

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

**Company Appeal (AT) (Insolvency) No. 696 of 2020**

[Arising out of order dated 22.07.2020 in CA-69(PB)/2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench.]

**IN THE MATTER OF:**

**Amish kumar Gupta,**

**C-103, Priyadarshini Apartment,**

**I.P. Extension, Delhi-110092.**

**..... Appellant.**

**Versus**

- 1. K Subhra Narayan Mohapatra**  
**Liquidator and Erstwhile Resolution**  
**Professional of General Power Limited**  
**5, Ground Floor, F-21, Lado Sarai,**  
**Behind Kalimata Mandir**  
**New Delhi-110030**  
**Email: liquidator.gpcpl@gamil.com**  
**ksnm72@hotmail.com**  
**Phone No. (838) 380-9699** **..... Respondent No. 1.**
- 2. General Power Company Private Limited**  
**Represented through erstwhile resolution professional**  
**K Subhra Nrayan Mohapatra**  
**406-E, International Trade Tower**  
**Nehru Place, New Delhi-110019**  
**Email: info@generalpowerindia.com** **..... Respondent No. 2.**
- 3. Punjab National Bank**  
**Through its Chief Manager**  
**Mr. Ramjeet Meena**  
**Pili Kothi, Hospital Road,**  
**Khurja (Bulandhahar)**  
**UP-203131**  
**Email: bo0267@pnb.co.in**  
**Mobile No. 8171113351.** **..... Respondent No. 3.**

**Present:**

**For Appellant:** Mr. Abhijeet Sinha, Mr. Avishkar Singhvi, Mr. Nipun Katyal and Mr. Aditya Shukla, Advocates.

Mr. Amish Kumar Gupta, party in person.

**For Respondent:** Mr. K Subhra Narayan Mohapatra, in person-Liquidator.  
Mr. Apoorv Sarvaria and Mr. Prakhar Shrivastava,  
Advocates for R-3.

**J U D G M E N T**

*(25<sup>th</sup> January, 2022)*

**Justice Anant Bijay Singh;**

This Appeal has been preferred by the Appellant - Amish Kumar Gupta being aggrieved and dissatisfied by the order dated 22.07.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in CP-69(PB)/2020 whereby and where under the Application filed by the Resolution Professional under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (***for short IBC***) was allowed and appointed Mr. K. Subhra Narayan Mohapatra as Liquidator.

2. The facts giving rise to this Appeal are as follows:

i) On 31.08.2012, the account of the Corporate Debtor was classified as NPA by the Financial Creditor with the outstanding amount of Rs. 812.60 lacs.

ii) On 25.09.2012, the Notice issued under Section 13(2) of SARFAESI Act. The Financial Creditor filed Original Application for an amount of Rs. 1912.60 Lakhs before DRT II, Delhi being T.A. No. 135 of 2015.

iii) That in the month of April and August, 2013 the Financial Creditor sold two properties of the guarantors situated at Khurja (U.P.), before issuing

Section 13(4) notice on 17.05.2017 under the SARFAESI Act against the Company, Promoters, Directors, Guarantors.

iv) That on 11.09.2013 the Financial Creditor had issued a show Cause Notice to the Corporate Debtor for adopting recourse identification of wilful defaulter of the loan transaction. The compliance of the show cause to be made within 15 days from the receipt of the show cause.

v) After receipt of the show cause notice, the Corporate Debtor submitted a representation dated 16.09.2013 by registered post by serving on the Financial Creditor personally on 16.09.2013, it was specifically pleaded for declaration of wilful defaulter and a process has to be followed as per the guidelines of Reserve Bank of India dated 01.07.2014.

vi) That on 30.12.2014, without considering the reply submitted by the Corporate Debtor in light of the show cause dated 11.09.2013, the Financial Creditor vide its order dated 20.12.2014 classified the Corporate Debtor as to be the wilful defaulter on the ground that the Corporate Debtor failed to submit any representation on the show cause notice which was completely fake.

vii) That on 12.01.2015, the Financial Creditor took physical possession of the plant of the Corporate Debtor at Pant Nagar, District Udham Singh Nagar, forcibly/illegally by putting its own lock on the main gate of the plant.

viii) That on 18.05.2018, the Petition was filed by the Financial Creditor under Section 7 of the IBC with a prayer to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

ix) The Ld. Adjudicating Authority vide its order dated 02.07.2019, admitted the Petition filed by the Financial Creditor and appointed the Interim

Resolution Professional for carrying out the Insolvency Resolution Process of the Corporate Debtor. Thereafter, the Resolution Professional / Respondent No. 1 herein filed an Application under Section 33(2) of the IBC based on the resolution dated 17.12.2019 by the Committee of Creditors for liquidation of the Corporate Debtor. The said Application was allowed by the Ld. Adjudicating Authority and hence this Appeal.

**Submissions on behalf of the Appellant**

3. The Learned Counsel for the Appellant during the course of argument and in his memo of Appeal along with Written Submissions submitted that although the Appellant has not challenged the order dated 02.07.2019 whereby the Application under Section 7 of the IBC filed on 18.05.2018 by the Financial Creditor (Respondent No. 3) was allowed rather the Appellant has challenged the order dated 22.07.2020 passed by Ld. Adjudicating Authority whereby the Application under Section 33(2) of the IBC filed by Resolution Professional (Respondent No. 2) was allowed and appointed Mr. K. Subhra Narayan Mohapatra as Liquidator.

4. It is further submitted that the Ld. Adjudicating Authority admitted the Application filed under Section 7 of the IBC without considering an important aspect of Limitation under Article 137 of the Limitation Act.

5. It is further submitted that the Application under Section 7 of the IBC was filed on 18.05.2018, on the basis of purported NPA dated 31.08.2012. This Application ignores the fact that the Application under Section 7 of the IBC would be time barred if it is not filed within three years from the date of the cause of action.

6. It is further submitted that the Hon'ble Supreme Court had passed the judgments in the case of "**Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. 2019 (10) SCC 572, Jignesh Shah & Anr. Vs. Union of India & Anr. 2019 (10) SCC 750, B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates 2019 (11) SCC 633**" on the point of limitation.

7. It is further submitted that the Ld. Adjudicating Authority has mechanically allowed the liquidation process, therefore, the impugned order is fit to be set aside and the Appeal be allowed.

#### **Submissions of the Respondent No. 1**

8. The Liquidator during the course of argument and his Reply Affidavit along with Written Submissions submitted that an Application under Section 7 of the IBC was filed by Punjab National Bank, the Financial Creditor (Respondent No. 3) for initiation of CIRP of General Power Company Private Limited, the Corporate Debtor. The said Application was heard on 02.07.2019 with order of initiation of CIRP of the Corporate Debtor.

9. It is further submitted that a bailable warrant issued under Section 19(2) of the IBC by the Ld. Adjudicating Authority against Ex-Directors (Appellant) on 20.08.2019 for co-operation with the Resolution Professional (Respondent No.2).

10. It is further submitted that on 20.09.2019, there was an MOU signed between the Resolution Professional (Respondent No. 2) and Mr. Amish Kumar (Appellant herein) that the Appellant will be the custodian of assets at Rudrapur and allow valuer to visit the site for valuation.

11. It is further submitted that the Resolution Professional filed Application under Section 43 & 66 of the IBC before the Ld. Adjudicating Authority for avoidable and fraudulent transactions.

12. It is further submitted that no resolution plan received, with consent of COC (Punjab National Bank with 100% voting) vide COC meeting dated 17.12.2019, the Resolution Professional filed an Application under Section 33(2) of the IBC for initiation of Liquidation of Corporate Debtor. The liquidation order passed by Ld. Adjudicating Authority on 22.07.2020 with the resignation of said Resolution Professional (Respondent No. 2) appointing Mr. K. Subhra Narayan Mohapatra as Liquidator.

13. It is further submitted that the Liquidator (Respondent No. 1) received the copy of the order from erstwhile Resolution Professional (Respondent No. 2) through mail but there was no handover of assets which are with Ex-Directors, financial records and business operation by the Respondent No. 2 to Respondent No. 1. Immediately, necessary steps under IBC were taken by the Liquidator, made public announcement (Form-B) on 01.08.2020 inviting claims, intimated all the statutory authorities, filed e-Form 28 with ROC and authorized with Income Tax e-Filing.

14. It is further submitted that the Liquidator visited the Registered office at Nehru Place, New Delhi, and found the door closed outside. Thereafter, contacted Mr. Amish Kumar (Appellant) to handover the possession of assets and financial records, but he did not get any response. The Liquidator mailed at [info@generalpowerindia.com](mailto:info@generalpowerindia.com), [info@insulatorindia.com](mailto:info@insulatorindia.com), [vipul424@yahoo.com](mailto:vipul424@yahoo.com) and also sent the liquidation order through speed post which returned undelivered.

15. It is further submitted that after receiving claims, verified and constituted stake holder consultation committee. The Liquidator visited Punjab National Bank (Financial Creditor) and opened escrow a/c for liquidation and also visited the plant at Rudrapur, but no-one from Corporate Debtor was present at the site despite giving prior notice through e-mail and sms. Due to non-co-operation from Ex-Directors, the Liquidator filed an Application under Section 19(2) of IBC.

16. It is further submitted that during possession of Regd. Office caretaker of Ex-Directors filed a complaint with the National Human Rights Commission against Liquidator and Police, the Liquidator unable to take possession. Due to non-cooperation from Ex-Director, Liquidator is unable to do his statutory duty which is time bound under IBC. The Liquidator is not able to file claim with the Company with security deposit and accounts receivable outstanding. Some are under CIRP/Liquidator, unable to file claim due to unavailability of financial records to Liquidator which are with Ex-Directors.

17. It is further submitted that the Liquidator is doing his statutory duty as assigned by Ld. NCLT from the date of appointment as Liquidator vide liquidation order dated 22.07.2020, therefore, based on these submissions there is no merit in the Appeal, the Appeal is fit to be dismissed.

### **Submissions on behalf of the Respondent No. 3.**

18. The Learned Counsel for the Respondent No. 3 (Punjab National Bank) during the course of argument and his Reply Affidavit along with Written Submissions submitted that the Appellant never filed an Appeal against the original order dated 02.07.2019 passed by the Ld. Adjudicating Authority

admitted the Application under Section 7 of the IBC. As the Appellant chose not to avail the remedy provided under the IBC, the order passed by the Ld. Adjudicating Authority attained finality.

19. It is further submitted that CIRP was conducted strictly in accordance with the provisions of the Code. The interim resolution professional received the claims only from Punjab National Bank and the Committee of Creditors was constituted with Punjab National Bank as the sole member. The CoC in its 6th CoC meeting dated 17.12.2019 decided to liquidate the Corporate Debtor as no resolution plan was received and it was resolved that the Resolution Professional will move liquidation application before the Ld. Adjudicating Authority. The minutes of 6th CoC meeting were also circulated to the Corporate Debtor but again no objection was raised or received.

20. It is further submitted that consequently an Application bearing No. 69/2020 under Section 33 of the Code was filed by the Resolution Professional before the Ld. Adjudicating Authority on 21.12.2019 with a prayer to liquidate the Corporate Debtor. The said Application was also forwarded to the Counsel for the Corporate Debtor vide email dated 21.12.2019 (Annexure R3/D at page 48 of the Reply Affidavit filed by Respondent No. 3). In this regard moving of an Application seeking liquidation of the Corporate Debtor on non-receipt of any resolution plan was strictly in accordance with Section 33 of the Code as such there was no infirmity or illegality whatsoever as alleged by the Appellant. Once no resolution was received, the CoC was well within its rights to take the decision to liquidate the Corporate Debtor.

21. It is further submitted that on 16.01.2020, the Corporate Debtor erroneously, without any basis and much contrary to the provisions of the



Code filed an Application bearing no. 567/2020 for recall of orders dated 02.07.2019 and another Application bearing no. 566/2020 for stay of proceedings. The said Applications were filed with the most ulterior motive and *mala file* intentions, that too only after the liquidation Application was filed by the Resolution Professional solely with the object of frustrating the proceedings under the Code.

22. It is further submitted that an Application bearing no. 2307/2020 was filed for replacement of the liquidator. The said Application was listed before the Ld. Adjudicating Authority on 28.06.2020. On the said date Ld. Adjudicating Authority directed that the said Application will be heard with the liquidation Application. On 22.07.2020 the Ld. Adjudicating Authority passed the order on the liquidation Application and also replaced the proposed Liquidator. The details/link of hearing dated 22.07.2020 was also shared with the Counsel for the Corporate Debtor and on the date of hearing, no objection whatsoever was raised by the Counsel for the Corporate Debtor. In the impugned/order dated 22.07.2020 the attendance of Sh. Amit Goyal, Advocate for the Corporate Debtor is marked which shows that the liquidation order was passed in the presence of the Counsel for the Corporate Debtor.

23. It is further submitted that the present Appeal is filed with the object to defeat and frustrate the CIRP. Based on these submissions the Appeal is fit to be dismissed with costs.

### **FINDINGS**

24. After hearing the parties and having gone through the pleadings and also submissions, we are of the considered opinion that admittedly, the Appellant has not challenged the original order dated 02.07.2019 passed by

Ld. Adjudicating Authority admitted the Application filed by the Respondent No. 3 whereby the CIRP was initiated, so the Appellant cannot now take the shelter of the question of limitation.

25. From the conduct of the Appellant which has been mentioned hereinabove in the submissions of the Respondent No. 1 and 3, we are of the view that the Appellant is taking all steps to delay the process.

26. We do not find any illegality in the impugned order. Accordingly, the impugned order dated 22.07.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in CP-69(PB)/2020 is hereby affirmed. The Appeal being devoid of merit is dismissed.

27. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi Principal Bench, forthwith.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**New Delhi**

**25<sup>th</sup> January, 2022**

*R. Nath*