

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1625 of 2023

IN THE MATTER OF:

Income Tax Department

...Appellant

Versus

Shikhar Chand Jain

Liquidator of the Corporate Debtor of

Hariom Rice Mill Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Ms. Maithili Mehta, Advocate.

**For Respondents : Mr. Sandeep Bajaj and Ms. Aakanksha Nehra,
Advocates for R-1.**

Mr. Sanwal Tibrewal, Advocate for R-3.

O R D E R
(Hybrid Mode)

15.05.2024: Heard Counsel for the Appellant as well as learned Counsel appearing for the Liquidator.

2. This appeal has been filed by the Income Tax Department, challenging the order dated 11.10.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack) in IA (IBC) No.196/CB/2023 in CP (IB) No.249/CB/2020.

3. The brief facts of the case are that the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. Hariom Rice Mill Pvt. Ltd. commenced on 09.06.2021; no Resolution Plan having been approved; the Liquidation was ordered by the Adjudicating Authority; before the Liquidator the Appellant has sent their claim in Statutory Form-C; certain clarifications were sought by the Liquidator; the Liquidator has informed about the Appellant about the admission of their claim of Rs.1,35,64,98,726/-; subsequently, the e-Auction was held by the Liquidator and one Rashik Bihari

Food Pvt. Ltd. was declared as a Successful Bidder; Letter of Intent (LoI) was issued on 03.02.2023; the Income Tax Department was also informed about the e-Auction and it was also informed that the claim of the Appellant has been admitted which shall be considered as per the waterfall mechanism; an application was filed by the Hariom Rice Mill Pvt. Ltd. seeking permission of the Adjudicating Authority to exclude and conclude the Liquidation of the Corporate Debtor as a going concern under the Liquidation and certain reliefs and concessions were asked for.

4. Adjudicating Authority in paragraph 2 has noticed the details of the application and after hearing the parties, directions have been issued in paragraph 4.

5. The Appellant is aggrieved by directions in paragraph 5.6 and submits that with regard to carry forward, the provisions of Section 79(2) of the Income Tax Act, 1961, (hereinafter referred to as 'The Act') have not been taken care of.

6. Learned Counsel for the Respondent submits that reliefs and concessions which have been granted are in accordance with law and as per Section 79(2) of the Act and no prejudice can be said to have been caused to the Income Tax Department.

7. We have considered the submissions of Counsel for the parties and perused the record.

8. In paragraph 5.6, Adjudicating Authority has directed:

<i>"5.6</i>	<i>Change in the shareholding of the Corporate Debtor as a result of the CD being sold as a going concern and</i>	<i>The unpaid liabilities/existing share capital which are to be extinguished, are to be credited into "Capital</i>
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	<p><i>pursuant to approval by the Adjudicating Authority leading to such change in shareholding shall not result in lapse of any carry forward losses and/ or unabsorbed depreciation in the books of the Corporate Debtor as on takeover date. that are brought forward under the provisions of section 79 read with section 2(18) Income-tax Act, 1961.</i></p>	<p><i>Reserve” in accordance with applicable Indian Accounting Standards; and the accumulated losses, if any, as per the balance sheet prior to the date of acquisition will have to be adjusted/set off as against such “Capital Reserve”. The balance amount losses, if any, can only be considered for carry forward as per provisions of Sections 79(2) of the Income Tax Act, provided a reasonable opportunity is given to the Principal Commissioner of Income Tax.”</i></p>
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9. The Adjudicating Authority in the column which contains the order of the Adjudicating Authority has clearly mentioned *“the balance amount losses, if any, can only be considered for carry forward as per provision of Section 79(2) of the Income Tax Act, 1961, provided a reasonable opportunity is given to the Principal Commissioner of the Income Tax”*.

10. When we look into the said direction, it is clear that the Adjudicating Authority itself has not passed any order under Section 79(2) of the Act and as per the Section 79(2), the carry forward has to be looked into and considered by the appropriate Assessing Authority in accordance with law.

11. We, thus are of the view that no grievance can be raised with regard to the above order of the Adjudicating Authority as noted in paragraph 5.6.

12. Counsel for the Appellant submits that she has e-filed the Rejoinder on 14.05.2024.

13. The apprehension of the Appellant that the Adjudicating Authority has allowed the carry forward under Section 79(2) of the Act is misconceived.

14. We, thus are of the view that no grounds have been made out to interfere with the impugned order, with the clarifications as above, we dispose of this Appeal.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

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