

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.196/2021
(IA Nos. 396, 398 & 397/2021)

In the matter of:

Mr. SRINIVASA RAO IDUPULAPATI,

Erst While Chief Promoter and Managing Director
of M/s. ISR Infra Pvt. Limited, Aged 51 years,
Occupation: Business, R/o. Door No. 9-19-10,
FF-2, Raghavendra Residency, CBM Compound,
Visakhapatnam, Andhra Pradesh - 530 003.

... APPELLANT

V

M/s.ISR INFRA PVT. LIMITED,

Represented by the Resolution Professional& Liquidator,
Mr.Pradeep Kumar Sravanam,
Office at: 6-40, Plot No. 101, Suprabhat Township,
Venture-2, Near Nallamallareddy Engineering College,
Kachavani Singaram, Hyderabad - 500 088.

...RESPONDENT NO.1

COMMITTEE OF CREDITORS

in the matter of M/s. ISR INFRA PVT LIMITED,
Represented by Indian Overseas Bank Regional Office,
No: 48-14-111, 3rd Floor, SRI NITYA Complex,
Rama Talkies Road, Visakhapatnam,
Andhra Pradesh, Pincode 530013.

...RESPONDENT NO.2

Present :

For Appellant : Mr. P. Elayaraj Kumar, Advocate

For Respondents : Ms. JVL Bharathi, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant, being the erstwhile Chief Promoter and MD of the Corporate Debtor, M/s. ISR Infra Private Limited is before this Appellate Tribunal expressing his grievances as against the impugned order dated 10.05.2021, passed by the Ld. NCLT Amravati bench in IA No. 176/2019, which was subject matter of consideration in TCP (IB) No. 106/9/AMR/2019, to be read with CP (IB) No. 382/9/HDB/2019. By virtue of the impugned order dated 10.05.2021, the application preferred by the Respondent / Resolution Professional, by invoking the provisions contained under Section 33 (1) (a) of the I & B Code, 2016, seeking an order of liquidation of the Corporate Debtor, has been allowed.

2. Briefly stated, the Appellant contends and claims to be the chief promoter of the Corporate Debtor, i.e., M/s. ISR Infra Private Limited. His grievance is that the process of liquidation has been resorted to without venturing into or exploring the possibility of a resolution, which should have been done in the first instance before putting the Corporate Debtor to liquidation.

3. It was further argued by the Ld. Counsel for the Appellant that, the Appellant has always been making efforts to settle the dues with the major Financial Creditors, i.e., the Indian Overseas Bank, till the date of filing of an application for liquidation. It is projected by the Appellant that he has been

pursuing the OTS proposal, but the same was declined to be accepted by the Financial Creditor, resulting into the invocation of the provisions under Section 33(1) of the I & B Code.

4. He has contended that he has extended various proposals, for settlement of the dues to the Sole Financial Creditor (FC) and has, from time to time, improved the offer and that the revised offers as solicited by the bank itself indicate that the bank was interested in settling the issue rather than forcing the Corporate Debtor to face the liquidation process.

5. He has further submitted that, owing to an abrupt closure of the CIRP process, the process of settlement got stalled and the progress of the Corporate Debtor and its continuance as an ongoing concern has been completely jeopardized. The Appellant's case was that, he, being an Engineering Graduate, had ventured into the field of Real Estate Business and construction by establishing a partnership firm in 2007, which was later converted into a private limited company and had taken up various infrastructure projects in which they were initially successful, but later on account of business failures, mounting overdues and changes in business climate the financial viability of the CD was affected and the account with IoB slipped into NPA.

6. He has contended that the Sole Financial Creditor, i.e., Indian Overseas Bank, declared the account of the CD as to be an NPA, without making any efforts

to explore possibilities of restructuring of the loan. At the same time Section 9 proceedings were initiated by one Operational Creditor M/s. CMR Transport Contractors and CD was admitted into CIRP. The Appellant immediately settled their dues with the said Operational Creditor by paying their dues, and in response thereto, the Operational Creditors have submitted Form FA to the Resolution Professional. However, the Financial Creditor, i.e., the Indian Overseas Bank instead of coming forward for a settlement, insisted upon the payment of the entire dues as a complete down payment before venturing into the withdrawal of the proceedings by invocation of the provisions contained under and therefore his efforts for a settlement through Section 12A route ended in failure. He has further submitted that all his efforts to revive the CD were not recognised by Ld. Tribunal which instead went on to pass the orders of liquidation which ought to be set aside in order to give a chance to the CD to revive.

7. The Respondent (Resolution Professional) has submitted to the contrary that, he filed the application for liquidation based on the resolution passed by CoC on the grounds that no Resolution Plan was received, that the Appellant failed to pay the agreed OTS amount despite various extensions given and despite extending CIRP period from time to time and that the conduct of the Appellant did not inspire confidence on the OTS proposals submitted by him.

8. Thus, the Resolution Professional filed an application, being IA No. 176/2019 (2020) in TCP (IB) No. 106/9/AMR/2019, praying for the liquidation, and, the orders on the said IA were reserved on 24.11.2020. Citing health reasons, the Appellant filed a recall application of the order dated 24.11. 2020, with a request to grant three weeks time to him to make the payment to the sole Financial Creditor, which was granted. However, the Appellant had failed to honour the commitment made by him, on grounds of Covid-induced health conditions.

9. Further, the Appellant had once again filed an application being IA No. 30/2021, in the company petition, after the rejection of the first recall application, praying for, recalling of the order of 24.11.2020 reserving the orders in IA No. 176/2019 (2020), being the application filed for liquidation of the Corporate Debtor. Here too, the Appellant had rather tried to prolong the proceedings by stating that, he is ready for a settlement, he will deposit Rs. 2.20 Crores, in addition to Rs. 80 Lakh paid already and will settle the balance in 2 – 3 months, which was agreed to and Ld. Tribunal granted him time to do so. But once again, he failed to honor his commitments and hence the application for recall, that is, IA No. 30/2021, was rejected by an order that was passed on 07.04.2021.

10. The Ld. Tribunal took into consideration the past conduct of the Appellant, and it proceeded to pass the impugned order directing the liquidation of the Corporate Debtor. In the said order Ld. Tribunal has recorded that the IRP had

constituted the CoC as back as in September, 2019, that meetings of the CoC got delayed because of the non-cooperation and non-participation of the erstwhile directors of the Corporate Debtor (Appellant herein) making efforts to buy time, that the Ld. Adjudicating Authority was constrained to issue directions to the the Appellant to cooperate with the RP, that only in the 3rd CoC meeting the decision to invite Expression of Interest could be taken and that CIRP timeline had to be extended from time to time because of repeated requests of the Appellant for time extension without any justifiable and logical reasons.

11. The Ld. Adjudicating Authority, has also recorded that considering the request made by the Resolution Professional, vide its order of 26.02.2020, it had extended the CIRP by 60 days, and thereafter, by an order of 07.03.2020, for a further period up to 05.05.2020, and that when no Resolution Plan could be received, by the last date fixed, i.e., 15.07.2020, the Appellant herein offered a One-Time Settlement to the FC and settled the claim of one Operational Creditor, who had filed the application under Section 9 of the I & B Code, and that despite 3 time extensions given, the Appellant could not make the full payment as promised under the OTS offer, resulting in failure of settlement initiated under Section 12A of the Code.

12. Owing to the finding that has been recorded by the Ld. Tribunal taking into consideration the past conduct of the Appellant, coupled with the fact that since

in the e-voting that was conducted on 19.10.2020 and 20.10.2020 in the 7th CoC meeting, the CoC approved the proposal for carrying out the liquidation with a 100% voting, Ld. Tribunal passed the impugned order whereby the CIRP was directed to be closed, and the CD was directed to be put under liquidation.

13. It is important to note that when the application under Section 33 (1)(a) of the Code was under consideration before the Ld. Tribunal in the shape of IA No. 176/2019 (2020), a specific finding has been recorded that, the application was not objected by the Appellants by filing of any objection meaning thereby the propriety of the application preferred under Section 33 (1)(a) of the Code seeking a direction for liquidation remained uncontroverted, that the attempt to revive the CD during CIRP period failed, and that the wisdom of the CoC, which was carried with 100% voting in favor of issuing a direction for liquidation, calls for no interference.

14. Thus, the order passed by the Ld. Tribunal of directing the Corporate Debtor to be placed under liquidation, subject to the directions as given in the order is in absolute consonance to the provisions of law and particularly to the spirit contained under Section 33 (1)(a) of the Code and thus the direction for liquidation does not suffer from any apparent error and rather the Appellant has to blame himself for his own dereliction and conduct, when despite of various

opportunities having been granted, he has failed to act in a bonafide manner on the proposals extended by him.

15. Hence, the liquidation was a legal consequence, which has to take its course. Hence passing of an order of liquidation on 10.05.2021 doesn't suffer from any apparent error, which would calls for any interference by this Appellate Tribunal, in the exercise of our appellate jurisdiction under Section 61 of the I & B Code, 2016. Thus, the 'appeal' lacks 'merit', and the same is accordingly 'dismissed'. All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

06.07.2026
SN/MS/AK