

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 624 of 2024

(Arising out of Order dated 09.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in CA No.24/ND/2023 in Company Petition No.(IB)-1373(ND)/2019)

IN THE MATTER OF:

SBS Holdings, Inc.
8-17-1 Nishi-Shinjuku,
Shinjuku-ku
Tokyo 160 6125 Japan

... Appellant

Versus

Mohan Lal Jain,
Liquidator of SBS Transpole Logistics
Private Limited,
F-2/28, Sector-15, Rohini,
Delhi – 110089.

... Respondent

Present:

For Appellant : Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Tushar Nair, Advocates.

For Respondent : Mr. I.P.S. Oberoi, Mr. R.K. Srivastava, Mr. Himrit Singh Wadhwa, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Appellant challenging the order dated 09.02.2024 passed by the National Company Law Tribunal, New Delhi Bench (Court-II) dismissing CA No.24/ND/2023 filed by the Appellant, by which application the Appellant has challenged the order of the Liquidator dated

03.04.2023, rejecting the Appellant's claim. The Appellant aggrieved by the said order has come up in this Appeal.

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

- (i) The Appellant and its group companies entered into Memorandum of Understanding ("**MoU**") dated 20.01.2014 with the Corporate Debtor SBS Transpole Logistics Private Limited. A Shareholders' Agreement was also entered between the Appellant and the Corporate Debtor dated 31.07.2014.
- (ii) The Promoters of the Corporate Debtor along with the Corporate Debtor initiated arbitration against Global Enterprise Logistics Pte. Ltd. For breach of MoU, SPA and SHA on 25.02.2019.
- (iii) On an Application filed under Section 9, the Corporate Debtor was admitted into the insolvency by an order of the Adjudicating Authority dated 04.09.2019. Respondent - Mohan Lal Jain was appointed as Interim Resolution Professional ("**IRP**"). The Adjudicating Authority by an order dated 16.12.2020 directed for liquidation of the Corporate Debtor and Respondent - Mohan Lal Jain was appointed as Liquidator.

- (iv) A public announcement was made by the Liquidator on 20.12.2020 inviting claims for the liquidation. Last date for submission of the claim was 15.01.2021.
- (v) In the arbitral proceedings between the Appellant and the Corporate Debtor, the Resolution Professional (“**RP**”) sent a letter dated 05.05.2020 to the Arbitral Tribunal communicating that he has authorised the continuation of ongoing arbitration proceedings on behalf of the Corporate Debtor. The arbitral proceedings, were proceeding at Singapore International Arbitration Centre. The Arbitral Tribunal by its Award dated 22.12.2022 dismissed the claim and awarded the cost amounting to Rs.9,52,19,337.82 in favour of the Appellant. The cost was jointly and severally payable by the promoters and Corporate Debtor. On request made by the Appellant for re-verification of certain clarification/ typographical error in the Award, the Arbitral Tribunal issued a Memorandum of Correction for the arbitration Award dated 06.03.2023.
- (vi) The Appellant filed its claim in Form-G on 27.03.2023 before the Liquidator. On 03.04.2023, the Liquidator communicated its decision, rejecting the claim of the Appellant on the basis – (i) claim did not exist on the liquidation commencement date as per Regulation 12(2)(a) of the IBBI (Liquidation Process) Regulations,

2016 (“**Liquidation Regulations**”); (ii) the claim was submitted after 15.01.2021, which was impermissible under Regulation 16(1) of the Liquidation Regulations.

- (vii) The order dated 03.04.2023, was challenged by the Appellant by filing CA No.24/ND/2023 before the Adjudicating Authority. The Adjudicating Authority after hearing the parties, upheld the order of the Liquidator, rejecting the claim of the Appellant. Aggrieved by the order of the Adjudicating Authority, this Appeal has been filed.

3. We have heard Ms. Asmita Singh, learned Counsel appearing for the Appellant and Shri I.P.S. Oberoi, learned Counsel appearing for the Liquidator.

4. Learned Counsel for the Appellant challenging the impugned order submits that Arbitral Award having been passed on 22.12.2022, there was no occasion for the Appellant to file its claim prior to 14.01.2021. It is submitted that after correction of the Award on 06.03.2023, the claim was filed by the Appellant on 27.03.2023 in Form-G. It is stated that the arbitration proceedings were initiated much before the commencement of the insolvency by the Promoters of the Corporate Debtor, in which amount is awarded as cost, which was awarded in favour of the Appellant. It is submitted that during the arbitral proceedings, the RP has sent a letter dated 05.05.2020

addressed to the Arbitral Tribunal that he wants to continue the arbitration proceedings on behalf of the Corporate Debtor. It is submitted that when RP was participating in the arbitration proceedings, which culminated into award of cost, the Appellant's claim, cannot be denied. It is submitted that any claim, which arises subsequent to liquidation commencement date, can also be admitted, subject to only rider that admission of claim shall not effect the distribution already made. The learned Counsel for the Appellant in support of her submission has relied on judgment of NCLT, Mumbai in **Company Appeal No. 12 of 2023** in the matter of **Securities and Exchange Board of India vs. Vishal Ghisulal Jain**, decided on 14.09.2023, where the claim, which arose after the liquidation commencement date was directed to be entertained. The learned Counsel for the Appellant has also relied on certain other judgments of the NCLT, Hyderabad Bench and Kolkata bench. It is submitted that Adjudicating Authority committed error in dismissing the Company Appeal filed by the Appellant under Section 42 of the IBC.

5. Learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that claim in a liquidation proceedings can be filed as on liquidation commencement date. The learned Counsel for the Respondent has referred to Regulations 12 and 16 of the Liquidation Regulations. It is submitted that claims by all creditors are frozen on the liquidation commencement date and no claim can be filed or admitted subsequent to the said date. The Appellant has already filed enforcement

application in the Delhi High Court for enforcement of the Award against the Promoters, which enforcement Application is still pending. The Appellant having taken steps for enforcement of the Award, it has no right to file any claim in the liquidation proceedings of the Corporate Debtor. Learned Counsel for the Respondent has also placed reliance on judgment of this tribunal in **Company Appeal (AT) (Ins.) No.1048 of 2022 in DBS Bank India Ltd. vs. Kuldeep Verma, Liquidator of Eastern Gases Ltd.**, decided on 06.02.2023, where this Tribunal has held that when a statute provide for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator.

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

7. The liquidation commencement order in the present case is 16.12.2020 in pursuance of which publication was made by the Liquidator on 20.12.2020, inviting claims from the creditors and the last date of submission of the claim was 15.01.2021. The Appellant's case is that the arbitration proceedings, which were initiated by Promoters of the Corporate Debtor, prior to insolvency commencement date, came to be decided by Award dated 22.12.2022, awarding cost to the Appellant for an amount of Rs.9,52,19,337/-, and the corrected Award was issued on 06.03.2023. Thereafter the claim has been filed by the Appellant on 27.03.2023 before the Liquidator in Form-G, which claim was based on arbitral Award dated 22.12.2022 by Singapore

International Arbitration Centre. The Liquidator vide email dated 03.04.2023, rejected the claim of the Appellant. Email dated 03.04.2023 has been extracted by Adjudicating Authority in paragraph 8 of the impugned order, which is as follows:

“2. It is felt necessary to convey briefly the following relevant facts:-

- (i) *By Order dated 16.12.2020 of the Hon'ble Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-II in IA No. 1480/ND/2019, liquidation of the Corporate Debtor (for short "CD") M/s. SBS Transpole Logistics Pvt. Ltd. was ordered, and I was appointed as the Liquidator. Thus, 16.12.2020 is the "liquidation commencement date."*
- (ii) *I as the Liquidator had issued public announcement in Form B of Schedule-II of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, (for short, 'Liquidation Regulations') on 20.12.2020, calling upon the stakeholders of the CD to submit their claims with proof on or before 15.01.2021.*
- (iii) *The present claim by SBS Holdings Inc., Japan has been submitted in Form G of Schedule II to the Liquidator by email on 27.03.2021.*
- (iv) *The subject claim now filed did not exist on 16.12.2020, the liquidation commencement date, and the same can be considered to have got created on 06.03.2023, the date when the memorandum of correction of the arbitral award was issued, or at best on 22.12.2022, the date of the arbitral award, on which the claim is based.*

3. In terms of relevant provisions of the aforesaid Liquidation Regulations, the stakeholders are called upon to submit their claims as on the liquidation commencement date and to prove their claims, as on the liquidation commencement date."
4. In view thereof, your claim which was not in exercise as on the liquidation commencement date cannot be taken up for verification in terms of the relevant provisions of the Regulations. Accordingly, we regret our inability to verify and consider your claim.
5. Notwithstanding the aforesaid, in terms of the relevant provisions of the Liquidation Regulations, even otherwise, the claims were to have been submitted by the date mentioned in the public announcement i.e. 15.01.2021.
6. Accordingly, your subject claim cannot be taken up for verification and consequently cannot be admitted."

8. As noted above, there were two reasons given by Liquidator for rejection of the claim, namely – (i) the claim did not exist on the liquidation commencement date as per Regulation 12(2)(a) of the Liquidation Regulations; (ii) the claim was submitted after 15.01.2021, which was impermissible under Regulation 16(1) of the Liquidation Regulations. We have noted the submissions of learned Counsel for the Appellant that when the claim of the Appellant came into existence on the basis of Award dated 22.12.2022, which Award was corrected on 06.03.2023 and certified copy was received by the Appellant on 11.03.2023, the Appellant could not have filed a claim before 06.03.2023. It is submitted that there is no prohibition in the Liquidation Regulations from entertaining any such claim, which has come into existence

after the liquidation commencement date. Learned Counsel for the Appellant has emphasized that RP has sent a letter to the Arbitral Tribunal on 05.05.2020 informing that RP has authorized continuation of arbitration proceedings by the Corporate Debtor. Hence, the cost, which has been imposed by the Arbitral Tribunal in the arbitration proceedings, which was authorised by the RP, the RP / Liquidator cannot now deny acceptance of the claim. The Liquidator is bound to accept the claim, which arose of cost on the basis of arbitral Award, which was authorised by the RP himself.

9. We need to examine the main submission advanced by the learned Counsel for the Appellant that Liquidation Regulations, does not prohibit acceptance of any claim, which arises after the liquidation commencement date. For answering the above question, we need to examine the statutory scheme under the IBC as well as Liquidation Regulations. IBBI (Liquidation Process) Regulations 2016 have been framed, which apply to liquidation process under Chapter III of Part II of the IBC. Regulation 12, deals with 'Public announcement by the liquidator', which is as 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.

(3) The announcement shall be published-

(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose.”

10. The scheme of sub-clause (2) of Regulation 12 “call upon stakeholders to submit their claims or update their claims submitted during the CIRP, **as on the liquidation commencement date**”. Regulation 13, deals with ‘Preliminary report’, which provide that ‘The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date’. The said Regulation 13 provides that the Preliminary Report should contain the estimates of the assets and liabilities as on the liquidation commencement date of the Corporate Debtor. Thus, liabilities are to be determined as on the liquidation commencement date.

11. Regulations 16, which deals with the ‘Submission of claim’, provides 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.”

12. Regulations 16, sub-regulation (2) again contemplate that a person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date. The statutory scheme delineated by the above provisions, makes it clear that the claims to be filed by the claimants as on the liquidation commencement date. The Liquidation Regulations, does not contemplate consideration of any claim, which arises subsequent to liquidation commencement date. We may also notice one more provision of the Liquidation Regulations with regard to ‘Debt payable at future time’, which is Regulation 28, which is as follows:

“28. Debt payable at future time.

(1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

(2) Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows-

$$X / (1+r)^n$$

where-

- (a) “X” is the value of the admitted claim;

- (b) “r” is the closing yield rate (%) of government securities of the maturity of “n” on the date of distribution as published by the Reserve Bank of India; and
- (c) “n” is the period beginning with the date of distribution and ending with the date on which the payment of the debt would otherwise be due, expressed in years and months in a decimalized form.”

13. Regulation 28 provides that a person may prove for a claim, whose payment was not yet due on the liquidation commencement date and is entitled to distribution and which amount is to become due on future date. Regulation 28 contemplate distribution of such claim as per sub-regulation (2) of Regulation 28. A formula is also provided under sub-regulation (2) of Regulation 28 for distribution with regard to claim, which is to become due in future date. Regulation 28 is only Regulation, which deals with a claim, which claim is not due on the liquidation commencement date, but the claim has to be filed, by such claimant. Regulation 28 being the only Regulation, which deals with a payment not due on the liquidation commencement date and the distribution has been provided in a manner as contained in sub-regulation (2) of Regulation 28, it is clear that no other claim is contemplated to be considered, which is not available on the liquidation commencement date. The statutory scheme delineated by Regulation 12 and Regulation 16, clearly contemplate that a claim has to be filed on the liquidation commencement date. When a claim has not arisen on the liquidation commencement date, the Regulation do not contemplate admission of such claim.

14. Liquidation commencement date has been defined in Section 5, sub-section (17) of the IBC, which is as follows:

“**5(17)** “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;”

15. The liquidation commencement date has specific definition and there is purpose and object for considering the claim as on liquidation commencement date. Regulation 13, as noted above, which provides for sending a Preliminary Report of the assets and liabilities as on the liquidation commencement date, clearly indicate that all liabilities have to be frozen on the liquidation commencement date and the statutory regulation does not contemplate admission of any claim arisen subsequent to liquidation commencement date.

16. Learned Counsel for the Respondent has placed reliance on judgment of this Tribunal in **DBS Bank India Ltd.**, where the Appellant has filed its claim in Form-D containing the total claim of the Appellant along with interest on liquidation commencement date. The Appellant has informed the Liquidator to realize its security interest as per Section 52(i)(b) of the IBC. The Appellant realized its security and informed that he is entitled to claim interest amount till the date of distribution to recover its debt and not only the amount at the time of filing of the claim in Form-D. Liquidator filed an IA, seeking direction to the Bank, praying for refund of Rs.1.84 crores, which was allowed. DBS Bank India Ltd. challenged the order by filing the above Appeal. In the

above case, this Tribunal had occasion to consider Regulation 16, sub-regulation (2). In paragraph 14, 15, 17 and 18, following was held by this Tribunal:

“14. Liquidation Process Regulations provides for procedure and manner in which Liquidation Process begins claim are received and distribution of the amount take place to various stakeholders. Regulation 12 provides for public announcement by the Liquidator calling upon the stakeholders to submit their claims or update their claims submitted during the Corporate Insolvency Resolution Process. Regulation 16 deals with submission of claims. Regulation 16 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. Regulation 16(2) requires to prove his claim as on the Liquidation Commencement Date. Claims by the Financial Creditor has to be filed in Form D as per Regulation 18. Regulation 18 is as follows:

“18. Claims by financial creditors.

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

(2) The existence of debt due to the financial creditor may be proved on the basis of-

(a) the records available in an information utility, if any; or

(b) other relevant documents which adequately establish the debt, including any or all of the following-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; and

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.”

xxx

xxx

xxx

17. Form D also clearly mentions that total amount of claim including an interest, “As At The Liquidation Commencement Date”. The Liquidation Regulation thus clearly contemplated the claim which also includes the interest “As At The Liquidation Commencement Date”. Liquidation commencement date is a defined term in Section 5(17) to following effect:

“(17) “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;”

18. In the present case, Liquidation Commencement Date is a date when the Adjudicating Authority passed the Order of Liquidation. Thus claim has to be with reference to the liquidation commencement date. The statute pegs the claim on a particular date for a purpose and object. When a claim is filed in Form D where interest and principal have been included up to the date of liquidation commencement date, claimants cannot be allowed to claim any further amount in addition to the amount which they have claimed in their Form D.”

17. This Tribunal after noticing the statutory scheme for submission of the claim has concluded in paragraph 20, in following manner:

“20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.”

18. The learned Counsel for the Appellant submits that the above judgment is distinguishable, since in the above case, the claim was filed by the Bank for principal and interest as on liquidation commencement date, whereas in the present case, the claim has been filed subsequent to liquidation commencement date. The judgment of this Tribunal as noted above, after noticing the statutory scheme under the Liquidation Regulations has held that *“When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator”*. The above judgment fully supports the submission of learned Counsel for the Respondent.

19. The learned Counsel for the Appellant has relied on judgment of the NCLT, Mumbai Bench in Company Appeal No.12/2023 decided on 14.09.2023. In the above case, after liquidation commencement date (18.10.2021), the SEBI has passed an adjudication order dated 17.02.2022.

The claim was filed before the Liquidator, which was rejected by the Liquidator against which Company Appeal was filed under Section 42 of the IBC. In the above judgment, the learned NCLT in paragraph 11 held following:

“11. The Hon'ble Supreme Court has referred to moratorium not only under Section 14 but also under Section 33(5) of IBC. In fact, the Court categorically states that the interim resolution professional, resolution profession or ***the liquidator*** as the case may be, has an obligation to ensure that the assessment of statutory dues like taxes, fine, penalty etc. is legally completed. Natural corollary to this is, if determination of the statutory dues is allowed during liquidation period then filing of the claim arising out of such determination cannot be barred under IBC otherwise it would amount to empty formality. The only restriction the belated claimant has to face is that it cannot disturb the amount already distributed as per waterfall mechanism under Section 53 of the IBC.”

20. When we look into the judgment of NCLT, it is clear that NCLT has not adverted to Regulation 12 and Regulation 16 of the Liquidation Regulations. When a statutory provision has not been considered in the above judgment, the judgment cannot be held to be a precedent to be followed.

21. The learned Counsel for the Appellant has also relied on judgment of NCLT Hyderabad in **The Customs Department vs. Rajendra Prasad Tak in I.A. No.990/2022 in C.P. (IB) No.328/7/HDB/2018** decided on 19.10.2022. In the above judgment, the NCLT took the view that NCLT may condone the delay in filing the claims. The Liquidator was directed to take on record the claim of the creditors. The claim, which was filed were not the claims, which have arisen out of liquidation commencement date. Similar is the another

judgment of NCLT, Hyderabad Bench, **Board of Trustees of the Port of Mumbai vs. Vijay Kumar Garg – (2022) SCC OnLine NCLT 193**. In the above case, the amount was owed on the date of commencement of the liquidation. The claim was rejected by the Liquidator, against which an Appeal was filed before the NCLT. The NCLT in paragraph 6, held following:

“6. We have perused the order of the liquidator, the liquidator has simply rejected the claim on a mere ground that the same was not submitted with the time set by him, without going into the reasons why it was not submitted in time. When the country was reeling under COVID-19 pandemic and restrictions like lockdown, social distancing and home isolation etc., it is natural that things such as filing of the petition in time may not be done in time. Therefore, the reasons pleaded by the petitioner that prevented the petitioner from submitting the claim within time, ought to have been considered by the liquidator while taking decision on whether or not to condone the delay instead of simply rejecting the petition on a mere ground that the same was not submitted within time. We are convinced by the reasons put forth by the petitioner for the delay in filing the claim. We therefore allow the petition and condone the delay.”

22. The above judgment was also not on the issue, which has arisen in the present Appeal, as to filing of claim, which has arisen after the liquidation commencement date. The judgment of NCLT relied by learned Counsel for the Appellant, cannot be held to support the submissions as observed above.

23. The learned Counsel for the Appellant has placed reliance on two more judgments, which need to be noticed. Reliance is placed on the judgment of the Delhi High Court in **Elecon Engineering Company Limited vs. Energo Engineering Projects Limited and Ors. (2022) SCC OnLine Del 2860**. The

Delhi High Court in the above judgment while dealing with provision of Section 33, sub-section (5) of the IBC, laid down following in paragraph 13:

“13. From the language of Section 33(5) of the IBC, it is clear that the bar/moratorium is only in respect of fresh suits or legal proceedings. Unlike the moratorium under Section 14 of the IBC, where it is clearly noted that the moratorium is in respect of institution of suits or continuation of pending suits or proceedings against corporate debtor, the words “*continuation of pending suits or proceedings*” are conspicuously absent in Section 33(5) of the IBC.”

24. No exception can be taken to the legal proposition as laid down by the Delhi High Court in the above paragraph. The observation contained in Section 33, sub-section (5) is regarding institution of suits or other legal proceedings by or against the Corporate Debtor. It is true that the expression “*continuation of pending suits or proceedings*” are absent in Section 33 sub-section (5) and hence, the Liquidator was fully entitled to take a decision to continue pending suits or proceedings.

25. To the similar effect is another judgment relied by the learned Counsel for the Appellant of this Tribunal ***Reliance India Power Fund, Reliance Capital Trustee Company Ltd. vs. Raj Kumar Ralhan Liquidator of Su Kam Power Systems Ltd. – Company Appeal (AT) ((Ins.) No.318 of 2020*** decided on 24.02.2020. In the above case, the Appeal was filed, where this Tribunal in paragraph 5 has laid down following:

“5. We find that the duty cast on the Liquidator is to institute or defend any Suit, prosecution or other legal proceedings. The same

would include conscious decision which a Liquidator may take whether or not in the given set of facts, he needs to defend the proceeding. If the Liquidator has taken the decision, for reasons stated, we do not think that the Appellant has any right to force the Liquidator to come and defend and surrender to the action which the Appellant claims to have initiated.”

26. In the facts of the present case, as submitted by learned Counsel for the Appellant itself letter dated 05.05.2020 was written by the then IRP to the Arbitration Tribunal regarding continuation of ongoing arbitration proceeding on behalf of the Corporate Debtor. Even if, we proceed on the premise that arbitration proceedings was continued on behalf of the Corporate Debtor with the authorization of RP, the claim on the basis of Award of cost in such arbitration proceedings, which award was delivered on 22.12.2020, could not have been entertained in the liquidation proceedings of the Corporate Debtor as has been observed by us in preceding paragraph of this judgment. The judgment of Delhi High Court in **Elecon Engineering Company Ltd.** (supra), does not help the Appellant to support the submission raised in the present Appeal that claim on the basis of arbitral award dated 22.12.2022, ought to have been admitted by the Liquidator.

27. The learned Counsel for the Respondent has further submitted that the Appellant has already filed an enforcement petition before the Delhi High Court against the Promoter of the Corporate Debtor for enforcement of the Award, which proceedings are still pending consideration. We are also of the view that claim could not have been entertained by the Liquidator, which arose

subsequent to the liquidation commencement date, no error has been committed by the Liquidator in rejecting the claim on the ground that it was filed much beyond the last date for admission of the claim, which was 15.01.2021 and claim was filed by the Appellant, after more than two years.

28. We, thus, do not find any error in the order of the Adjudicating Authority rejecting No.24/ND/2023 filed by the Appellant, upholding order of the Liquidator. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

18th September, 2024

Ashwani