

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))

I.A. No.272 of 2024 in
C.P. (IB)No.357/BB/2019
U/s 60(5) of the IBC, 2016
R/w Rule 11 of the IBBI (Liquidation
Process) Regulations, 2016

IN THE MATTER OF:

Shri Kanekal Chandrasekhar

Liquidator of Southern Batteries Pvt. Ltd
No.6, Shree, 9th Cross,
Bhuvaneshwari Nagar, Hebbal
Kempapura, H.A. Farm,
Bangalore – 560 024.

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Applicant

Versus

Chief Commissioner of Income Tax, Bengaluru

No.59, HMT Bhavan, 3rd Floor,
Ballari Road, Dena Bank Colony,
Ganganagar, Armane Nagar,
Bangalore – 560 032.

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Respondent

Order delivered on: 02.08.2024

CORAM: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Ms. Sanjana H.

O R D E R

Per: K. BISWAL, MEMBER (JUDICIAL)

1. The instant Application is filed by Shri Kanekal Chandrasekhar, ('Applicant') under Section 60(5) of the IBC, 2016 r/w Rule 11 of the IBBI (Liquidation Process) Regulations, 2016 by *inter alia* seeking to direct the Respondent/Income Tax Department to refund the amount of

Rs.1,20,50,000/- paid as TDS on the liquidation auction sale of the assets of the Corporate Debtor to the bank account of the Corporate Debtor, i.e., Southern Batteries Pvt. Ltd., A/c number:7478002061, IFSC:IDIB000B009, Indian Bank, Bengaluru City Branch, K.G. Road, Bengaluru-560009.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

- i. It is stated that the Corporate Debtor was ordered to be liquidated in terms of Section 33(3) of the IBC, 2016 vide order dated 02nd March 2023 of the Adjudicating Authority. In terms of the said order, the Applicant Shri Kankal Chandrasekhar was appointed as the Liquidator of the Corporate Debtor. By way of public notice dated 14th December 2023, the Liquidator announced the 04th e-auction of the Corporate Debtor's assets on 12th January 2024. One M/s. Godha Realtors (India) Pvt. Ltd. ('Godha Realtors') emerged as the successful auction purchaser having submitted the highest bid at INR 127.50 crore for purchased of all the assets of the Corporate Debtor as a composite block.
- ii. Subsequently, the results of the 4th e-auction were announced to the stakeholders on 13th January 2024 and a letter of demand was also issue to Godha Realtors on 17th January 2024 calling upon them to make the payment of the Bid Amount as per the Asset Sale Process Memorandum within 16th February 2024, without interest or within 16 April 2024 with interest of 12% in terms of Clause 1(12) of Schedule I of the Liquidation Regulations. After the deduction of TDS amount of INR 1,20,50,000 being 1% of the consideration of the immovable property, Godha Realtors has made the payment of the balance e-auction sale consideration of INR 126,29,50,000 to the account of the Corporate Debtor designated for the purpose of liquidation.
- iii. It is also stated that as per the judgment dated 08th February, 2021 passed by the Hon'ble NCLAT, Delhi in *Company Appeal (AT)(Ins)*

624 of 2020- *Om Prakash Agarwal vs. CIT*, TDS need not be paid for sale of assets of a company through a liquidation auction since Section 53 of the Code, which provides a “*non-obstante clause*”, has an overriding effect over Section 194IA of the Income Tax Act, 1961, under which TDS is made payable. Section 53 provides for distribution in liquidation of “*any amount due to the Central Government and the State Government including the amount to be received on account of the consolidated fund of India and the consolidated fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*” only after distribution of the amounts due to secured creditors. Since TDS under Section 194IA is nothing but advance capital gains tax recovered through the purchaser, the Hon’ble NCLAT has ordered that TDS need not be paid on liquidation sale since that would amount to Government’s dues gaining priority in liquidation of the Corporate Debtor when compared to other creditors, thereby disturbing the order of disbursement (waterfall mechanism) under Section 53 of the Code.

- iv. It is further stated that subsequent to the order of the Hon’ble NCLAT in *Om Prakash Agarwal*, various NCLTs have also ordered the refund of the TDS paid on the basis of the judgment passed in *Om Prakash Agarwal*. The NCLT, Mumbai, in C.P.(IB)No.619/MB/2018 - *Nico Extrusions Ltd. Vs. Nicomet Industries Ltd.* and the NCLT, Ahmedabad, in C.P.(IB)No.149 of 2017 - *Sunil Kumar Agarwal Liquidator for Varia Engineering Works Pvt. Ltd. vs. Chief Commissioner of Income Tax (TDS), Ahmedabad*, have opined that no tax is deductible at source for amount paid in liquidation sale and have ordered refund of the TDS paid on liquidation sale, to be made to the respective liquidators of the companies. The NCLTs have also noted that such a deduction is contrary to the objects and provision of the Code.
- v. It is stated that in light of the above judgments, no TDS is deductible from payment made towards liquidation sale of assets

of the Corporate Debtor and any such deduction is to be refunded to the Corporate Debtor. As such, the TDS payment of Rs.1,20,50,000 made by Godha Realtors on the sale of the assets of the Corporate Debtor in liquidation auction are to be refunded by the Income Tax Department to the Corporate Debtor at the earliest in order to enable expedited dissolution of the Corporate Debtor.

3. The Income Tax Department has filed its objections vide diary no.4304 dated 22.07.2024.
4. Heard the learned Counsel for the Applicant/Liquidator. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Regulations made thereunder.
5. In the circumstances, and in view of the order passed by the Hon'ble NCLAT in the matter of *Om Prakash Agarwal* (supra), which has been followed by co-ordinate Benches, i.e., NCLT Mumbai in the matter of *Nico Extrusions Ltd. Vs. Nicomet Industries Ltd* in I.A. 1634 of 2022 in C.P.(IB)No.619/MB/2018) vide order dated 17.10.2023 and NCLT Ahmedabad in the matter of *Sunil Kumar Agarwal Liquidator of Varia Engineering Works Pvt. Ltd. vs. Chief Commissioner of Income Tax (TDS)* in I.A. No.678 of 2022 in C.P.(IB)No.149/NCLT/AHM/2017 vide order dated 11.12.2023, the instant **I.A. No.272 of 2024 in C.P.(IB)No.357/BB/2019 is hereby disposed** of by directing the Income Tax Department to refund the amount of Rs.1,20,50,000/- into the account of Corporate Debtor, within one month from the date of this order.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)