

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 375 of 2023 & I.A. No. 1261, 1262 of 2023

(Arising out of the Order dated 03.02.2023 passed by the National Company Law Tribunal, Mumbai Bench- IV in IA No. 2599 of 2022 in CP (IB) No.- 529/MB/2021.)

IN THE MATTER OF:

Amrit Rajani

Erstwhile Director

M/S Shri Balaji Entertainments Private Limited

Address:-

502, Ghanshyam Chamber,

B-12, Link Road,

Andheri (W), Mumbai – 400053.

(Maharashtra)

...Appellant

Versus

1. Pegasus Assets Reconstruction Private Limited

55/56, 5th Floor, Free Press House,

Nariman Point,

Mumbai – 400-021

(Maharashtra)

...Respondent No. 1

2. Shri Balaji Entertainment Private Limited

Through Liquidator Mr. Sandeep Goel

1604, Verona Hiranandani Gardens,

Powai, Mumbai 400076

(Maharashtra)

...Respondent No. 2

Present

For Appellants:

Mr. Umang Mehta & Mr. Harsh Jain, Advocates.

For Respondents:

Mr. Dinkar Singh & Mr. Rohit Singh, Advocates.

J U D G E M E N T

(23.01.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed U/S 61(1) of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) by the Appellant i.e., Amrit Rajani, Erstwhile Director of Shri Balaji Entertainment Private Ltd., the Corporate Debtor/Respondent No. 2 herein against the Impugned Order 03.02.2023 passed by the National Company Law Tribunal, Mumbai Bench (IV) (**‘Adjudicating Authority’**) in IA. No. 2599 of 2022 in Company Petition No. (IB)-529/MB/2021 wherein the application filed under Section 33 (1) of the Code by the Respondent No. 2 has been allowed and disposed of.

2. M/s Pegasus Assets Reconstruction Private Limited, the Financial Creditor, is the Respondent No. 1 herein, who filed an application being CP (IB) No.529/MB/2021 under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (**‘CIRP’**) against Shri Balaji Entertainments Pvt Ltd (**“Corporate Debtor”**) and Respondent No. 2 herein claiming a total default of Rs.35,90,56,629/-.

3. The Financial Creditor (Respondent No. 1) stated that the account of the Corporate Debtor (Respondent No. 2) was classified as Non-Performing Asset (**“NPA”**) on 02.12.2019, with the date of default being 01.06.2019. The Respondent No. 1 further stated that the Corporate Debtor was both a co-borrower and a corporate guarantor under the loan agreement, primarily in relation to a loan

extended to Principal Borrower M/s Universal Textile Waterproof Company (India) ("UTWC").

4. The Appellant stated that on 18.06.2021, SVC Co-operative Bank Limited (SVC Bank), a Multi-State Co-operative Bank registered under the Multi-State Co-operative Societies Act, 2002, sanctioned a Term Loan of Rs. 2037.87 Lakhs and an Overdraft limit of Rs. 423.29 Lakhs in favour of Principal Borrower UTWC, wherein the Corporate Debtor was alleged to be a co-borrower and corporate guarantor for UTWC.

5. The Appellant submitted that on 31.07.2018, to effectuate the sanction letter dated 19.07.2018, the Corporate Debtor provided a corporate guarantee for the loan to SVC Bank. According to the Appellant, UTWC defaulted on repayment on 01.06.2019, leading to UTWC being declared as a Non-Performing Asset (NPA) on 02.12.2019. The Appellant stated that SVC Bank issued a notice under Section 13(2) of the SARFAESI Act, 2002, demanding repayment of ₹29,89,96,940/-. Subsequently, on 27.02.2020, a Deed of Assignment was executed between SVC Bank and the Respondent No. 1 regarding financial assistance. It has been brought out that as per the Respondent No 1's Statement of Accounts dated 30.04.2021, the debt owed by the Corporate Debtor amounted to ₹35,90,56,629/-.

6. The Appellant submitted that on 18.05.2021, Respondent No. 1 filed Company Petition No. 529/MB/2021 under Section 7 of the Code against the

Corporate Debtor which was admitted by the Adjudicating Authority and Mortarium was declared.

7. The Appellant submitted that, through the Impugned Order dated 03.02.2023, the Adjudicating Authority allowed the application of the Resolution Professional and appointed a liquidator, following just four meetings of the Committee of Creditors ('CoC'), which unanimously resolved to liquidate the Corporate Debtor with a 100% vote. The Appellant stated that the Interim Resolution Professional, Shri Gajesh Labhchand Jain, filed his first progress report on 16.05.2022, indicating that the Corporate Insolvency Resolution Process had commenced on 20.04.2022 and the public announcement of the same was made on 22.04.2022.

8. It is submitted by the Appellant that upon verification of the claims, a report under Regulation 17(1) certifying the constitution of the CoC was submitted. The Appellant further submitted that the Committee was constituted with the following financial creditors, along with their respective shares of the claimed amounts: -

a) Pegasus Asset Reconstruction Private Limited – amount claimed: -
40,67,84,523/-

b) NKGSB Co-operative Bank Limited – amount claimed – 10,78,93,356/-

The Appellant submitted that the IRP had distributed the voting share of Pegasus and NKGSB as 79% and 21%.

9. The Appellant submitted that the entire amount claimed had been treated as admitted by the Interim Resolution Professional without any details being

provided regarding the verification process. The Appellant contended that the Interim Resolution Professional has demonstrated gross negligence by failing to make any effort to verify or scrutinize the said claims to assess their veracity. The Appellant submitted that the Interim Resolution Professional, upon receiving the order of his appointment, was fully aware of the contest raised by the Appellant before the Adjudicating Authority and yet neglected to undertake a thorough examination of the claims of the Financial Creditors.

10. The Appellant submitted that the mere admission of the application under Section 7 of the Code does not automatically verify the claims of all the financial creditors and necessary exercise of due diligence in the process of verifying the same should have been undertaken by the Interim Resolution Professional.

11. The Appellant submitted that the adjudication of an application under Section 7 of the Code by the Adjudicating Authority is limited to a prima facie determination of the corporate debtor's default and does not constitute an exhaustive verification of all claims by financial creditors and submitted that the Interim Resolution Professional's failure to undertake or present any verification of the claims, particularly when the very existence of the alleged debt is under scrutiny before this Appellate Tribunal amounts to gross negligence. The Appellant alleged that IRP has taken steps towards expediting the liquidation of the corporate debtor without due diligence and further alleged that the conduct of the Resolution Professional in merely recording claims and notifying them as verified, without any supporting proof, coupled with the ongoing challenge to the

veracity of the entire claim, demonstrates a mala fide intention to push the Corporate Debtor into liquidation.

12. The Appellant submitted that during the second meeting of the CoC on 13.06.2022, it was resolved that the Resolution Professional would present detailed Expression of Interest documents and FORM-G was published. However, at the time of this meeting, the claim amount submitted by NKGSB Co-operative Bank Limited was revised to Rs. 27,85,33,677/- on the grounds that an alleged corporate guarantee had been issued by the Corporate Debtor to "Whiz Enterprises Private Limited." The Appellant stated that the Resolution Professional accepted this revised claim without objection, treating it as verified, without any consideration of whether the alleged corporate guarantee was valid, properly invoked, or the debt adjudicated. As a result, the voting percentage of NKGSB Co-operative Bank Limited increased to 41%. It is the case of the Appellant that the conduct of the Resolution Professional in accepting both the initial and revised claims and treating them as verified on both occasions clearly demonstrates a lack of independent verification of the claims. The Appellant highlighted that the Resolution Professional has simply treated these claims as an admission of debt on the part of the Corporate Debtor, without due diligence or scrutiny.

13. The Appellant submitted that the earlier Resolution Professional, Shri Gajesh Labhchand Jain, continued to act as the Resolution Professional despite expressing his disinterest, even after a new Resolution Professional had been

appointed which is in direct contradiction to the fact that the earlier Resolution Professional was *functus officio*. Furthermore, the Appellant submitted that the minutes of the meetings of the CoC fails to reflect any effort on the part of the CoC or the Resolution Professional to revive the Corporate Debtor. The Appellant further submitted that the minutes of the CoC meetings noted that the company possesses working capital, movable assets, and ongoing projects, yet no tangible steps were taken to utilize these resources to facilitate the revival of the Corporate Debtor.

14. The Appellant submitted that without prejudice to the submissions regarding the existence of the corporate debt and the arbitrary initiation of the Corporate Insolvency Resolution Process by the order of the Adjudicating Authority, it was the duty of the CoC to actively engage in efforts to revive the Corporate Debtor before making a unilateral decision to liquidate.

15. The Appellant submitted that the primary objective of the Code is to the resolution and revival of the Corporate Debtor, with liquidation being considered only as a measure of last resort. The Appellant assailed the Impugned Order which fails to adjudicate or even take note of the complete absence of any meaningful effort by the CoC toward reviving the Corporate Debtor and instead, the order has mechanically allowed the application and appointed a liquidator without considering whether the CoC had discharged its duty to explore resolution opportunities.

16. The Appellant further submitted that it is evident from the conduct of the CoC and the meetings held that no genuine efforts were made to explore viable revival options. The proceedings reveal a lack of commitment to the revival process, as demonstrated by the fact that the Resolution Professional, Shri Gajesh Labhchand Jain, who had already expressed his unwillingness to continue as Resolution Professional, remained in the role until the fourth CoC meeting where it was resolved to liquidate the Corporate Debtor. The Appellant submitted that the decision to liquidate a corporate debtor is a serious matter and cannot be treated as routine and necessitates adherence to all prescribed procedures and a thorough exploration of resolution possibilities before resorting to liquidation.

17. The Appellant submitted that Respondent No. 1 had filed certain additional documents before the Adjudicating Authority which should not have been allowed. It is submitted by the Appellant that the filing and reliance on such documents are prima facie in violation of the principles of natural justice and the rule of law.

18. Concluding his arguments, the Appellant urged this Appellate Tribunal to dismiss the Impugned Order and allow his appeal.

19. Per contra, the Respondent No. 1 denied all the averments made by the Appellant in the present appeal

20. The Respondent No.1 submitted that based on his application filed under Section 7 of the Code, the Adjudicating Authority ordered for CIRP against the Corporate Debtor. The Respondent No.1 elaborated that Mr. Gajesh Labhchand

Jain was appointed as the Interim Resolution Professional (“**IRP**”) for the Corporate Debtor and was later confirmed as the Resolution Professional.

21. The Respondent No.1 contended that Corporate Insolvency Resolution Process commenced with a public announcement on 22.04.2022, initiated in accordance with the statutory mandate of the Code and Form G was issued on 22.06. 2022, inviting interested parties to submit Expressions of Interest (“**EoI**”) by 07th July 2022. The Respondent No.1 submitted that no EOIs were received by the deadline of 07th July 2022 from any prospective Resolution Applicants in response to Form G published on 22.06.2022.

22. The Respondent No. 1 highlighted that during the third meeting of the CoC on 12.07.2022, it was disclosed that suspended directors of the Corporate Debtor informed that the Corporate Debtor had no assets, raising concerns regarding the physical availability of assets w.r.t., assets mentioned in the last balance sheet. The Respondent No. 1 noted that several issues were faced while conducting asset valuation due to non-availability of details about the Corporate Debtor's assets, which caused reasonable apprehension regarding their existence and manipulation done by the Ex-Promoter/Appellant of the Corporate Debtor.

23. The Respondent No. 1 submitted that at the end of the third CoC meeting, the Resolution Professional sought members' views on whether to issue a fresh Form G or proceed with liquidation, but this decision was deferred to a subsequent CoC meeting. The Respondent No. 1 contended that after considering all facts, the CoC unanimously resolved to liquidate the Corporate Debtor with a 100%

vote from its members in the fourth Coc meeting as it found no reasonable chances of revival of the Corporate Debtor.

24. The Respondent further submitted that as per Section 33(2) of the Code, if the resolution professional intimates a decision by not less than sixty-six percent of voting shares to liquidate, the Adjudicating Authority must pass a liquidation order. The Respondent No. 1 emphasised that in case where the corporate debtor has no assets, the CIRP must end and liquidation must start keeping in view the cardinal principle of value maximization.

25. The Respondent No. 1 submitted that Mr. Sandeep Goel was appointed as Liquidator to conduct the liquidation process of Shri Balaji Entertainments Private Limited as provided under Section 34(1) of the Code.

26. The Respondent No. 1 submitted that after considering all pleadings and evidence presented by both parties, Adjudicating Authority justifiably allowed the application for liquidation under Section 33 of the Code.

27. Concluding his arguments, the Respondent No.1 submitted that the Appeal is liable to be dismissed with cost.

Findings

28. We have already noted facts of the case, background of CIRP and background for recommending the Liquidation of the Corporate Debtor, while recording the pleadings of the parties, hence, we shall not repeat the same for the purpose of brevity. Suffice to note that certain financial facilities in terms of Term

Loan as well as working capital facilities were granted to UTWC by SVC/ Corporate Bank. It is noted that the Corporate Debtor gave its corporate guarantee as well as became co-borrower of the loan . The Principal Borrower i.e., UTWC could not repay the loan and service interest liability, therefore, an application filed under Section 7 of the Code was initiated for an amount of Rs. 35,90,56,629/- as on 30.04.2021, which was admitted by the Adjudicating Authority after passing the Order dated 20.04.2022. The Adjudicating Authority, later on an application made by the Resolution Professional, allowed the liquidation of the Corporate Debtor vide the Impugned Order dated 03.02.2023 since CoC decided to liquidate not finding the case to be fit for revival of the Corporate Debtor.

29. We note that the CIRP commenced vide the public announcement on 22.04.2022. The Resolution process was initiated, Form G was issued on 22.06.2022, wherein it was stipulated that interested parties, on or before 07.07.2022, may submit the EoI but no EoI was received till the last date of submission on 07.07.2022, from any prospective Resolution Applicant, in response to Form G, published on 22.06.2022. The CoC in its 3rd meeting held on 12.07.2022, was apprised about non-availability of details of the assets of the Corporate Debtor, which causes reasonable apprehension about physical availability of any of the assets of the Corporate Debtor, as mentioned in the last balance sheet (not filed with MCA) received from the Promoters on 02.05.2022. We note that the CoC further appraised the members, about the capital work amounting to Rs. 1.34

Crores, in the financial year 2020, but the promoter directors had not been able to give any explanation about such expenditure. The CoC after considering the aforesaid facts, unanimously resolved to liquidate the Corporate Debtor. The said resolution was passed with 100% votes from the members of CoC. The Resolution Professional filed an application seeking liquidation of Corporate Debtor under Section 33(1) (a), 33(2) and 34(1) of the Code and the Adjudicating Authority, after considering the peculiar facts of the present case, allowed the application to liquidate the Corporate Debtor, under the provisions of Section 33 of the Code. It has been pleaded before us by the Respondent No. 1 that the Code lays down an established process flow for distressed companies, which entails a compulsory insolvency resolution process prior to liquidation. Thus, as per the settled law, on the hierarchy of processes, every company before its Liquidation/Dissolution pursuant to the Code, 2016, has to mandatorily undergo to the proceeding CIRP. However, there may be some unique cases wherein the CIRP, would not be purposeful, hence not warranted at all- a common example, being nil assets in the company. The Respondent No. 1 has argued that where the company has nil assets, there is practically nothing left to resolve and/ or realise. As a result, the odds of receiving a resolution plan during CIRP, or realization during liquidation seems certainly negative. Thus, a prima-facie stance was much in favour of liquidation and finally to dissolution of the Corporate Debtor.

30. We note that basically the liquidation of the Corporate Debtor has been challenged by the Appellant on the following grounds :-

- (I) The CoC had not taken full initiatives to resolve the Corporate Debtor which is against the spirit of the Code.
- (II) The Section 7 application was admitted on forged documents filed by the Respondent No. 1. The Appellant has also assailed the conduct of the Resolution Professional as not good as he accepted the claims of the Financial Creditor without verification.
- (III) The additional documents of ledger accounts of SVC Bank were introduced to harm the Corporate Debtor and requested this Appellate Tribunal not to consider such additional document filed by the Respondent No. 1.

31. Since, these points are interconnected and inter dependent and shall be dealt in conjoint manner in the following discussions :-

(I) **The CoC had not taken full initiative to resolve the Corporate Debtor against the spirit of the Code.**

- (a) We have noted that CoC indeed had taken the initiatives to resolve the Corporate Debtor and Form G and invited issuance of 'EoI'. It is noted that no response came and as such CoC considered remote likelihood of resolution of the Corporate Debtor.
- (b) We have further noted that the CoC in its third CoC meeting held on 12.07.2022 has come to notice the fact that the Suspended

Directors of the Corporate Debtor informed the CoC that the Corporate Debtor has no assets.

(c) The Respondent No. 1 also brought out that the CoC faced several issues while trying to value the assets of the Corporate Debtor such as non availability of details of the assets of the Corporate Debtor, physical non-availability of any assets of Corporate Debtor in contrast to assets being shown in the last balance sheet received from the ex-promoters of the Corporate Debtor on 02.05.2022.

(d) We have also been apprised that capital works amounting to Rs. 1.34 Crores as shown in financial year 2020 could not be explained by the Ex-Promoter Directors of the Corporate Debtor regarding how this money was spent, which according to the Respondent No. 1 and CoC was suspicious act of the Appellant.

(e) We have noted from the pleadings as well as from the Impugned Order that there was no likelihood of revival of the Corporate Debtor in absence of any assets of the Corporate Debtor as well as non-availability of records, as such the CoC passed the resolution to liquidate the Corporate Debtor with 100% voting rights.

(f) We further note that the Adjudicating Authority, after going through all details of IA, approved the liquidation of the

Corporate Debtor based on I.A. No. 3150 of 2022 filed by the Respondent No. 2.

(g) We will refer to Section 33 (2) of the Code, which provides that-

“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 [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]”

(Emphasis Supplied)

(h) Thus, Section 33(2) of the Code leaves hardly any choice to the Adjudicating Authority, once the CoC decide with the 66% voting rights to liquidate the Corporate Debtor. In the present case, the resolution to liquidate was passed by 100% votes in CoC. Hence, we do not find any error in the Impugned Order.

(II) The Section 7 application was admitted on forged documents filed by the Respondent No. 1 and the conduct of the Resolution Professional is not good as it accepted the claims of the Financial Creditor without verification.

(III) The additional documents of ledger accounts of SVC Bank were introduced to harm the Corporate Debtor and requested this Appellate Tribunal not to consider such additional document filed by the Respondent No. 1 including ledger account of SVC Bank.

(a) As regard to the forged documents, the same pleading were taken by the Appellant before the Adjudicating Authority which were not accepted by the Adjudicating Authority.

(b) Incidentally, we note that in another connected appeal i.e., Company Appeal (AT) (Ins.) No. 476 of 2022 before us, the same issue was taken by the same Appellant in I.A. No. 3150 of 2022 which was filed by the Respondent No. 1 seeking permission of this Appellate Tribunal to allow additional documents like ledger account of SVC Bank etc. On 12.12.2022, after hearing both the parties, we passed the following order:-

“We have heard counsel for the parties and perused the record. The documents Annexure R/1 (a to d) are the ledger account of M/s Shri Balaji Entertainment Pvt. Ltd. whereas another document Annexure R/2 is the writ petition filed by six entities including Shri Balaji Entertainment Pvt. Ltd. before the Hon’ble Supreme Court. In so far as the writ petition is concerned, it is a part of the judicial record and the ledger account is a part of the accounts maintained by the SVC Co-operative

Bank Ltd.; therefore, these documents are required to be taken on record in order to reach to a conclusion as to whether the application filed under Section 7 of the Code, should have been allowed or not. Accordingly, the application is allowed and these documents R/1 (a to d) and R/2 appended with the application are taken on record.
.....”

(Emphasis Supplied)

(c) As such, we do not find any merit in the contention of the Appellant. Incidentally, we note that the same Appellant had gone even before the Hon’ble Supreme Court of India, where that Corporate Debtor has pleaded the fact that he has been co-borrower of the loan with the principal borrower UTWC.

(IV) The alleged manipulation of record by Financial Creditor.

(a) The Appellant conceded that the director of the Corporate Debtor as well as the partners of the principal borrower i.e., UTWC are the same person but argued that the record furnished by them as partners including blank signed papers have been manipulated by the Financial Creditor in fraudulent manner.

(b) During pleadings, no concrete evidenced has been reproduced by the Appellant to establish the said allegations. We have already noted that the documents produced by the SVC Bank clearly stipulate

responsibilities of the Corporate Debtor as co-borrower and Corporate Guarantor.

(c) As such, we do not find any merit in the submissions made on this account by the Appellant.

32. The other issue raised by the Appellant are not based on an factual or legal position, as such we do not find any merit in the contentions of the Appellant.

33. We find that the corporate debtor has no assets, the CIRP Period only implies zero returns with avoidable costs such as liquidator's fee, public notice etc. Thus, we do not find any error in the CoC decision to the Liquidator of the Corporate Debtor which was accepted by the Adjudicating Authority in the Impugned Order.

34. In view of detailed examination of various issues brought out in the present appeal, we do not find any merit in the Appeal. Appeal devoid of any merit stand rejected. No costs. I.A, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sim