024

(Arising out of Order dated 11.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench-I, Ahmedabad in IA (Dis)/14(AHM)/2024 in CP(IB)/71(AHM) 2023)

IN THE MATTER OF:

Janak Jagjivan Shah
Resolution Professional
Rainbow Infrabuild Pvt. Ltd.
Having Address at:
201, Kamdhenu Complex,
Near Toran Dining Hall, Opp. Sales India,
Income Tax, Ashram Road,
Ahmedabad, Gujarat - 380009

... Appellant

Versus

Committee of Creditors
Rainbow Infrabuild Pvt. Ltd.
Represented by
AVB Global Ventures Pvt. Ltd.
Having registered office at:
A-5/4, Shop No.2, Krishna Nagar,
Delhi – 1100051

... Respondent

Present:

For Appellant : Mr. Dheeraj Garg, Advocate

For Respondents : Mr. Pratik Thakkar, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by the Resolution Professional (“**RP**”) of Infrabuild Pvt. Ltd. has been filed challenging order dated 11.06.2024 passed by National Company Law Tribunal, Division Bench-I, Ahmedabad in IA (Dis)/14(AHM)

2024 in CP(IB)/71(AHM) 2023. By the impugned order, the Adjudicating Authority has rejected IA No.14 of 2024 filed by the RP praying for dissolution of the Corporate Debtor (“**CD**”). Aggrieved by which order, this Appeal has been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- (i) On an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) by AVB Global Ventures Pvt. Ltd., claiming dues of Rs.2,38,95,357/- the Adjudicating Authority passed an order on 09.11.2023 admitting Section 7 Application and appointing Janak Jagjivan Shah as the Interim Resolution Professional (“**IRP**”). Public announcement was made by the IRP on 11.11.2023, in pursuance of which, one claim was submitted by Financial Creditor – AVB Global Ventures Pvt. Ltd. claiming an amount of Rs. Rs.2,38,95,357/-, which was admitted by the IRP. The IRP constituted the CoC, consisting of AVB Global Ventures Pvt. Ltd. as 100% Member of the Committee of Creditors (“**CoC**”). The Report of the constitution of CoC was submitted on 30.11.2023.
- (ii) Income Tax Department also filed its claim vide letter dated 28.11.2023 in Form-B. However, the total amount of claim was mentioned in Form-B as ‘NIL’.

- (iii) The first Meeting of the CoC was held on 08.12.2023. The CoC noticed the claims received from the Financial Creditors. The Suspended Director of the Corporate Debtor was also present in the Meeting. The IRP was approved as RP. RP was permitted to incur expenses for the valuation of the assets of the Corporate Debtor. The Valuation Report was submitted reporting that cash and bank balance of the CD is only Rs.1,535/-. No other assets were noted or valued.
- (iv) The second CoC Meeting was held on 06.01.2024, where a decision was taken to invite Expression of Interest (“**EoI**”) and further not to conduct a transaction/ forensic audit of the Company. The publication of Form-G was approved. The Information Memorandum was also published attaching the financial statements for Financial Years 2021-22 and 2022-23. Cash balance was mentioned as Rs.84 and total cash and cash equivalents was mentioned as Rs.1,451/-
- (v) The third Meeting of the CoC was held on 06.02.2024, where it was noted that Form-G did not fetch any EoI. However, it was decided to take one more effort for fetching EoI. Form-G was published again and no EoI was received. It was noted that even after second publication of Form-G, no EoI was received.

- (vi) Fifth CoC Meeting was held on 29.04.2024. The RP informed the CoC that since permitted period of CIRP is going to over on 06.05.2024 and no EoI has been received, liquidation process should be initiated. The CoC resolved not to initiate liquidation process and decided to file an application for dissolution of the CD.
- (vii) In pursuance of the resolution passed by the CoC in its fifth Meeting dated 29.04.2024, an IA was filed by the RP being IA (Dis)/14(AHM)/2024, which came to be rejected by the Adjudicating Authority. The Adjudicating Authority took the view that Application under Section 54 for dissolution of the Corporate Debtor can be filed only when assets of the Corporate Debtor are liquidated. The Adjudicating Authority has also referred to the provisions of IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to “**Liquidation Regulations**”) Regulation 14 and Section 54 of the IBC and opined that in exercise of power conferred under Section 54 of the IBC, the Adjudicating Authority is not inclined to order dissolution of the CD. Consequently, the Application was rejected. Aggrieved by the order passed by Adjudicating Authority dated 11.06.2024, this Appeal has been filed.”

3. We have heard Shri Dheeraj Garg, learned Counsel appearing for the Appellant and Shri Pratik Thakkar, learned Counsel appearing for the CoC.

4. Learned Counsel for the Appellant in support of the Appeal contends that the CD having no assets and no business for last 2-3 years and the total bank balance of the CD being only Rs.1,451/- and the liquidation value of the CD being only Rs.1,535/-, CoC decided not to take steps for liquidation of the CD. The CoC decided not to bear any expenses on liquidation, hence, the dissolution of CD was approved. It is submitted that Form-G was twice published under the decision of the CoC and no EoI was received. The CoC rejected the resolution to initiate the liquidation and with 100% majority approved the resolution for direct dissolution. The learned Counsel for the Appellant in support of his submission relied on judgment of NCLAT Chennai Bench in the matter of **Shyson Thomas vs. Mr. Madhugiri Venkatarayappa Sudarshan (TA (AT) No.8 of 2021 in CA(AT) (CH) (Ins.) No.925/2020)** and submitted that the Adjudicating Authority committed error in rejecting Application for dissolution filed by the RP under the resolution of the CoC. It is submitted that when CoC is not ready to bear the liquidation cost and the CD has no assets to be liquidated, filing of liquidation application will further burden the CoC. It is submitted that observation of the Adjudicating Authority in the impugned order '*the cash and cash equivalent as on that date were Rs.1,44,880/- ...*', which is the amount contributed by the CoC for meeting the CIRP cost and the reliance on the said amount was wholly incorrect. It is

submitted that in the special facts and circumstance of present case, dissolution was only option left and the Adjudicating Authority committed error in rejecting the Application.

5. The learned Counsel for the CoC has also supported the submissions of the Appellant. It is submitted that CoC, who resolved to file application for dissolution instead of a liquidation, since neither the CD has the assets, nor there are any amount available to bear the cost of liquidation.

6. We have considered the submission of learned Counsel for the parties and have perused the records.

7. We have already noticed the above that the valuers were appointed by the RP in pursuance of the resolution of the CoC. Valuation of the CD was reported as Rs.1,535/-, which was cash and bank balance as on the CIRP commencement date, which have been found by Adjudicating Authority in paragraph 16(f). As noted above, the CoC decided twice to issue Form-G and Form-G was issued twice, but no EoI was received from anyone. M/s. AVB Global Ventures Pvt. Ltd. was the Financial Creditor who initiated proceedings under Section 7 and the claim of AVB Global Ventures Pvt. Ltd. was accepted and admitted in the CIRP to the extent of Rs.2,57,12,668/-. The Financial Creditor was the sole CoC Member with 100% vote share. In the fifth CoC Meeting held on 29.04.2024, the discussion on the initiation of liquidation was taken at Agenda Item No. Discussion on Agenda Item No.4 is as follows:

“4) TO DISCUSS ON THE INITIATION OF LIQUIDATION AND APPOINTMENT OF LIQUIDATOR PURSUANT TO THE SECTION 33 & 34 OF INSOLVENCY AND BANKRUPTCY CODE. 2016

The RP informed the COC that since the permitted period of CIRP is going to be over shortly i.e. on 06-05-2024 and no expression of interest has been received therefore liquidation process should be initiated and appointment of the liquidator should be made and proposed himself to be the liquidator.

The members of the COC informed the RP that since there is no assets with CD and no expression of interest was received inspite of publication of form G for invitation of expression of interest twice, the COC is of the opinion that the CD should be dissolved instead of initiation of liquidation process. The member further stated that the CD has very small Authorised capital of Rs. 1 lac and as informed by the RP that carried forward loss of about Rs.31,500/- only therefore there is no contingent assets also. on the contrary if anybody take over the CD as going concern or otherwise huge income tax liabilities will arise due to written back of the creditors of more than 630 lacs due to amendment in income tax law with effect from AY 2023-24 however in earlier years the written off of loan given kind of liability was not allowable as was in the case of the CD as the entire loss in p&l a/c is related to written off such kind of liability.

After discussion the following resolution was put to vote:-

"RESOLVED THAT THE CORPORATE DEBTOR BE LIQUIDATED AND AN APPLICATION IN THIS REGARDS SHOULD BE MADE BEFORE THE ADJUDICATING AUTHORITY FOR APPROPRIATE ORDER AND JANAK SHAH BE APPOINTED AS A LIQUIDATOR OF THE CD TO CARRY OUT LIQUIDATION PROCESS."

The member of the COC voted against the above resolution therefore the above resolution is not passed."

8. Under Agenda Item No.5 discussion regarding Regulation 39B, 39BA, 39C and 39D of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 was taken, where it was resolved that Corporate Debtor be dissolved and application in this regard be made before the Adjudicating Authority. The Minutes regarding dissolution at Agenda Item No.5 is as follows:

“5) TO DISCUSS REGARDING THE REGULATION 39B, 39BA, 39C & 39D OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016:-

The RP informed the COC that in the facts of the case of the CD requisite resolutions as per regulations 39B, 39BA, 39C & 39D regarding estimation of liquidation cost, the arrangement for meeting of the said liquidation cost, assessment of compromise or arrangement or assessment of sale as a going concern, fixing the fee of liquidator etc. are required to be considered by the COC and vote in this regard.

The members of the COC informed the RP that since there is no assets with CD and no expression of interest was received in spite of publication of form G for invitation of expression of interest twice, the COC is of the opinion that the CD should be dissolved instead of initiation of liquidation process.

The members of the COC further state that they are against the passing of the resolutions under regulations 39B, 39BA, 39C & 39D.

The members of COC informed that they are in favour of passing the resolution for the dissolution of CD therefore appropriate resolution should be put for vote of the COC. The RP put the following resolution for vote of the COC: -

"RESOLVED THAT THE CORPORATE DEBTOR RAINBOW INFRABUILD PRIVATE LIMITED BE DISSOLVED AND AN APPROPRIATE APPLICATION IN THIS REGARDS BE MADE BEFORE THE ADJUDICATING AUTHORITY FOR THE ORDER OF DISOLUTION OF THE CORPORATE DEBTOR"

9. It was on the basis of the resolution of the CoC in fifth Meeting, application was filed before the Adjudicating Authority for dissolution of the Corporate Debtor. We now need to notice the relevant provisions under the IBC for dissolution. Section 54 of the IBC provides for dissolution of the Corporate Debtor, which is as follows:

“54. Dissolution of corporate debtor. - (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(2) The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.”

10. The Adjudicating Authority has referred to Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, which deals with early dissolution. Regulation 14 is as follows:

“14. Early dissolution.

Any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

- (a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and
- (b) the affairs of the corporate debtor do not require any further investigation;

he shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority]for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.”

11. The Adjudicating Authority in the impugned order in paragraph 16 of the judgment has made the following observations:

“16 ...

- (c) Upon a comprehensive examination of Regulation 14 of the IBBI (Liquidation Process) Regulations and Section 54 of the Insolvency and Bankruptcy Code, 2016, this Tribunal observes that "**only the Liquidator**" is empowered to make an application to the Adjudicating Authority for the dissolution of a Corporate Debtor. As the liquidation process has not yet commenced in this matter, there is no specific provision that authorizes an early dissolution prior to the initiation of liquidation.
- d) It has been observed that the Applicant, in his capacity as the Resolution Professional, has submitted a compliance certificate under Form-H in accordance with Regulation 45(3) of the IBBI (Liquidation Process) Regulations. Additionally, the Applicant has designated himself as the Liquidator under **Annexure-S** of this application. However, it is pertinent to note that no order for liquidation has been passed by this Tribunal to date. Consequently, there is no Liquidator or any authorized person in the capacity of the Liquidator who can file the said compliance certificate.

- e) It is seen that the applicant has not filed the copy of Transaction Audit Report along with its application and no averment has been made in this regard by the applicant.
- f) Applicant has attached the valuation report by two valuers, both of whom have given the valuation of Rs. 1535/- being cash and bank balance as on the CIRP commencement date and no value has been ascribed to any other current asset/fixed asset of the Corporate Debtor. Applicant has attached the audited financials of the Corporate Debtor as on 31.03.2023 and at page 191 of the application, is the audited balance sheet as on 31.03.2024. Perusal of the same reveals that the cash and cash equivalents as on that date were Rs. 1,44,880 I- which are much more than the liquidation value ascribed by the two valuers.”

12. The application was rejected and RP was directed to carry out transaction audit from 01.04.2020 to the date of commencement of the CIRP, which order is under challenge in this Appeal.

13. We may first notice the direction of Adjudicating Authority for transaction audit report as contained in paragraph 18 of the order, which direction is as follows:

“18. In light of the observations noted in paragraphs 16(e) and 16(f), the applicant is hereby directed to carry out transaction audit from 01.04.2020 to the date of commencement of the CIRP.”

14. The CoC in its second Meeting had already taken the decision not to conduct the transaction/ forensic audit of the Company. At Agenda Item No.6, following was resolved:

“6) To conduct the Transaction/Forensic Audit of the Company;

The Resolution Professional. informed that the company is not conducting/continuing the business from last 4-5 years Thus, it was decided that conducting a transaction/forensic audit may not be useful. This stance is based on the prescribed look-back period of 1-2 years from the commencement of Corporate Insolvency Resolution Process (CIRP) as specified in the provisions of the Insolvency and Bankruptcy Code (IBC) of 2016.”

15. In the CoC Meeting, it was noted that CIRP is coming to an end in May 2024, the CIRP having already come to an end on 06.05.2024, there being no prayer for extension of CIRP period, we fail to see any reason for direction of transaction audit as directed by the Adjudicating Authority. The liquidation value of the CD was already obtained, which was Rs.1,535/- only. There was no cash or cash balance except of a meagre amount of Rs.1,451/- no other assets were found and CIRP having come to an end, direction by the Adjudicating Authority dated 11.06.2024 for transaction audit is unsustainable and is set aside.

16. Now we come to the application filed by the Appellant praying for dissolution of the CD, which has been rejected by the impugned order. The Adjudicating Authority in the impugned order has referred to Section 54 of the IBC, which contemplate making an application to the Adjudicating Authority for the dissolution, **where the assets of the Corporate Debtor have been completely liquidated**. In the present case, the Adjudicating Authority has neither directed for any liquidation, nor liquidation has actually been conducted.

17. The learned Counsel for the Appellant has placed reliance on the judgment of this Tribunal, Chennai Bench in **Shyson Thomas** (supra), which was a case where Promoter/ Director of the CD had filed the Appeal challenging the order of the Tribunal dated 24.06.2020, by which order Adjudicating Authority had allowed dissolution of the CD. In paragraph 2 of

the order, this Tribunal has noted paragraphs 5 and 6 of the order of the Adjudicating Authority, which is as follows:

“2. The ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Bengaluru Bench), while passing the ‘impugned order’ in IA No. 198 of 2020 in CP (IB) No. 180 / BB / 2018, at Paragraph Nos. 5 & 6, had observed the following:

5. *“In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of Corporate Persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case, justify there would not serve any purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the Adjudicating Authority, by exercising its inherent powers conferred under the Code, can pass appropriate order(s) in the interest of speedy justice.*

6. *The above facts and circumstances of the Case fully justified, that there would be no useful purpose be served, by placing the Corporate Debtor under Liquidation process, under the extant provisions of Code. Since no assets exists in the Company, as declared by the Resolution Professional, the liquidation process under the provisions of Code, is deemed to have completed under Chapter III of Part II of Code, and thus it would just and proper for the Adjudicating Authority to dissolve the Company as prayed by the Resolution Professional. The instant Application is filed in accordance with law and the Resolution to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra.”*

18. The Promoter/ Director had challenged the order on the ground that they had already obtained No Objection Certificate from the Ministry of Civil Aviation Sector and there has been sufficient infrastructure to support the Corporate Debtor. This Tribunal after considering the submissions of the parties, upheld the order of the Adjudicating Authority, relying on inherent power of the Adjudicating Authority to direct for dissolution in the facts of the said case. The submission, which was advanced by the RP before this

Tribunal was that commercial wisdom of the CoC need no interference and the Adjudicating Authority in exercise of inherent jurisdiction can dissolve the CD in the facts of the case. In the present case, the Adjudicating Authority has not exercised its jurisdiction in allowing the application filed by the CD for dissolution referring to Section 54 of the IBC and Regulation 14 of the Liquidation Regulations. The scheme of the IBC clearly provides that dissolution is a step subsequent to the Corporate Debtor having been completely liquidated. In the present case, the liquidation proceedings have not been undertaken and resorting to Section 54 could not have been taken as per the scheme of the IBC. The facts of the present case indicate that CIRP has been completed without any Plan having been received, inspite of Form-G published twice. The Adjudicating Authority did not pass any order for liquidation, which could have been passed under Section 33, sub-section (1). Thus, the CIRP having been unsuccessful and no liquidation order having been passed, recourse to Section 54, could not have been taken by the RP.

19. Under the Companies Act, Chapter XVIII, containing the heading "*Removal of names of companies from the Register of Companies*", provides ample jurisdiction to Registrar of Companies to remove the name of a Company from Register of Companies. Section 240 empowers the Registrar, who on being satisfied by reasonable cause as mentioned in sub-clause (1) or as is covered by sub-clauses (c), (d) and (e), Registrar can strike off the name of the Company from the Register of Companies. In the present case, the RP

could have intimated the Registrar of Companies for striking off the name of the Company. In the facts of the present case, where company is not carrying on any business and there are no assets of the Company, dissolution of the Company under Section 54, is a step, which could have been taken as per the statutory scheme of the IBC. This Tribunal's judgment in **Shyson Thomas** was a case where Adjudicating Authority exercising its jurisdiction has directed for dissolution by allowing the application. In the present case, the Adjudicating Authority had rejected the application, relying on the provisions of Section 54 of the IBC and Regulations 14 of the Liquidation Regulations.

20. We have noted above that CoC has decided not to make any contribution towards the liquidation process and liquidation, hence, was not directed. In the present case, CoC consisted of sole Financial Creditor, who had initiated the CIRP against the CD. When the entity, who has initiated the CIRP is not ready to proceed any further and CIRP period having already come to an end, no further steps were required in the CIRP of the Corporate Debtor and RP could have closed the matter by intimating the Registrar of Companies for striking off the name of Company from the Register of the Companies.

21. In view of our foregoing discussions and conclusions, we dispose of this Appeal with following direction:

- (I) The impugned order dated 11.06.2024 directing for carrying out transaction audit, is set aside.

- (II) The RP may send intimation to Registrar of Companies, giving the facts and details, praying that Company's name be struck off from the Register of Companies
- (III) The CIRP having come to an end and liquidation has not been ordered, no further steps are required to be taken by the RP. The CIRP proceedings may be treated to be closed.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

28th October, 2024

Ashwani