

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.25/2022
(Filed under Section 61(1) of the Insolvency & Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 06/12/2021 in IA/296/IB/2020
in IBA/898/2019 passed by the 'Adjudicating Authority' (National
Company Law Tribunal, Division Bench -II, Chennai)

In the matter of:

V. Duraisamy

Interim Resolution Professional
of M/s. H G S Diaries and Agro Limited
No.397, Precision Plaza, Third Floor
Teynampet, Chennai-600 018.

... Appellant

Versus

- 1. Jeyapriya Fruits and Vegetables Commission Agent**
No.54, 5th Street, Kannyamman Nagar,
Maduravoyal, Chennai-600 095. ... Respondent No.1
- 2. H G S Diaries and Agro Limited**
225A, Vettavalam Road, 4th Street
Tiruvannamalai-606 601. ... Respondent No.2
- 3. Kesavan Ramachandran Sivakumar**
225A, Vettavalam Road, 4th Street
Tiruvannamalai-606 601. ... Respondent No.3
- 4. Rathinavel Indira**
225A, Vettavalam Road, 4th Street
Tiruvannamalai-606 601. ... Respondent No.4

Present :

For Appellant : Mr.B. Thilak Narayanan, Advocate

For Respondents : No Appearance

J U D G E M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the order dated 06.12.2021, passed in IA/296/IB/2020 in IBA/898/2019, by the National Company Law Tribunal, Division Bench-II, Chennai ('Adjudicating Authority') the Insolvency Resolution Professional

(IRP) has preferred this Appeal on the ground that the Adjudicating Authority has erroneously dismissed the Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’), while dismissing the Application, the ‘Adjudicating Authority’ observed as follows:

“6. Heard the submissions made by the Learned Counsel of the Applicant, it is seen that the Corporate Debtor ‘HGS Dairies and Agro Limited’ was struck off by the RoC on 02.08.2019 and the Application to initiate CIRP against Corporate Debtor was filed by the Operational Creditor on 01.07.2019 in IBA/898/2019. Thereafter, the order initiating CIRP was passed by this Tribunal on 20.01.2020. It is also seen that the Applicant had effected public announcement on 23.01.2020 and the Applicant admitted that he had received Rs.20,000/- towards publication expenses.

7. Further, it is seen that the Respondents have not appeared before this Tribunal. The Private notice dated 21.08.2020 caused by the Applicant was also returned as “no such person”.

*8. In so far as the prayer (a) is concerned, seeking dismissal of the order passed by this Tribunal on 20.01.2020, this Tribunal has no power to review or recall its order which is confirmed by the Hon’ble Appellate Tribunal in the matter of **Amod Amladi Vs. Mrs. Sayali Rane & Anr. (2017 SCC OnLine NCLAT 430)**. Therefore, prayer (a) is not maintainable, and thus stands rejected. Further, if the IRP has received the claim from only the Operational Creditor, he is required to constitute the CoC with the sole Operational Creditor. Further, in case the name of the Corporate Debtor has been struck off by the RoC, the IRP is required to move an Application before this Tribunal to restore the name of the Company under Section 252 of Companies Act, 2013 however, we find it strange that the IRP has moved an application for dismissal of CIRP, more particularly, the IRP, in the consideration of this Tribunal has not taken enough steps in order to conduct the CIRP proceedings in relation to the Corporate Debtor.”*

2. It is the case of the Appellant that the CIRP in respect of the Corporate Debtor was ordered by the 'Adjudicating Authority' on 20.01.2019 in IBA/898/2019 and pursuant to the order, the IRP had sent a letter to the Corporate Debtor, to handover the possession of the Corporate Debtor, but the same was returned with an endorsement 'unclaimed'.

3. It is submitted that the Appellant had checked the MCA Master Data and found that the Corporate Debtor was struck off by the Registrar of Companies for non-filing of returns. On 02.02.2020, when the Appellant had visited the premises of the Corporate Debtor, he found it locked. It is submitted that only an amount of Rs.20,000/- (Rupees Twenty Thousand Only) was paid by the Operational Creditor to the Appellant and since then, the Appellant /IRP was spending out of his own pocket.

4. It is strenuously argued by the Appellant that the findings given by the 'Adjudicating Authority' that if the IRP has received the 'Claim' only from one Operational Creditor, he is still required to constitute the CoC with the sole Operational Creditor.

5. To a query from the Bench, with respect to any 'Claims' received, it was submitted that not a single 'Claim' was received. It is contended that 'the Company' having been struck off for non-filing of the financial statements, the Adjudicating Authority ought to have allowed the Application seeking dismissal of the CIRP.

6. This Tribunal is of the earnest view that there is no provision in the Code for the Corporate Debtor to constitute the CoC with a single Operational

Creditor, when it is seen from the record that despite the public announcement being made inviting claims from its stakeholders, the Appellant has not received a single 'Claim' from the date of initiation of the Corporate Debtor into CIRP. As the CoC itself is not constituted and in the light of the fact that not a single 'Claim' was received by the IRP even after the public announcement, as well as the fact that the Corporate Debtor Company has been struck off from the Registrar of Companies, this Tribunal is of the considered view that the CIRP may be closed with respect to the subject company.

7. For all the foregoing reasons, this Appeal is 'Allowed' and the order of the 'Adjudicating Authority' is set aside and the 'Company' is released from all rigors of CIRP. All pending Applications and Interlocutory Applications, if any, stand 'Closed'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

23.06.2023
ASJ/NG