

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1224 of 2023

IN THE MATTER OF:

Jaipur Trade Expocentre Pvt. Ltd.

....Appellant

Vs.

Metro Jet Airways Training Pvt. Ltd. & Ors.

....Respondents

Present:

**For Appellant: Mr. Sanyat Lodha, Ms. Sanjana Saddy and
Mr. Lavam Tyagi, Advocates.**

**For Respondents: Mr. Aditya Vijay and Ms. Anusha Jain, Advocates for
R-3,4.**

O R D E R
(HYBRID MODE)

21.12.2023: Heard Learned Counsel for the parties.

2. This appeal has been filed against the order dated 31.08.2023 by which order Adjudicating Authority has allowed the application for liquidation and directed for liquidation. When this appeal was filed this Tribunal has passed following interim order on 18.09.2023:

“18.09.2023: Learned counsel for the Appellant submits that decision of the CoC to liquidate was with reasons and the Adjudicating Authority erred in rejecting the application for liquidation. It is submitted that in pursuance of the impugned order, CoC is to meet today and it is likelihood that Form G be issued.

Issue notice. Learned counsel for Respondent No.2 has appeared. Let Reply be filed by the Respondents within two weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 16.10.2023.

In the meantime, it shall be open for the Resolution Professional to issue Form G, however, no final decision with regard to any Resolution Plan, if any, received shall be taken.”

3. We need to notice certain dates and events before coming to the submission made by the counsel for the parties.

4. Adjudicating Authority by the order dated 10.08.2022 admitted the application under Section 9, the publication was made on 12.08.2022 by IRP pursuant of which only one claim was filed that was of Operational Creditor who had filed the application. The CoC was constituted by the IRP since no other claim was received, 1st meeting of Committee of Creditors was held on 03.09.2022 and 3rd meeting of CoC was conducted on 27.09.2022 and resolution was passed by CoC to liquidate the Corporate Debtor. In pursuance of which an application was filed by Resolution Professional before the Adjudicating Authority which have been disposed of by the Adjudicating Authority directing the CoC take steps following the code in successfully resolving the Corporate Debtor including publication of Form-G and an appointment of valuers.

5. Challenging the order impugned Learned Counsel for the appellant submits that the scheme of the IBC does not contemplate that without issuance of Form-G decision cannot be taken by CoC to liquidate the Corporate Debtor. He submits that in the meeting of CoC held on 27.09.2022 reasons were given for taking a decision for liquidation and there was no ground for interfering with the said order.

6. Learned Counsel for the appellant submits that the Resolution Professional after passing of the interim order passed by this Tribunal has published Form-G but no EOI was received, thereafter another application has been filed by Resolution Professional for liquidation.

7. Learned Counsel for the Respondent refuting the submission of Learned Counsel for the Appellant contends that respondent has already challenged the order admitting Section 9 application in the Supreme Court where SLP was dismissed and review petition was also dismissed but a Curative Petition has been filed which is pending consideration. He further submits that Resolution Professional has filed another application for liquidation subsequent to filing of the appeal which was also listed on the 15.12.2023.

8. Learned Counsel for the parties in support of their submissions have relied on Judgment of this Tribunal which shall be noticed hereinafter.

9. We may first notice the resolution passed by the Committee of Creditors on 27.09.2022. The resolution has been brought on the record along with the Rejoinder affidavit. In the Resolution (B-2) following has been recorded:-

“B-2. TO DISCUSS AND APPROVE 'LIQUIDATION' OF THE CORPORATE DEBTOR UNDER SECTION 33(2) OF IBC:-

The Chairman informed the COC that due to non-cooperation from the promoter/directors, the CIRP could not move forward. He has investigated the affairs of the corporate debtor, and found that the company has no employees, no business, no registered office, no filing of Annual Accounts at the MCA since 31/3/2011 no

auditors, and no banking transactions since 2017. It has virtually no signs of going Concern, and no business activities which can attract the Investors for resolution of the corporate debtor. In the 2nd COC Meeting, a request for consideration of liquidation of the corporate debtor under Regulation 18 was also received. Hence the 'Liquidation' of the Corporate Debtor is proposed without any efforts to seek resolution at an early stage of CIRP.

The COC discussed the matter and the following resolution was passed:-

"RESOLVED that a resolution under section 33(2) of the Insolvency and Bankruptcy Code, 2016, be and is hereby approved for liquidation of the Corporate Debtor namely 'Metro Jet Airways Training Private Limited'.

"RESOLVED FURTHER that Mr. Bhim Sain Goyal, Resolution Professional, be and is hereby authorised to file the requisite application before the Adjudicating Authority, for its orders for liquidation of Corporate Debtor"."

10. Learned Counsel for the Appellant has placed reliance on the Judgment of this Tribunal in three members Bench Judgment in Company Appeal (AT) (Ins.) No. 1062 of 2022 - *Sreedhar Tripathy vs. Gujarat State Financial Corporation & Ors.* where this Tribunal after noticing Section 33 sub section 2 of the IBC Code, 2016 laid down following in paragraph 6 & 7:

6. Section 33 Sub-section (2) of the I&B Code which deals with initiation of liquidation, is as follows:-

“2. Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

2[Explanation. – For the purpose of this subsection, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under subsection (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”

“7. The Explanation under Section 33 (2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for

the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of the each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I&B Code or not. With these observations, the Appeal is dismissed."

11. When we looked into the resolution passed by the Committee of Creditors, CoC has given reasons as to that there are no employees, no business, no registered office, no filing of annual account of the MCA since 31.03.2011, no returns and no transactions since 2017. The scheme of the IBC as delineated by Section 33 sub section 2 empower of Committee of Creditors to take a decision to liquidate after constitution of Committee of Creditors.

12. It is true that the decisions of the CoC to liquidate has to be with reasons and that cannot be arbitrarily done but in the present case when we looked into the resolution of the CoC it is clear that there was objective consideration by the CoC for taking a decision to liquidate

13. Learned Counsel for the Respondent has relied on the Judgment of Chennai Bench of the Tribunal in Company Appeal (AT) (CH) (Ins.) No. 25 of 2022 - *V. Duraisamy vs. Jeyapriya Fruits and Vegetables Commission Agent &*

Ors. It is submitted by the Learned Counsel for the respondent that if there are single Operational Creditor no Committee of Creditors can be constituted. He relied on Paragraph 4 & 6 of the Judgment which are as follows:

“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.

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.”

14. The judgment which has been relied by the counsel for the respondent was a case where appeal was filed against the order 06.12.2021 passed by Adjudicating Authority where application filed by Resolution Professional to close the CIRP was dismissed. In the appeal this Tribunal took the view that no claim was received after the publication then Adjudicating Authority committed error in rejecting the application of CIRP.

15. When we looked into the Judgment specially Paragraph 4,5 & 6 it is clear that what has been held by this Tribunal that the case was that in which no claim was filed, no committee of Creditors was constituted. The said was a not a case of that Committee of Creditors was constituted by single Operational Creditor, hence, the submission which is sought to be advanced by the counsel for the respondent that the single Operational Creditor committee cannot be constituted was not an issue nor any ratio in the said judgment can be read to that effect.

16. Learned Counsel for the respondent has lastly submitted that Curative Petition is pending against the admission order of Section 9.

17. We are of the view that since SLP having been dismissed and review having also dismissed on the said submission the hearing of the appeal cannot be adjourned. It goes without saying that any order passed by Hon'ble Supreme court is binding by this tribunal and Adjudicating Authority, in event any such order is passed in the Curative Petition.

18. In so far as coming to the subsequent application filed by the Resolution Professional, the RP has filed the application after issuance of Form-G after the interim order passed by this tribunal and as submitted by Learned Counsel for the appellant even after the Form-G no EOI was received.

19. Be as it may, in view of the order which we are passing in this appeal the subsequent application has become infructuous and has to be closed.

20. In view of the foregoing decision we allow this appeal, set aside the order passed by Adjudicating Authority dated 31.08.2023 and allow the I.A No. 543/JPR/2022 and direct for liquidation. The Adjudicating Authority shall pass an order appointing a Liquidator to proceed with the liquidation proceeding of the Corporate Debtor.

21. The parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

sa/nn