

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 1060 of 2021**

In the matter of:

Sagar Dineshchandra Jariwala

....Appellant

Vs.

Mr. George Samuel & Ors.

...Respondents

For Appellant: Ms. Aastha Mehta, Advocate.

For Respondents: Mr. Amir Arsiwala, Mr. Amey Hadwale, Ms. Geeta Lundwani, Advocates with Mr. George Samuel in person for R-1/ Liquidator.
Mr. Aayush Agarwala and Mr. Akshit Pradhan, Advocates for R-2 to 4.

ORDER

(Through Virtual Mode)

15.02.2022: Heard Ms. Aastha Mehta, Learned Counsel for the Appellant, Shri Amir Arsiwala, Learned Counsel for Respondent No.1 and Shri Aayush Agarwala, Learned Counsel for Respondent Nos. 2 to 4. With the consent of the parties, Appeal be disposed of at the admission stage itself.

2. This Appeal has been filed against an order dated 01.03.2021 by which the Learned Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad Court-2, has rejected Resolution Plan which was submitted by the Promoters of Swiss Ribbons Pvt. Ltd. through Dineshchandra Bhagwandas Jariwala & Ors.

3. The Appellant's case is that the Corporate Debtor is registered MSME and Resolution Plan was submitted which was higher than the liquidation value but the Committee of Creditors (CoC) has not approved the said Resolution Plan. After rejection of the Resolution Plan of the Appellant, the Adjudicating Authority has further observed to proceed with the liquidation and Learned Counsel for the Liquidator submits that there has already been publication of notice for auction as a going concern under Regulation 32 (e) & (f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 but the auction was unsuccessful.

4. After having heard Learned Counsel for the Appellant and Learned Counsel for the Respondents, we see no reason to interfere with the impugned order insofar as it refuses to approve the Resolution Plan filed by the Appellant. It is well settled that the commercial wisdom of the CoC is not to be interfered with by the Adjudicating Authority and even by the Appellate Tribunal unless the decision is not in accordance with Section 61. We, thus, do not find any error in the order rejecting the Resolution Plan filed by the Appellant.

5. Now, Learned Counsel for the Appellant after obtaining instructions further submitted that the Appellant is ready to participate in the liquidation proceedings for giving their bid as going concern. Learned Counsel for the Appellant submits that the Appellant's endeavor is to somehow save the Corporate Debtor and run the Corporate Debtor because large number of employees are working in it.

6. In view of the aforesaid, we are of the view that the Appeal insofar as it challenges the order dated 01.03.2021 need no interference with liberty to the Appellant to participate in auction of the Corporate Debtor as a going concern as provided in Regulation 32 (e) & (f). Learned Counsel for the Liquidator submitted that 90 days' time as provided under Regulation 32(4) is already over and liberty be granted to Liquidator to issue a fresh auction notice to enable all concerned including the Appellant to participate. We, thus, allow 30 days' further time to the Liquidator to issue fresh notice for auction as a going concern in which Appellant shall be at liberty to participate. The Liquidator thereafter shall proceed in accordance with Liquidation Regulations, 2016.

7. With these observations, the Appeal is disposed off.

[Justice Ashok Bhushan]
Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

Anjali/nn