

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 221 of 2023
& I.A. No. 795, 796 of 2023

IN THE MATTER OF:

Amar Nath
Liquidator for Karan Processors Pvt. Ltd.
(In Liquidation)

...Appellant

Versus

Excise & Taxation Commissioner

...Respondent

Present:

For Appellant : Mr. Saurabh Jain, Mr. Amar Nath and Mr. Prayag Jain, Advocates.

For Respondent : None.

O R D E R

[Per : Justice Mr. Rakesh Kumar Jain (Oral)]

11.01.2024 This appeal is directed against the order dated 24.01.2023 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (in short 'Adjudicating Authority') by which an application bearing I.A. 486/2021 filed by the Respondent in CP (IB) No. 339/Chd/Hry/2019 under Section 54 of the Insolvency and Bankruptcy Code, 2016 (the "**Code**") has been allowed.

2. Shorn of unnecessary details, M/s Ultratreat Industrial Services filed a petition under Section 9 of the Code against M/s Karan Processors Pvt. Ltd. ('**Corporate Debtor**') which was admitted and the CIRP proceedings were initiated. There was no resolution of the amount claimed, therefore, order for

liquidation was passed and Amar Nath was appointed as the Liquidator of the Corporate Debtor. The Liquidator filed the application under Section 54 of the Code for dissolution. While the said application was pending, the Respondent filed an application/ appeal under Section 42 of the Code bearing I.A. No. 486/ 2021 seeking a direction to the liquidator to accept the claim filed by the Respondent in Form C in terms of IBBI (Liquidation Process), Regulations 2016 (in short '**the Regulations**').

3. Case of the Respondent is that the books of accounts of the Corporate Debtor, for the assessment year 2014-15 and 2016-17, were assessed on 15.03.2018 and 05.02.2020 respectively and an amount of tax was found due of Rs. 3,39,157/- and Rs. 14,82,357/-, total amounting to Rs. 18,21,513/-.

3. The Respondent came to know that the liquidation proceedings against the Corporate Debtor is pending, therefore, filed an application on 01.03.2021 and informed the liquidator through e-mail. The Liquidator replied on 03.03.2021 that the date of submission of claim was upto 26.12.2020 and the claim received much beyond the period prescribed cannot be entertained.

4. The case of the Liquidator is that he had sent an e-mail to all the stakeholder including the Respondent 02.12.2020 and also sent final reminder on 11.12.2020 but the claim was filed on 01.03.2021 much after the period had expired on 26.12.2020.

5. The Tribunal while relying on the judgment of the Hon'ble Supreme Court in the case of **State Tax Officer Vs. Rainbow Papers Limited**, Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020 decided on

06.09.2022, held that filing of dues within the prescribed period does not apply to the taxation department as Section 26 of Haryana Value Added Tax, 2003 creates a first charge on the property of the defaulter. On this premise, the Tribunal issued a direction to the Appellant to treat the claim of the Respondent under Section 53(1)(b)(ii) at par with the debt owed to a Secured Creditor ranking equally with other secured debts. It also directed the Liquidator to ensure that the stakeholders, who have received any money beyond their entitlement at the time of distribution, forthwith return the same as per Regulation 43 of IBBI (Liquidation Process) Regulation, 2016 so that dues of Respondent are paid as directed. Aggrieved by the aforesaid order the present appeal has been filed.

6. It is submitted by Counsel for the Appellant that there is no dispute that Form C was sent by the Respondent through e-mail on 01.03.2021 and it was replied on 03.03.2021 by the Liquidator informing them that the claim cannot be submitted after 26.12.2020. It is further submitted that from 11.03.2021 to 31.03.2021, the property under liquidation was sold in auction and the proceeds of Rs. 39 Lakhs was distributed to as many as 29 stakeholders including the liquidation cost.

7. It is also submitted that at the time when the claim filed by the Respondent was rejected, the decision of the Hon'ble Supreme Court in the matter of **Rainbow Papers Limited** (Supra) had not come as it was delivered on 06.09.2022 and therefore, the Appellant has followed the provisions of law

as per which timeline was given for the purpose of seeking claims before him by the stakeholders.

7. It is further argued that decision in the case of ***Rainbow Papers Limited (Supra)*** has been confined to facts of that case as held in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd Paschimanchal Vidyut Vitran Nigam Ltd Vs. Raman Ispat Private Limited & Ors.*** Civil Appeal No. 7976 of 2019 decided on 17.07.2023.

8. It is argued that even the decision rendered in the case of ***Rainbow Papers Limited (Supra)*** is distinguishable on the facts because that has been rendered in the matter where the CIRP proceedings were pending, whereas it is the case where even the liquidation proceedings are over.

9. It is further submitted that it would be a herculean task for the Appellant (as Liquidator), after the completion of the liquidation proceedings and making all the payment to the Stakeholders, to recover the amount from as many as 29 stakeholders.

10. It is submitted that the total claim received was of Rs. 2.48 Crores and the admitted claim was of Rs. 2.32 Crores but the liquidation value was only of Rs. 39 Lakhs i.e, only about 15% of the total claim admitted out of which the amount has been distributed to as many as 29 stakeholders.

11. It is also submitted that after the liquidation proceedings were over and the application was filed for an order of dissolution, the liquidator does not have any mechanism to incur expenses for recovery of the amount for which the direction has been issued.

12. It is further submitted that even the bank account of the Corporate Debtor has been closed.

13. Counsel for the Appellant has also referred to a decision of the Delhi High Court rendered in the case of **M/s Kamla Syntex Limited vs. -----**, CO. PET. 125 of 2000 decided on 18.05.2018 and referred to para 13 and 14 which is reproduced as under :

"13. Reference may also be had to A. Ramaiya "Guide to Companies Act,"

Seventeenth Edition, where in respect of Section 474 of the Companies Act, the learned Author notes:

"The object of the section is that the assets of a company in liquidation should be realized and distributed pari passu among the creditors as expeditiously as possible. It is, therefore, only proper that creditors who want to claim the benefit of any distribution of the assets should prove their debts and claims as soon as possible.

The section provides for the court fixing a time or times within which the creditors are to send their proofs. The fixing of a date does not mean that a creditor who fails to prove within the time is excluded altogether. He may come in and prove at any time, before the company is dissolved. The only penalty is that he disentitles himself from participating in any dividend declared before he comes in. That is to say, he will not be allowed to disturb or reopen dividends already declared."

14. What emerges from the catena of judgments above is that it was for the applicant to have approached the OL to have his claim settled within the stipulated period. As he failed to do the same, he is entitled to the fund, which is

presently available with the OL, He cannot undo the dividends already paid.”

14. No one appears on behalf of the Respondent.

15. We have heard Counsel for the Appellant and perused the record.

16. There is no doubt that at the time when the Appellant rejected the claims of the Respondent, there was a timeline and the window was open till 26.12.2020 whereas Form C was submitted on 01.03.2021 but the decision of the Hon'ble Supreme Court, which is a declaration of law, rendered on 06.09.2022 categorically says that the filing of dues within the prescribed period does not apply to the Respondent as in that case also there was a claim of the taxation department and it was held that as per Section 26 of Haryana Value Added Tax, 2003 the first charge on the dues under the said act, on the property of the defaulter, is of the department.

17. But the important aspect of the matter has not been looked into by the Learned Tribunal while issuing the directions.

18. The Tribunal has not taken into consideration the practical difficulties to be faced by the Liquidator for the purpose of recovering the amount from 29 stakeholders after the entire proceedings were over.

19. In such circumstance, we find it just and expedient to set aside the Impugned Order and remand it back to the Learned Tribunal to have a fresh look into the matter in regard to the direction issued, keeping in view the practical aspect much less difficulties, which are likely to be faced by the

Appellant in-effecting recovery from 29 stakeholders as far as the money is concerned.

20. The Learned Tribunal shall also take into consideration the decision of the Hon'ble Delhi High Court which we have referred in the earlier paragraphs of this order.

21. With these observations, the present appeal is hereby allowed. The Impugned Order is set aside. The matter is remanded back to the Learned Tribunal to decide it again in view of the aforesaid observations. The Parties are directed to appear before the Tribunal on **31 January, 2024**.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/Ravi