**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**CHENNAI BENCH**

**24.08.2026**

**Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)**
**JATINDRANATH SWAIN, MEMBER (TECHNICAL)**

**Company Appeal (AT) (CH) (Ins) No.358/2022**
**(IA Nos. 821, 818 & 1094/2022, 868 & 869/2023)**

**In the matter of:**

**Mr. Babu Manoharan Jaikumar Christhurajan**
**No.34, Ranganathan Avenue,**
**East Coast Road,**
**Uthandi, Chennai - 600 119. ...Appellant**

**Vs**

**Mr. Umesh Garg, Liquidator of Jeppiaar Cements Pvt. Ltd.**
**1413-16, 14th Floor, Devika Tower,**
**Nehru Place,**
**New Delhi – 110 019. ...Respondent No. 1**

**M/s. Jeppiaar Cements Private Limited**
**Represented by the Liquidator Mr.Umesh Garg**
**Old No. 11, New No. 19**
**Venkatraman Street,**
**Srinivasa Avenue, Bishop Garden Extension,**
**R.A.Puram, Chennai – 600 028. ...Respondent No. 2**

**Indian Bank**
**Represented by its Deputy General Manager,**
**Thousand Lights Branch,**
**Kannammai Building,**
**No.611, Anna Salai,**
**Chennai – 600 006. ...Respondent No. 3**

(Arising out of Order dated 26.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Special Bench – II, Chennai) in I.A.800/2022 in IBA/685/2019)

**Present :**

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| **For Appellant** | **:** | Mr T.K. Bhaskar, Advocate<br>For Mr. Ravi Rajagopalan, Advocate |
| **For Respondents** | **:** | Mr. Abhishek Anand, Mr. Karan Kohli & Ms. Aanya Gupta, Advocates for R1 & R2<br>Mr. Jayesh B Dolia, Senior Advocate<br>For Ms. N. Varsha, Advocate for R3 |

**JUDGMENT**
**(Hybrid Mode)**

**[Per: Justice N Seshasayee, Member (Judicial)]**

This appeal is preferred, challenging the order of the Adjudicating Authority dated 26.08.2022, passed in IA No. 800/2022 in CP(IB)/685/2019, by which the Adjudicating Authority has directed the liquidation of M/s. Jeppiaar Cements Ltd, the Corporate Debtor (CD).

2. The background to this appeal is provided as below:

a) On 27.06.2013, M/s. Jeppiaar Power Corporation Ltd. availed a term loan of ₹92.50 crores from M/s Indian Bank, the 3rd Respondent herein, for which the corporate debtor stood as a corporate guarantor. On 05.08.2016, the principal borrower availed another loan of ₹48.50 crores from Indian

Bank, and the corporate debtor (CD) offered a corporate guarantee for this loan as well.

b) As the principal borrower defaulted on the loan repayment, Indian Bank filed application under Sec.7 of IBC against the corporate guarantor, the corporate debtor in this case, and this petition came to be allowed and the corporate guarantor was drawn into CIRP vide the Order of the Adjudicating Authority, dated 10.10.2019. An Interim Resolution Professional (IRP) was appointed, who constituted the Committee of Creditors (CoC) comprising of two financial creditors, M/s. Indian Bank as the major financial creditor with 96.65 % voting share and M/s. HDFC Bank with remaining 3.35% voting share. On constitution of the CoC, it resolved to retain the IRP to act as the Resolution Professional (RP).

c) In terms of Sec.12(1), the 180 days stipulated therein for the completion of the insolvency resolution process was to end on 07.04.2020, and the resolution professional had moved I.A.321 of 2020 for extending the CIRP period by 90 days. However, after 25.03.2020, the onset of Covid intervened to extend the resolution process period by another 737 days. On 18.04.2022, the resolution professional, as required by the CoC in its 8th meeting, had moved I.A.656 of 2022 for exclusion of 737 days. This shifted the last day for concluding the insolvency resolution process to 14.04.2022. However, both I.A.321 of 2020 and I.A.656 of 2022 eventually came to be listed before the Adjudicating Authority only on 15.07.2022.

d) The 90 days extension as sought would extend the CIRP period till 13.07.2022. To this a further period of 60 days (as was made permissible under 2019 amendment to the Code), is added the CIRP period could be stretched for another 60 days (in all 330 days from 16.08.2019) and accordingly it would conclude on 11.09.2022.

e) However, before the arrival of any of these dates, on 30.03.2022, M/s. Indian Bank had sanctioned a One-Time Settlement (OTS) to the directors of the principal borrower, and granted time till 30.06.2022 to repay the debt. The appellants herein could only make partial payment of ₹66.75 crores, and the balance remained to be paid.

f) Even as the appellant plus other personal guarantors of the corporate debtor were complying with the OTS obligations, on 13.06.2022, the 11th meeting of the CoC was held wherein the liquidation of the corporate debtor came to be discussed and few resolutions, including one for liquidation of the corporate debtor were put to vote. The voting lines were kept open from 16.06.2022 to 24.06.2022 and the closing date was extended couple of times and finally till 04.07.2022. But neither of the two CoC members voted in favour of liquidation.

g) Given the facts which the resolution professional had faced, on 06.07.2022, he took out an application under Sec.60(5) of the Code seeking appropriate directions of the Adjudicating Authority for dealing with the situation and communicated the same to the CoC vide his e-mail dated 12.07.2022. However, two days later, on 14.07.2022, he e-mailed financial creditors again, and this e-mail is critical. In this e-mail, the resolution professional referred to the filing of the application under Sec.60(5), and informed the financial creditors that the *"Registrar office has raised objection on the said application and asked me to file the application under proper section which is 33(1) in this case*". On the same day, Indian Bank, the majority voting shareholder in the CoC responded with its e-mail which reads: *"Please proceed in accordance with the provisions of the IBC".* But two weeks later, on 28.07.2022, the same Indian Bank chose to extend the deadline to the personal guarantors for complying with the OTS till 30.09.2022. But by then, the resolution professional had filed I.A.800 of 2022 under Sec.33(1) of the Code for initiating liquidation proceedings. In his application, the resolution professional had fairly disclosed the OTS offered to the personal guarantors as well as the part payment of the amounts required to be paid in terms thereof. On 26.08.2026, the Adjudicating Authority allowed this application and ordered liquidation. The order directing liquidation of the corporate debtor is now under challenge by the suspended directors of the corporate debtor, the appellants herein.

h) Now, after the passing of the order of liquidation, on 15.09.2022, (four days after the expiry of 330 days period) Indian Bank, allowed the personal guarantors of the corporate debtor to fulfil their entire OTS commitment, and the bank acknowledged it when it issued the NOC.

i) To complete the narration of facts, Indian Bank, perhaps finding itself in a spot of embarrassment, itself took out I.A. 512 of 2023 under Sec.12A for withdrawal of the CIRP, for there was no resolution professional owing to the passing of the order of liquidation. As to be expected, this application was dismissed on 20.04.2023 in view of the same.

**Arguments**

3. The Learned counsel for the appellant submitted that on 13.06.2022, in the 11th meeting of the CoC, the resolution professional has moved a resolution for the liquidation of the corporate debtor, and kept the voting window open till 04.07.2022. But, neither of the two members in the CoC opted to vote. In terms of Sec.33 (2) of the IBC, the resolution professional can move an application seeking an order for liquidation of the CD, only when the resolution for the same is voted by at least by 66% of votes of those who have formed the CoC. Very apparently it was not done. Not only have the directors of the principal borrower/ the personal guarantors paid M/s. Indian Bank its dues as per the OTS terms, but have also paid the other financial creditor, the HDFC bank, on 22.06.2023. Indeed, the Indian Bank moved IA No. 512 of 2023 under Sec.12A of the IBC, but that came to be dismissed vide order of the Adjudicating Authority dated 20.04.2023, in view of the order of liquidation passed in I.A No. 800 of 2022. The learned counsel submitted that in view of this settlement and given the fact that the order of liquidation was passed without notice to the CoC and in violation of Section 33(2) of

the IBC, the order passed in IA No. 800 of 2022 cannot be sustained.

4. The learned counsel for Liquidator would submit that:

   a) IA No. 800 of 2022 was filed, not under Section 33 (2) of the IBC, but under Section 33 (1). After all, if statutory timeline as prescribed is not reached, then CIRP should necessarily end and the Adjudicating Authority is at liberty to decide on the liquidation of the CD.

   b) Apart from the two financial creditors, there are other operational creditors as well, and it is not known whether they had been settled. So far as dismissal of application under Section 12A is concerned, it is in order since it cannot be maintained once the Adjudicating Authority has decided to order liquidation of the CD.

   c) Turning to Indian Bank, the respondent no. 3, it supported the appellant but it must be taken note of, that it is its vacillation in taking a position in the 11th meeting of the CoC that has brought about the situation.

5. In response, the learned counsel for the appellant would submit that, the timeline prescribed is only directory and not mandatory, and had the factum of OTS been brought to the

notice of the Adjudicating Authority, it might have weighed its decision after factoring in the OTS.

**Discussion & Decision**

6. If the facts are sequentialized chronologically, they strongly suggest that here has arisen a situation which neither side welcomes now, except perhaps the liquidator, but he is not a stakeholder but a mere statutory facilitator, who is, and who can be, concerned only with the legality of the issue involved. The action starts from 30.03.2022 and ends on 15.09.2022. Between these dates, Indian Bank had offered OTS, even as the CIRP timeline of 180 days was heading fast towards its expiry on 14.04.2022. The bank has fixed the closure date for OTS compliance to 30.06.2022. And, an application earlier preferred by the resolution professional in I.A.321 of 2020 under Sec.12(3) for extension of time for concluding CIRP by another 90 days was also pending. In the meantime, the 11th CoC meeting had taken place, where the decision for passing a resolution for liquidation was put to vote, but neither of the two CoC members evinced any interest to vote for it. After all, the banks were realising their dues through OTS or otherwise. In these circumstances, the resolution professional had justly and perhaps most

appropriately intended to file only an application under the residuary provision in Sec.60(5) of the Code as could be gathered from his e-mail dated 12.07.2022 to the CoC, but he apparently was made to drop this idea owing to the alleged unsolicited advice or insistence of the Registry of the tribunal. He communicates this to the CoC vide his e-mail dated 14.07.2022, and strangely Indian Bank, which hardly a few days ago had opted not to vote for liquidation of the corporate debtor, instructed the resolution professional to act as per the IBC within a wink of the eye. The resolution professional acted and filed his application under Sec.33(1) of the Code, and invited the consequence which has now become the point of debate in this appeal. Very curiously, within about a week after the Indian Bank had instructed the resolution professional to act as per the IBC, it chose to extend the closure date for OTS compliance till 30.09.2022, when it had all the opportunity to close it even on 30.06.2022 in view of its instruction to the resolution professional to act as per the Code. And, despite the order of liquidation, the personal guarantors paid off the OTS amount, and were issued with a NOC by the bank.

7. Now, where are the financial debts for discharging which, the corporate debtor should be now liquidated? And, with only the

operational debts remaining to be paid, have not the suspended directors created for themselves a greater opportunity to save the company that they have promoted from jaws of liquidation through Sec.12A route? If the facts, undisputed and indisputable, are analysed, they ideally set the circumstance where an application for the withdrawal of the CIRP could legitimately be made. However, a solitary move by the resolution professional in filing an application under Sec.33(1), which according to him was insisted by the Registry of the tribunal, has led to a situation which pose challenges on the reversibility of the order of liquidation for accommodating an application under Sec.12A, but who is to be blamed for it?

a) Is it the Indian Bank? Its approach was unclear and it was most evidently caught in a plane of uncertainty. Or, is it plainly clueless without a strategy? It did not vote on liquidation, extended time for OTS compliance, and in the same breath advised the resolution professional to act by the Code, when it knows, or ought to know that the only option available was to apply for liquidation.

b) Was the Registry of the tribunal to be blamed? According to the resolution professional it was, otherwise, how to appreciate his e-mails dated 12.07.2022 and 14.07.2022? If this allegation is true, then it is very unfortunate that the Registries of judicial fora should display a tendency to behave as a super court to insist upon the litigants the nature of relief that they should seek. Any advocate with some degree of practice at the Bar would vouchsafe for this tendency. And this attitude, perhaps is seen reflected in the tribunal. In the context of civil suits, the role of the Registry of the Court is explained in ***Selvaraj Vs Koodankulam Nuclear Power Plant India Ltd[1].,*** and the Registry of the tribunals are encouraged to at least read it. The Registry should consciously stay away from those functions where only the tribunal has the exclusive jurisdiction to decide.

c) Was the resolution professional to be blamed? He started most appropriately when he thought it fit to obtain appropriate instruction with an application under Sec.60(5), but shelved it because of what he claims to be based on the Registry's advice. It is apparently an error in perception that Registry's instruction on the relief to be sought or the nature of application to be filed is sacrosanct. To borrow the

[1] 2021 SCC OnLine Mad 2514

metaphor of the pre-eminent Chagla J, a resolution professional is not required to trim his sails the way the Registry instructs. Where he is convinced on the right course action but finds resistance from the Registry, then he should require the Registry to place the matter before the tribunal.

8. The point which we are required to resolve is about the reversibility of the order purported to have been passed under Sec.33(1) of the Code for accommodating the withdrawal of the CIRP under Sec.12A. In other words, can CIRP be revived once the insolvency resolution process has reached liquidation, merely because Sec.12A facility is not available in liquidation? Both sides made their submissions and placed reliance on predictable authorities[2] to sustain their rival contentions, yet we are required to travel alone. Placing reliance on the ratio in ***Asha Chopra and others Vs M/s Hind Motors India limited*** [CA(AT) Ins.no.1425- 1428 of 2024] the learned counsel for the liquidator contended that the Code bars a reversal from

[2] Appellants authorities: Mehulkumar Arvindbhai Patel and Anr Vs. Vinod Tarachand Agarwal [CA(AT)INS No. 1598 of 2023], Sunil Surendrakumar kakkad Vs. Sujyot Infrastructure Pvt Ltd and Another [ CA(AT)INS 1423 of 2024], Ngaitlang Dhar Vs. Panna Pragati Infrastructure Pvt Ltd & Anr [ Civil Appeal No. 3665 & 3666 of 2020], C Sivasami Vs Ramasubramania Raja, Liquidator of Topknit processing Mills Pvt Ltd and Another [ CA (Ins) No. 246/ 2024], Kalisp Realty Pvt Ltd Vs.Frontline Printers Pvt Ltd & Anr. [ CA(AT)INS No. 308 of 2022], V Karthikeyan Vs. M S Viswanathan and others [ CA(AT)INS No. 245/ 2022]

Liquidator's authorities: Asha Chopra and others Vs. M/S.Hind Motors India limited [ CA(AT) Ins.no.1425- 1428 of 2024], Kridhan Infrastructure P Ltd vs Venkatesan Sankaranarayan and another [ Civil Appeal NO.3299 of 2020], Dinesh Gupta Vs. Vikram Bajaj [ Civil Appeal No. 2471 of 2021], Vallal RCK Vs. Siva Industries and Holdings Ltd & Others [ 2022 (9) SCC 803 ], V.S Varun Vs. South Indian Bank [ 2022 SCC Online NCLT 218] liquidation to CIRP. If this proposition were to be accepted as a universal truth, then we will have a corporate debtor in this case with no financial debt to be discharged through the order of liquidation yet its suspended board faces an imminent possibility of losing an opportunity to run the corporate debtor that they had promoted as a going concern thorough Sec.12A[3]. It is indisputable that the Income tax Department has its claim which is in the nature of an operational debt and is yet to be settled, but that issue can be addressed only if the CoC is granted an opportunity to go through the process of Sec.12A. In this setting, will it be appropriate to use the IBC, which aims to bring in financial discipline in corporate governance and to protect a company as a going concern in the insolvency resolution process, to destroy a solvent company through liquidation to pay the operational creditor? A serious point to ponder.

9. The issue, in our mind, can be approached in two ways, one based on what has been done, and the other what could have been done but omitted to be done.

[3] For a similar view see paragraph 10(b) of the judgement in Achal Kumar Jindal Vs Sanjay Kumar Bhuwalka [C.A.(AT) (Ins)2341 of 2024, dated 30.06.2026

10. On the first aspect, on what has been done, the issue is whether the impugned Order sustainable? We are not convinced that it is, and our reasons are:

a) The Code has constituted the office of resolution professional, granted him the authority to act on the instructions of his own conscience but consistent with the instructions of the CoC or the directions of Adjudicating Authority and not the Registry of the tribunal. This is the basic premise.

b) Going by the stated position of the resolution professional, he had acted as per the instructions of the Registry of the tribunal backed by the instruction of the Indian Bank, a member of the CoC, but outside the CoC, to move an application under Sec.33(1). While a resolution professional, based on his independent and objective judgement can move the Adjudicating Authority under Sec.33(1), the fact that he allowed himself to be influenced by what he claims as Registry's advice or instructions, his decision can neither be stated to be independent nor objective.

c) Lastly, even if he considered it fit to act by Registry's advice, then inasmuch as it ceases to be his independent decision based on his objective assessment of the situation, then he ought to have convened the meeting of the CoC to deliberate on it, and should not have engaged in a private consultation with a member of the CoC but outside the CoC. This plainly offends the statutory intent and design as has been structured by the legislature.

Therefore, it is not about the authority of the Adjudicating Authority to order liquidation under Sec.33(1) that matters but the circumstances in which it was caused to be exercised which were oblivious to the Adjudicating Authority that has rendered it incompatible to legal sustainability of the impugned order. A resolution professional is central to the resolution process, but suddenly he appeared to have reacted in panic when he should have asserted his role and persisted with his move to approach the Adjudicating Authority for a general direction that he initially proposed to obtain. A good start ended abruptly inappropriately.

11. Now to the second aspect – what could have been done, but omitted to be done: Given the fact that the appellant had been settling the dues to the banks behind and beyond the activities under the Code, does it not make it more probable that the CIRP might have ended under Sec.12A without any need for the

resolution professional to move for liquidation under Sec.33(1)? This may appear sensible, but still it could be possible only if the CIRP period was extended beyond 180 days (for which the resolution professional himself had taken out I.A.321 of 2020). However, at the first instance it could be extended only by 90 days, and this period could stretch the CIRP period only up to 13.07.2022. And, it is an admitted fact that even by this date the OTS terms were still not fully complied with. But there exists another 60 days which are implicitly made available under the second proviso to Sec.12(3) where the Code stipulates that the outer time limit for concluding the insolvency resolution process should not go beyond 330 days. Having indicated it, the Code also throws a statutory conundrum when it also stipulates vide the first proviso, that there can be only one application for the extension of time, which makes the total CIRP period extendable only up to 270 days. Has then the Code created an un-utilisable 60 days on a combined reading of the first and the second provisos? There thus exists an apparent irreconcilability but it is not difficult to iron it out through an interpretative process by leaving the utilisability of this differential 60 days to the discretion of the Adjudicating Authority to be exercised under its inherent powers depending on the facts of a particular case before it. Now, in the context of the present case, if the total period for the conclusion of the resolution process is taken as 330 days, then the same ends only on 11.09.2022, it then becomes unavoidable to avert a question: would it not have been more reasonable for the resolution professional to have waited till after 11.09.2022 for invoking Sec.33(1), especially when he also knows that the OTS obligations are being complied with by the personal guarantors of the corporate debtor as has been recorded in the minutes of the 11th CoC meeting? Set in this plane, even if the impugned order is presumed to be legally sustainable, yet there is a larger question that disturbs our conscience: Is it fair to do what has been done under the circumstances? Whether fairness in working is anathema to the insolvency-jurisprudence as conceived and conceptualised by the Code? And, cannot the extension of time under Sec.12(3) be sought for invoking Sec.12A?

12. To set the commencing point for discussion, let the basic precepts as evolved by the Supreme Court be re-stated:

a) Liquidation is not a ready-reckoner remedy but is the option of the last resort[4]; It implies that liquidation under Chapter

[4] Swiss Ribbons Pvt., Ltd., & another Vs UOI and others [(2019) 4 SCC 17]

III of the Code can be ordered only after ascertaining that there is no possibility of a successful resolution process under Chapter II.

b) While time is of essence for concluding the insolvency resolution process, it is only directory and not mandatory.

c) there are only three known modes for resolving an insolvency resolution process[5], (i) through the plan route under Sec.31; (ii) through the scheme route under Regulation 2B of the IBBI (Liquidation Process) Regulation (which is part of liquidation) and (iii) actual liquidation through the sale of the assets of the corporate debtor.

13. Contextually, how to position Sec.12A, a provision that is grouped alongside Sec.31 in Chapter II of the Code? Will it be legislatively incompatible to read Sec.12A conjointly and purposively with Sec. 31 and Sec.33? In other words, does Sec.12A provides another option for insolvency resolution? Here we also sense that our consideration of these aspects necessarily opens up a need for an adjunct examination of the role of the resolution professional who is at the triggering end of the decision towards liquidation, especially when he is faced

[5] Arun Kumar Jagatramika Vs Jindal Steel and Power Ltd., & another [(2021)7 SCC 474]. Now in the 2026 amendment,

with more options to choose from. The issues are layered, and it requires an understanding of the object of the Code and its scheme beyond what has already been told or is known, before deciding on the revivability of CIRP post the order of liquidation.

14. We open with a preludial statement. No legislature has ever known to have made a statute for all conditions and circumstances, and the Code is no exception. Otherwise, how to explain the Code, launched a decade ago as a complete Code and a solution-provider for all issues associated with insolvency of corporate debtors, undergoing as many as seven amendments[6] till date? Legislative engagements involving a strategy for dealing with insolvency of the corporate debtors are not its experimentation with lives of citizens, but are its purposeful engagement to evolve the law on corporate insolvency to negotiate the shortcomings highlighted by life's experience. However, legislative responses invariably are slow as they are gauged and guarded, but life still has to be lived in this country. With its experiences varying, life spins unpredictable challenges which may not comfort legislature's

[6] Two amendments each in 2018 and 2020, and one amendment in 2019, 2021 and 2026.

preference for certainty in working a statute or infuse it with the kind of predictability which the legislature may have believed that it has achieved through the legislation. It therefore, becomes the responsibility of the judiciary, (read it as including the tribunal), to bridge the time-lag between the remedial challenges it encounters and the legislative responses to the very challenges. When judiciary faces a current challenge to be addressed, it cannot plead helplessness to respond when a commonsensical and pragmatic solution is within its sight which the legislature may have overlooked. Relevance of any statute and its working within the Constitutional frame work is enabled chiefly by judicial responsiveness in creative interpretation – what Cardozo would term as '*interstitial legislation*' in his immortalized work *'Nature of Judicial Process'*, in filling the gap which demands legislative attention till the legislature observes and responds. It is not always an act of legislating by the judiciary, but merely, what Lord Denning had termed as '*ironing the creases',* to make the working of the statute meaningful and sensible. It is hence, timeline prescribed for completing a CIRP is held to be directory if the solution is not at a distance. Another instance in the context is reverse insolvency resolution process, a concept not within the conceptualisation of the Code, but has been observed, engineered and fashioned by the creative judicial mind in ***Flat Buyers Association Winter Hills Vs Umang Realtech Pvt., Ltd.***[7], before it was partly incorporated in the Code in the 2026 amendment.

15. The votaries of strict adherence to rules may have to be informed that there exists a difference between reading the rules and handling the rule-book, and judiciary has rarely hesitated to go beyond the text of the rule if its application goes tangential to the object required to be achieved through the rule book and tend to lose pragmatism in exchange for absurdity. The Code is not designed in the mould of pure sciences that its working should match scientific precision. It should not be forgotten that insolvency is an aspect of life and that there is a life behind every insolvency – both of the creditors and the debtors. And both CIRP and liquidation aim only at generating cashflow out of the assets of the corporate debtors for the benefit of the body of its creditors belonging to

[7] 2020 SCC Online NCLAT 1199 and it was approved by the Supreme Court in Narendra Singh Vs. M/S Umang Realtech Pvt. Ltd [Civil Appeal No.2942 of 2020] and was subsequently recognised in Anand Murti Vs Soni Infratech Pvt. Ltd., [(2023)3 SCC 743], Indiabulls Asset Reconstruction Comany Ltd., Vs Ram Kishore Arora [2023 SCC OnLine SC 612] Mansi brar Fernandes Vs Shubha Sharma [2025 SCC OnLine SC 1972].

different categories and classification. It must be realised that life is not lived and cannot be lived in a conveyer belt-mode, moving in one direction and that anything associated therewith should necessarily move the way a conveyer belt moves. The need is therefore, compelling on us to be conscious of the realities of life and the Constitutional values associated therewith. An ideal approach to any enactment that regulates and impacts human life is not to forget life, its kaleidoscopic uncertainties, and its quest for existence in trying circumstances, and the Constitutional sensitivity which epitomizes them.

16. Having set the plane and outlined our approach to the issues, we now propose to address them. We begin with a reiterative understanding of the rudimentary aspects of insolvency resolution and its process. The Code neither defines insolvency nor an 'insolvency resolution' nor an 'insolvency resolution process'. Therefore, these terms that reverberate while working the Code and echoes across the tribunals constituted thereunder needs to be understood. A corporate insolvency is a situation where the corporate debtor is unable to repay its debts due to the body of its creditors with its available cash flow, exposing the corporate assets to the peril

of being exposed to an involuntary sale, either as a going concern or auction-sale in liquidation for the repayment of the debts in a statutorily pre-defined order. As per the scheme of the Code, an insolvency situation sets in a creditor's petition under Sec.7 or Sec.9 when the corporate debtor defaults in paying the debt due to a single creditor. This marks the onset of insolvency resolution process. However, a distinction may have to be made between insolvency resolution and the insolvency resolution process. An insolvency resolution may be termed as the endpoint of an insolvency situation when it actually comes to an end, whereas the resolution process is the manner or procedure for moving from the commencing point of insolvency-condition to its endpoint. The insolvency resolution - the endpoint of the resolution process, in terms of the statutory structure is achievable either through a successful approval of a resolution plan under Sec.31 or through liquidation. A resolution in that sense is finding a way out of an insolvency-condition. In a classical resolution process the object of a resolution process is to realise the maximum value for the asset of the corporate debtor either through the resolution-plan option under Sec.31 or the liquidation option under Sec.33, for payment to the creditors.

17. Moving further on the fundamental understanding, a default in paying the debt need not necessarily lead to an insolvency situation unless it is coupled with a trust deficit of a single creditor on the ability of the debtor to repay its debt, or where the debtor is not confident of repaying its debts with the assets it has. Now, turning to Sec.12A, it is a provision which enables withdrawal of a resolution process on settlement, where the suspended board or the promotors of the corporate debtor can require the creditors to withdraw the CIRP either through actual repayment of debts to the satisfaction of the creditors, or through the suspended board of the debtor re-building the lost confidence of the creditors on debtor's ability to repay the debt. Either way, the settlement and withdrawal option under Sec.12A drops the curtains on the resolution process through the exit route, and brings an end to the insolvency-condition as much as Sec.31 or 33 routes.

18. What is significant in the context is that Sec.12A route gives an opportunity to the suspended management of the corporate debtor to re-run the company they may have painstakingly promoted by avoiding the possibility of losing it through the plan route or in liquidation for paying off the creditors. To re-emphasis, the insolvency resolution process sets in when the

corporate debtor does not have the cashflow to repay the debts even if it is otherwise solvent in terms of its assets. The vagaries of business cycle or misfired commercial decisions may create a cash crunch even in the best-run companies. It is hence Sec.12A opportunity deserves to be appreciated as the legislative recognition of the uncertainties in the commercial world and as a legislative effort to balance the inbuilt presumption in the Code that a default in paying a solitary debt is necessarily due to financial mismanagement of the corporate debtor[8].

19. If the insolvency resolution process within the parameters of the Code can end an insolvency-condition, then inasmuch as Sec.12A also brings in the same consequence, will it not then be appropriate to term Sec.12A also as an aspect of insolvency resolution, and the mechanism prescribed therefor also as an insolvency resolution process? We find no reasons why it should not be considered to be so. Necessarily, the effect of Sec.12A and the impact it can make cannot be isolated from the operation of Sec.31 or its relevance for invoking Sec.33, but as integral to the understanding of the insolvency

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[8] See the observations in Suyog Suryakant Talekar Vs Trivenimudrai Project Ltd., and another [C.A.(AT)(Ins) 247 of 2026, dated 06.04.2026

resolution process. Beneath the superficiality of its isolated existence, Sec.12A reflects this underlying philosophy which subtly provides the requisite degree of stability to the insolvency resolution process between conflicting and competing interests. It may hide like the hidden side of the moon, yet it unquestionably exists. Unfortunately, the excessive spotlight on Sec.31 has blurred the functional utility of Sec.12A as a tool of insolvency resolution. When the exit route through Sec12A has the efficacy to conclude an insolvency condition, it will be uncharitable to underestimate this non-violent provision as a legislative charity when it ought to be respected as a statutory opportunity to resolve an insolvency-condition. It should not be forgotten that, besides the promotors of the corporate debtor, the operational creditors will have greater value for their debt under the withdrawal through settlement mechanism as envisaged in Sec.12A (not to be confused with the processual mechanism therefor) than they would have under Sec.31. Is not then Sec.12A fairer than Sec.31? In ***Arun Kumar Jagatramika case***, the Hon'ble Supreme Court, however, did not have an occasion to consider this angle.

20. In the present case, the resolution professional appeared to have either given prominence to the rule, or perhaps had even messed up with his understanding of the rule and his own role, but the rule book carries a greater message: a successful insolvency resolution process, which to repeat for an emphasis, includes not only an approval of the Adjudicating Authority to a resolution plan but also helping the corporate debtor to exit from the process. This implies that it requires as much application of mind for seeking extension of time for completing the resolution process through the exit route under Sec.12A as it is through the plan route under Sec.31.

21. Set in this backdrop, Sec.12(3), which provides for the extension of time for concluding the CIRP, needs to be understood not only in the context of concluding the CIRP through the plan route under Sec.31, but also through the exit route under Sec.12A when either of them is in sight.

22. A resolution professional is an appointee under the Code and has been vested with the statutory responsibility to discharge, not only for the benefit of the creditors or the corporate debtor but for every the benefit of every stakeholder in the resolution process, and this will include the promotors, personal

guarantors of the corporate debtor, even though they have only a small window under Sec.12A. Set in the context of the facts of this case, the decision of the resolution professional not to seek extension of time till at least 11.09.2022 (with or without the advice of the Registry of the tribunal) suffers from subjectivity and arbitrariness but both readily offends our Constitutional ethos. As indicated earlier, it is imperative that every resolution professional shall take an objective view even in seeking extension of time by factoring in all the facts that provide the most probable indication for concluding a resolution process successfully – the plan route under Sec.31 or the exit route under Sec.12A. If this duty is ignored it can taint his decision to invoke Sec.33(1) with arbitrariness. In the present case, the resolution professional had his opportunity to balance the situation before him but he obviously had spilled it.

23. If a statute has to be worked, not just purposively but also sensibly, then it is not just sufficient to look to the legality of a decision made, but it is fair to make the said decision when there is also available a better option for a purposive and humane way of approaching the same issue. Otherwise, it may confer an undeserving premium to arbitrary decisions as

in the present case. The broad statement therefore be made: Where there are more options than one to end an insolvency condition of the corporate debtor, then fairness involved in choosing an option should be allowed to prevail. This would imply that the insolvency resolution process cannot enjoy greater prominence than the end result it aims to achieve.

24. To sum up, rules are important, but adhering to the rule-book, in respect for its spirit and objectives with a sense of fairness is a better choice, which no adjudicatory fora governed by our Constitution and guided by its values can afford to ignore. Necessarily, we have to step in, and the Order of the Adjudicating Authority dated 26.08.2022 ordering liquidation must necessarily give way. After all no judicial fora cannot plead helplessness to deal with situations merely because the situation is out of the ordinary. Now, turning to the ratio in ***Asha Chopra and others Vs. M/S.Hind Motors India limited*** [CA(AT) Ins.no.1425- 1428 of 2024] on which the liquidator placed considerable reliance, it is distinguishable on facts. That was a case where reversal to the liquidation process was sought after the corporate debtor was well into the third year of liquidation, whereas in the present case repayment based on OTS was parallelly happening. A

judgement, after all, is a precedent only for what it decides and not a formula for universal application.

25. In conclusion, from whichever angle the order of the Adjudicatory Authority directing the liquidation of the corporate debtor requires to be set aside. We, therefore, allow this appeal, set aside the Order of the Adjudicating Authority dated 26.08.2022, in I.A.800/2022 in IBA/685/2019, restore CIRP and require the resolution professional to explore Sec.12A route. All pending interlocutory applications would stand closed. No costs.

**[Justice N. Seshasayee]**
**Member (Judicial)**

**[Jatindranath Swain]**
**Member (Technical)**

VG/MS/AK