

**(2020) 08 NCLT CK 0040**

**In the National Company Law Tribunal**

**Case No :** Company Appeal Nos. 215 Of 2019, 73 Of 2020, Interlocutory Appeal No. 160 Of 2020 In Company Petition No. (IB) 223/Ald Of 2018

Standard Chartered Bank And Ors

APPELLANT

Vs

Jvl Agro Industries Ltd. And Ors

RESPONDENT

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**Date of Decision :** 19-08-2020

**Acts Referred:**

Insolvency And Bankruptcy Code, 2016 — Section 5, 12, 14, 29(A)(c), 29(A), 30, 30(4), 30(6), 33, 33(1), 33(5), 34(1), 56, 60(5)  
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 12, 36(A)  
Constitution Of India, 1950 — Article 226

**Citation :** (2020) 08 NCLT CK 0040

**Hon'ble Judges :** Rajesh Dayal Khare, J

**Bench :** Single Bench

**Advocate :** Yash Tondon, Krishna Agarwal, Saurabh Singh, Jishnu Chaudhary, Akhilesh Kalra

**Final Decision :** Disposed Of

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**Judgement**

Rajesh Dayal Khare, J

1. Since in all the applications (CA No. 215/2019, CA No. 73/2020, IA No. 160/2020 in CP No. (IB) 223/ALD/2018) the issues involved are common and the same question of law is to be decided against the same corporate debtor, therefore, all the three applications are taken up together and are being decided by the common order.

2. The present application has been filed under Sec. 33(1) of the Insolvency & Bankruptcy Code, 2016 by the Resolution Professional for liquidation of the Corporate Debtor i.e. JVL Agro Industries Ltd. in which, this Tribunal vide order dated July 25, 2018 in CP No. (IB) 223/ALD/2018 has admitted the petition for initiation of CIRP against JVL Agro Industries Limited and appointed Mr. Abhishek Gupta as IRP and subsequently on September 10, 2018 this tribunal has

appointed Mr. Supriyo Kr. Chaudhary as RP.

3. It is further stated that the RP in accordance with Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 issued request for submitting EOI, 2 EOIs were received then further COC decided to reissue the request for EOI in which 12 EOIs were received till the last date of submissions. On examination, the RP short listed all 12 potential resolution applicant and provided them access to the virtual data and issued information memorandum as well as Request for submission of Resolution Plan (RFRP) to such potential applicants and the last date for submission of resolution plan was 2nd February, 2019, however no plans were received. As no plans were received by the RP till the last date of submission, therefore COC agreed to extend the date of submission of Resolution plan and COC in its 5th meeting approved the extension of the period of CIRP of 180 to further 90 days.

4. Meanwhile, RP received communication from SREI Multiple Assets Investment Trust Vision India Fund to participate in the Resolution Process and had submitted the EOI. On 7th May, 2019 the Resolution Plan submitted SREI was rejected by 98.18 % voting share of the Financial Creditor. And with the rejection of Resolution Plan submitted by Resolution Applicant, the RP had no other Resolution Plan and the CIRP period was over subject to the order of exclusion, thus the RP has submitted the application in accordance with section 33(1) of the Code for liquidation of the CD and appointment of the RP as the liquidator for the liquidation process of the Corporate Debtor.

5. Further the proposal which was rejected by the CoC was put before this tribunal for consideration and this tribunal vide order dated 3rd, February, 2020 rejected the SREI application which was filed praying for consideration of their revised commercial proposal.

6. Meanwhile, an application U/s 60(5) of IBC, 2016 i.e. CA No. 73/ALD/2020 has been filed by Mr. Ramesh Chandra Garg, Chief Financial Officer of the Corporate Debtor, Mr. Yogesh Singh, the Electrical Engineer (HOD) of the Corporate Debtor and Mr. Prem Nath, the Mechanical Maintenance In-charge, of the Corporate Debtor jointly on behalf of employees of JVL Agro Industries Ltd. culminated into a trust by the name of employee welfare trust of JVL Agro seeking indulgence of this Tribunal to place a resolution plan for consideration and approval under the provision of IBC and further praying the liquidation application to be dismissed as it is not maintainable U/s 33(1) of IBC.

7. It is contended by the Counsel for the Workmen Employees that the object of IBC is the Resolution of assets of the Corporate Debtor and maximization of value of the assets of the Corporate Debtor and further stated that RP is biased towards COC led by SBI of which he is a former retired employee and thus cannot act as a RP and since 330 days is not mandatory, therefore prayed that this Tribunal may direct the RP to place the Plan with the CoC as he ensures that the approval of plan shall maximize the value of assets of the Corporate Debtor

and the approval of this plan will not only keep the Corporate Debtor as a going concern but also shall upkeep the livelihood of more than 500 families directly.

8. It is further contended that a Resolution Plan is in conformity with the code and Regulations framed under Section 30 of the IBC, and in this Pandemic situation and the economic crisis existing due to Covid-19, the assets of the Corporate Debtor may not fetch the liquidation value, thus prays for considering the application to the RP for voting of the plan before the CoC and the liquidation application to be kept in abeyance.

9. In reply to the above, the counsel for the RP has contended that the applicants admittedly was aware of all developments during the CIRP period and opted not to file any Resolution Plan during the period under IBC and decided to submit the plan before this Tribunal only when SREI application was rejected by this Tribunal. Further, the Resolution Plan of the Applicant was never submitted to the RP and was only provided when this Tribunal directed the applicant to provide the copy of the plan. It is also contended that there is no provision under IBC permitting Resolution Applicant to wait for an indefinite period or for the other resolution plan to be rejected by CoC or by this Tribunal. As the Resolution Applicant was required to submit their plan pursuant to publication of the invitation of EOI within the last date specified under the provisions of IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016.

10. It is further contended that the last date of CIRP was 21.04.2019 and after exclusion of 18 days it was 09.05.2019, thus CIRP is already over and the COC as well RP have become functus-officio. Further the Applicant have not participated in any EOI thus they cannot be considered as a resolution applicant as per definition u/s 5 of IBC and they have never received any information memorandum as it can only be provided to the applicant who have applied as per the EOI which has not been explained as to how they have received all the confidential and sensitive information about the Corporate Debtor and still even after the expiry of 700 days from the inception of CIRP they have failed to file any plan. It is further submitted that there is no provision or law to allow a plan to be submitted at this stage as laid down in several judgments of the Apex Court that after the expiry of the maximum period provided for CIRP no plan can be presented and rather the CD has to go into liquidation. In addition, it is stated that the CIRP will become an unending process if such an application is allowed.

In support of his contention the learned counsel for the RP has referred the judgment of Hon'ble Apex Court in the matter of Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Others, (2019) 2 SCC 1 and referred to Para 79 & 82, which is further quoted;

72. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 before a High Court would also be turned down on

the ground that no right much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.

82. Take the next stage under Section 30. A Resolution Professionals has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved and as no adjudication has not taken place.

11. Further submitted that the applicants are also disqualified as per Section 29A IBC as the trust which is the proposed applicants is not in existence and the application is filed by CFO Mr. R.C. Garg who was in the management of CD when it defaulted and the account was declared NPA, thus he is disqualified u/s 29(A) (c) of IBC as he was in the board of ex management that can also be reflected from the MCA data.. Since there is no resolution plan in hand there is no question for RP for representing any plan to the COC and the Resolution Applicant is the non-existing entity and have no locus to file any resolution plan at this stage.

12. Another Intervention Application i.e. LA No. 160/2020 has also been on behalf of the Applicant namely Equilibrated Venture CFlow Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with other applicable provisions of the Code and Regulations seeking liberty to place the expression of interest for onward submission of the Resolution Plan before the Resolution Professional and Committee of Creditors.

13. In this application, it was stated by the applicant that prior to the present application, the Applicant, on 16.07.2020 has demonstrated its bona fide by emailing the said expression of interest which inter-alia includes financial statements of the Consortium demonstrating the robust financial strength, to Respondent No. 1, for onward consideration of the Resolution Plan. The Applicant had submitted the Expression of Interest (EOI) in furtherance of the spirit of Code, which aims at reorganization and insolvency resolution of the Corporate Debtor for maximizing the value its assets, in order to promote entrepreneurship, availability of credit, balance interest of the stakeholders and ensure that Corporate Debtor continues to be a going concern. The Applicant is filed the present application inter alia seeking resolution and revival in line with the law enunciated by the Hon'ble Apex Court which categorically states "resolution

before liquidation'

14. In reply, to this the learned counsel for the RP has stated that there is no provision or law to allow a Resolution Plan to be submitted at this stage rather it is contrary to the law and will become an unending process. Further, the Code does not allow the Resolution-Applicant to submit the plan directly to the Adjudicating Authority without participating in the Expression of Interest as published by RP and without giving any information to the Resolution Professional of the Resolution Plan to put before the CoC for approval and after such a long time the submission of Resolution Plan before the CoC is just a process of delaying the Liquidation Application and is nothing but the abuse of process of law.

15. In view of the submission made by the parties and the documents placed thereof this Adjudicating Authority is of the view that the intervention applications i.e. CA No. 73 of 2020 and IA No. 160 of 2020 both filed by the Resolution Applicant after the completion of CIRP period i.e. more than 700 days directly to the Adjudicating Authority, was needed to be filed before Appropriate Authority i.e. Resolution Professional to be put before CoC and this Adjudicating Authority is not empowered to allow the applicant to file the plan before this Tribunal after the expiry of the such a long period of ending of CIRP. Further in CA No. 73 of 2020, it is also found that it is being filed by one of the Members of the Suspended Directors i.e. Mr. R.C. Garg, who was the CFO of the Company at the time when the application for insolvency was admitted which can also be reflected in the data of Ministry of Corporate Affairs of the corporate Debtor, thus being disqualified under Sec 29(A) of the Code. Thus, this Adjudicating Authority does not find any merit in the arguments raised by the Applicants for allowing the applications and accordingly CA No. 73/2020 as well as IA No. 160 of 2020 is rejected and accordingly disposed of.

16. Further, with regard to the Liquidation application i.e. CA 215/2019, this Tribunal finds that the ex-management has raised the objection that the object of the Code is maximization of value of assets. Therefore, the plan presented before this Adjudicating Authority shall be placed before the CoC instead of liquidating the Corporate Debtor. To this, I do not find any infirmity in the contention raised by the Corporate Debtor. In regard to the CoC, it shows that after the Resolution Plan of SREI was rejected by CoC with required majority and further was also rejected by this Adjudicating Authority vide order dated 5th February, 2020, there was no viable plan put before CoC for consideration and CIRP period has expired long back. Thus, in absence of any approved or viable plan the adjudicating authority has no option but to pass order of liquidation on completion of insolvency period.

17. The Resolution Professional has filed the present application for resolution as statutory period has elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by the CoC.

18. At this juncture, it is pertinent to refer Section 33(1)(a) of the IBC, which mandates that "where the Adjudicating Authority before the expiry of maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track corporate insolvency resolution process under Section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the manner."

19. Therefore, the Tribunal observes that upon failure of the resolution process and no approved resolution plan and further on completion of statutory CIRP process, there is no alternative left but to order in conformity with the decision of the CoC liquidation has to follow under Section 33 of the Code. Adherence of the statutory requirement has to be done, as the language of the Code is clear that the adjudicating authority must give effect to it whatever may be consequences.

20. Thus, the application is allowed by ordering liquidation of Corporate Debtor i.e. JVL Agro Industries Ltd. in the manner laid down in Chapter III Part II of IBC, 2016 and further appoint Supriyo Kumar Chaudhari with Registration No. IBBI/ IPA-001/IP-P00644/2017-2018/11098 as a liquidator in terms of Section 34(1) of the Code, and he is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

21. The registry is directed to communicate the order to ROC Kanpur and to Insolvency and Bankruptcy Board of India.

22. The order of moratorium passed under Section 14 of IBC, 2016 cease to have its effect and a fresh moratorium under Section 33(5) of IBC shall commence.

23. The Liquidator is directed to proceed with the process of liquidation in the manner laid down and in accordance with the Code and Regulations.

24. The liquidator shall file progress report of every three months.

25. With the aforesaid observation, the CA No. 215/2019 is allowed and accordingly stands disposed of.