

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1425 – 1428 of 2024

&

I.A. No. 5180 – 5183 of 2024

[Arising out of order dated 31.05.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Chandigarh Bench, (Court – II),
Chandigarh), in I.A. Nos. 336/2021, 1875/2022, 375/2023 & 376/2023 in
C.P. (IB) No.06/Chd/2017]

IN THE MATTER OF:

1. Asha Chopra

H. No. 3021, Sector 20-D
Chandigarh.

...Appellant No. 1

2. Dimple Gulati

403, Sector 9,
Panchkula.

...Appellant No. 2

3. Deep Rathore

2345, Phase – II, Ram Darbar,
Chandigarh.

...Appellant No. 3

Versus

1. M/s. Hind Motors India Limited

Through its Liquidator
Sh. K.V. Jain,
SCO 345-346, Second Floor, Sector 35-B,
Chandigarh.

...Respondent No. 1

2. Ashish Mohan Gupta

H. No. 161, Sector 27 A,
Chandigarh.

...Respondent No. 2

3. Union Bank of India

Stressed Assets Management Branch,
SCO-137-138, Sector 8C,
Chandigarh

Through its Authorized Representative
Sh. Navneet Chauhan

...Respondent No. 3

Present:

**For Appellant : Mr. Saket Sikri, Ms. Anannya Ghosh, Mr. Ajay and
Mr. Brian Moses, Advocates.**

For Respondents : Mr. Kamal Satija, Advocate for R-1.

ORDER

ASHOK BHUSHAN, J.

These Appeals have been filed by the Appellant challenging the Order dated 31.05.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Court – II, Chandigarh) in I.A. No. 336/2021, 1875/2022, 375/2023 and 376/2023. By the Impugned Order, the Adjudicating Authority has dismissed all the aforesaid Applications. Aggrieved by the said Order, Appellant has come up in this Appeal.

- 2.** Brief facts necessary to be noticed for deciding the Appeals are:
- i. Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor M/s. Hind Motors India Ltd., commenced by an Order dated 09.03.2017 passed under Section 10 of the Insolvency and Bankruptcy Code 2016, (for short 'The Code or The IBC') on an Application filed by the Corporate Debtor itself.
 - ii. On 12.09.2017, an Order of Liquidation was passed by the Adjudicating Authority.
 - iii. The Respondent No. 2 Mr. Ashish Mohan Gupta, the Promoter and former Director challenged the Liquidation Order, which Appeal was dismissed by this Tribunal on 26.04.2018.
 - iv. In the Liquidation Proceeding, Liquidator issued an e-Auction Notice, former Director also filed an Application seeking stay of the sale on the ground that the Scheme under Section 230 of the Companies Act, 2013 (for short 'The Act') has been submitted by the former Director which needs to be considered, which Application was rejected on 23.08.2019

against which Order Comp. App. (AT) (Ins.) No. 875/2019 was filed which too was dismissed on 13.04.2021. Relying on the Judgment of the Hon'ble Supreme Court in the matter of '**Arun Kumar Jagatramka' Vs. 'Jindnal Steel & Power Ltd. & Anr.'**' reported in **2021 SCC OnLine SC Court 220**, where it was held that former Director could not be eligible to flow the Settlement Scheme under Section 230 of the Act, keeping in view the ineligibility attached under Section 29A of the Code.

- v. The Appellant who claimed to be depositors of the Corporate Debtor has filed an Application on 24.05.2021, under Section 12A of the Code. I.A. No. 336/2021 was filed by the Appellant before the Adjudicating Authority under Section 12A seeking a direction to the Liquidator to call the Meeting of the Committee of Creditors ('CoC') in terms of Regulation 30A and to consider the Application dated 24.05.2021 submitted by the Applicant under Section 12A.
- vi. Liquidator filed a Reply to the I.A. No. 336/2021 contending that I.A. is not maintainable. Sale Notice was issued by the Liquidator on 30.10.2021, which was challenged by Appellant No. 1 by filing I.A. No. 594/2021.
- vii. Adjudicating Authority has granted stay on the Sale Notice dated 30.10.2021, which Notice was subsequently withdrawn on 06.01.2022.
- viii. Another Sale Notice was issued by Liquidator on 02.12.2022. Appellant No. 1 filed I.A. No. 1875/2022 seeking stay on the Sale Notice dated 02.12.2022. Appellant No. 2 filed I.A. No. 376/2022, seeking stay on

the Sale Notice dated 02.12.2022. Appellant No. 3 filed I.A. No. 375/2022 seeking stay on the Sale Notice dated 02.12.2022.

- ix. Adjudicating Authority vide Order dated 31.05.2024 rejected I.A. No. 336/2021 filed by the Appellant holding that Application is not maintainable under 12A. Adjudicating Authority has also further observed that the Applications I.A. No. 336/2021 has been filed by the Appellant at the instance of the ex-Director of the Corporate Debtor, Mr. Ashish Mohan Gupta, since as per 'Form-FA', the Guarantees being offered by Mr. Ashish Mohan Gupta. Adjudicating Authority has observed that Application filed by the Appellant under the Guarantee of Mr. Ashish Mohan Gupta, who himself is barred under Section 29A is not maintainable.
- x. Coming to the other Applications filed by all the three Appellants, Adjudicating Authority held that earlier Auction Notice having been withdrawn by the Liquidator, there is no error, hence the Application challenging the Auction Notice dated 02.12.2022 was dismissed. Aggrieved by the Order passed by the Adjudicating Authority dated 31.05.2024, these Appeals have been filed.

3. Learned Counsel for the Appellant challenging the Order submits that the Adjudicating Authority has committed an error in holding that Section 12A Application was not maintainable in the Liquidation Proceeding. Learned Counsel for the Appellant has relied on the 2 Member Bench Judgment of this Tribunal in the matter of '**V Navneetha Krishnan' Vs. 'Central Bank of India, Coimbatore & Anr.'**' reported in **2018 SCC OnLine NCLAT 904**, to support his submission that 12A Application is maintainable even in

Liquidation Proceeding. Learned Counsel for the Appellant further submits that Liquidator is proceeding to sell the Assets of the Corporate Debtor without constituting a Stakeholders Consultation Committee ('SCC'). It is submitted that as per the Insolvency and Bankruptcy Board Liquidation Regulations as amended by Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, it was incumbent on the Liquidator to constitute the SCC and without constitution of SCC, no sale can be proceeded with. It is submitted that Sale Notice issued by the Liquidator without their being any constitution of SCC is again the IBBI (Liquidation Process) Regulations, 2016, and deserves to be set aside, and the Adjudicating Authority committed an error in rejecting the Application.

4. Learned Counsel for the Liquidator refuting the submission of the Appellant submits that Application under Section 12A is not maintainable during Liquidation Process and further Liquidation commencement Order being 12.09.2017 i.e., much before Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, Liquidator has not to constitute the SCC. It is submitted that Regulation requiring Constitution of SCC applies when Liquidation commencement is subsequent to the amendment in the Regulation.

5. We have heard the Counsel for the Parties and perused the record.

6. From the submission of the Counsel for the Parties, only two issues arise for consideration in the present case, i.e.,

- (i) whether an Application under Section 12A for withdrawal of the CIRP can be filed after commencement of the Liquidation Proceedings;
- (ii) whether in the facts of the present case, when the Liquidation commenced on 12.09.2017, it was obligatory for the Liquidator to constitute the SCC as per the Regulation 31A inserted in Liquidation Regulation with effect from 25.07.2019.

Question No. 1

7. Section 12A was inserted in IBC by Act 26/2018 with effect from 06.06.2018. Section 12A is as follows:

“12A. Withdrawal of application admitted under section 7, 9 or 10.—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.”

8. An Order of Liquidation is passed in Section 33 when before the expiry of the Insolvency Resolution Process, no Resolution Plan is received under Section 30(6) or Resolution Plan is rejected, under Section 33(2) Liquidation can be directed at any time during the CIRP but before confirmation of the Resolution Plan when the Adjudicating Authority is intimated, the decision of the Committee of Creditors (‘CoC’) with approval of not less than 66% of the voting share to liquidate the Corporate Debtor. It is not disputed that Liquidation commenced on 12.09.2017. Section 12A itself contemplates withdrawal of the Application with the approval of the 90% voting share of the CoC in such manner as may be prescribed. The CoC exist till continuation of the CIRP and after the Order passed under Section 33 for Liquidation, the

CoC does not continues so as to take a decision for withdrawal of an Application under Sections 7, 9 & 10. The Statutory Scheme of IBC thus clearly contemplates that withdrawal of Application is permissible only during CIRP period with the approval of 90% vote shares of the CoC. The Scheme of Liquidation and the Liquidation Regulations do not contemplate any withdrawal under Section 12A. In this context, we may refer to Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, which provides for Compromise or Arrangement. Regulation 2B provides as follows;

“2B. Compromise or arrangement. (1) *Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under [***] section 33:*

Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

Provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.”

9. Thus, in the Liquidation Process, Compromise or Arrangement is contemplated as per Regulation 2B which clearly negates the submission of the Appellant that withdrawal is permissible only under Section 12A.

10. Learned Counsel for the Appellant has relied on the Judgment of the 2 Member Bench Judgment of this Tribunal in '**V Navneetha Krishnan**' (*Supra*). In the above case, Resolution Plan was submitted on 178th day and on 179th day CoC decided to go for Liquidation as 180th day was to be completed. The Appeal was filed by the Resolution Applicant who has submitted the Resolution Plan and contention was that without giving opportunity CoC decided to request the Adjudicating Authority for Liquidation. In above context in Paragraphs 4 & 5 this Tribunal held as follows:

“4. Taking into consideration the fact that the ‘resolution plan’ was submitted on 178th day and on the next day i.e. 179th day the ‘Committee of Creditors’ decided to go for liquidation as 180th day was to be completed and order under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) was required to be passed and in absence of any good reason for extension of time, we are not inclined to grant any relief.

5. However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A, satisfy the demand of ‘Committee of Creditors’ then such person may move before the Adjudicating Authority by giving offer which may be considered by the ‘Committee of Creditors’, and if by 90% voting share of the ‘committee of creditors’, accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order. Both the appeals are dismissed with aforesaid observations. No cost.”

11. The observations made in Paragraph 5 by this Tribunal, where in the facts of the said case, where a Plan was already submitted on 178th day. The Court, however, dismissed both the Appeals but made an observation which is relied by the Appellant in Paragraph 5 that “in view of Section 12A, even during the Liquidation period, if any person, not barred under Section 29A satisfy the demand of CoC then such person may move before the Adjudicating Authority by giving the offer which may be considered by the CoC”.

12. The above observation made by this Tribunal has not taken the Statutory Scheme which is delineated by Section 12A and Section 33 of the IBC Code. Liquidation Regulations 2016 which provides for Compromise and Arrangement has also not been placed before this Tribunal in the above case. We do not subscribe to the observation made by the Tribunal in Paragraph 5 that even during Liquidation period, any person can make an Application under 12A.

13. Learned Counsel for the Appellant has also placed reliance on the Judgment of the Hon’ble Supreme Court in the matter of **‘Lokhandwala Kataria Construction Private Limited’ Vs. ‘Nisus Finance and Investment Managers LLP’** reported in **(2018) 15 SCC 589**. In the above Judgment, Hon’ble Supreme Court passed an Order exercising power under Article 142 of the Constitution to put quietus to the matter by taking consent on the record. The said Judgment was delivered on 24.07.2017. Paragraphs 2 to 4 of the Judgment are as follows:

“2. The present appeal raises an interesting question as to whether, in view of Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the National Company Law Appellate

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Tribunal could utilise the inherent power recognised by Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 to allow a compromise before it by the parties after admission of the matter.

3. *By the impugned order dated 13-7-2017 [Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Manager LLP, 2017 SCC OnLine Nclat 406], the National Company Law Appellate Tribunal was of the view that the inherent power could not be so utilised. According to us, prima facie this appears to be the correct position in law.*

4. *However, since all the parties are before us today, we utilise our powers under Article 142 of the Constitution of India to put a quietus to the matter before us. We take the Consent Terms dated 28-6-2017 and 12-7-2017 entered into between the parties on record and also record the undertaking of the appellate before us to abide by the Consent Terms in toto. The appellate also undertakes to pay the sums due on or before the dates mentioned in the aforesaid Consent Terms.”*

14. Section 12A was inserted in IBC with effect from 06.06.2018, i.e., much subsequent to the above Judgment. The above Judgment in no manner help the Appellant in the facts of the present case.

15. In view of the clear Statutory Scheme as delineated by 12A, Section 33 and Regulation 2B of the Liquidation Regulation, we are of the view that during Liquidation period, an Application under Section 12A is not permissible. In the facts of the present case, it is clear that former Director of the Corporate Debtor, Ashish Mohan Gupta, himself has challenged the Liquidation Order and also sought to submit a Scheme which were all rejected up to this Tribunal. The Application which has been filed by the Appellant No. 1 under Section 12A was filed after more than three years from Liquidation commencement, which was at the instance of the former Director Aashish Mohan Gupta, which has been clearly noticed by the Adjudicating Authority in the Impugned Order. We may notice Paragraphs 3 (iv) and (v),

Adjudicating Authority also in Paragraph 5 has noticed that Union Bank of India which has 80.43% vote shares as stated before the Adjudicating Authority that Union Bank of India is not inclined to enter into any kind of settlement with Respondent No. 2.

16. We are of the view that Adjudicating Authority for the reasons as noticed above did not commit any error in rejecting I.A. No. 336/2021 filed by the Appellant.

Question No. 2

17. As noted above, the Liquidation commencement date in the present case is 12.09.2017. The provision for constitution of SCC was inserted in IBBI (Liquidation Process) Regulations, 2016, by Notification dated 25.07.2019 with effect from 25.07.2019, which required the Liquidator shall constitute the SCC. An explanation to Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, has been inserted by Notification dated 08.04.2022 with effect from 20.04.2022, which explanation is clarificatory explanation, clarifying the ambit and scope of Regulation 31A, explanation as added on 28.04.2022 to the Regulation is as follows:

“31A. Stakeholders’ consultation committee. (1)
The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to –

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

.....

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.”

18. Moreover, when we look into the Scheme of IBC, SCC, which is required to be constituted within 60 days from the Liquidation commencement date is not a possibility in the facts of the present case. Statute never contemplate performance of impossible act, in the present case when Liquidation has commenced on 12.09.2017, there is no question of constitution of the SCC within 60 days from Liquidation commencement date. From bare look into the statutory provision, it is clear that Regulation 31A did not require constitution of SCC with regard to the Liquidation which has commenced years ago from the provision for SCC came into the Regulation. Explanation to Regulation 31A is a complete answer to the submission of the Appellant that there is no requirement of constitution of SCC in the facts of the present case.

19. We thus do not find any error in the Order passed by the Adjudicating Authority, rejecting the Applications filed by the Appellant. We thus do not find any substance in any of the submission advanced by the Counsel for the Appellant.

There is no merit in the Appeals. The Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

29th August, 2024

himanshu