

National Company Law Appellate Tribunal,
Principal Bench, New Delhi
Company Appeal (AT) (Ins) No. 676 of 2021

IN THE MATTER OF:

1. **Sudhir Kumar Goel**
(Promoter of Shashi Oils & Fats Pvt. Ltd.)
s/o Late Bhag Chand Goel,
Rio House No. 135, Ward No. 5:, East South
Mutfariq Budhana Road,
Khatauli, District Muzaffarnagar
Uttar Pradesh 215201
2. **Alok Goel**
(Promoter of Shashi Oils and Fats Pvt. Ltd.)
s/o Late Bhag Chand Goel,
Rio House No. 135, Ward No. 5, East South
Mutfariq Budhana Road,
Khatauli, Distict Muzaffarnagar
Uttar Pradesh- 215201

...Appellants

Versus

1. **M/s Shashi Oils and Fats Pvt. Ltd.**
(In liquidation) registered office:
Goel Dall Mill, Opposite
Budhana Road, G.T. Road,
Khatauli, Muzaffarnagar,
Uttar Pradesh 251201
Through its Liquidator Chanchal Dua,
Partner in ARCK Resolution Professional
LLP R/o-1-A/85-A,
Ramesh Nagar,
New Delhi 110015 Office Address:
409, Ansal Bhawan, 16 K.G. Marg, Connaught
Place, New Delhi – 110001
2. **ASREC (India) Ltd.**
Registered Office:
Solitaire Corporate Park, Building No. 2,
Unit No. 201-202 A & 200-2028,
Ground Floor, Ghatkopar Link Road,

...Respondent no.1

- Chakala Andheri(East) Mumbai 400093 ...Respondent no. 2
3. **M/s Mahadev Rice Mill**
Through its partners Saurabh Agarwal and
Vivek Agarwal
Son of Some Prakash Agarwal,
Rio 18, Mohalla Katorataal
Ram Industries Manpur Road
Kashipur Udham Singh Nagar,
Uttarakhand 244173
Registered Office:
Manpur Road, Kashipur,
U.S. Nagar ...Respondent no.3
Uttarakhand 244713
4. **Third Party Auction Purchaser to be served**
through Liquidator Mr. Chanchal Dua ...Respondent no. 4
Present:

For Appellant: Mr. Amish Tandon, Advocate.
For Respondents: Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Advocates
for R1.
Mr. Abhishek Anand, Adovate for R2.
Mr Chanchal Dua, RP in person.

With
Company Appeal (AT) (Ins) No. 99 of 2022

IN THE MATTER OF:

1. **Sudhir Kumar Goel**
(Promoter of Shashi Oils & Fats Pvt. Ltd.)
s/o Late Bhag Chand Goel,
Rio House No. 135, Ward No. 5, East South
Mutfariq Budhana Road,
Khatauli, District Muzaffarnagar
Uttar Pradesh 215201
2. **Alok Goel**
(Promoter of Shashi Oils and Fats Pvt. Ltd.)
s/o Late Bhag Chand Goel,
Rio House No. 135, Ward No. 5, East South
Mutfariq Budhana Road,
Khatauli, Distict Muzaffarnagar

Uttar Pradesh- 215201
Versus

...Appellants

1. **Mr. Chanchal Dua**
Insolvency Professional
(Former Liquidator- Shashi Oils and Fats Pvt. Ltd.)
R/o-1A/85-A, Ramesh Nagar,
New Delhi – 110015
Also at:
409, Ansal Bhawan, 16 K.G.Marg,
Connaught Place, New Delhi - 110001 **...Respondent No.1**
 2. **ASREC (India) Ltd.**
Registered Office:
Solitaire Corporate Park, Building No. 2,
Unit No. 201-202 A & 200-2028,
Ground Floor, Ghatkopar Link Road,
Chakala Andheri(East) Mumbai 400093 **...Respondent No.2**
 3. **M/s Mahadev Rice Mills**
Through its partners Mr. Saurabh Agarwal
and Vivek Agarwal
Sons of Some Prakash Agarwal
Rio 18, Mohalla Katorataal,
Ram Industries, Manpur Road,
Kashipur Udham Singh Nagar,
Uttarakhand 244173 **...Respondent No.3**
 4. **Third Party Auction Purchaser**
To be served through Respondent No. 1
Liquidator- Mr. Chanchal Dua **...Respondent No. 4**
- Present:**

For Appellant: Mr. Amish Tandon, Advocate.

For Respondents: Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Advocates
for R1.

Mr. Abhishek Anand, Advocate for R2.

J U D G M E N T

Dr. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

CA (AT) (Ins) No. 676 of 2021 has been filed against the order passed by Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) in CA No. 143/2021 in CP (IB) No. 140/ALD/2017 dated 15.07.2021.

2. The Adjudicating Authority in the said impugned order has observed as follows:

“17. Further compliance certificate in Form-H as per Regulation 45(3) of Liquidation Process Regulations, 2016 has also been annexed as Annexure A-23 of the present application. Thus, the applicant has complied with all the provisions of the Code and Regulation made thereunder.

18. After hearing the learned Counsel for the Liquidator and perusing the material available on record, this Tribunal observed that the company has been completely wound up and its assets have been completely liquidated. Hence, the proposed dissolution is not going to affect adversely to its shareholder or creditors and nor it is contrary to the provisions of law.

19. Hence, considering the above facts and circumstances of the case, this Adjudicating Authority is of the opinion that the present petition deserves to be allowed in terms of its prayer clause.

*20. Consequently, in Adjudicating Authority in exercise of the power conferred to it under Sec 54 of IBC, 2016 orders and direct that the company “**Shashi Oils & Fats Pvt. Ltd.**” shall stand*

dissolved from the date of its order and thus the liquidator stands relieved.

21. The liquidator and registry is further directed to communicate a copy of this order to the Registrar of Companies (where the registered office of the company is situated), IBBI, New Delhi and other Statutory Authorities for necessary information”.

3. CA (AT) (Ins) No. 99 of 2022 has been filed against the impugned order in CA No. 198/ALD/2020 & CA No. 351/2020 dated 27.07.2021 with the following observations:

“It has been brought to the notice of this Court that the Company (Shashi Oils & Fats Pvt. Ltd.) has been dissolved vide order of this tribunal dated 15.07.2021”.

4. The Appellants in both the cases are ex-promoters and ex-members of M/s Shashi Oils & Fats Pvt. Ltd. New Delhi which was a company incorporated under the Provisions of the Companies Act, 1956 on 26.05.2005 and is primarily engaged in the business of manufacturing and packaging of edible oil.

5. Brief facts common to the case are listed in chronology of events of dates which is being reproduced herein for clarity as under:

List of Dates

| <u>S. No.</u> | <u>Date</u> | <u>Event</u> |
|----------------------|--------------------|--|
| 1. | | The Appellants herein are the ex-promoters and ex-members of M/s Shashi oils & Fats Pvt. Ltd. (‘Company’) |

[Company Appeal \(AT\) \(Ins\) No. 676 of 2021& Company Appeal \(AT\) \(Ins\) No. 99 of 2022](#)

| | | |
|-----|------------|---|
| 2. | 18.11.2009 | <p>Allahabad Bank had sanctioned a term loan facility of Rs. 3 Crores and a working capital limit of Rs. 12 Crores to the Company.</p> <p>The term loan facility of Rs. 3 Crores was divided into two parts i.e. Term Loan- I of Rs. 1.7 Crores to be repaid in 43 equal monthly installments and Term Loan –II of Rs. 1.3 Crores to be repaid in 66 equal monthly installments.</p> <p>For the aforesaid purpose, the entire movable assets of the Company as well as the title deed of the immovable property were mortgaged with the Allahabad Bank.</p> |
| 3. | 23.06.2011 | <p>On account of adverse financial situation, the Company defaulted in the payment of instalments to Allahabad Bank due to which the account of the Company was declared as a Non Performing Asset (NPA)</p> |
| 4. | 30.09.2011 | <p>Allahabad Bank took symbolic possession of the immovable properties of the Company under Section 13(4) of the SARFAESI Act, 2002.</p> |
| 5. | 30.03.2013 | <p>Allahabad Bank assigned all its title, interest and benefits in respect of the debts of the Company to Respondent No.2 herein through a Deed of Assignment (DoA), merely at a price of Rs. 5,75,00,000/-.</p> |
| 6. | 07.01.2014 | <p>Respondent No. 2 initiated recovery proceedings against the Company before the Debt Recovery Tribunal, Lucknow by filing Original Application No. 27/2014.</p> |
| 7. | 17.01.2014 | <p>Symbolic possession of the immovable properties of the guarantors was conferred upon the Allahabad Bank</p> |
| 8. | 10.10.2017 | <p>Respondent no.2 also preferred an application under Section 7 of the IBC, 2016 before the NCLT being CP (IB) No. 140/ALD/2017</p> |
| 9. | 20.03.2018 | <p>NCLT admitted the application and initiated CIRP against the Company.</p> |
| 10. | | <p>CoC constituted and Respondent No. 2 was the sole member of the CoC with 100% voting rights.</p> |
| 11. | 12.11.2018 | <p>Appellants submitted a Resolution Plan in terms of Section 240A of the Code, r/w clauses (c) and (h) of Section 29A of the Code.</p> |
| 12. | 17.12.2018 | <p>The Resolution Plan submitted by the Appellants was placed before the CoC in its 7th Meeting, and the CoC requested the promoters to increase the consideration in</p> |

| | | |
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| | | the Resolution Plan which could be done. Thus , Plan of the Promoters was rejected by the CoC. Consequently, Respondent No.1 herein filed CA No. 310/2018 (Chanchal Dua v. ASREC (India) ltd. & Anr.) under Section 33(2) of the Code seeking to liquidate the Company. |
| 13. | 25.09.2019 | During pendency of CA No. 310/2018, the promoters made a revised proposal for settlement along with a demand draft of Rs. 5,00,000/- to the Respondent No. 2, proposing a One Time Settlement (OTS) of Rs. 5,25,00,000/- to be paid by M/s Mahadev Rice Mill. |
| 14. | 18.11.2019 | No response was received from Respondent No. 2 and the ,the application for liquidation was heard and reserved for orders by the NCLT |
| 15. | 21.01.2020 | Application for Liquidation was allowed and Mr. Chanchal Dua was appointed as the Liquidator. |
| 16. | 03.01.2020 | Promoters once again submitted the revised proposal to Respondent No. 2. |
| 17. | 10.02.2020/ 18.03.2020 | Revised proposal was approved and accepted by ASREC, and the Letter of Acceptance of the tripartite scheme of compromise/arrangement was duly communicated to the Liquidator |
| 18. | March, April 2020 | Country was put under lockdown by the Government on 22.03.2020 due to the prevailing COVID 19 pandemic, and as such no application could be filed before the NCLT for approval of the tripartite scheme of compromise/arrangement. |
| 19. | 12.08.2020 | Liquidator published a notice on 12.08.2020 in the newspaper Amar Ujala for auction of the land of the Company along with building, plant and machinery at a reserve price of Rs. 3,75,00,000/-, to be held on 29.08.2020. |
| 20. | 29.08.2020 | Auction was conducted by the Liquidator and the property was sold to the successful bidder for Rs. 3,78,00,000/-. |
| 21. | 05.09.2020 | Appellants herein preferred the subject CA under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 seeking sanctions of the NCLT to the scheme of compromise and arrangement between the Promoters, the Company and its Creditors. |

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| 22. | 22.12.2020 | CA 198 of 2020 was listed wherein the Respondent no.1 was being represented by its counsel on advance notice and the matter was adjourned to 26.03.2021 |
| 23. | 26.03.2021 | The aforesaid matter was adjourned to be taken up before the regular court for arguments. |
| 24. | 07.07.2021 | IA No. 143 of 2021 seeking dissolution of the Company, filed by the Respondent No.1 was listed for the first time. The said application was never served upon the Appellants. |
| 25. | 15.07.2021 | NCLT allowed the IA No. 143 of 2021 and the Company was purportedly dissolved. |
| 26. | 27.07.2021 | The factum of dissolution application and the order therein only came to the knowledge of the Appellants on 27.07.2021 when the subject CA came up for hearing. |
| 27. | 27.07.2021 | Impugned Order passed by Hon'ble NCLT without deciding the subject CA on merits and dismissing the same for being infructuous in as much as the Company had been purportedly dissolved vide an ex-parte order dated 15.07.2021. |

6. The Counsel for the Appellant stressed much on CA No. 143 of 2021 seeking dissolution of the Company filed by the liquidator of the Company/Respondent No.1 which was listed for the first time on 07.07.2021. The said application was not at all served on the Appellants & the Company was allowed to be dissolved from 15.07.2021.

7. The Ld. Counsel for the Appellant also stressed that the consequential order of 27.07.2021 is also bad in law as the Appellants herein were not aware of the order passed in CA No. 143 of 2021 and when the Ld. Counsel for the Appellant appeared on 27.07.2021 before the Adjudicating Authority in CA No. 198/ALD/2020, CA No. 351 of 2020 was taken up and the Adjudicating

Authority dismissed the petition on the ground that the company has already been dissolved by that Adjudicating Authority order dated 15.07.2021.

8. The Appellants/ the promoters are much more feeling aggrieved as they are challenging the sale of assets of Corporate Debtor on the ground that the value at which the assets were sold were much less than the market price as also the valuation was not properly done which was less than the market rate/circle rate.

9. While, the promoters have also provided counter guarantees for this loan against which Bank is going to issue auction notice to sell the houses in which they are staying. They will be without any shelter to live in and needs sympathetic consideration as the increase in sale of auction price could have given the Appellant a breathing space & a better margin. Hence, they were praying for setting aside of all these orders.

10. Since here the Appellants and Respondents are common with a common purpose of setting aside the order of liquidation/dissolution of the Corporate Debtor of which the Appellants are ex-promoters and ex-members both the cases were clubbed together for getting a broad clarity as also to avoid any inconsistent orders.

11. Respondent No.1/the liquidator has comprehensively submitted the following:

“2. Respondent herein was appointed as the liquidator of Corporate Debtor, Shashi Oils and Fats Pvt. Ltd. by the Adjudicating Authority vide its order

dated 21.01.2020, which was received by the Answering Respondent on 22.01.2020.

3. That pursuant to the appointment, the Answering Respondent in compliance of Section 33(b) (ii) of the Code read with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (herein after referred to as "Liquidation Regulations") made a public announcement on 25.01.2020 in Form B in the two newspapers (English and Hindi), wherein the last date for submission of claims was stipulated as 20.02.2020 i.e. 30 days from the liquidation commencement date.

4. That in compliance of the order dated 20.01.2020 passed by the Adjudicating Authority, the Answering Respondent also intimated the ROC, Kanpur by filing Form No. INC-28, thereby the status of the company was changed from "Active- Non Compliant" to "Under Liquidation" on the portal of MCA.

5. Respondent vide letters dated 12.02.2020 also intimated various other authorities such as Department of Trade & Taxes, District Muzaffarnagar, U.P and Income Tax Department, Khatauli, District Muzaffarnagar, U.P, about the initiation of Liquidation Proceedings in the matter of M/s Shashi Oils and Fats Pvt. Ltd. Copies of Letters dated 12.02.2020 issued by the Liquidator.

6. On 14.02.2020, the Answering Respondent received a copy of proposal dated 10.02.2020 from ASREC (India) Ltd., the sole secured creditor ('Respondent No. 2 herein') regarding One Time Settlement (OTS) agreed between Mahadev Rice Mills ('Respondent No.3 herein') and Promoters of Corporate Debtor with Respondent No. 2 vide said proposal. Subsequently, Answering Respondent had obtained legal opinion from an advocate regarding the Respondent No. 2 can settle with the Promoters of the Corporate Debtor by accepting the One Time Settlement against the secured assets to be realized

under Section 52 of the IBC, 2016 during liquidation process and other related matters arising out of the said OTS proposal.

7. The Respondent No. 2 being the sole secured financial creditor filed its claim for Rs. 49,61,07,301 in prescribed Form-D vide email dated 20.02.2020 and also through Courier on 21.02.2020. It is pertinent to note that the security interest of Respondent No. 2 on the assets of the Corporate Debtor was not relinquished by it.

8. The Appellants and Respondent No. 3 defaulted in making the payment within the time period to the Respondent No. 2, consequent to which, the Respondent No. 2 issued OTS Cancellation letter dated 07.08.2020 upon the Appellants and the Respondent No. 3, which was also received by the Answering Respondent on the same date.

9. The cancellation of the proposed OTS settlement, the Respondent No. 2, vide communication dated 07.08.2020, informed the Answering Respondent regarding the relinquishment of their security interest on the assets of the Corporate Debtor and accordingly, the Answering Respondent made the assets of the Corporate Debtor part of the liquidation estate in terms of Section 36(3) (g) of the Code and Regulation 37(1) of the Liquidation Regulations, 2016.

10. Details of Various stakeholders included in this

SCC are as follows:

| <i>Class of Creditor</i> | <i>Number of Representatives</i> |
|---|---|
| <i>Secured financial creditors, who have relinquished their security interests under Section 52</i> | <i>Number of creditors in the category, subject to a maximum of 2</i> |

| | |
|---|--|
| Unsecured financial creditors | Number of creditors in the category, subject to a maximum of 1 |
| Workmen and employees | 1 |
| Governments | 1 |
| Operational creditors other than workmen, employees and Governments | Number of creditors in the category, subject to a maximum of 1 |
| Shareholders or Partners, if any | 1 |

14. Respondent made a public announcement dated 12.08.2020 in the newspaper in term of Regulation 31 (2) read with regulation 12 (3) providing the list of stakeholders as filed with the Adjudicating Authority.

15. The Answering respondent approached the ICICI Bank Limited for opening a liquidation account of the Corporate Debtor as is required under Regulation 41(1) of the Liquidation Regulations. The liquidation account of the Corporate Debtor was opened with some delay due to the prevalent pandemic situation and the details of the Bank account was provided by the Bank.

16. Respondent issued notices dated 07.08.2020 upon the members of SCC for their 1 meeting, which was held on 11.08.2020, wherein the members were apprised about the sale of the assets of Corporate Debtor. After discussion and deliberations, the SCC with 100% voting share decided that the assets (Land & Building and Plant & Machinery) of the Corporate Debtor to be put to e-auction at a reserve price of Rs. 3.75 crores against the Liquidation Value of Rs.3.13 Crores (approx.).

17. Respondent issued public notices for e-auction sale to be conducted on 12.08.2020 for the assets for sale of assets of corporate debtor on "as is where is, as is what is, whatever there is and without

recourse basis” in two newspapers (English and Hindi).

18. It is further submitted that, all information/ documents with respect to the e-auction process and the list of assets of Corporate Debtor was uploaded on the website of agency conducting E-Auction.

19. Two prospective bidders i.e. HSA Traders (Proprietor Mr. Furqan Ahmed) and Hierank Sugar Industries Pvt. Ltd. showed their interest and also deposited the requisite EMD amount i.e. Rs. 37.50 Lakhs being 10% of the reserve price along with relevant Bid documents, for participating in e-auction process.

20. It is further submitted that on the date of e-auction i.e. 29.08.2020, upon closure of the e-auction window, the successful bidder with the highest bid was declared in terms of the E-Auction Process Document.

21. It is submitted that the Answering Respondent communicated the declaration of successful bidder to HSA Traders (Proprietor Mr. Furqan Ahmed) vide email dated 29.08.2020. As per the payment schedule mentioned in the E-auction Process Document, the successful bidder was required to complete 25% payment of the sale consideration within 3 days of e-auction. Accordingly, the Successful Bidder deposited another Rs. 57 Lakhs in the Bank account of the Corporate Debtor maintained with ICICI Bank. The Balance amount was to be paid within 30 days of the sale or within 90 days of the sale (with 12% interest) in terms of the provision of the Code.

22. It is further submitted that the remaining sale consideration was duly paid by the Successful Auction Purchaser till 25.09.2020 along with an amount of Rs. 18.90 lakh towards GST. Pursuant whereof, a sale certificate dated 28.09.2020 was

issued to the Successful Auction Purchaser and a possession certificate was received from the Successful Auction Purchaser after the schedule assets were handed over to the buyer on 01.10.2020. Copy of the Sale Certificate issued by the Answering Respondent to the Successful Auction Purchaser and Possession Certificate issued by the Successful Auction Purchaser —HSA Traders to the Answering Respondent is annexed herewith.

23. Respondent cancelled the contract with security agency being VR India Security Services w.e.f. 01.10.2020.

24. It is further submitted that post receipt of full sale proceeds towards sale of all assets of Corporate Debtor under the liquidation process conducted in accordance with provisions of the Code and Regulations made thereunder, the Answering Respondent took the undertaking from the sole secured creditor Asrec (India) Ltd. that in the event of any orders being passed by any Court / Tribunal requiring the Answering Respondent to distribute the proceeds in any way different than as provided above or if otherwise any excess payment, if any has been made to Asrec (India) Ltd. in terms of Section 53(1)(b)(ii), then Asrec (india) Ltd. shall contribute such amount as required to execute the orders as above and also refund the said excess amount, if any to the Answering Respondent forthwith on receipt of notice from the Answering Respondent for the distribution as per the Insolvency and Bankruptcy Code, 2016 or even otherwise directed by any Court of Law. Furthermore, the sole financial creditor shall keep the Answering Respondent being the Liquidator will not be held responsible in the event such distribution to them is in excess or otherwise.

25. Respondent released an amount of Rs.3.50 Crores to them on 29.09.2020. The Answering Respondent also deducted his professional fees of Rs.10 Lakh plus applicable GST from the sale

proceeds, which was decided as per agreement with Asrec India Ltd.

27. In the interregnum two applications being I.A. 206 of 2020 and I.A. 198 of 2020 were filed by the Appellants herein before the Adjudicating Authority for seeking stay of auction to be held by the Answering Respondent on 10.09.2020 and for seeking directions from the Adjudicating Authority to not to confirm the e-auction sale of the assets of the Corporate Debtor conducted by the Answering Respondent on 29.08.2020. Thereafter, an application being I.A. 201 of 2020 was filed by the Appellants herein seeking urgent hearing of LA. 198 of 2020, however the same was dismissed as not being maintainable.

28. The Successful Auction Purchaser also filed an application being I.A. 355 OF 2020 for seeking directions against the Appellants to restrict them from interfering in the peaceful possession of the assets purchased by the Successful Auction Purchaser, which application was allowed by this Hon'ble Tribunal vide its order dated 03.08.2021 giving directions to the ex-directors and other statutory authorities to abide by the provisions of Section 53 of the Code.

32. The realization of all the assets of the Corporate Debtor, the liquidation account of the Corporate Debtor has been closed accordingly by the Answering Respondent and a closure letter for the said liquidation account was duly received by the Respondent from the bank.

35. It is further submitted that the Appellants have no locus standi to challenge the order impugned herein as the Corporate Debtor herein of which the Appellants herein are the ex-promoters, as on date stands dissolved.

36. It is also relevant to point out that the Appellants, who are challenging the order of

dissolution and the subsequent orders did not even challenge the liquidation order passed by this Hon'ble Tribunal. Furthermore, the Dissolution order passed by the Adjudicating Authority is not going to affect adversely to its shareholders or creditors and nor it is contrary to the provisions of law.

38. *It is well settled law that a Court/Tribunal cannot compel a party to settle a matter and in the instant case when the OTS settlement had failed between the parties, the Appellants herein by way filing these frivolous Appeals are trying to compel the Hon'ble Tribunal which is not otherwise permitted in law.*

40. *Interestingly, the Appellants have submitted that the order of dissolution was passed ex-parte against them however, it is relevant to note that the Appellants were not even a proper and necessary party to the I.A. 143 of 2021 filed by the Answering Respondent seeking dissolution of the Corporate Debtor.*

41. *Even Section 54 of the Code is clear to that extent that a Liquidator can make an Application once the assets of the Corporate Debtor are completely liquidated, and the Appellant herein does not form a proper and a necessary party to the said application. It is further pertinent to mention herein that the proceedings under IBC are proceedings in rem and for the purpose of a Resolution. Furthermore, if no resolution is achieved, then the assets of the Company are sold and the creditors of the Corporate Debtor are sold and the amount realised is distributed amongst the Creditors in terms of Section 53 of the Code. Once the distribution is complete, the Company is legally dissolved. In view thereof, the Ex- directors/promoters i.e. the Appellants herein do not have any locus”.*

12. The Ld. Counsel for the Respondents have stressed that once a dissolution order has been passed by the Adjudicating Authority there is no merit in the case and the case deserves to be dismissed.

13. It was also submitted by the Counsels for the Respondents that there is no equity in IBC & hence requested the Tribunal to dismiss their applications.

14. We have gone through the impugned order and examined submissions made by the Ld. Counsels for the parties, particularly facts disclosed in the Memo of Appeal filed by the Appellants. Accordingly, we observe as follows:

- (i) It is not in dispute & rather accepted by the Appellants in their own Memo of Appeal at pg-9 that on 23.06.2011 on account of adverse financial situation the company/corporate debtor defaulted in the payment of installments to Allahabad Bank due to which the account of the Company was declared NPA.
- (ii) It is also not in dispute that Allahabad Bank assigned all its title interest & benefits in respect of the debts of the Company to Respondent No.2 through a deed of assignment at a price of Rs. 5.75 Crore.
- (iii) CIRP proceedings against the Company was initiated on 20.03.2018. This is also not in dispute that on 17.12.2018, CoC rejected the Resolution Plan submitted by the Appellants. The Appellant submitted the revised proposal on 03.01.2020. Revised Proposal was approved & accepted by Financial Creditor but since

March/April 2020 Country was put under lockdown by the Government and as also from 22.03.2020 due to global pandemic no application could be filed before NCLT for approval of the revised proposal duly accepted by the Financial Creditor. Liquidator was however informed. Thereafter the, liquidator proceeded with auction notice from 12.08.2020 & on 29.08.2020 and finally the property was sold to the successful bidder for Rs. 3.78 Crore.

- (iv) Considering all these aspects CA No. 143 of 2021 seeking dissolution of the Company was filed by the liquidator of the Company/Respondent No.1 which was listed on 07.07.2021 which was not served on the Appellants and the Adjudicating Authority allowed the same IA and the Company was purportedly dissolved on 15.07.2021.
- (v) Once the Company is dissolved under Section 54 of the Code, nothing remains. Section 54 of the IBC is reproduced below:

*“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”.

- (vi) In view of provisions contained in Section 54 of the IBC, once after the completion of liquidation an application is filed by the liquidator of a Corporate Debtor for its dissolution to the Adjudicating Authority, who has no option but to pass an order of dissolution. In the present case the Adjudicating Authority has simply complied with the provisions under Section 54(2) of the Code.
- (vii) It is very much clear that the Company is fully dissolved. This dissolution happens when the company is liquidated.

15. Before parting with order it is apt to clarify that there is no need to go into the matter further as to when the Appellants submitted the OTS/ other proposals & the Financial Creditor/CoC have not accepted their proposals. The equity though not applicable under IBC, even remotely same cannot come into play at this juncture. The role of this Appellate Tribunal is also restricted within the four walls of the ‘Code’ & passing of order under Section 54 of the Code brings the Corporate Debtor to a closed chapter.

16. Accordingly, we do not find any merit in the appeals and it deserve to be dismissed. Both appeals are dismissed. No order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

New Delhi
04.08.2022
sr