

AMIT GOEL V. PIYUSH COLONIZERS LTD. & ANR.

Amit Goel

...Appellant

Vs.

Piyush Colonizers Ltd. & Anr.

...Respondents

Case No: Comp. App. (AT) (Ins.) No.981 of 2023

Date of Judgement: 07.08.2023:

Judges:

[Justice Ashok Bhushan]

Chairperson

[Barun Mitra]

Member (Technical)

For Appellant: Mr. S.M. Sharma, Sr. Advocate with Mr. Sanchit Garga, Mr. Nikunj Jain, Mr. Madhav Ananad, Advocates.

For Respondents: Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Mohak Sharma, Mr. Supriyo Bangri, Mr. Lubhanshi Rai, Advocates.

Facts:

Appellant Amit Goel, an ex-Director and shareholder of the corporate debtor Piyush Colonizers Ltd, filed an appeal against the order of the Adjudicating Authority dated 24.05.2023. The appeal challenges the decision of the Committee of Creditors (CoC) dated 09.07.2022. The Resolution

Professional had earlier filed an application IA 2425 of 2021 under Section 66 of IBC challenging the sale of 30,000 shares of the Corporate Debtor to the Appellant. This application is still pending before the Adjudicating Authority.

Court's Opinions:

1. Power of CoC under Section 28(1)(j) of IBC:

The Court held that the power to change management of the subsidiary companies is vested with the CoC under Section 28(1)(j) of IBC. Pending application under Section 66 is not a reason to prohibit CoC from taking decisions as per the statute.

2. Impact of pending Section 66 application:

When the Section 66 application IA 2425 of 2021 is heard and decided, the Adjudicating Authority shall not be influenced by the CoC's decision dated 09.07.2022. The pending Section 66 application and the present appeal shall be decided independently.

Referred Laws and Sections:

Insolvency and Bankruptcy Code, 2016 Section 28(1)(j) – Powers of Committee of Creditors; Section 66 – Fraudulent trading or wrongful trading; The appeal was filed under Section 61 of the Insolvency and Bankruptcy Code before the National Company Law Appellate Tribunal, Principal Bench, New Delhi.

The Court dismissed the appeal while allowing the Section 66 application to be decided independently without being influenced by the CoC's decision.

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Court

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Full Text of Judgment:

1. Heard Shri S.M. Sharma, Learned Senior Counsel for the

Appellant as well as Shri Abhishek Anand, Learned Counsel for the Respondents.

2. This Appeal has been filed against the order passed by the Adjudicating Authority on 24.05.2023. The Appellant, who is ex Director and Shareholder of the Corporate Debtor, has filed the Application challenging the decision of the Committee of Creditors dated 09.07.2022.

3. The submission of Shri S.M. Sharma, Learned Senior Counsel for the Appellant is that the Application has already been filed by the Resolution Professional being IA 2425 of 2021 challenging the sale of 30,000 shares of the Corporate Debtor in favour of the Appellant under Section 66 Application which is still pending, hence, the Committee of Creditors ought not to have taken a decision to change the management of the subsidiary.

4. We are of the view that the power under Section 28(1)(j) of the IBC Code is a power vested with the Committee of Creditors with regard to the change in management of the subsidiary also. The fact that an Application under Section 66 is pending may not be a reason to prohibit the Committee of Creditors to take a decision as per the statute. We only observe that when IA 2425 of 2021 is heard and decided, the Adjudicating Authority shall not be influenced by the decision of the CoC taken on 09.07.2022 and applications shall be independently decided.

5. With these observations, we dismiss the Appeal.