

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 536 of 2021

IN THE MATTER OF:

West Bengal Financial Corporation

Having its Registered Office at
DD-22, Sector-I, Salt Lake City,
Kolkata – 700 064.

...Appellant

Versus

Bijoy Murmuria

Resolution Professional of the Corporate Debtor
C/o Sumedha Management Solution Pvt. Ltd.
8B, Middleton Street,
6A, Geetanjali,
Kolkata – 700 071.

...Respondent No. 1

C. P. Ispat Pvt. Ltd.

Having its Registered Office at
37, Shakespeare Sarani,
S. B. Towers, 3rd Floor,
Kolkata – 700 017.

...Respondent No. 2

State Bank of India

Stressed Assets Management Branch,
1, Nagaland House,
8th Floor, 11& 13, Shakespeare Sarani,
Kolkata – 700 071.

...Respondent No. 3

Punjab National Bank

109, G.T. Road,
Burdwan – 713101.

...Respondent No. 4

Karnataka Bank Limited

Overseas Branch, Kolkata
1, Sarojini Naidu Sarani,
Subham Building, 1st Floor, Park Street,
Mallickbazar Crossing, Near Simpark Plaza,
Kolkata – 700 017.

...Respondent No. 5

For Appellant: Mr. Siddhartha Dave, Sr. Advocate with Mr. Sadapurna Mukherjee, Mr. Jishnu Chowdhury and Mr. Abhijit Sarkar, Advocates.

For Respondents: Mr. Anuj Singh, Advocate for R-1.
Mr. Gaurav H. Sethi, Advocate for RP.

ORDER
(Virtual Mode)

02.08.2021: This appeal has been filed by the Appellant – ‘West Bengal Financial Corporation’ against impugned order passed in IA/426(KB)2021 in C.P. (IB)/832(KB)2019 by which order the application filed by the Applicant came to be rejected. The Applicant/Appellant had in the Application prayed for the following reliefs:-

“(a) Injunction restraining the respondents from giving any effect or further effect or acting in terms of or in furtherance to the resolution adopted in the meeting of Committee of Creditors on March 25, 2021, to the extent that time to take a decision in the matter, as specified in the order dated March 16, 2021, regarding the resolution plan of the Respondent No.2, was unilaterally extended;

(b) Injunction restraining the respondents from considering and/or deliberating the amended and/or altered and/or modified resolution plan, if any, submitted by the Respondent No.2, in terms of the directions of the Respondent No.1 given in the meeting convened on March 25, 2021.

(c) Injunction restraining the respondents from approving the amended and/or altered and/or modified resolution plan, if any, submitted and/or circulated by the Respondent No.2 in any manner whatsoever.

(d) An order of liquidation be passed in terms of section 33 of the Code.”

2. The Learned Senior Counsel for the Appellant pointed out that Corporate Insolvency Resolution Process (CIRP) in the matter of Corporate Debtor –

‘Dimension Steel & Alloys Pvt. Ltd.’ had started somewhere in 2019. On 4th January, 2021, the Committee of Creditors had decided to go for liquidation. The Learned Senior Counsel referred to Minutes dated 4th January, 2021 (page 1083 at 1086). The Learned Senior Counsel submits that after such decision was taken the Resolution Professional had moved the Adjudicating Authority to pass orders of liquidation vide I.A. No. 274/KB/2021. At that time, it is stated that Resolution Plan came to be proposed by Respondent No. 2 - ‘C P Ispat Pvt. Ltd.’ and they filed application before Adjudicating Authority having I.A. No. 197/KB/2021. The Adjudicating Authority, inter alia passed following orders (Page 1213) in I.A. No. 197/KB/2021 and I.A. No. 274/KB/2021:

“1. I.A. No. 197/KB/2021:

This is an application filed by C P Ispat Private Limited against the Resolution Professional for a direction to accept the Resolution Plan submitted by it. It is submitted by the RP that the Resolution Plan was to be submitted on or before 22.12.2020 but the plan was actually submitted on 5th of February, 2021. The Committee of Creditors (COC) could, therefore, not consider the plan since, in the meantime, in the COC meeting held on 04/01/2021, a decision was taken to recommend liquidation of the Corporate Debtor. That application has also been filed and numbered as I.A. 274/KB/2021.

Without going into too many aspects in the matter, we notice that there is only one Resolution Applicant in respect of the Corporate Debtor and it has been provisionally found eligible to submit the Resolution Plan in the matter. For various reasons detailed in I.A. No. 197/KB/2021 the said plan could not be submitted before the expiry of the extended CIR-P period of 22.12.2020.

Considering also that maximisation of the Corporate Debtor is one of the twin objectives of the IBC and liquidation should only be ordered as a last resort, we deem it fit to condone the delay of 43 days in submitting the Resolution Plan by the

applicant in I.A. No. 197 of 2021. The Resolution Plan submitted by the applicant on 05/02/2021 shall be placed before the COC for its consideration on or before 22.03.2021. The COC shall deliberate on the Resolution Plan and its feasibility and viability and take a decision in the matter on or before 25th of March, 2021.

With these directions I.A. No. 197/KB/2021 shall stand disposed of.”

x.....x.....x

“5. I.A. No. 274/10/2021:

This is an application filed by the RP for liquidation of the Corporate Debtor. Since in I.A. No. 197/KB/2021 we have directed the COC to consider the Resolution Plan submitted by the applicant, I.A. No. 274/KB/2021 is pre-matured at this stage. RP therefore seeks permission to withdraw the present application.

I.A. No. 274/KB/2021 stands disposed of accordingly.”

3. Thus, it is submitted that the Adjudicating Authority gave time to the Committee of Creditors (CoC) to consider the proposed Resolution Plan and take a decision on or before 22nd March, 2021. It is stated that when Resolution Plan was placed before the CoC, the CoC gave further time to the Resolution Applicant for modification of the plan. This was done on 25th March, 2021, which can be seen from Minutes dated 25th March, 2021 (page 1217 of Appeal at page 1219). It is stated that the Appellant who was member of the CoC had objected but still the CoC decided to give opportunity to Respondent No.2.

4. The Appellant claims it then filed the Application before the Adjudicating Authority in which above prayers have been made which came to be rejected. The

Learned Senior Counsel submits that the Adjudicating Authority expressed displeasure with the manner in which the CoC did not followed the time frame given by the Adjudicating Authority. It is stated that still the Adjudicating Authority considering the developments rejected the application. The argument is that under Section 33 of Insolvency and Bankruptcy Code, 2016 ('IBC' for short) if in the given time frame as per Section 12 of IBC the CIRP is not completed, the only consequence which can follow is to pass order of liquidation. Thus, it is claimed that the impugned order deserves to be set aside and liquidation orders of the Corporate Debtor should be passed.

5. The Adjudicating Authority in the impugned order in Para 11 to 17 observed and held as under:

“11. The primary question that comes up for consideration at this stage is whether there has been any violation of the order dated 16.03.2021 and if so, whether it is sufficient to order liquidation of the corporate debtor.

12. At the outset, we record our disapproval, in the strongest possible terms, the actions of the RP and the majority members of the COC in not sticking to the timelines specifically given in the order dated 16.03.2021 and unilaterally extending the decision on the resolution plan until 22.04.2021, when the voting on the resolution plan ended. The argument that in view of the extension and exclusion granted by this Adjudicating Authority, there was plenty of time left for concluding the CIRP and therefore, the COC was justified in taking time in violation of the order dated 16.03.2021, cannot be countenanced at all.

13. While it is true that following the order of exclusion of 52 days vide order dated 16.03.2021 in IA 259/KB/2021, the CIRP was to expire only on 07.05.2021, it does not follow as a natural corollary that time up to 07.05.2021 is available with the COC to take final call on the resolution plan. The entire CIRP was to be completed on or before 07.05.2021, which is

to say, either the resolution plan was to be finally approved after a resolution in its favour was passed by the COC, or the corporate debtor would have to be sent into liquidation. This was the underlying intention of the order dated 16.03.2021, which specifically provided for a decision to be taken on or before 25.03.2021.

14. *The defence that the COC took the decision that it did on the ground of maximisation of the corporate debtor cannot be accepted because the IBC envisages maximisation of value **but within a definite timeframe**. Emphasising one aspect at the expense of the other will derail the whole process of resolution. Therefore, the RP and the COC were certainly not correct in not adhering to the timelines given in the order dated 16.03.2021 without approaching or even once mentioning the matter before the Court for enlargement of time.*
15. *Given the circumstances and the fact that voting has already been taken place in resolution plan, we do not at this stage pass any orders with respect to liquidation of the corporate debtor. However, the conclusion is inescapable that we have been presented with a fait accompli both by the RP and by the COC in the guise of maximisation of value of the corporate debtor. This attitude needs to be strongly deprecated and we express our deep displeasure in this regard. RP and the COC ought to have been more careful in this regard.*
16. *In the circumstances, the prayers sought for in the present IA 426/KB/2021 cannot be granted at this stage. However, we direct that the entire process be concluded expeditiously.*
17. **IA 426/KB/2021 shall stand disposed of accordingly.”**

6. Thus, as voting on the Resolution Plan had already taken place Adjudicating Authority declined to pass order of liquidation. It is now stated that the voting process has already been completed and that even the Resolution Plan has been approved by the CoC and that the Resolution Professional has also filed application before the Adjudicating Authority for approval of the Resolution Plan which application is coming before the Adjudicating Authority on 4th August, 2021.

7. Having heard the Learned Counsel for the Appellant and keeping in view the main objective of Insolvency and Bankruptcy Code that all efforts should be made for resolution of the Corporate Debtor in the present matter when we have a Resolution Plan approved by the CoC, we do not think that orders of liquidation should be passed without considering the Resolution Plan already approved by the CoC. We do not find any reason to admit the Appeal in the facts of the matter. Although the CoC did not strictly follow the time frame given by the Adjudicating Authority and displeasure was expressed, when Adjudicating Authority exercised discretion not to pass order of liquidation and wait, we will not interfere in the discretion. When the Resolution Plan is on the verge of being accepted or rejected by the CoC it would not make much difference if little time is extended.

8. We, thus, decline to entertain the appeal to interfere with the impugned order. The Adjudicating Authority may consider the Resolution Plan as has been placed before it in terms of provisions of law on its own merits. The Appeal stands disposed of accordingly. No costs.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Archana/gc.