

IN THE NATIONAL COMPANY LAW APPELLAE TRIBUNAL AT NEW DELHI

COMPANY APPEAL (AT) (INS) No.1402 of 2019

(Arising out of the impugned order dated 21.11. 2019 passed by the National Company Law Tribunal, Chennai Bench in C.P. No.759/IB/2018)

IN THE MATTER OF:

**T. Johnson, Of St. John Freight Systems Limited
(Company under Insolvency)
Majority Shareholder and Managing Director (Suspended) ... Appellant
of St. John Freight Systems Limited
(Company under Insolvency)
S-98, SIPCOT Industrial Complex Harbor Express Road
Tuticorin-628008.**

Vs

1.St. John Freight Systems Limited)	
Through Mr. R. Venkatakrisnan)	
(Resolution Professional of St.John Freight Systems Limited))	
Partner of RVKS and Associates, Chartered Accountants)	
'Rangas', ¼, 4th Main Road, R.A. Puram, Chennai 600028)	
)	... Respondents
2.Phoenix ARC Private Limited)	
Dani Corporate Park, 5th Floor)	
158, CST Road, Kalina, Santa Cruz (E))	
Mumbai-400098)	
(Added as per order dated 04.03.2020 made in C.A.No.282/2020))	

**For the Appellant : Mr. Amit & Chadha, Sr. Advocate, with
Mr.Pushkar Sood, Mr. S.C.Das and Mr.Sahil
Mongia, Advocates.**

**For Respondent No.1 : Mr.Darpan Wadhwa,Sr.Advocate,with Mr.Aditya
Verma, Mr. Shrey Patnaik, Ms.Aishwarya Nabh
and Ms. Priyamvada Mishra, Advocates.**

For Respondent No.2 : Ms. Sonnakshi Dhiman, Advocate.

JUDGMENT

VENUGOPAL, M, J.

1. The Appellant (Majority Shareholder and Managing Director) (Suspended) of St. John Freight Systems Limited (Company under Insolvency) has preferred the Appeal being dissatisfied with the impugned order dated 21.11.2019 in MA/989/2019 in CP/759/IB/2018 passed by the Adjudicating Authority (National Company Law Tribunal, Chennai). The Adjudicating Authority on 21.11.2019, had passed an order for 'Liquidation of the Corporate Debtor' etc., and appointed Mr. R. Venkatakrishnan, a 'Resolution Professional', as 'Liquidator' for the purpose of 'Liquidation' of the Corporate Debtor, etc.
2. Challenging the impugned order of the Adjudicating Authority whereby a Liquidation Order was passed under Section 33 of the I & B Code in respect of the Corporate Debtor/Company, the Learned Counsel for the Appellant submits that the Adjudicating Authority was not correct in not directing the 'Committee of Creditors' to reconsider the Resolution Plan, especially in the light of the fact that the 'Earnest Money Deposit' was arranged by the Resolution Applicant in the form of 'Bank Transfer' of Rs.50,00,000/- (Fifty lakhs) and 'Title Deed' of the property for Rs.6.6 crores. In this connection, it is the plea of the Appellant that the Resolution Plan

ought not to have been rejected for failure to pay the 'Earnest Money Deposit'.

3. The Learned Counsel for the Appellant contends that the 'Adjudicating Authority' had failed to appreciate that the 'Resolution Professional' had not released the 'Original Title Deeds' of the property in question even at the time of filing of the present Appeal in spite of the fact that the 'Resolution' was rejected on 28.9.2019 and thus it prevented the 'Resolution Applicant' from raising money in open market, to submit the 'Demand Draft' or RTGS of balance of Rs.4.5 crores.

4. It is represented on behalf of the Appellant that the Adjudicating Authority had failed to appreciate that after filing of M.A. No.989/2019 by the Resolution Professional u/s 33 of the I & B Code. Further developments took place in the 'Resolution Process' such as filing of a fresh Resolution Plan by the Learned Applicant on 20.9.2019 and that the 'Resolution Applicant' had also transferred Rupees Fifty lakhs by RTGS transfer on 27.9.2019 and further gave the Original Title Deeds of a prime property along with the 'Valuation Report' and 'Legal Opinion' worth Rs.6.6 crores, on or before 26.9.2019. However, these facts were not brought to the notice of the Adjudicating Authority by the Resolution Professional and hence the impugned order is not valid in the eye of Law.

5. The Learned Counsel for the Appellant submits that the date of admission of 'Appeal' against the Admission Order dated 10.12.2018 before this Tribunal was 10.1.2019 and that the Appeal was dismissed on 7.5.2019 and that 117 days are required to be excluded. Further, '330 days' after

exclusion of 117 days expired on 2.3.2020. Moreover, the 'Committee of Creditors' meeting dated 4.9.2019 clearly established that the members of the 'Committee of Creditors' had agreed to seek further extension of time but the Resolution Professional projected M.A. No.989/2019 on 6.9.2019 (filed under Section 33 of the Code for liquidation) and in this regard, the 'Resolution Professional' had committed an error in not complying with the directions of the 'Committee of Creditors' for seeking 15 days extension to examine the Resolution Plan in detail. And that apart, the Adjudicating Authority (NCLT, Chennai) had failed to take into account the same at the time of passing the impugned order.

6. The Learned Counsel for the Appellant brings to the notice of this Tribunal that the I & B Code was amended on 16.8.2019 and after amendment, proviso 2 and 3 were added in Section 12 and as per third proviso 'all CIRP processes pending on the said date were to be completed within a period of 90 days from the date of commencement of the amended Act, that is from 16.8.2019. Moreover, in the instant case, 'CIRP process' would have been completed on 16.11.2019, whereas the Resolution Professional during the COC meeting on 4.9.2019, represented to the 'Committee of Creditors' that the 'CIRP process' would come to an end on 6.9.2019. Therefore, it is the precise stand of the Appellant that neither 117 days extension of time available nor the amendment granting extension of 90 days was brought to the notice of the 'Committee of Creditors'. Also, it is the plea of the Appellant that even though the 'Committee of Creditors' wanted time to examine the Resolution Plan in detail, the 'Committee of Creditors' was urged to urgently

take the decision on the facts and information available by the 'Resolution Professional' and this aspect was not considered either by the Resolution Professional or by the Adjudicating Authority at the time of passing the impugned order.

7. The Learned Counsel for the Appellant points out that the Hon'ble Supreme Court in **ESSAR Steel India Ltd through authorised signatory vs. Satish Kumar Gupta & 7 Ors. 2019 (16) SCALE 319** has held that the word "mandatorily" as it exists in Section 12 of the Code is arbitrary under Article 14 of the Constitution of India and has struck down the said word. As a consequence thereof, ordinarily, the time taken in relation to the 'Corporate Resolution Process' must be 330 days from the Insolvency commencement date', including extensions and time taken in Legal proceedings. However, on the facts of a given case, the Adjudicating Authority/Appellate Authority, under the I & B Code, can put back the 'Corporate Debtor' on its feet, instead of sending it into 'Liquidation' beyond 330 days.

8. The Learned Counsel for the Appellant takes a stand that the Corporate Debtor/Company was certified to be a 'Small Scale Ancillary Undertaking', as per the registration certificate issued by the District Industries Centre dated 12.7.1993 and that the MSME certificate dated 23.1.2019 confirmed the date of commencement of activities of the 'Corporate Debtor' company from 21.06.1991. In this connection, the Learned Counsel for the Appellant refers to the Hon'ble Supreme Court decision in **Arcelor Mittal India Pvt. Limited vs. Satish Kumar Gupta ((2019) 2 SCC 1) 109 para 46)** wherein it is observed as under:

“According to us, it is clear that opening word of Section 29A furnish a clause as to the time at which clause (c) is to operate. The opening words of Section 29A state, ‘a person shall not be eligible to submit a resolution plan...”

9. The Learned Counsel for the Appellant refers to the Hon’ble Supreme Court decision in **Swiss Ribbons and Another Vs. Union of India (AIR 2019 at page 739)** wherein the ingredients of Sec 29A of the I & B Code were upheld.

10. The Learned Counsel for the Appellant submits that ‘MSME Certificate is only regarding the status of the company from 21.6.1991 onwards and it is pertinent to mention that as per notification S.O. No.2052 (e), dated 30.7.2017, issued by the Ministry of MSME, Government of India, in clause 13, it is mentioned that it is the General Manager of the District Industries Centre of the concerned District, who is the competent authority to cancel the ‘MSME Certificate’. Further it is pleaded that in Note (i) of the notification of the MSME it is clear that the enterprises that have filed Small Scale Industries Registration are not required to file UAM (Udyog Aadhar Memorandum) which is also called the MSME Certificate, but may file it, if it so desires. As such, it is the contention of the Appellant that as per the said Note, there was no requirement of the ‘Corporate Debtor’ to secure MSME Certificate to be provided to Vendors as per MCA requirements.

11. The Learned Counsel for the Appellant also contends that the Resolution Professional by preferring his own opinion during the 10th ‘Committee of Creditors’, meeting dated 28.8.2019, had planted confusion in the minds of the ‘COC members’ and added further in the 13th meeting of the ‘Committee of Creditors’ that took place on 17.9.2019, some of the COC

members had expressed their displeasure as regards voting on the eligibility under Section 29A. Moreover, one of the members of the Committee specifically stated that the 'Committee of Creditors' does not have the power to vote on eligibility under Section 29A. At this stage, the Learned Counsel for the Appellant proceeds to point out that the 'Committee of Creditors' in the meeting held on 4.9.2019 voted on the 'Resolution Plan' and in fact, the Appellant's Resolution Plan secured 55.49 per cent votes out of 92.66 per cent voting which come to 60 per cent effective/affirmative vote.

12. Yet another plea projected on the side of the Appellant is that any 'Committee of Creditors' meeting after 6.9.2019, viz. after the Resolution Professional had preferred M.A. No.989/2019 (under Section 33 of the Code for Liquidation) is not relevant. The Learned Counsel for the Appellant comes out with an argument that the 'Corporate Debtor' is a freight forwarding Company started by the Appellant (Entrepreneur) with a Capital of Rs.10,000/- during the year 1991 and there was no other 'Resolution Applicant'/'Resolution Plan' except for the Plan submitted by the Appellant as the Corporate Debtor Company is a 'MSME company'.

13. It is the version of the Appellant that in the Resolution Plan by the Appellant, the 'Resolution value' was mentioned as Rs.242/- crores and that the Liquidation value as determined by the 'Resolution Professional' is Rs.161.25 crores as mentioned in the impugned order. Besides this, out of Rs.242/- crores, Rs.222.5 crores would go to the 'Financial Creditors' thus moving forward on 'Resolution Plan' makes more sense than going for Liquidation of Company in issue. Further, that much more than the principal

sum of the 'Financial Creditors' is being given under the Resolution Plan. It is brought to the fore before this Tribunal that in respect of 'Earnest Money Deposit' of Rs.5 crores asked by the 'Committee of Creditors', Rs.50 crores was deposited with the Resolution Professional by means of 'RTGS' on 27.9.2019 by the Appellant and that the 'Original Title Deeds' of a property valued at Rs.6.6 crores was submitted with the 'Resolution Professional' on 26.9.2019, in terms of the discussions that took place on 24.9.2019 by the 'Committee of Creditors'. As a matter of fact, the receipt of 'Earnest Money Deposit' as property in Lieu of cash/Bank Guarantee was circulated by the 'Resolution Professional' to the 'Committee of Creditors' with copy to the 'Resolution Applicant' and none of the 'COC members' had communicated any objections.

14. The Learned Counsel for the Appellant brings it to the notice of this Tribunal that the 'Resolution Professional' wrote to the Appellant seeking return of the original property papers, after filing of the instant Appeal on 11.12.2019 and since the matter is '**sub judice**', the 'Original Title Deeds' are lying with the 'Resolution Professional' and that the 'Appellant' can deposit Rs.5.5 crores, within a week of return of 'Original Title Deeds' by monetising/leveraging the property submitted in lieu of Cash/Bank Guarantee being returned.

15. Continuing further, the Learned Counsel for the Appellant submits that during the 'CIRP', the 'Corporate Debtor' was doing business of 'International Logistic and Freight Forwarding', contributing substantial Forex earning to the country and maintaining average turnover of Rs.20 crores per month from

the last one year during the CIRP, with the able assistance/cooperation of the suspended Directors. Apart from that, the 'suspended Directors', in spite of not being paid Salaries/Travel Expenses had extended unstinted support to the Resolution Professional in ensuring that the Corporate Debtor remains an ongoing concern to safeguard the long-term interest of over 300 dedicated clients/1400 committed employees, besides providing indirect employment to over 4000 persons and therefore, in the interest of justice, rather than liquidation of the Company, one may go for a Resolution.

16. In response, it is the submission of the Learned Counsel for the Respondent that by virtue of the impugned order of the Adjudicating Authority (NCLT, Chennai Bench), dated 21.11.2019 (delivered on 26.11.2019), the 'Liquidation proceedings' were initiated against the Respondent/Corporate Debtor under Section 33(1) of the I & B Code and it is on record that no 'Resolution Plan' was received by the 'Adjudicating Authority' before the expiry of the Respondent's 'Corporate Insolvency Resolution Process period' on 6.9.2019.

17. On the side of the Respondent, it is contended that the Adjudicating Authority dismissed the Appellant's M.A. No.995/19, dated 14.9.2019, wherein the Appellant had prayed that the Resolution Plan dated 25.8.2019 be reconsidered by the members of the 'Committee of Creditors' and it is quite evident that the Plan was not approved by the 'Committee of Creditors' on 4.9.2019 and no 'Appeal' was filed against the order of dismissal passed in M.A. No.995/2019. At this juncture, the Learned Counsel for the Respondent points out that the CIRP of the Respondent was initiated by the Adjudicating

Authority on 10.12.2018 and in fact, the Appellant had not filed any application seeking exclusion of any period of time before any Court or Tribunal and that there was no stay of 'CIRP' at any stage; also that no time was excluded from the Respondent's 'CIRP' period of 270 days (including 90 days extension granted by the Adjudicating Authority on 7.6.2019).

18. Advancing his argument, the Learned Counsel for the Respondent contends that the Appellant's Plan was not approved by the 'Committee of Creditors' after a full consideration on merits of its 'commercial viability and feasibility'. In terms of the ingredients of Section 30(4) of the Code, at least 66 per cent of the 'Committee of Creditors' should vote in favour of a Resolution Plan for it to be approved. However, with respect to the Appellant's Plan, only 55.49 per cent of the COC voted in favour and 37.17 per cent voted against and 7.17 per cent abstained. More importantly, in the absence of any exclusion of any period, the 'CIRP' period lapsed on 6.9.2019 and the 'Resolution Professional' filed M.A. No.536/19 praying that an order of Liquidation be passed under Section 33(1) of the I & B Code. Later, on 17.9.2019, while considering the Appellant's MA No.995/2019, the Adjudicating Authority orally observed that the 'Committee of Creditors' should reconsider the Appellants Plan and report its decision on 1.10.2019 and that the Appellant submitted a Revised Plan dated 20.9.2019 which was not approved by the 'Committee of Creditors' on 28.9.2019. In reality, only 20.54 per cent of the Committee of Creditors voted in favour of the Revised Plan and 63.02 per cent of the COC voted against it and 12.74 per cent abstained from voting.

19. The clear stand of the Respondent is that the Appellant's Resolution Plans (the Plan dated 25.8.2019 and the Revised Plan dated 20.9.2019) were considered and not approved by the 'Committee of Creditors' on 4.9.2019 and 28.9.2019 respectively. According to Section 33(1) of the Code, if an 'Adjudicating Authority' does not receive a Resolution Plan before the expiry of CIRP period, 'an order of Liquidation' can be passed and owing to the expiry of the Respondent's CIRP on 6.9.2019, the Adjudicating Authority had correctly allowed the Resolution Professional's M.A. No.536/2019 in accordance with the mandate and hence the Appeal is liable to be dismissed.

20. The Learned Counsel for the Respondent contends that the Adjudicating Authority had already extended the CIRP by 90 days by virtue of the order dated 7.6.2019 and as per the first proviso to Section 12 of the Code, the 'Resolution Professional' is barred from applying to the 'Adjudicating Authority' seeking further extension of time. Apart from that, on 21.11.2019, 'Adjudicating Authority' passed an order dismissing the Appellant's M.A. No.955/2019 for reconsideration of the Plan and the said order has become final. Therefore, it is the submission of the Learned Counsel for the Respondent that no prejudice was caused to the 'Appellant' since the 'Revised Plan' was considered by the 'Committee of Creditors' on 28.8.2019 and the same was not approved. When that being the fact situation, the aspect of 'CIRP period', the 'Committee of Creditors' request for 15 days extension and the eligibility of the 'Appellant' as per Section 29A of the I & B Code on account of 'MSME' registration are not relevant.

21. The plea on behalf of the Respondent is that the 'Resolution Professional' had discharged his duties as per Section 25 of the I & B Code by filing a 'Miscellaneous Application' before the 'Adjudicating Authority' for the determination of 'MSME status' of the Respondent and by bringing to the attention of the 'Committee of Creditors' without making an adjudication in this regard. Further, in the order dated 6.8.2019, of the Adjudicating Authority (NCLT, Guwahati Bench), in **Bank of India v M/s Maxim Infrastructure & Real Estate Limited and Others**, it is observed as under:

“...act of obtaining the MSME status by the ex-promoter is not but another attempt to submit a Resolution Plan through back-door entry which is not at all as per the true letter and spirit of 240 A of IBC. I the true spirit of 240A is to protect genuine MSME entrepreneurs which are MSME entrepreneurs from the beginning and not the entities like the present applicant. If that is the true spirit of the legislation, every ex-promoter or director will get himself registered as an MSME unit to get over the clutches of section 29 A and if the said acts and attempts of ex-promoters and directors are allowed, it would amount to clear abuse of the process of the Code and would amount to achieving something in an indirect manner which cannot be done directly.”

22. It is to be relevantly pointed out that on the occurrence of default in repayment of the 'Debts' due and payable to Phoenix ARC Private Limited (acting as the Trustee of Phoenix Trust FY-16-26), 'Phoenix' preferred a Petition in CP/759(IB)/2018 (under Sec 7 of the I & B Code, 2016) before the Adjudicating Authority(Chennai Bench), under the caption 'Phoenix ARC Private Limited v. St. John Freight System Limited and the said Petition was admitted on 10.12.2018 and that CIRP of 'Corporate Debtors' was initiated. It must be borne in mind that in the present case, the Appellant has not impleaded 'Phoenix' as a necessary and proper party. It transpires that the

Appellant earlier filed Company Appeal (AT)(Ins) No.32/2019 dealing with the order dated 10.12.2018 passed by the Adjudicating Authority for initiating CIRP of Corporate Debtors wherein Phoenix was impleaded as the First Respondent and that the said Appeal was dismissed by this Tribunal on 7.5.2019. However, in this Appeal, Company Application No.282/2020 is filed by the Applicant/Phoenix ARC Pvt. Ltd. seeking to implead in the present Company Appeal (AT)(Ins) No.1402/2019 as a necessary and proper party for an adjudication of the issues and because of the reason that the Applicant/Phoenix ARC Pvt. Ltd. figured as petitioner in C.P./759/IB/CB/2019 before the Adjudicating Authority, (NCLT, Chennai), to prevent an aberration of justice and to promote substantial cause of justice, this Tribunal allows the impleading Application. The Learned Counsel for the Appellant is directed to carry out necessary corrections in the Cause Title of the Main Appeal and further directed to submit a fresh Memo of Parties for the purpose of record.

23. The Resolution Professional of the Corporate Debtors, pursuant to the order dated 10.12.2018, in CP/759/(IB)(CB)/2018 passed by the Adjudicating Authority made a public announcement of CIRP and on 13.12.2018 and 14.12.2018, publications were effected in numerous newspapers as per Sec 15 of the Code, inviting claims from the 'Creditors' of the 'Corporate Debtor'. Although the management of the affairs of the Corporate Debtor vested in the hands of the Resolution Professional on 23.1.2019 (after the initiation of CIRP), the promoters who were employees of the Corporate Debtor, without the knowledge of the Resolution Professional,

had applied for and obtained a Registration Certificate under the MSME Act to circumvent the ingredients of Sec 29A of the Code.

24. The first meeting of the 'Committee of Creditors' of 'Corporate Debtor' took place on 8.1.2019. After obtaining the nod of the 'Committee of Creditors' on 23.2.2019, the 'Resolution Professional', in terms of Form-G as per the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, invited 'Expression of Interest' from interested and eligible Resolution Applicants to submit their respective Resolution Plans and ten such interests were received, out of which only two were found eligible. That apart, the said the two Resolution Applicants had not complied with the terms mentioned in I & B Code. The Appellant had to deposit the 'Earnest Money Deposit' of Rs.Five Crores by way of Demand Draft or Bank Guarantee and that the Appellant had failed to deposit the same and also failed to submit principle letter from investors to submit their Resolution Plan. But in the 12th COC meeting of the 'Corporate Debtor' that took place on 4.9.2019 itself, the 'Committee of Creditors', in regard to the feasibility and viability of the said Resolution Plan, initiated 'voting' and 55.66% voted in favour of the Resolution Plan, 37.17% voted against the Resolution Plan and 7.17% abstained from voting relating to the Resolution Plan. The Resolution Plan of the Appellant was not approved, as per Section 30 of the Code, with the minimum vote of 66% of voting share of the 'Committee of Creditors' and resultantly, the Resolution Plan of the Appellant was rejected as per the I & B Code.

25. The Appellants filed MA No.995/IB/2019 (under Sec 60(5) of the Code), seeking permission of the 'Adjudicating Authority' for reconsideration of the 'Resolution Plan' submitted by it, in the meeting of the 'Committee of Creditors' that took place on 17.9.2019. The Adjudicating Authority, by means of an oral direction dated 17.9.2019, granted opportunity to the Resolution Applicants to present the 'Resolution Plan' before the 'Committee of Creditors' for their reconsideration and on 24.9.2019 (14th meeting of COC of the Corporate Debtor), the 'Committee of Creditors' discussed in regard to the Revised Resolution Plan submitted by the Resolution Applicants whether it conforms with the requirements of the request for the Resolution Plan and that the Committee of Reporters, after deliberations, the Appellant offered some land as 'Security Deposit' and offered to make an additional deposit of Rs.Fifty Lakhs to establish 'Bonafides'. At the end of the aforesaid meeting, the Resolution Applicant was required to submit the 'Revised Plan' for incorporating the requisite changes and also for obtaining the mandate by the COC members to vote on 28.9.2019 for accepting/rejecting the Revised Resolution Plan to be submitted by the Appellant.

26. The 'Committee of Creditors', on 28.9.2019, among other things, voted on the 'Revised Resolution Plan' and 20.54 per cent voted in favour of the Resolution Plan and the members (including the Applicants/Phoenix) voted with 63.02% voting share voted against the Resolution Plan and balance 12.74% abstained from voting in regard to the Resolution Plan. Therefore, the said Resolution Plan projected by the Appellants, could not secure the minimum required vote of 66% of the voting share of the Committee of

Creditors and the Resolution Plan submitted by the Appellant came to be rejected. The Resolution Professional filed an Application under Sec 33(1) of the Code for initiation of 'Liquidation Process of Corporate Debtor' and the 'Adjudicating Authority' passed an order on 21.11.2019 whereby a direction was issued for initiation of the 'Liquidation Process of the Corporate Debtor'. In short, the present Appeal filed by the Appellant is only to stifle the 'Liquidation Process' of the 'Corporate Debtor'.

27. It will not be out of place for this Tribunal to make a significant mention that a 'Liquidation' can be triggered under the following circumstances:

- (i) Where no 'Resolution Plan' is received by an 'Adjudicating Authority' from the 'Resolution Professional' prior to the expiry of the Insolvency Resolution Process period
- (ii) Where the 'Adjudicating Authority' rejects the Resolution Plan under Sec 31 of the Code for noncompliance of the requirements specified therein
- (iii) Where the 'Committee of Creditors' at any time before confirmation of the Resolution Plan decide to liquidate the Corporate Debtor and the same is intimated by a 'Resolution Plan' to an Adjudicating Authority
- (iv) Where the 'Corporate Debtor' violates a 'Resolution Plan' as approved by the 'Adjudicating Authority' and any person other than the 'Corporate Debtor' prejudicially affected by such breach files an

application seeking a 'Liquidation Order' before an 'Adjudicating Authority'.

28. Suffice it for this Tribunal to point out explicitly that a 'Corporate Debtor' can be pushed into 'Liquidation' only if any of the aforesaid circumstances exist and in fact, there is no power available with an 'Adjudicating Authority' to order 'Liquidation' on any other reason. It is to be remembered that under Sec 271(e) of the Companies Act, 2013, power is showered on the 'Tribunal' to order winding up, if in the opinion of the 'Tribunal' it is just and equitable that the 'Company' is to be wound up. But, the I & B Code, 2016 has no such residual ground. Moreover, in a suitable case, an 'Application' can be projected by an 'Applicant' under the relevant provisions of the 'Companies Act, 2013' for a 'just and equitable reason'.

29. It cannot be lost sight of that where no 'Resolution Plan', is approved by the 'Committee of Creditors', an Adjudicating Authority is bound to order 'Liquidation' of a Company. If the time prescribed under Sec 12 of the I & B Code had lapsed, an 'Adjudicating Authority' will pass an 'Order of Liquidation' against 'Corporate Debtor' regardless of whether the management of Corporate Debtor or the Resolution Applicant had enough opportunity to come up with viable/suitable Plan, as the case may be. Notwithstanding the fact that 'Resolution of Corporate Insolvency' is meant for survival of a Company as a Going Concern, it cannot be ignored that 'Timely Liquidation' is a palatable/desirable one too over an 'Indefinite Resolution Proceedings'.

To put it precisely, when a 'Resolution Plan' was negated by the 'Committee of Creditors' and the time enunciated under Sec 12 of the Code had come to an end, the time limit prescribed is to be followed in stricto sense, failing which the aim of 'maximising' the 'value of Assets' of the Company will get defeated.

30. When the 'Committee of Creditors' is of the view that no useful purpose will be served in continuing/elongating the Insolvency Resolution Process because of the fact that there was no 'Resolution Plan' to the satisfaction of the 'Committee of Creditors', then an 'Adjudicating Authority' is undoubtedly to pass necessary orders as per Sec 33(1)(a) and Sec 34(1) of the I & B Code for announcement of 'Liquidation' in respect of a 'Corporate Debtor'.

31. It is true that the I & B Code is a social legislation not just to take into account the stakeholders' interests (including the 'Corporate Debtors', Employees and others who have stake in Business). Sec 29A of the I & B Code mentions the persons who cannot be a 'Resolution Applicant' (including an 'Undischarged Insolvent', 'Wilful Defaulter' of loans, anyone who has an 'NPA loan' as per RBI Guidelines, etc.). In fact, restrictions shall apply in respect of an ineligible individual or any other person acting jointly with such person and submitting a plan.

32. As per Regulation 39(1) of IBBI (Insolvency Resolution Process) for Corporate Persons) Regulations, 2016, a 'Resolution Plan' is to be submitted to the Resolution Professional 30 days before the expiry of maximum period of 180 days. Where no Resolution Plan was

submitted, period of 180 days is not to be extended. An order of Liquidation is to be passed for the Liquidation of a 'Corporate Debtor' and the Resolution Professional will act as a 'Liquidator'.

33. Coming to the aspect of Sec 240A of the Code to Micro, Small and Medium Enterprises, it is to be pointed out that a 'Financial Creditor' or an 'Operational Creditor' has a right to file necessary application for 'Insolvency'. The creditors of Micro, Small and Medium Enterprises can take it to 'Insolvency'. In fact, Sec 240A (2) of the Code confers power on the Central Government to direct by notification in 'Public Interest' that any of the provisions of I & B Code shall not apply to MSMEs or apply to them with such variations as may be mentioned in the notification.

34. It is beyond one's comprehension as to how the Promoters/Employees of the Corporate Debtor without the knowledge of Resolution Professional and that too, after initiation of CIRP coupled with the fact that the management of the affairs of the 'Corporate Debtor' remained in the hands of the Resolution Professional, had secured the Registration Certificate under the Micro, Small and Medium Enterprises Development Act and obviously, the same was obtained only to overcome the ingredients of Sec 29A of the Code. In the instant case, even though one Johnson and Samuel Jefferson (Suspended Directors and ex-promoters of Corporate Debtor) furnished a Resolution Plan before the 'Resolution Professional' claiming to be eligible to submit the said 'Resolution Plan' in lieu of Sec 240A of the I & B Code,

in the instant case, the Appellant had failed to deposit a sum of Rs.Five Crores either by 'Demand Draft' or 'Bank Guarantee'. In any event, the Resolution Plan of the Appellant was not approved with a minimum vote of 66% of voting share of the 'Committee of Creditors' and resultantly, the said Plan of the Appellant was rejected. That apart, the Appellant, although filed MA 995/IB/2019 praying for permission of the Adjudicating Authority for reconsideration of the Plan submitted by it in the meeting of COC on 17.9.2019, the 14th meeting of the COC of Corporate Debtor took place in which the Appellant offered some land as Security Deposit and offered to make an additional deposit of Rs.Fifty lakhs to prove his Bonafides. And on 28.9.2019, the 'Committee of Creditors' vote on the Revised Plan and 63.6% voting share of the members voted against the Resolution Plan, etc. to put it in emphatic term, the Appellant had not secured the minimum required vote of 66% of the voting share of COC and therefore, the Plan submitted by the Appellant was rejected and considering the fact that the Resolution Plan of the Appellant was rejected twice by the 'Committee of Creditors' and in the absence of 'Resolution Plan' for 'Resolution Process of the Corporate Debtor', the Adjudicating Authority, by taking into account of these attendant facts and circumstances of the instant case, passed the impugned order dated 26.11.2019 for initiation of the 'Liquidation Process of the Corporate Debtor', which is free from any legal flaw. Consequently, the instant Appeal is devoid of merits and the same is

dismissed. No costs. I.A. No.3973/2019 and I.A. No.3974/2019 are closed.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice Venugopal, M)
Member (Judicial)

(Justice Anant Bijay Singh)
Member (Judicial)

4th, March, 2020

ssr/nn