

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

Company Appeal (AT) (Insolvency) No. 1122 of 2020

IN THE MATTER OF:

SHAILAJA VAIBHAV PATIL

Ex-Director of Corporate Debtor
Having Din No. 06411453
And Address at Laxmi Vijay Building,
Peth Phata, Pachwati, Nashik – 422003
Email Id: vaibhav@silveroak.co.in

...Appellant No. 1

VIKAS SURESH MALEKAR,

Ex-Director of Corporate Debtor
Having Din No. 02558051
And Address at Flat No. 6, Shivkranti Society,
Peth Road, Mehargham, Nashik – 422003
Email Id: vikas_malekar@rediffmail.com

...Appellant No. 2

Versus

CMA HARSHAD S. DESHPANDE

Liquidator of Corporate Debtor
Having Registration No. IBBI/IPA-001/
IP-P-166/2017-2018/10335
And having office at Rohit Chambers, 4th Floor,
Janmabhoomi Marg, Fort, Mumbai – 400 001
Phone No. 9890420201
Email Id: harshad_de@hotmail.com

...Respondent No. 1

M/S SILVEROAKS COMMERCIALS LIMITED

Plot No. F-24 MIDC Satpur
Nashik – 422007

...Respondent No. 2

**NASHIK MERCHANT CO-OPERATIVE BANK
LIMITED**

Member of CoC having office at A/16,
Late Babubhai Rathi Chowk,
Netaji Subhashchandra Bose Marge,
MIDC, Satpur, Nashik – 422007
Email: ceo@namcobank.in

...Respondent No. 3

CITY CO-OPERATIVE CREDIT AND CAPITAL LIMITED

Member of CoC having office at having its address at **...Respondent No. 4**
224, 1st Floor, Opposite Mahalaxmi Theatre, Dindori
Road, Panchwati, Nashik – 422003

MR. P.L. ADKE

Being Sole Proprietor of M/s P.L. Adke **...Respondent No. 5**
Having office at 02-AB, Adgaonkar Plaza,
AAB Circle, Trimbark Road, Nashik – 422 007
Email Id: pladke9@gamil.com

GALACTICO CORPORATE SERVICES LIMITED

...Respondent No. 6
Having office at Office No. 68, Business Bay
Premises Co-Operative Housing Society
Nashik - 422002

Present:

For Appellants : Mr. Shyam Nandan, Mr. Gaurav Nail and Mr. Pranati
Bhatnagar, Advocates.

For Respondents : Mr. Rohit Rathi, Advocate for R-1.
Mr. Rahul Totala along with Mr. Rajat Malu,
Advocates for R-3

With

Company Appeal (AT) (Insolvency) No. 1123 of 2020

IN THE MATTER OF:

CITY CO-OPERATIVE CREDIT AND CAPITAL LIMITED

Member of CoC having office at having its address at
224, 1st Floor, Opposite Mahalaxmi Theatre, Dindori
Road, Panchwati, Nashik – 422003 **...Appellant**

Versus

CMA HARSHAD S. DESHPANDE

Liquidator of Corporate Debtor
Having Registration No. IBBI/IPA-001/
IP-P-166/2017-2018/10335
And having office at Rohit Chambers, 4th Floor,

Janmabhoomi Marg, Fort, Mumbai – 400 001
Phone No. 9890420201
Email Id: harshad_de@hotmail.com

...Respondent No. 1

M/S SILVEROAKS COMMERCIALS LIMITED

Plot No. F-24 MIDC Satpur
Nashik – 422007

...Respondent No. 2

NASHIK MERCHANT CO-OPERATIVE BANK LIMITED

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Email: ceo@namcobank.in

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Email Id: pladke9@gamil.com

...Respondent No. 4

GALACTICO CORPORATE SERVICES LIMITED

Having office at Office No. 68, Business Bay
Premises Co-Operative Housing Society
Nashik – 422002

...Respondent No. 5

SHAILAJA VAIBHAV PATIL

Ex-Director of Corporate Debtor
Having Din No. 06411453
And Address at Laxmi Vijay Building,
Peth Phata, Pachwati, Nashik – 422003
Email Id: vaibhav@silveroak.co.in

...Respondent No. 6

VIKAS SURESH MALEKAR,

Ex-Director of Corporate Debtor
Having Din No. 02558051
And Address at Flat No. 6, Shivkranti Society,
Peth Road, Mehaddham, Nashik – 422003
Email Id: vikas_malekar@redifmail.com

...Respondent No. 7

Present:

For Appellant : Mr. Samesh Dhawan and Mr. Raghav Dembala,
Advocates.

For Respondents : Mr. Rohit Rathi, Advocate for R-1.
Mr. Rahul Totala along with Mr. Rajat Malu,
Advocates for R-3

With

Company Appeal (AT) (Insolvency) No. 11 of 2021

IN THE MATTER OF:

MR. P.L. ADKE

Sole Proprietor of M/s P.L. Adke
Having office at 02-AB, Adgaonkar Plaza,
AAB Circle, Trimbark Road, Nashik – 422 007
Email Id: pladke9@gamil.com

...Appellant

Versus

HARSHAD S. DESHPANDE

Liquidator of Corporate Debtor
Having Registration No. IBBI/IPA-001/
IP-P-166/2017-2018/10335
And having office at Rohit Chambers, 4th Floor,
Janmabhoomi Marg, Fort, Mumbai – 400 001
Phone No. 9890420201
Email Id: harshad_de@hotmail.com

...Respondent No. 1

**NASHIK MERCHANT CO-OPERATIVE BANK
LIMITED**

Member of CoC having office at A/16,
Late Babubhai Rathi Chowk,
Netaji Subhashchandra Bose Marge,
MIDC, Satpur, Nashik – 422007
Email: ceo@namcobank.in

...Respondent No. 2

CITY CO-OPERATIVE BANK LIMITED

Member of CoC having office at having its address at
224, 1st Floor, Opposite Mahalaxmi Theatre, Dindori
Road, Panchwati, Nashik – 422003

...Respondent No. 3

SHAILAJA VAIBHAV PATIL

Ex-Director of Corporate Debtor
Having Din No. 06411453
And Address at Laxmi Vijay Building,
Peth Phata, Pachwati, Nashik – 422003
Email Id: vaibhav@silveroak.co.in

...Respondent No. 4

VIKAS SURESH MALEKAR,

Ex-Director of Corporate Debtor
Having Din No. 02558051
And Address at Flat No. 6, Shivkranti Society,
Peth Road, Mehaddham, Nashik – 422003
Email Id: vikas_malekar@redifmail.com

...Respondent No. 5

Present:

For Appellant : Mr. Varun Singh, Advocate.

For Respondents : Mr. Rohit Rathi, Advocate for R-1.
Mr. Rahul Totala along with Mr. Rajat Malu,
Advocates for R-3

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This order shall dispose of a batch of three appeals bearing CA (AT) (Ins.) No. 1122 of 2020, CA (AT) (Ins.) No. 1123 of 2020 and CA (AT) (Ins.) No. 11 of 2021, as all these appeals have been filed against the same impugned order dated 16.12.2020, by which an application bearing M.A. No. 510 of 2020 filed by the Resolution Professional seeking liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been allowed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court- III).

2. CA (AT) (Ins.) No. 1123 of 2020 'City Co-Operative Credit And Capital Limited Vs. CMA Harshad S. Deshpande & Ors' has been filed by the secured Financial Creditor. CA (AT) (Ins) No. 11 of 2021 'Mr. P.L. Adke Vs.

Harshad Deshpande & Ors.’ has been filed by the Resolution Applicant and CA (AT) (Ins.) No. 1122 of 2020 ‘Shailaja Vaibhav Patil & Anr. Vs. CMA Harshad Deshpande & Ors.’ has been filed by the ex-director of the Corporate Debtor. They are all aggrieved against the impugned order dated 16.12.2020, however, for the sake of convenience, the facts are being taken from CA (AT) (Ins.) No. 1123 of 2020 treating it as the lead case.

3. In brief, an application under Section 9 of the Code was filed by an Operational Creditor (M/s Ultratech Cement Ltd.) against the Corporate Debtor (Silveroak Commercial Ltd.) which was admitted on 01.05.2019 and Rajendra Kumar Khandelwal was appointed as an Interim Resolution Professional (IRP). However, in the 3rd CoC meeting held on 16.07.2019, Alkesh Rawka was appointed as Resolution Professional (RP) and his appointment was approved by the Adjudicating Authority on 19.08.2019. After the advertisement was published inviting expression of interest (EOI) in Form-G, the RP received four EOI from (a). Nashik Merchant Cooperative Bank Ltd. (CoC Member) (b). Galactico Cooperative Services Ltd. (c). Mr. Prakash Adke (d). Mr. Amar Patil (Suspended Director). Out of the four, only two submitted the resolution plan i.e. M/s Galactico Cooperative Services Ltd. and Prakash Adke. The Prospective Resolution Applicants did not satisfy the eligibility criteria and both were rejected by the CoC, having two members, namely, City Co-Operative Credit And Capital Limited, having 18.55% voting share and Nashik Merchant Cooperative Bank Ltd., having 81.45% voting share. In the 10th CoC meeting held on 21.01.2020, finding no chance of revival of the Corporate Debtor, resolution was passed to the effect that “resolved that, pursuant to Section 33 of the Insolvency and

Bankruptcy Code, 2016 the approval of members of committee of creditors be and is hereby accorded for liquidation of Corporate Debtor”

4. Pursuant to the aforesaid resolution, having been passed in 10th CoC meeting held on 21.01.2020, the RP filed an application under Section 33 of the Code for seeking following two reliefs (a) to pass an order under Section 33 of the Code commencing the liquidation process of the Corporate Debtor, (b) to appoint Mr. Harshad Deshpande as a liquidator of Corporate Debtor. The Adjudicating Authority, after considering the application of the RP, found it to be a fit case to pass the order of liquidation under Section 33 of the Code and after obtaining the consent of Harshad Deshpande, appointed him as a liquidator and passed the formal directions.

5. It is pertinent to mention that all these three appeals are directed against the same impugned order dated 16.12.2020 but in appeal bearing no. 1123 of 2020 and 1122 of 2020 prayer for stay was declined whereas in appeal bearing 11 of 2021 stay was granted to the effect that “the liquidator may carry on the process but shall not sell the liquidation estate till next date of hearing”.

6. Counsel for the Appellant in CA (AT) (Ins.) No 1123 of 2020 has submitted that since there was dissenting view of CoC in the 10th Meeting and Nashik Merchant Cooperative Bank Ltd. was having a major voting share, therefore, resolution was passed to appoint liquidator to proceed with the liquidation but after the 10th Meeting of CoC held on 21.01.2020 and passing of the impugned order on 16.12.2020, the Appellant (City Co-Operative Credit And Capital Limited) has purchased the share of Nashik

Merchant Cooperative Bank Ltd. by way of an assignment deed dated 05.04.2020 and has thus 100% voting share. It is submitted that with the change of circumstances, the Appellant is now interested in approving the plan submitted by P.L Adke. It is also submitted that the liquidation is the corporate death of the corporate debtor and all the steps should be taken to avoid it. It is also submitted that liquidation is the last resort to be adopted after genuine attempts are made for revival of the Corporate Debtor. In nutshell, it is argued that this Tribunal still can pass an order of turning the clock back even after the CoC has become functus officio after the 10th meeting of CoC passing the resolution of liquidation and the application under Section 33 of the Code has been allowed by the Adjudicating Authority, appointing the liquidator to proceed with the liquidation of the asset of the Corporate Debtor. In support of his submissions, he has relied upon a decision of this Court in the case of Mr. Sharad Sangi Vs. Vandana Garg & Ors., CA (AT) (Ins.) No. 461 of 2018 and State of Maharashtra Vs. Videocon Industries Ltd.& Ors., 2022 SCC Online NCLAT 6.

7. On the other hand, Counsel for the Respondent has argued that the Code has not provided any express power to this Tribunal to set aside the order of liquidation and that the judgments relied upon by the Appellant in the case of Sharad Sangi (Supra) and State of Maharashtra (Supra) are not applicable.

8. In reply, Counsel for the Appellant has fairly conceded that though there is no provision as such in the Code to deal with such a situation but

Rule 11 of the NCLAT Rules, 2016 provides the inherent power which may be invoked.

9. We have heard Counsel for the parties and perused the record with their able assistance.

10. The facts are not in dispute as these are borne out from the record. The resolution plan submitted by M/s Galactico Cooperative Services Ltd. and P.L. Adke were strongly opposed by Nashik Merchant Cooperative Bank Ltd. having 81.45% voting share and a decision was taken in the 10th CoC meeting held on 21.01.2020 for initiation of liquidation proceedings. The RP filed the application under Section 33 of the Code which was allowed on 16.12.2020. It was during the pendency of these appeals, the assignment deed dated 05.04.2022 has come into being as per which the Appellant (City Co-Operative Credit And Capital Limited) has acquired the voting share of Nashik Merchant Cooperative Bank Ltd. and has acquired 100 % voting share. In these circumstances, it is sought to be argued that despite the fact that CoC has become functus officio, the order passed under Section 33 of the Code by the Adjudicating Authority be set aside and the matter be remanded back to the CoC for considering the resolution plan of P.L Adke. The Appellant has tried to take support from an earlier decision of this Tribunal in the case of Sharad Sangi (Supra). We have gone through the decision of the coordinate bench. In this case the order was passed by the Adjudicating Authority on two grounds, namely, total period of 270 days had lapsed by the time last voting took place on 02.04.2018 and secondly, as on 26&27.03.2018 the voting percentage was 62.66% which is less than 75%.

It was noticed as to whether a member who had already opined, can change its opinion or not? It is the matter which can be decided by the CoC which may extend the period and allow for a fresh voting and that Regulation 26(2) being directory cannot override the power of the CoC which can take the final decision accepting or rejecting the resolution plan. It was held in Para 24 of Sharad Sangi (Supra) “in view of the aforesaid findings and as we have already held that the resolution process took place within 270 days and the CoC had the jurisdiction to change its opinion in favour of the resolution plan to make it a success and Regulation 26(2) being directory which also stands deleted, we set aside the impugned order and hold that the resolution plan being in conformity with Section 30(2) warranted approval by the Adjudicating Authority”. With utmost respect, the ratio in the case of Sharad Sangi (Supra) is not applicable to the facts and circumstances of the present case because there is a change in the voting share in the present case that takes place after the order of liquidation. Similarly, the decision in the case of State of Maharashtra (Supra) is also not applicable to the facts and circumstances of the present case. Moreover, the said decision is under challenge before the Hon’ble Apex Court.

11. It is also pertinent to mention that it has been time and again held by the Hon’ble Apex Court that the Code is complete in itself and since there is no provision to deal with such a situation as we have one in hand, we do not find it to be a fit case to apply Rule 11 of the NCLAT Rules 2016 which operate in altogether different sphere.

12. Thus, looking from any angle, we could not persuade ourselves to accept the contention raised by the Appellants in the present three appeals for setting aside the impugned order and to set the clock back on the asking of the Appellant (City Co-Operative Credit And Capital Limited). Hence, all the three appeals are found devoid of merits and the same are hereby dismissed, though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi

05th December, 2022

Sheetal