

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 654 of 2024**

**&**

**I.A. No. 2345 of 2024**

**IN THE MATTER OF:**

**Pimpri Chinchwad Municipal Corporation**

**...Appellant**

**Versus**

**Jayanti Lal Jain**

**IRP of Windals Auto Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Samrat K. Shinde, Advocate.**

**For Respondent : Ms. Mitali Bhat and Mr. Ayush J. Rajani,  
Advocates.**

**ORDER**  
**(Hybrid Mode)**

**30.04.2024:** Heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Respondent.

**2.** This Appeal has been filed against the order dated 02.02.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench), in I.A.4379/2023 in C.P. (IB)/503(MB)/2021, by which the I.A.4379/2023 filed by the Resolution Professional (RP) has been allowed.

**3.** The RP has filed the application I.A.4379/2023 against the Appellant seeking necessary direction to handover the possession of property of the Corporate Debtor, i.e., Zone-14, Gat No. 01, Property No. 114010112, situated at Survey No. 90, Jyotiba Nagar, Talawade, Tal. Haveli, Dist. Pune – 412114, by after lifting the attachment.

**4.** Adjudicating Authority by the impugned order has allowed the application. Adjudicating Authority held that once the Appellant had filed the

claim before the RP and the said claim is considered and admitted an amount of ₹27,66,333/-, RP has absolute right to deal with the said property.

5. Learned Counsel for the Appellant challenging the order submits that under Section 406 of the Maharashtra Municipal Corporation Act, 1949, it was open for the Respondent to file an Appeal before the Court and without filing the Appeal, the attachment could not have been lifted.

6. He further submits that the Adjudicating Authority has no jurisdiction to issue a direction as contained in the impugned order. He has referred to the Judgement of the Hon'ble Bombay High Court in ***W.P. (C) No.3396/2019 'The State of Maharashtra, through Deputy Collector & Competent Authority (NSEL)' Vs. 'Anil Kohli, Resolution Professional for Dunar Foods Ltd.'***, decided on 09.11.2020.

7. Appellant who is a Municipal Corporation is entitled to receive Property Tax on the assets of the Corporate Debtor and for Property Taxes amounting to ₹29,86,959/- the Municipal Corporation has attached the assets of the Corporate Debtor on 17.11.2019 i.e., prior to the initiation of the Corporate Insolvency Resolution Process ('CIRP'). It is submitted that the Adjudicating Authority ought not to have directed for de-sealing the attachment by the impugned order. He submits that only course open for the Respondent was to file an Appeal under Section 406 of the Maharashtra Municipal Corporation Act, 1949.

8. Counsel for the Respondent submits that for the Property Tax claim of the Corporation Appellant, they have already filed a claim in the CIRP, which has been admitted by the RP. Their claim has to be dealt with the CIRP and

they have no right to keep the possession of the property which is the asset of the Corporate Debtor. It is submitted that it is duty of the IRP to take possession of the all assets of the Corporate Debtor and for that purpose the application was filed before the Adjudicating Authority.

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

**10.** Learned counsel for the Appellant has relied on Section 406 of the Maharashtra Municipal Corporation Act, 1949, which is as follows:

*“406. Appeals when and to whom to lie. - (1) Subject to the provisions hereinafter contained, appeals against any rateable value [or the capital value, as the case may be] or tax fixed or charged under this Act shall be heard and determined by the judge.*

*(2) No such appeal [shall be entertained] unless -*

*(a) it is brought within fifteen days after the accrual of the cause of complaint;*

*(b) in the case of an appeal against a rateable value [or a capital value, as the case may be] a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;*

*(c) in the case of an appeal against any tax [including interest and penalty imposed] in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;*

*(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within [twenty one days] after he first received notice of such amendment, and his complaint has been disposed of;*

*(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable*

*value [or the capital value, as the case may be] [the amount of the disputed tax claimed from the appellant or the amount of the tax chargeable on the basis of the disputed rateable value, [or the capital value, as the case may be] upto the date of filing, the appeal has been deposited by the appellant with the Commissioner.]*

*[(2A) Where the appeal is not filed in accordance with the provisions of clauses (a) to (e) of sub-section (2), it shall be liable to be summarily dismissed.]*

*[(3) In the case of any appeal entertained by the Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporations (Amendment) Act, 1975, the Judge shall not hear and decide such appeal, unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, upto the date of filing the appeal has been deposited by the appellant with the Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. The Commissioner shall simultaneously serve on each such appellant a notice under sections 473 and 474 and other relevant provisions of this Act for intimating the amount to be deposited by the appellant with him.*

*(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under sub-section (3), the Commissioner shall intimate to the Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the Judge shall summarily dismiss the appeal of any appellant who has not deposited the required amount with the Commissioner within the prescribed period.*

*(5) In the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not here and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment*

*of the appeal, is also deposited, from time to time, with the Commissioner in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal,]*

*[(6) An appeal against [the demand notice in respect of levy of cess under Chapter XIA or the Local Body Tax under Chapter XIB] shall lie,-*

*(i) to the Deputy Commissioner, when the demand notice is raised by the Cess Officer [or any other officer, not being the Deputy Commissioner]*

*(ii) to the Commissioner, when the demand notice is raised by the Deputy Commissioner.*

*(7) The appeal under sub-section (6) shall be filed within fifteen days from the date of the demand notice.]*

*[(8) No appeal under sub-section (6) shall be entertained by the Deputy Commissioner or, as the case may be, the Commissioner unless the amount of the disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner.]”*

**11.** The Section 406 of the Maharashtra Municipal Corporation Act, 1949, provides an appeal against any rateable value or the capital value, as the case may be or tax fixed or charged. Present is not a case where the Respondents are challenging the tax fixed or charged under the act over the assets.

**12.** With regard to the property tax which is leviable on the property, the Appellants have already filed a claim in the CIRP, which has been accepted by the Adjudicating Authority. Adjudicating Authority in the impugned order in paragraph 6 has noted the aforesaid facts which are as follows:

*“6. Heard the Counsel. This Bench has taken a considered view that once the respondent filed their claim before the Resolution Professional and the said claim is considered and admitted by the Resolution Professional (claim amount of Rs.27,66,333/- admitted out of Rs.29,86,959/-), The RP has absolute right to*

*deal with the said asset as property of the Corporate Debtor as per provisions of IBC.”*

**13.** It is true that attachment of the asset property was by the Appellant for realisation of its Property Tax prior to the initiation of the CIRP, but by only attachment of the assets, the rights entitled in the property does not vest in the Appellant.

**14.** Under Section 18 of the Insolvency and Bankruptcy Code, 2016, RP is entitled to take possession of the all assets of which Corporate Debtor is the owner. Admittedly the Corporate Debtor is the owner of the assets hence the RP is entitled to take possession and filed the application before the Adjudicating Authority.

**15.** Merely because Appellant has attached the assets for recovery of its Property Tax, it cannot continue with attachment and refuse to give handover the possession to the RP.

**16.** Insofar as the Judgement of the Bombay High Court relied by the Appellant in ***‘The State of Maharashtra, through Deputy Collector & Competent Authority (NSEL)’ (Supra)*** that was a case where attachment was made under the Maharashtra Protection of Interest of Depositors Act, 1999. (for short *‘MPID Act’*) which was by Special Court, where attachment was made that was a Competent Authority under the Act.

**17.** In the above context, the Bombay High Court took the view that for de-attachment of the assets, the RP ought to have file an application before the Special Court under the MPID Act.

**18.** Learned Counsel for the Appellant has relied on paragraph 30 of the Judgment which is as follows:

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*“30. Thus, in view of the above discussion, we hold that the NCLT has no jurisdiction to examine legality or validity of action taken under MPID Act and it is only the Designated Court constituted under Section 6 of the MPID Act that will have exclusive jurisdiction to deal without jurisdiction and therefore, amenable to a challenge in our writ jurisdiction.”*

**19.** Judgment of the Bombay High Court in **‘The State of Maharashtra, through Deputy Collector & Competent Authority (NSEL)’ (Supra)** was on entirely different facts and circumstances. Present is not a case that assets have been attached by the Appellant to recover its Property Tax for which it has already filed the claim in the CIRP.

**20.** We thus are of the view that above Judgment does not come to any aid of the Appellant in the present case. We thus do not find any error in the order impugned.

The Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

*himanshu/nn*