

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1520 of 2024

(Arising out of Order dated 18.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court III, in I.A. No.610 of 2024 in C.P. No.(IB) 350/MB/C-III/2019)

IN THE MATTER OF:

Shantech International Pvt. Ltd.
Pheidon House, First Floor, 64 Rajni Shivaji
CHS, off Senapati Bapat Road, Pune,
Maharashtra - 411 016

... Appellant

Versus

Devendra Singh,
Liquidator of Venus Rolling Mills Pvt Ltd,
at Assotech Business Cresterra,
216, 2nd Floor, Tower: 1,
Sector-135, NOIDA,
Uttar Pradesh - 201 305

... Respondent

Present:

**For Appellant : Mr. Dhaval Deshpande and Mr. Amir Arsiwala,
Advocates.**

**For Respondent : Mr. Palash S. Singhai and Harshal Sareen,
Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Successful Auction Purchaser in the liquidation proceedings of the Corporate Debtor – Venus Rolling Mills Pvt. Ltd. has been filed challenging the part of the order dated 18.06.2024 passed in IA No.610

of 2024, by which order some of the reliefs and concessions as claimed by the Appellant were not granted by the Adjudicating Authority.

2. The brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor – Venus Rolling Mills Pvt. Ltd. commenced by order dated 22.04.2019 of the Adjudicating Authority and Mr. Devendra Singh was appointed as Interim Resolution Professional (“**IRP**”), who was subsequently confirmed as Resolution Professional (“**RP**”).
- (ii) Upon failure of the resolution of the Corporate Debtor, the Committee of Creditors (“**CoC**”) unanimously resolved to liquidate the Corporate Debtor. An order dated 09.06.2022 was passed by the Adjudicating Authority directing for liquidation of the Corporate Debtor. The liquidation order having been passed on 09.06.2022, 09.06.2022 became the liquidation commencement date.
- (iii) Pursuant to the liquidation order, Liquidator made public announcement. The List of stakeholders of the Corporate Debtor was prepared. The Liquidator conducted total of 7 e-auctions in accordance with Regulation 33 of Insolvency and Bankruptcy

Board of India (Liquidation Process) Regulations, 2016. (hereinafter referred to “**Liquidation Regulations**”) for sale of assets of the Corporate Debtor. The Corporate Debtor was specifically sold as a ‘going concern’ during 7th e-auction held on 30.03.2023.

- (iv) The Appellant became successful bidder and under orders of the Adjudicating Authority granted extension for depositing the entire bid amount. Sale Certificate dated 14.09.2023 was issued by the Liquidator to the Appellant.
- (v) IA No.610 of 2024 was filed by the Appellant praying for taking on record the completion of the Sale Process of the Corporate Debtor. One of the reliefs prayed in the Application was for granting reliefs and concessions sought under para 15 of the Application. The Application – IA No.610 of 2024 was heard by the Adjudicating Authority and by order dated 18.06.2024, IA 610 of 2024 was disposed of by the Adjudicating Authority. Aggrieved by the order dated 18.06.2024, passed in IA No.610 of 2024, this Appeal has been filed.

3. We have heard Shri Dhaval Deshpande and Shri Amir Arsiwala, learned Counsel appearing for the Appellant and Shri Palash S. Singhai, learned Counsel appearing for the Respondent – Liquidator.

4. The learned Counsel for the Appellant submits that sale in favour of the Appellant as a 'going concern' of the Corporate Debtor was made, which entitled the Appellant to claim a declaration that Corporate Debtor shall not be liable on account of any transaction, dealing or arrangement or any liability till the date of issuance of Sale Certificate. All liabilities up to the date of issue of Sale Certificate required to be extinguished on principle of 'clean slate' theory. The Adjudicating Authority granted relief and concession only for the period prior to the date of CIRP, whereas relief and concession was required to be granted up to the date of issuance of Sale Certificate. It is submitted that Application – IA No.610 of 2024 ought to have been allowed in toto by granting all the reliefs and concessions, which were sought by the Appellant in the said Application. It is submitted that 'clean slate' principle extend not only to the liability prior to insolvency commencement date, but also extend to the date of actual sale date as a going concern. The learned Counsel for the Appellant has referred to reliefs and concessions granted at Sl. No.6, 8 and 9, where the reliefs and concessions as prayed in the Application were not granted. The learned Counsel for the Appellant further submits that Adjudicating Authority in paragraph 14 has directed that any other reliefs and concessions not mentioned in the table shall be deemed to have been not granted.

5. The learned Counsel appearing for the Respondent refuting the submissions of learned Counsel for the Appellant submits that the Appellant

was a successful bidder and has purchased the assets of Corporate Debtor as 'going concern' on "as is where is & as is what is" basis and the reliefs and concessions to which the Appellant was entitled have already been granted by the Adjudicating Authority by the impugned order. The 'clean slate' theory as contended by the Appellant is applicable in reference to a Resolution Plan and does not apply to e-auction in the liquidation proceedings. The e-auction in the liquidation proceedings is held on the terms and conditions as per the e-auction Notice and Process Document. The Adjudicating Authority has granted all necessary reliefs and concessions to which the Appellant was entitled, which is clear from paragraph 13 of the judgment and the Adjudicating Authority has rightly given liberty to the Appellant to approach the appropriate and concerned authority to seek the relevant reliefs and concessions as may be available to the Applicant.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. The question of law which arises in the present Appeal as formulated by the Appellant in paragraph 8(b), are as follows:

- (i). Whether the "clean slate" principle extends only to liabilities prior to the insolvency commencement date or will extend to the date of actual sale of the Corporate Debtor as a "going concern"?
- (ii) Whether the Adjudicating Authority can refuse to grant necessary reliefs and concessions without even considering them and without assigning any reasons?

8. In the Appeal, the Appellant has prayed for following reliefs:

- a. That this Hon'ble Tribunal be pleased to modify the order dated the 18th of June, 2024 passed in Interlocutory Application No. 610 of 2024 in Company Petition (IB) No. 350/MB/C-111/2019 to the extent of granting all the reliefs and concessions which were sought by the Appellant in the said application;
- b. For such further and other reliefs, as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the case.”

9. The moot question to be answered in this Appeal is as to whether the Appellant was entitled to grant of reliefs and concessions not on the date prior to insolvency commencement date, but ought to have been granted the reliefs and concessions till the date of actual sale of the Corporate Debtor as a 'going concern'. Item Nos. 6, 8, 9 of paragraph 13 of the impugned order, which have been specifically referred to by the Appellant are as follows:

“Sr. No.	Reliefs/ concessions sought by the Applicant	Orders thereon
6.	A direction and declaration that the Corporate Debtor shall not be liable on account of any transaction, dealing, or arrangement between it and any other person relating to the period prior to the date of relief being granted in the present application. It is clarified that any existing and on-going contracts between the Corporate Debtor and any other person shall continue to be valid and binding between the parties as per their terms; provided, however, that the Corporate Debtor shall bear no liability for any claim for compensation or damages arising out of any act or omission prior to the date of grant of relief in the present application.	Granted, for the period prior to the date of CIRP.

8.	A direction for waiver of any liabilities in relation to any water dues of the Corporate Debtor to any State Government or Central Government Department before the Acquisition Date.	May apply to appropriate authorities of respective department based on this Order.
9.	A direction for waiver of any past liabilities in relation to any electricity dues of the Corporate Debtor to any State Government or Central Government Department before the Acquisition Date.	May apply to appropriate authorities of respective department based on this Order.”

10. With regard to relief granted at Item No.6 of paragraph 13 of the order, the Appellant submission is that the Adjudicating Authority committed error in granting relief only for the period prior to the date of CIRP. Further, the relief ought to have been granted up to the date of actual sale in favour of the Appellant, i.e. up to 30.03.2023. The Appellant has filed copy of Certificate of Sale as Annexure-A3 along with which terms and conditions of auction sale has also been annexed as Annexure-1. Clause 5 of terms and conditions provides as follows:

“5. Successful Auction Bidder has been provided with Corporate Debtor as going concern strictly on "as is where is & as is what is" basis and is subject to approval of Hon'ble NCLT, Mumbai Bench. The information in respect of the Asset has been stated to the best of the knowledge of the Liquidator, however, he shall not be responsible for any inadvertent error, or omission in the said particulars. It should be noted that the Liquidator does not make any representation as to the correctness, validity or adequacy or otherwise of any ownership of asset or the

conditions of the asset or its quality for any specific purpose or use.”

11. Schedule-1, which deals with Block-A contains the following note:

Note:

- All known or unknown, claimed or unclaimed, disclosed or undisclosed liabilities/obligations risk as on the cut-off date(i.e. date of commencement of liquidation) including prior claims of all creditors whether secured, unsecured, workers, employees, statutory authorities on account of Income Tax, Sales Tax, GST, Service Tax, DGFT, Excise, Customs, etc., shareholders on account of transactions prior to the cut-off date (i.e. date of commencement of liquidation) shall be dealt as per Section 53 of the Insolvency and Bankruptcy Code, 2016 as full and final settlement of their dues. The Liquidator shall be in no event be responsible for any liabilities/obligations/risks pertaining to the period prior to the Cut-off date, and the same shall be dealt with as per the provisions of law and Directions of Hon'ble NCLT or any higher authority thereof.”

12. Above Note clearly provide that all known or unknown or unclaimed, disclosed or undisclosed liabilities/ obligations risk as on the cut-off date (i.e. date of commencement of liquidation) is to be dealt with including prior claims of all the creditors whether secured, unsecured, statutory authorities shall be dealt with as per Section 53 of the IBC. Thus, e-auction was conducted on the above conditions as captured in the Note. As noted above, the reliefs and concessions was granted to the Appellant with regard to declaration that Corporate Debtor shall not be liable on account of any transaction, dealing, or

arrangement between it or any other person relating to the period prior to the date of CIRP. We do not find any illegality in the above relief granted to the Appellant prior to the date of CIRP. Insofar as claims of known or unknown, disclosed or undisclosed liabilities, the obligation is up to the cut-off date, i.e. date of commencement of liquidation. The e-auction Notice clearly mention that transactions prior to the cut-off date shall be dealt as per Section 53 of the IBC. Thus, all claims known or unknown on the date of liquidation commencement date has to be dealt as per Section 53. The prayer of the Appellant in this Appeal is to grant reliefs and concessions for all claims and liabilities up to the date of sale by e-auction i.e. 30.03.2023. When the e-auction Notice itself does not contemplate grant of any relief from claims and liabilities up to the date of e-auction sale, the Appellant cannot be granted reliefs and concessions, which is not contemplated by e-auction Notice itself.

13. The IBBI (Liquidation Process) Regulations, 2016, Regulation 12, which deals with 'Public announcement by liquidator'. Regulation 12, sub-regulation (2) (a) call upon stakeholders to submit their claims or update their claims submitted during the CIRP, as on the date of liquidation commencement date. Regulation 12, sub-regulations (1) and (2) provides follows:

“12. Public announcement by liquidator. (1) The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.

(2) **The public announcement shall-**

(a) call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

(b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.”

14. Further, Regulation 16 provides for “Submission of claim”, which is as follows:

“16. Submission of claim. (1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.”

15. Regulations 12 and 16 as extracted above contemplate filing of a claim **as on the liquidation commencement date**. There can be no question of extinguishment of claim up to the date of sale of e-auction of the Corporate Debtor as ‘going concern’. When claim itself are as on the liquidation commencement date in the liquidation process, the argument that extinguishment of claims and liabilities should be granted till the date of sale by e-auction is not in accord with the statutory scheme as delineated by IBBI (Liquidation Process) Regulations, 2016. In any view of the matter, we have

already noticed that e-auction was held under the terms and conditions and with regard to Block-A, under which the Appellant having declared successful bidder, for the sale of Corporate Debtor as a 'going concern' for all known or unknown claims; disclosed or undisclosed liabilities and obligations were to be dealt as per Section 53 of the IBC. Hence, all claims were required to be considered by Section 53 in the liquidation process. Hence, relief of the Appellant, which is sought in the IA as well as in this Appeal to extinguish all claims and liabilities as on date of e-auction, is contrary to the very conditions under which e-auction was held. Hence, the prayer of the Appellant that it should have been granted reliefs and concessions up to the date of e-auction sale, cannot be accepted and has rightly not been granted by the Adjudicating Authority.

16. Coming to Item Nos.8 and 9, where the Appellant has prayed for a direction for waiver of any liabilities in relation to any water dues of the Corporate Debtor or any past liabilities in relation to any electricity dues of the Corporate Debtor. The Adjudicating Authority has rightly directed the Corporate Debtor to apply to appropriate authorities of respective department based on the order. Waiver of the liabilities with regard to dues of the Corporate Debtor to any State or Central Government or statutory Authorities, was to be dealt with as per Note extracted above and no exemption or waiver could have been granted as prayed by the Appellant.

17. The learned Counsel for the Appellant has also referred to paragraph 14 of the order, which is as follows:

“**14.** Any other relief and concession not mentioned in the above table shall be deemed to have been not granted. However, the Applicant may in accordance with applicable law and procedure, approach the appropriate and concerned authority to seek the relevant reliefs and concessions as may be available to the Applicant.”

18. Paragraph 14 of the order of the Adjudicating Authority is clarificatory in nature, which provided that any other relief and concession not mentioned in the table in paragraph 13, shall be deemed to have not been granted. The Adjudicating Authority has considered all relevant reliefs and concessions, which were part of the reliefs contained in paragraph-15 of the Application – IA 610 of 2024 and all relevant reliefs and concessions were specifically dealt with. Hence, we do not find any error in paragraph 14 of the order of the Adjudicating Authority, where Adjudicating Authority has observed that any relief and concessions not mentioned in paragraph 13 shall be deemed to have not been granted. Further, in paragraph 15 itself, the Adjudicating Authority has observed that Applicant may in accordance with applicable law and procedure, approach the appropriate and concerned authority to seek the relevant reliefs and concessions as may be available to the Applicant.

19. In view of the foregoing discussions, we are of the view that the relief claimed by the Appellant to grant extinguishment of all claims and liabilities up to the date of e-auction, i.e. 30.03.2023, cannot be accepted and

Adjudicating Authority by the impugned order has granted reliefs and concessions to which the Appellant was entitled and the reliefs and concessions not granted were in accordance with law and statutory scheme of the liquidation process. We do not find any error in the order impugned, warranting interference in this Appeal. The appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

NEW DELHI

20th September, 2024

Ashwani