

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

**Company Appeal (AT) (Ins.) No. 1117 of 2020**

**IN THE MATTER OF:**

**Jay Overseas Pvt. Ltd.  
402, Shoppers Plaza-IV,  
Opp. Lal Bungalow,  
C.G. Road, Navrangpura,  
Ahmedabad – 380 009.**

**....Appellant**

**Versus**

**1. Mr. George Samuel  
Resolution Professional of Jason Decor Pvt. Ltd.  
217, Ganesh Glory, Jagatpur,  
S.G. Highway, Ahmedabad - 382481**

**....Respondent No.1**

**2. Indian Overseas Bank  
Financial Creditor,  
Sharad Shopping Centre, Chinubhai Tower,  
Ashram Road, Ahmedabad – 380009.**

**....Respondent No.2**

**Present:**

**For Appellant: Mr. Sumant Batra, Advocate  
Ms. Astha Mehta, Advocate**

**For Respondents: Mr. Ravi Pahwa, Advocate for R-1  
Ms. Sangya Negi for R-2.**

**ORDER  
(Virtual Mode)**

**23.12.2020:** Heard the Learned Counsel for the Appellant. This Appeal has been filed against the Impugned Order dated 09.12.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, Court 2) in I.A. 886 of 2020 in CP (IB) 257/NCLT/AHM/2019. The Impugned Order which is a short order which reads as under :-

**“ORDER**

*Advocate, Mr. Pavan Godiawala appeared on behalf of the Resolution Applicant. Advocate, Mr. Monaal Davawala appeared on behalf of the RP. RP, Mr. George Samuel is present in person. Advocate, Mr. Raju Kothari appeared on behalf of the COC.*

*The instant application is filed by one of the Resolution Applicants, whose Resolution Plan was already rejected by the COC.*

*Since, there was no viable Resolution Plan, the COC passed a resolution for liquidation of the company and accordingly, the said application was filed on 24.11.2020 by RP and the same is listed on 26.11.2020, wherein notice has been issued to the Suspended Management and the matter is fixed for final order on 18.12.2020.*

*Now, at such a belated stage the Resolution Applicant has filed this application stating inter-alia that he is giving a revised offer, hence, seeking direction upon the Member of the COC to reconsider the revised offer with a further prayer to direct the RP to convene the meeting, when there is no COC.*

*Gone through the previous orders. It is seen that the C.P. (I.B) No. 257/2019 was admitted on 19.12.2019, however, it is wrongly written in the order as 19.08.2019.*

*On perusal of the records, it is found that the RP has filed an application for extension of time, much after the expiry of 180 days.*

*It is to be mentioned herein that as per record 180 days expired on 15.06.2020 and thereafter, the RP has already availed 68 days of the lockdown period, which was also expired on 28.08.2020 but till November, 2020 RP has not filed any application for extension of time for further 90 days. However, in the first week of November, all of a sudden, the RP has filed an application for extension of time by wasting almost more than two months ignoring the very object of the IB Code, which is required to be completed in time bound manner.*

*It is a matter of record that on 09.11.2020, while passing the order on application so filed by RP, notice was issued to the COC. However, it is the prime duty of the RP to call and convene the meeting of COC in time bound manner and file necessary application to that effect.*

*On 26.11.2020, the 90 days have been extended beyond 180 days and thereafter the liquidation application has been filed. Thus, the CIRP period has already been expired. It is also a matter of record that the Applicant has never approached to the RP with his revised Plan/offer and have directly approached to this Adjudicating Authority, when an application under Section 33 of the IB code is already filed and COC is/are no more in existence.*

*Under such circumstances, the instant application is premature and not maintainable. More so, when the COC has already passed a resolution and RP has filed an application under Section 33 of the IB Code, which is fixed for final disposal on 18.12.2020.*

*Accordingly, the matter is dismissed as premature.”*

2. The Learned Counsel for the Appellant submits that the application was filed by the Appellant /Resolution professional to place the revised Impugned Order /Resolution Plan which have been before the ‘Committee of Creditors’. The same has been wrongly rejected as pre mature. He states that the earlier plan submitted by the Appellant was rejected by the ‘Committee of Creditors’ on 11.11.2020 and ‘Committee of Creditors’ decided to proceed for liquidation. The Learned Resolution Professional filed application under Section 33 of the Insolvency and Bankruptcy Code before the Adjudicating Authority. It is stated that after such developments the Appellant drastically improved the offer Appellant had made earlier and moved the Adjudicating Authority to direct the Resolution Professional to receive and process the revised Resolution Plan. It is stated that 270 days period is still not over.

3. The Learned Counsel submits that the revised Resolution Plan is at Page 46 (Annexure P/6). The Learned Counsel states that orders of liquidation are yet not passed by the Adjudicating Authority and matter is

posted on 25.01.2021. It is stated that in the meanwhile the 'Committee of Creditors' can consider even this Resolution Plan (Annexure P/6) so that attempt can be made to save the Corporate Debtor – M/s Jason Dekor Pvt. Ltd. from liquidation.

4. Issue Notice.

5. Mr. Ravi Pahwa, Advocate appears on behalf of Respondent No. 1 and Ms. Sangya Negi, Advocate appears on behalf of Respondent No. 2 (Indian Overseas Bank). Formal service of notice is dispensed with by both.

6. The Learned Counsel are not disputing that Respondent No. 2 is 'Committee of Creditors' having 100% voting right. The Learned Counsel for Respondent No. 2 submits that if this Hon'ble Tribunal directs the Respondent No. 2 is ready to consider the revised Resolution Plan (Annexure P/6). Counsel for Respondent No. 1 does not object. In view of above, an effort may be made if 'Committee of Creditors' accepts the revised Resolution Plan (Annexure P/6). As liquidation order is yet not passed, there will be no harm if attempt is made to save the Corporate Debtor from liquidation.

7. We set aside the Impugned Order. The revised Resolution Plan – Annexure P/6 may be processed by the Resolution Professional as required by the provisions of IBC and if in order Resolution Professional will take steps to place the same, before 'Committee of Creditors'. The 'Committee of Creditors' may consider the revised Resolution Plan and it will be for the 'Committee of Creditors' whether or not to accept the Resolution Plan, and if rejected may take further suitable decision regarding liquidation.

8. With direction as above Appeal is disposed of.

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

[V. P. Singh]  
Member (Technical)

*sa/md*