

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

(Company Appeal (AT) (CH) (Ins) No.413/2022)

IN THE MATTER OF:

CA Ramasamy Shanmuggam,
Liquidator of RLS Alloys Pvt. Ltd.
No. 207, 1st floor, Thirukumaran Building,
11-F, Mettur Road,
Erode- 368011

... Appellant

V

Insolvency and Bankruptcy Board of India
7th floor, Mayur Bhavan,
Connaught Place, New Delhi- 110011

...Respondent

Present :

For Appellant : Mr. A.G. Sathyanarayana, Advocate
For Respondent : Mr. K. S. Jeyaganeshan, Senior Panel Advocate

JUDGMENT
(Hybrid Mode)

(Per: Justice Sharad Kumar Sharma, Member (Judicial))

20.11.2024:

The Appellant who is the Official Liquidator of the Corporate Debtor M/s RLS Alloys Pvt. Ltd, puts a challenge to the Impugned Order dated 02.06.2022, as it has been passed by the Ld. Adjudicating Authority in IA No.796/2021, in CP /661(IB)/CB/2017. As per the relief clause which has been modulated by the appellant in the appeal, there is a partial challenge given to the Impugned Order that is limited to the extent of the observation which has been made in para 30(vii) of the Judgment, whereby the directions has been issued to the IBBI to

conduct detailed inspection regards the conduct of Liquidator and the records, pertaining to the Corporate Debtor in order to find out the irregularities in the process. The Appellant contends that the said observation made in para.30(vii) is wrong with eyes of law for the reason being that, prior to passing of the order, no opportunity of explaining or defending himself was provided, as to whether at all based on the evidence on record, the conduct of the liquidator can be said to be unjustified! and whether the remarks made for taking necessary decision of the case is at all an integral part of the proceedings were, justified.

As far as, the observations which has been made in Para 30(vii), it is the exclusive prerogative of the Ld. Adjudicating Authority when it apparently finds that there had been an anomaly with regards to, the functioning of the appellant as a liquidator which makes the proceedings to be non-transparent. The Ld. Adjudicating Authority does have the power to refer the matter to the IBBI, for conducting an enquiry and particularly in the context of the irregularities as observed in para.30 of the judgment which is extracted here under: -

On perusal of the facts placed, it appears that the auction was not

conducted in a transparent manner due to the following reasons: -

- i. the Ld. Liquidator could have very well sold the property to the second highest bidder Mr. G. Subramanian for Rs. 1,55,55,550/- at his bid placed at 11:56 AM as per the auction record.*
- ii. No fresh e-auction notice was published by the Liquidator for holding e-auction on 25.09.2020. As late as 24.09.2020 the Liquidator was not clear what he is going to do which is apparent from the email written by the Liquidator to the Financial creditor as mentioned supra.*
- iii. The upset price was set at the level of Rs. 1,06,55,550/-. This was the level at which the auction commenced on 23.09.2020 and was lower than the last valid bid amount which was Rs. 1,55,55,550/- which was the bid of Mr. G. Subramanian,*
- iv. Taking advantage of the entire scenario Mr. G. Subramanian was declared successful bidder on 25.09.2020 for a sum of Rs. 1,10,55,550/- in place of his own bid of Rs. 1,55,55,550/- on 23.09.2020 for the same property. The amount of the final bid was lower by nearly 45 lakh.*

- v. *From the record of auction placed before us it is clear that the Liquidator allowed Mr. S. Ramalingam, the person who placed a wrong bid on 23.09.2020 and whose EMD the Liquidator had forfeited to participate in the auction held on 25.09.2020.*
- vi. *In place of maximization of value, the auction held on 25.09.2020 decreased the value for the financial creditor. To top it all, the Liquidator never kept the financial creditor in loop for the proceedings held on 25.09.2020.*
- vii. *The entire episode smacks of wrongdoings and malafide on the conduct of the Liquidator in conducting the two auctions on 23.09.2020 and 25.09.2020.*

If the logic assigned in para 30, as extracted above are taken into consideration, the anomaly which were found in conducting the e-auction proceedings appear malicious on the face of it for which, direction to conduct the inspection/enquiry cannot be said to be apparently faulted, particularly, when the said enquiry takes a shape of being only a fact-finding enquiry.

The appellate proceedings under Section 61, of I & B Code cannot be resorted to by the Liquidator, for the purposes of the challenging

direction issued to the IBBI to enquire into the conduct of the appellant regards his functioning as a liquidator, because that will be absolutely an in-house proceeding of the registering body of the liquidator to justify as to whether at all, the based on the set of allegations, if proved, he is required to continue as a Liquidator or not. In fact, at this stage, there is nothing apparently adverse against the Appellant, which could call for invocation of an Appellate Jurisdiction particularly when it is only an enquiry and upon which the decision on the same is yet to be taken.

Apart from it, during the course of argument it has been informed by the Ld. counsel for the Respondent, (not disclosed by the Appellant) that a bunch of Writ Petitions were preferred and they came up for consideration before the Hon'ble High Court of Delhi and Writ Petition shown at SL.No.7, being Writ Petition(C) 7961/2023, and C(M) Application 30638/2023, 30639/2023, was preferred by the Appellant. The Hon'ble High Court of Delhi in its Judgment of 10.04.2024, after taking into consideration the legal ratio laid down in Judgment referred in Para.8 of the Judgment dated 10.04.2024, has observed, that, the matter does not call for any interference with regards to the conduct of

inspection/investigation which has not yet been finally decided against, the Appellant. The relevant observation made in Para.8 of the Judgment which reads as under: -

This Court vide the aforesaid Order dated 11.01.2024 remanded back the matter to the Board with a direction to the Board to supply a copy of the Final Inspection Report to the Petitioner. Applying the said Order dated 11.01.2024 to the facts of the present cases, this Court is inclined to remand back the present matters to the Board with a direction to the Board to supply a copy of the Final Inspection Report to the Petitioners. The Petitioners are permitted to file a further or substituted reply to the Show Cause Notice within two weeks thereafter and the Board is directed to decide the matter within four weeks thereafter in accordance with the Regulations. The Impugned Orders are, therefore, set aside.

In view of the above decision taken by the Hon'ble High Court of Delhi where it left it open for the Appellant to file a reply to the show cause notice issued by the IBBI, as against the recommendations made in para 30(vii) of the Impugned Judgment of Ld. NCLT, Chennai and directed the IBBI to take a call on the same within 4 weeks, it is clear that It is an issue still wide open to be decided by the IBBI. Hence at

this stage, owing to the Judgment dated 10.04.2024. In this scenario, as of now there is no specific cause of action for the Appellant, to invoke the Appellate Jurisdiction under Section 61, of I & B Code. The Appeal lacks merit and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

GL/TM/MS