NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

30.06.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.2341 of 2024

ACHAL KUMAR JINDAL **...Appellant**
(Member of the Suspended Board of Directors
Sulojay Realty Private Limited)

Vs

1. SANJAY KUMAR BHUWALKA **...Respondent No.1**

2. MR. MAHESH AGARWAL, **...Respondent No.2**
Interim Resolution Professional

(Arising out of Order dated 13.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in CP (IB) 69/KB/2024)

For Appellant: Mr. Siddharth Yadav, Mr. Apoorv Agarwal, Mr. Manav Goyal, Ms. Ritika Gusain, Ms. Aastha, Advocates

For Respondent: Mr. Sidhant Kumar, Ms. Ekssha Kashyap, Advocates for R-1
Mr. Joel, Mr. Ujjval Gupta, Mr. Seeshpal Singh, Advocates for IRP
Mr. Saurabh H. Seth, Ms. Neelampreet Kaur, Mr. Abhiroop Rathore, Mr. Kabir Dev, Mr. Sukhvir Singh, Advocates for Intervenor

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This appeal is preferred by the suspended director of the corporate debtor, who challenges the Order of the Adjudicating Authority (NCLT, Kolkata Bench) in C.P. (IB) No. 69/KB/2024, dated 13.12.2024, by which the CD was admitted to CIRP

under Sec.7 IBC in a proceeding initiated by the first respondent. Right at the outset it may be stated, as the proceeding progressed before us, the focus of appeal shifted from a contest on the merit of the Order of the Adjudicating Authority to the advisability of continuing CIRP on grounds of malice within the meaning of Sec.65 IBC.

2. The material facts are:

a) Sulojay Realty Pvt. Ltd., is the Corporate Debtor and the appellant is one of its suspended Directors. The CD was incorporated on 20.03.2021, and at the relevant point of time, Sanjay Kumar Bhuwalka, the first respondent herein, was also one of its directors and indeed was its majority shareholder.

b) Between April, 2021 and May, 2022, the first respondent had advanced various sums to the Corporate Debtor through banking channels, aggregating ₹.7,47,32,000/-. And, in June, 2021, the CD had made a partial repayment of Rs.1,85,01,399/- towards the said liability. As to the balance payable, CD had acknowledged the same in its annual report for the FY 2021-22 and also for the FY 2022-23, which shows the balance liability due payable at ₹.6,43,51,360/- as on 31.03.2023.

c) While so, on 02.06.2022, the entire shareholding of the family holding of Bhuwalka (from which the first respondent hails) and Agarwala families in the Corporate Debtor stood transferred to M/s Exclusive Motors Private Limited pursuant to a Share Purchase Agreement. Consequently, the first respondent along with another director of the CD resigned from the Board

of the Corporate Debtor, while the present appellant along with Mr. Satya Prakash Bagla assumed control and management of the Corporate Debtor.

d) Subsequent to the change in management, substantial amounts, aggregating approximately Rs.55.66 crores, was paid through the Corporate Debtor to members of the Agarwala family towards repayment of their alleged loans. Respondent No.1 relied on the Annual Report for FY 2022-23 to contend that the Corporate Debtor continued to acknowledge the outstanding liability payable to him, which stood reflected at Rs.6,43,51,360/- as on 31.03.2023.

e) Since repayment was not forthcoming, the first respondent issued a demand notice dated 29.02.2024 claiming an amount of Rs.7,54,79,326/- which included the subsequent interest payable, and since the amount so demanded was not paid, the first respondent instituted a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Adjudicating Authority in CP (IB) No.69/KB/2024.

f) The CD resisted the proceedings with its dispute over the nature and existence of the alleged financial debt, and further contended that the proceedings arose due to the deterioration of personal and commercial relations between the parties.

g) The Adjudicating Authority, vide its Order dated 13.12.2024, which is now impugned before us, allowed the application filed under Section 7 of the Code and initiated CIRP against the Corporate Debtor.

3. As outlined earlier, this appeal was filed challenging the aforesaid Order. When the appeal was moved, on 18.12.2024, this Tribunal passed an interim order restraining further progress of CIRP save and except collation of claims by

the IRP on condition that the appellant deposited the entire amount claimed by the first respondent together with accrued interest. Thereafter, the appellant sought termination of CIRP on the ground that the entire debt amount has been deposited.

Arguments

4. Before embarking to narrate the arguments advanced by the rival parties, few facts are required to be placed on record:

a) that the CoC is comprised of a sole member, the petitioning creditor, the first respondent herein. And, the Interim Resolution Professional has made a statement that when he invited claims, he has received none. This implies, that the corporate debtor has just one creditor, and he constitutes the one member CoC;

b) In the course of the argument, the learned counsel for the appellant has made a submission that the amount deposited by the appellant before this tribunal pursuant to the Order dated 18.12.2024 may be withdrawn by the first respondent towards satisfaction of the claim.

c) The first respondent, however, rejected this offer on the ground that the amount was deposited not with any intent to pay the debt, but with an intent to show bonafide for obtaining an interim order of stay, and not voluntarily but only as directed by the tribunal.

5. Turning to the arguments, keeping aside his contention on the merit of the appeal, the learned counsel for the appellant submitted that irrespective of the merit of the defence which the corporate debtor has taken before the Adjudicating Authority, the fact now remains that the entire amount whose

payment was alleged to have been defaulted by the sole creditor of the CD has been deposited with interest, when in law payment of interest is not even required to be offered, and that the petitioning-creditor can satisfy himself towards his claim. This is a subsequent turn of events which is ascertainable from the records, and hence, to let the CIRP initiated against the corporate debtor to continue would now constitute abuse of process of this tribunal.

6. Per contra, the learned counsel for the respondent argued:

a) when once the existence of financial debt and default stands established, the Adjudicating Authority is left with no discretion but to admit the Corporate Debtor into CIRP and considerations relating to settlement or solvency are wholly irrelevant at that stage. And, indeed, the appellant has chosen not to contest the merit of the Order passed by the tribunal below.

b) the deposit of the amount defaulted was made before this Appellate Tribunal pursuant to the interim orders does not amount to settlement of the dispute nor can the same compel the withdrawal of CIRP dehors the statutory mechanism contained under Section 12A of the Code. Any withdrawal of CIRP after admission can be permitted only in the manner contemplated under Section 12A read with Regulation 30A and in terms of the law laid down by the Supreme Court in ***GLAS Trust Co. LLC v. Byju Raveendran*** [(2025) 3 SCC 625], namely upon an application by the original applicant founded on a concluded settlement between the parties.

c) Pleas founded on Section 12A, Section 65 of the Code and Rule 11 of the NCLAT Rules were neither raised before the Adjudicating Authority nor pleaded in the Memorandum of Appeal and, therefore, the appellant

cannot be permitted to set up an altogether new case at the appellate stage. Respondent No.1 has never consented to settlement of the proceedings and refusal to accept the amount deposited before this Tribunal cannot be construed as malicious conduct or abuse of process. At any rate that the conduct of the first respondent in insisting upon continuation of CIRP strictly in accordance with the statutory framework of the Code, by any stretch, cannot be construed as mala fide or malicious.

d) Sec.65 of the Code cannot be invoked in the absence of specific pleadings and material establishing fraudulent or malicious initiation of insolvency proceedings and, in any event, such plea cannot be permitted to be raised for the first time in appeal.

e) that the liabilities of the Corporate Debtor are far in excess of its assets and continuation of CIRP is therefore necessary for carrying the insolvency process to its logical conclusion in accordance with the provisions of the Code.

7. In reply, the learned counsel for the appellant argued:

a) even if it is presumed that there existed any ground for initiating a CIRP against the corporate debtor, today, with the amount so alleged to have been defaulted having been deposited by the appellant with a plea to the sole creditor to withdraw it towards satisfaction of his debt**,** the justification for initiating CIRP is lost and to let it to continue will now fall outside Sec.12A of the Code, but will fall within Rule 11 of the NCLAT Rules as it constitutes an abuse of judicial process of the tribunal.

b) the refusal of the first Respondent, being the sole creditor of the Corporate Debtor, to accept repayment despite availability of the entire amount demonstrates that the proceedings are being pursued for purposes other than genuine insolvency resolution.

c) Sec.65 of the Code is intended to prevent fraudulent or malicious initiation of insolvency proceedings and once malicious intent becomes evident from the conduct of the CIRP applicant, such intent necessarily relates back to the initiation of proceedings under Section 7 of the Code.

Decision & Discussion

8. One creditor. The repayment of the amount which this creditor claims as having been defaulted by the corporate debtor, is now deposited by the appellant. If it were a suit for recovery of money, the game should have ended here. However, this is IBC scenario, where on admission of the corporate debtor to CIRP, the proceedings assume the character of what the Hon'ble Supreme Court describes as *'proceedings in rem'* in which the interest of all the creditors of the corporate debtor will automatically be brought within the fold of insolvency resolution process, with a specific statutory mechanism to settle and withdraw a CIRP in Sec.12A to be read with Regulation 30. Therefore, what now stands between the appellant and the first respondent is not the refusal of the latter to accept the offer made by the former, to emphasis, to the only creditor who constitutes the sole-member CoC, but the Order of the Adjudicating Authority admitting the corporate debtor to CIRP. Indeed, the first respondent is well within his right to reject the offer to settle, but the issue is, can his resistance to settle should deny the tribunal of its power to terminate the CIRP? The appellant contends, that the refusal of the first respondent to settle, given the fact that

there is no other creditor in the fray could be termed as demonstrating his malicious intent and does it constitute abuse of process remediable under Rule 11 of the NCLAT Rules?

9. Before delving into the merit of the contention of the appellant to terminate the CIRP, it is necessary to remind at least relevant facets of law which the Supreme Court has declared on an interpretation of the Code:

a) In ***Swiss Ribbons Pvt. Ltd., & another Vs Union of India & others*** [(2019)4 SCC 17] and ***Kridhan Infrastructure Pvt. Ltd. Vs Venkatesan Sankaranarayanan and others*** [(2021) 6 SCC 94], Hon'ble Supreme Court spotlighted the legislative philosophy behind the insolvency resolution process, where it was declared that the principal aim of the Code is to revive and resurrect a financially crippled corporate debtor, and that the liquidation of the corporate debtor should be the last resort, and should not be attempted till the insolvency resolution process is exhausted.

b) In ***M. Suresh Kumar Reddy Vs Canara Bank & Others*** [(2023)8 SCC 387] it is held that before initiating CIRP, the Adjudicating Authority is only required to examine the criteria prescribed in Sec.7 or 9 IBC, and not to examine the solvency of the corporate debtor, since the Code has not required it as a pre-requisite.

c) In ***GLAS Trust Co. LLC v. Byju Raveendran*** [(2025) 3 SCC 625] it is held that for settlement and withdrawal of CIRP the inherent powers of the tribunal shall not be summoned since the Code has made a specific

provision in Sec.12A to be read with Regulation 30 of the CIRP Regulation for the said purpose.

10. To repeat, here in this case, there is just one creditor, who constitutes the sole member of the CoC. And, the debt said to be in default is now offered to be repaid by the suspended director of the CD, which the only creditor has rejected. The issue therefore, is no more about the justification for commencing CIRP but about refusing a settlement. The issue at hand is required to be tested on the plane of law as stated above:

a) Firstly, only for commencement of CIRP, it is stipulated that the tribunal has to only ascertain existence of a debt and the default in repaying the same and not required to examine the solvency of the corporate debtor. There is a reason for it. A CIRP has to be completed within the timeline prescribed, and investigation into the solvency of the corporate debtor can divert the issue in another track which may defeat the statutory objective of meeting the timeline. However, if during the CIRP, an offer of settlement has forthcome, can it be sabotaged without justification because there is justification for commencing CIRP? It needs to be underscored that the factors necessary for commencing a CIRP need not remain the same for terminating it on settlement. After all, the scheme of Sec.12A which provides for settlement and withdrawal of CIRP has not required the CoC which is authorised to consider and take a decision on any offer of settlement to be bound by the criteria necessary for commencing the CIRP.
b) Secondly, if the legislative philosophy behind an insolvency resolution process is about reviving the corporate debtor, then does not an offer of

settlement by the promotors or the suspended board of the corporate debtor indicate an idea that the suspended directors themselves are keen to revive the company that they have promoted?

c) Thirdly, IBC is not designed as an exproprietary enactment as mandating compulsory divestiture of the property, which a corporate debtor is in the hands of its promotors or shareholders, once it has defaulted in repaying the debt of the petitioning-creditor. As we have observed in ***Suyog Suryakant Talekar Vs Trivenimudrai Project Ltd., & another*** [Com.Appeal (IB)(Ins) 247 of 2026], the entire fulcrum of insolvency process rests on a presumption that once the corporate debtor has committed default in paying a solitary debt - the debt due to the petitioning-creditor, such default is necessarily owing to its insolvency. However, if the basic character or objective of the Code is understood not as an exproprietary statute like the land acquisition legislation, then there is a compelling need to limit the operation of this underlying presumption behind initiating a CIRP right at the point where a genuine offer of settlement is made, more so where there is a one member CoC, constituted of only the petitioning-creditor. Otherwise, the Code will end up producing Shylocks out of creditors of the corporate debtor. A default in paying the debt may generally be understood as a situation where the debtor did not possess the money to repay the debt (which the Code treats as an act of insolvency), but is it an irredeemable sin if the debt-amount is offered later, but before third party interests are created in the assets of the corporate debtor?

d) Now, under Sec.12A, a decision on settlement and withdrawal has to be approved by a 90% vote of the CoC, but if the offer of settlement is understood as conveying an intention of the suspended board to revive the corporate debtor, can the CoC decide against it and reject the offer of settlement arbitrarily and without assigning justifiable reasons?

11. And, here in this case, the CoC has a solitary member, who incidentally is the only creditor of the corporate debtor. The money due to him has already been deposited by the appellant, no matter the circumstances in which it was deposited. And it is now offered towards repayment of debt which this creditor claims as due to him. It may be true, that when this money was due for repayment, it was not paid, but when it is offered on a platter the creditor rejects, especially when he has no one to consult, or decide for him. Is it then fair for this one creditor-one member- CoC to reject the offer, merely because there existed grounds for commencing CIRP? What exactly this creditor wants - the blood of the suspended board of the corporate debtor, or its revival? If CIRP is all about revival of the corporate debtor and about settling any personal scores, and if the first respondent believes in the legislative philosophy of the Code, then what legal or moral grounds has he when the suspended director himself indicates his intent to revive and keep alive the corporate debtor with his offer of settlement? Does not the conduct of the creditor reflect an intention to misuse IBC and its process? If the first respondent's keenness to continue the CIRP does not reflect malice, what else will?

12. We are not able to appreciate the attitude of the first respondent. The scenario may be different if there had been more creditors than one, but not in

this case. The rejection of the offer of settlement is plainly without justification and we sense an anxiety in the first respondent to abuse the Code, its philosophy and intent. Turning to Sec.65 of the Code, while the text of this provision provides for imposition of penalty for fraudulent and malicious initiation of CIRP and appears as an ex-post facto proceeding, where a malicious intent becomes evident even during the course of the proceedings, should the tribunal watch with glee the misuse of the Code, and wait to remedy a wrong when it has the powers to prevent? It would be a travesty of justice if we choose to abdicate our authority when there is a need to act and accept the contentions of the first respondent and to oversee what we consider as a shameless attempt to abuse the Code, its objectives, and the judicial process of this tribunal.

13. Taking cognizance of the developments during the pendency of this appeal, we find every reason to terminate the CIRP initiated against the corporate debtor, and it is terminated. The appeal is disposed of accordingly.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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