

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins) No.1207 of 2019**

[Arising out of Order dated 17<sup>th</sup> September, 2019 passed by National Company Law Tribunal, Special Bench, Chennai in MA/918/2019 in IBA/308/IB/2019]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Mr. Vijayakumar  
5-4-40, Kalaignar  
3<sup>rd</sup> Main Road  
Madurai – 625 017

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Appellant

**Versus**

1. Mr. Gopalsamy Ganesh  
Babu,  
Liquidator  
Quantum Coal  
Energy Pvt. Ltd.  
986-H Block,  
24<sup>th</sup> Street  
Anna Nagar (West)  
Chennai – 600 040

Applicant/  
Resolution Professional

Respondent No.1

2. ICICI Bank  
represented by its  
Authorised Officer  
ICICI Bank Tower,  
DSMG-Blg,  
Arihant Insight,  
Plot No.24, Block No.1  
Ambattur Industrial  
Estate,  
Chennai – 600 058

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Respondent No.2

3. Income Tax Officer  
Corporate Ward 2  
No.2, VP Rathinasamy  
Nadar Road  
CP Building,  
Bibikulam  
Madurai – 625 002

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Respondent No.3

**For Appellant: Shri Kaushik N. Sharma and Shri Sudhanshu Sharma, Advocates**

**For Respondents: Shri Rohan Narula and Shri T.N. Durga Prasad, Advocates (R-1)  
Shri Gautam Singhal and Ms. Richa Chopra, Advocates (R-2)**

**ORDER**

**19.02.2020** Learned Counsel for the Appellant submits that in this matter, the Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) was admitted on 15.07.2019 vide Order which is at Annexure A-2 against Quantum Coal Energy Pvt. Ltd. – Corporate Debtor. The IRP was appointed. IRP gave public announcement on 20<sup>th</sup> July, 2019 and first COC (Committee of Creditors) meeting was held on 13<sup>th</sup> August, 2019. The Affidavit of the RP - now Liquidator (Diary No.19066) shows in the first meeting, IRP was confirmed as RP and on that date itself, the COC decided that the Corporate Debtor is only a trading business and there is no possibility of making Corporate Debtor a going concern and resolved to liquidate the Corporate Debtor rather than going for resolution. Counsel for the Appellant states that this was not correct as the Corporate Debtor in the earlier year, had turnover of Rs.19 Crores. The learned Counsel for the Appellant – Shri Kaushik N. Sharma and the learned Counsel for the Liquidator – Shri Rohan Narula state that because of such decision of the COC, the matter was placed before the Adjudicating Authority (National Company Law Tribunal, Chennai Bench) and on 17<sup>th</sup> September, 2019, the Adjudicating Authority passed Order of liquidation.

2. This Appeal has been filed against the Order of liquidation. The Counsel states that the MA which was filed by Resolution Professional, was

under wrong Section 33(1)(a) as the CIRP did not go through the regular process and no Resolution Plans were invited or considered and within a month of admission of the Application under Section 9, abruptly, COC had taken decision on liquidation. The learned Counsel for the Appellant states that if at all RP could rely, it was Section 33(2). The Adjudicating Authority acted under Section 30(6) if Para – 10 of Impugned Order is seen which again is wrong and thus, the liquidation Order passed is under wrong provision.

3. The learned Counsel for Appellant states that COC consisted of only one Financial Creditor which is ICICI Bank. It is stated that the Appellant has already settled with ICICI Bank on 12.12.2019. Ms. Richa Chopra – Advocate appears on behalf of ICICI Bank (Respondent No.2). She states that the Appellant has settled the dues with the Respondent No.2 – ICICI Bank.

4. The Counsel for RP/Liquidator states that in the CIRP process, there were claims received only from Financial Creditor - ICICI Bank and the Appellant has already settled the dues of ICICI Bank. It is stated that there were claims received from four Operational Creditors out of which, one was Operational Creditor who had moved Application under Section 9 namely, ENP IMPEX Pvt. Ltd. The learned Counsel has referred to the Affidavit filed by the original Operational Creditor - ENP IMPEX Pvt. Ltd. through Director – Mr. Rajesh Khetan which is Annexure A-27 (Diary No.18363) to submit that dues of ENP IMPEX have been already settled. It is stated that the settled Operational Creditor has already filed Form FA (Page 11 Diary No.18363).

5. Learned Counsel for the Appellant submits that there were three more Operational Creditors namely, Carbone International PTE Ltd., Agarwal Coal Corporation Pvt. Ltd. and Penta Coal Pvt. Ltd. The Affidavit filed by the Appellant is referred at Diary No.17031 to claim that the Appellant has settled with these three Operational Creditors also and obtained their consent for revival of CIRP process and willing to start business with Corporate Debtor and settle their debts payable to them in instalments. The documents are referred as Annexure A-24 to A-26. Counsel states that while filing Affidavit now vide Diary No.19077, the Appellant has again taken letters from these Operational Creditors consenting to restoration of the Company. The learned Counsel for Appellant states that in the Affidavit now filed, in Para 6(vi), the Appellant has stated that all outstanding dues payable to all stakeholders in relation to the liquidation of Corporate Debtor are settled.

6. The Counsel for the RP/Liquidator also accepts that the dues have been settled of the only Financial Creditor and the four Operational Creditors. Both sides have filed Affidavits as referred.

7. Considering the object of IBC which is resolution and that effort should be made to revive the Corporate Debtor rather than to eliminate the same, we find that this is a fit case for us to exercise inherent powers under Rule 11 of National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules, 2016 – in short), to do justice. It is necessary to set aside the liquidation Order as well as the CIRP proceedings.

8. The learned Counsel for RP/Liquidator states that the dues of the RP/Liquidator have already been settled by the Appellant.

9.(A) For the above reasons, we set aside the Impugned Order of liquidation and the earlier proceedings of CIRP initiated on admission of Application under Section 9 of IBC, exercising powers under Rule 11 of NCLAT Rules, 2016.

(B) The Corporate Debtor is released from the rigour of law and is allowed to function independently through its Board of Directors. The Liquidator will hand back the records and management of the affairs of the Corporate Debtor, to the Board of Directors.

(C) The Corporate Debtor will ensure compliance of Annexure A-24, Annexure A-25 and Annexure A-26, the consent letters taken from (1) Carbone International PTE Ltd., (2) Agarwal Coal Corporation Pvt. Ltd. and (3) Penta Coal Pvt. Ltd. (Diary No.17031). If any grievance is received from any of these Operational Creditors regarding non-receipt of the amounts or part of the same, we would recall the present Orders.

The Appeal is disposed accordingly.

[Justice A.I.S. Cheema]  
Member (Judicial)

(Justice A.B. Singh)  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

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