<u>NATIONAL COMPANY LAW APPELLATE TRIBUNAL</u>
<u>PRINCIPAL BENCH, NEW DELHI</u>

<u>Company Appeal (AT)(Insolvency) No. 275 of 2023</u>

[Arising out of order dated 22.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court-II) in I.A. No. 951 of 2023 filed in CP (IB) No.35 (ND)/2017)]

<u>IN THE MATTER OF:</u>

T.S. Murali
Residing at:
G-158, Sector-41, Noida,
Uttar Pradesh – 201301 **...Appellant**

Versus

Mr. Sarvesh Kashyap, Liquidator
IBBI/IPA-002/IP-N00127/2017-2018/10296
Residing at: 7, DDA Market,
E-Block, East of Kailash,
New Delhi – 110065 **...Respondent No.1**

Employees Provident Fund Organisation
EPFO Regional Office, Kozhikode (Calicut)
Bhavishya Nidhi Bhawan PB No.1806,
Eranhipalam (PO), Kozhikode, Kerala **...Respondent No.2**

With

Company Appeal (AT) (Insolvency) No. 276 of 2023

[Arising out of order dated 22.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court-II) in I.A. No. 224 of 2023 filed in CP (IB) No.35 (ND)/2017)]

<u>IN THE MATTER OF:</u>

T.S. Murali
Residing at:
G-158, Sector-41, Noida,
Uttar Pradesh – 201301 **...Appellant**

Versus

The Liquidator,
Helpline Hospitality Pvt. Ltd.
Mr. Sarvesh Kashyap,

IBBI/IPA-002/IP-N00127/2017-2018/10296
Residing at: 7, DDA Market,
E-Block, East of Kailash,
New Delhi – 110065 ...Respondent No.1

R.M. House Keeping,
Registered Office at 39/16, Pocket-7, Sector-82,
Noida, Gautam Budh Nagar,
Uttar Pradesh – 201301 ...Respondent No.2

With

Company Appeal (AT) (Insolvency) No. 277 of 2023

[Arising out of order dated 22.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court-II) in I.A. No. 1026 of 2023 filed in CP (IB) No.35 (ND)/2017)]

IN THE MATTER OF:

T.S. Murali
Residing at:
G-158, Sector-41, Noida,
Uttar Pradesh – 201301 ...Appellant

Versus

The Liquidator, M/s. Helpline Hospitality Pvt. Ltd.
Through Sarvesh Kashyap, Liquidator,
7, DDA Market,
E-Block, East of Kailash,
New Delhi – 110065 ...Respondent

With

Company Appeal (AT) (Insolvency) No. 344 of 2023

[Arising out of order dated 22.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench (Court-II) in M.A No.05/2022 filed in CP (IB) No.35 (ND)/2017]

IN THE MATTER OF:

T.S. Murali
Residing at:
G-158, Sector-41, Noida,
Uttar Pradesh – 201301 ...Appellant

Versus

The Liquidator, M/s. Helpline Hospitality Pvt. Ltd.

Through Mr. Sarvesh Kashyap,
7, DDA Market, E-Block,
East of Kailash, New Delhi – 110065 **...Respondent**

Present:

For Appellant: **Mr. Abhijeet Sinha, Mr. Apoorv Agarwal, Ms. Neha, Mr. Manav Goyal, Advocates**
For Respondent: **Mr. Sameer Rastogi, Advocate, Mr. Sarvesh Kashyap, Liquidator**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

Aggrieved by the impugned order dated 22.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court-II, New Delhi) in I.A. No. 1026/2023, I.A. No. 951/2023, M.A. No. 05/2022 and I.A. No. 224/2023 in C.P (IB) No. 35(ND)/17, four separate appeals have been filed by the Appellant under Section 61 of the Insolvency and Bankruptcy Code (‘**IBC’** in short).

2. The Appellant in the present case is Shri T.S. Murali, promoter and ex-Director of M/s Helpline Hospitality Pvt. Ltd. (hereinafter referred to as the ‘**Corporate Debtor’**). Since these appeals have arisen from more or less the same facts and circumstances, all these appeals have been heard together and are being decided by this common judgment.

3. In Company Appeal (AT) (Insolvency) No. 344 of 2023, the impugned order dated 22.02.2023 of the Adjudicating Authority passed in M.A. No.05/2022 has been challenged. The Adjudicating Authority while disposing of the M.A. No.05/2022 had vacated the interim stay granted by the Adjudicating Authority

on the sale of Plot No. C-158, Sector 41, Noida, Uttar Pradesh (hereinafter referred to as the 'subject property') and directed the liquidator to proceed with open auction with the minimum reserve/upset price of Rs.1.75 crore.

4. In Company Appeal (AT) (Insolvency) No.275 of 2023, the impugned order dated 22.02.2023 of the Adjudicating Authority passed in I.A. No.951/2023 has been challenged. The Adjudicating Authority while dismissing I.A. No.951/2023 held that the Appellant has no locus standi to settle the dues of the statutory creditors of the Corporate Debtor and rejected the application filed by the Appellant to place on record copy of settlement of dues with the EPFO Office.

5. In Company Appeal (AT) (Insolvency) No.276 of 2023, the impugned order dated 22.02.2023 of the Adjudicating Authority passed in I.A. No. 224/2023 has been challenged wherein the interim stay granted on the e-auction of the subject property on 16.01.2023 was vacated.

6. In Company Appeal (AT) (Insolvency) No.277 of 2023, the impugned order dated 22.02.2023 of the Adjudicating Authority passed in I.A. No. 1026/2023 has been challenged. The Adjudicating Authority while dismissing I.A. No.1026/2023 held that the Appellant being a third party has no locus-standi to file such applications nor empowered to seek documents/information from the liquidator or to settle the dues of the creditor on behalf of the Corporate Debtor during liquidation.

7. For deciding all these Appeals, the necessary facts and sequence of events being inextricably intertwined, it would be useful to conjointly outline them as follows: -

- The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) on 24.04.2017 following admission of a Section 9 application filed by M/s R.M. House Keeping Ltd./Operational Creditor.
- The present Appellant is ex-Director of the Corporate Debtor who resigned from the position of Director in 2006. The Appellant thereafter continued as CEO of the Corporate Debtor till initiation of CIRP in 2017.
- Subsequent to initiation of CIRP, the claims of the Operational Creditor were rejected by the Resolution Professional on the ground that the balance sheet of the Corporate Debtor did not support the claim. Further, within three months of commencement of CIRP, the Resolution Professional on raising the grounds of the unknown whereabouts of the Corporate Debtor, the Adjudicating Authority allowed initiation of liquidation proceedings on 11.10.2017. The Resolution Professional was appointed as the liquidator.
- During the liquidation proceedings, an interim Forensic Audit Report was brought on record on 10.11.2018 which was followed by the Final Forensic Audit report on 02.01.2019.
- The Interim Forensic Audit Report had noticed that the Corporate Debtor had taken a loan of Rs.36,59,250/- from ICICI vide agreement dated 30.04.2004 for a tenure of 104 months which period ended on 22.07.2013. The loan was for acquiring asset located at Plot No. C-158, Sector 41, Noida, Uttar Pradesh. It was also noted that the subject property was bought through a joint loan taken by the Appellant and the Corporate Debtor in 2004. The said asset was however registered in the name of present Appellant though he was only a co-applicant of the loan.

- The audit report held that amount for repayment of loan was withdrawn from the Corporate Debtor's account in respect of the subject property which amounted to wilful attempt by the Appellant for diversion of funds from the company account for personal benefits and creation of personal wealth. The total amount diverted in view of loan statement from ICICI dated 30.08.2018 was held in the report to be Rs.65,29,836.56/- only.
- The final audit report estimated the value of subject property at Rs. 4 crore. The audit report observed that the subject property should be transferred to the Corporate Debtor so that Service Tax due could be recovered from sale of the subject property to safeguard the interests of Service Tax Department, Government of India.
- An application was filed by the liquidator on 21.12.2018 before the Adjudicating Authority vide CA No. 840/2018, praying for recovery of Rs.65,29,836/- from the account of the Corporate Debtor to pay for the loan availed for the subject property. The Adjudicating Authority vide order dated 20.12.2019 had allowed the prayer and directed attachment of the subject property besides directing the liquidator to take further steps for public auction of the subject property. Following this order, the liquidator issued warrants of attachments in respect of the subject property.
- The Appellant thereafter approached the Adjudicating Authority vide CA No.266/2020 for review/modification of the above order dated 20.12.2019. However, before the Adjudicating Authority could pass an order thereon, the Appellant obtained an order from this Tribunal on 13.03.2020 in CA No.262/2020 staying the taking over of possession of the subject property until disposal of CA. No. 266/2020 by the Adjudicating Authority.

- The Adjudicating Authority by way of a detailed order dismissed the review petition in CA No.266/2020 on 26.02.2021 and confirmed its earlier order of 20.12.2019. This order was again challenged by the Appellant before this Tribunal vide CA No.234/2021. However, the said appeal was dismissed by this Tribunal on 18.10.2022.
- The Appellant thereafter approached the Hon'ble Supreme Court and filed Civil Appeal No.8362 of 2022 but the same was also dismissed on 28.11.2022.
- The Appellant thereafter approached the Hon'ble High Court of Delhi by filing WP(C) No.17431/2022 for quashing the e-auction notice allowed by the Adjudicating Authority. The said writ petition was remitted back by the Hon'ble Delhi High Court to the Adjudicating Authority on 20.12.2022 for its consideration on the ground that Adjudicating Authority had requisite jurisdiction to deal with the same.
- The Appellant had filed another Writ Petition No. 232/2023 before the Hon'ble High Court of Delhi which was also disposed of on 09.01.2023 directing the Appellant to give keys of the subject property to the Liquidator on 23.01.2023. An undertaking from the Appellant recording that keys would be handed over was also taken.
- Subsequently, the Writ Petition No. 17431/2022 filed before the Hon'ble Delhi High Court which was transferred to the Adjudicating Authority as M.A. No.05/2022 was dismissed on 22.02.2023. The Adjudicating Authority rejected the application filed by the Appellant challenging the auction process and passed orders vacating the stay on the sale of subject property. The liquidator was directed to proceed with open auction of

subject property with minimum reserve price of Rs.1.75 crore. The same impugned order also dealt with the three other IAs and aggrieved by this impugned order, the Appellant has preferred this clutch of appeals.

8. It will be useful at this stage to note the prayers made and relief sought in the above-mentioned appeals.

344/2023

a) Pass an order setting aside the Impugned Order dated 22.02.2023 passed by the Hon'ble Adjudicating Authority in M.A. No. 05(ND)/2022 filed by the Appellant in CP(IB) No.35(ND)/2017;

b) Pass an order to Set aside the e-auction notice which had been published by the Respondent in four daily newspapers in respect of the property bearing no. G-158, Sector-41, Noida, Dist. Gautam Buddha Nagar, UP-201301;

c) Grant stay on the e-auction notice for property bearing no. G-158, Sector-41, Noida, Dist. Gautam Buddha Nagar, UP-201301 which had been published by the Respondent in four daily newspapers till final disposal of main Petition;

d) In the alternative, grant ad-interim stay on e-auction and allow the Appellant to pay an amount of Rs.40,000/- per month as rent to reside in the property bearing no. G-158, Sector-41, Noida, Dist. Gautam Buddha Nagar, UP-201301 until the instant Appeal is pending adjudication before this Hon'ble Appellate Tribunal;

e) *Grant ad-interim stay on further proceedings in the main Company Petition, i.e., CP(IB) No.35/ND/2017;*

f) *Pass any other such further orders as deemed fit in the facts and circumstances of the present case.*

275/2023

a. *Pass an order setting aside the Impugned Order dated 22.02.2023 passed by the Hon'ble Adjudicating Authority in I.A. No.951/(ND)/2023 filed in CP(IB) No.35(ND)/2017;*

b. *Pass an order directing the Hon'ble Adjudicating Authority to make on record the Settlement/DD drawn by Mrs. Rema Murali and Mr. T.S. Murali in favour of RPF Commissioner, Kozhi Kode for settlement of its claim in the IA No.951 of 2023 by the Appellant herein and;*

c. *Pass an order to direct the Liquidator to rectify the Stakeholders Consultation Committee list in view of the settlement with EPFO;*

d. *Grand ad-interim stay on e-auction of the attached property of the Appellant, i.e., G-158, Sector-41, Noida, UP; and,*

e. *Pass any other such further orders as deemed fit in the facts and circumstances of the present case.*

276/2023

a) *Pass an order setting aside the Impugned Order dated 22.02.2023 passed by the Hon'ble Adjudicating Authority in I.A. No.224(ND)/2023 filed in CP(IB) No.35(ND)/2017;*

b) *Grant continuation of stay on the e-auction of the property bearing no. G-158, Sector-41, Noida, UP;*

c) Grant ad-interim stay on e-auction of the Property bearing no. G-158, Sector-41, Noida, UP and further proceedings in the CP(IB) 35 of 2017;

d) In the alternative, Grant ad interim stay on the e-auction of the Property bearing no.G-158, Sector-41, Noida, UP and allow the Appellant to pay rent for the mentioned property until the Auction is undertaken;

e) Pass any other such further orders as deemed fit in the facts and circumstances of the present case.

277/2023

a. Pass an order setting aside the Impugned Order dated 22.02.2023 passed by the Hon'ble Adjudicating Authority in I.A. No.1026(ND)/2023 filed in CP(IB) No.35(ND)/2017;

b. Pass an order directing the Liquidator of the Corporate Debtor to place on record the documents sought in the IA No.1026/2023 by the Appellant herein and;

c. Grant ad-interim stay on e-auction of the attached property of the Appellant, i.e, G-158, Sector-41, Noida, UP;

d. Pass any other such further orders as deemed fit in the facts and circumstances of the present case.

9. The Learned Counsel for the Appellant making his submissions admitted that both the Corporate Debtor and the Appellant were co-applicants for a loan of Rs.36,59,250/- for a tenure of 8 years availed from ICICI for purchasing the subject property of which the Appellant had already repaid the entire amount of Rs.65,29,836/- which included both the principal amount and interest component. It was further stated that the Appellant had brought to the notice of

the liquidator the settlement of payment of Rs.65,29,836/- along with a request to remove the subject property out of the liquidation asset but the same was rejected by the liquidator. This fact of repayment of entire principal amount with interest by the Appellant has been ignored by the liquidator and wrongly insisted that the subject property should be transferred in the name of the Corporate Debtor.

10. Assailing the impugned order, the Learned Counsel for the Appellant contended that the conduct of the liquidator was antithetical to the preamble of the IBC which is maximization of the value of assets in a time bound manner. It was contended that the liquidator acted in a mala-fide manner with ulterior motive to lower the reserve price from that of the valuation of the subject property as discovered by the forensic report. Though the forensic report had valued the subject property at Rs.4 crore, the liquidator had deliberately minimized the liquidation value. It was further asserted that the Adjudicating Authority ignored the fact that the liquidator was insistent on auctioning the subject property by undervaluing the same and that it wrongly allowed the reserve price at Rs.1.75 crore instead of Rs.4 crore in the auction of the subject property which was contrary to its earlier order dated 20.12.2019 wherein it had directed the liquidator to maximize the liquidation value of the asset.

11. It has also been submitted that the Adjudicating Authority failed to consider the fact that the Corporate Debtor had altogether four statutory creditors only and that out of them, the Appellant had settled the dues of EPFO and the Income Tax Department and that they were in the settlement process with the third statutory creditor i.e., ESIC, wherein the settlement process was placed before the Hon'ble

Delhi High Court. It was stressed that though the Appellant had been constantly approaching the statutory creditors so as to settle their dues, the liquidator had been deliberately blocking every possible attempt of settlement step taken by the Appellant. It was also submitted that the Adjudicating Authority in the impugned order has also been equally non-appreciative of the bonafide efforts made by the Appellant to settle the claims of the Corporate Debtor.

12. Advancing his arguments further, it was submitted that though the Appellant had made an express desire to settle with the fourth creditor i.e., the GST Department, he has been unable to do so since the liquidator rejected their request to share the relevant documents required for the purpose of settlement. It was vehemently argued that the action of the liquidator was violative of the intent of the IBC which is to resolve the companies from their distressed financial conditions and not to drive them into liquidation.

13. Submitting further that the Appellant being the promoter, shareholder, founder and ex-director of the Corporate Debtor and having been involved in the day-to-day management of the Corporate Debtor till 2017, the Adjudicating Authority erred in holding the Appellant as a third party. It is the Appellant who had handed over the assets, financial records etc. to the liquidator upon initiation of liquidation proceedings. Moreover, at a time when the Adjudicating Authority ordered the attaching of the subject property which is the sole residential property of the Appellant, the questioning of locus-standi of the Appellant at the same time is riddled with contradictions. Hence the Adjudicating Authority by dismissing the applications filed by treating the Appellant as a third party is erroneous.

14. Reliance was also placed on the decision of Hon'ble Supreme Court in "***Vallal RCK v. Siva Industries & Holdings Ltd (2022) 9 SCC 803*** where the promoter of the Corporate Debtor was allowed to propose a settlement to the Committee of Creditors (**'CoC'** in short). It was therefore contended that the Appellant in the present case also enjoyed the authority to propose a settlement to settle claims of the creditors of the Corporate Debtor. It was also pointed out that in ***Rishabh Agro Industries Ltd. v. PNB Capital Services Ltd. (2000) 5 SCC 515***, it has been held by the Hon'ble Apex Court that the Board of Directors continue to hold residuary powers for the benefit of the company including its rehabilitation despite appointment of liquidator. Attention has also been adverted to the judgment of the Hon'ble Supreme Court in ***Vijay Kumar Jain vs. Standard Chartered Bank and others (2019) 20 SCC 455*** wherein it observed that the erstwhile Board of Directors are not members of the CoC but have a right to participate in each and every meeting held by the CoC.

15. It has also been contended that when the liquidator as erstwhile Resolution Professional rejected the Section 9 application of the Operational Creditor, the CIRP proceedings should not have survived thereafter having become infructuous. The liquidator while rejecting the claim of the Operational Creditor ought to have filed an application under Section 65 of the IBC against the Operational Creditor for fraudulently initiating insolvency proceedings. It has therefore been alleged that liquidation initiated in 2017 is being pursued by the liquidator merely to unjustly enrich themselves. However, the Adjudicating Authority missed out this critical aspect while acceding to the liquidator when he pressed for commencement of liquidation proceedings.

16. The Learned Counsel for the Respondent/Liquidator refuting the above submissions of the Appellant has contended that the aforesaid set of appeals have been filed with the ulterior motive to delay and derail the liquidation process of the Corporate Debtor and to grab the subject property which is already under the illegal possession of the Appellant. An application under Section 66 of IBC has been filed against the Appellant for acquiring the subject property by using the funds of the Corporate Debtor and fraudulently recording the same in his own name.

17. It is the contention of the liquidator that funds were withdrawn from the company account which has been treated as siphoning of money and cheating, fraud, and mis-representation of company's financial position in the forensic audit report. It has also been observed in the said audit report that the total amount diverted is Rs.65,29,836.56 and therefore liable to be recovered with 18% interest from the erstwhile Director of the Corporate Debtor. The report also noted that the Corporate Debtor evaded Service Tax of Rs.3,91,04,886/- for which the GST Department levied a penalty of Rs.4,13,29,014/- aggregating Rs.8.04 crore.

18. Pointing out that the claim of the statutory creditor's percentage-wise dues was EPFO (0.07%), Income Tax Department (1.25%), ESIC (2.45%) and CGST (96.223%), it was asserted that the major statutory creditor is CGST with whom no settlement has been achieved so far and the total outstanding Service Tax due including penalty is Rs. 8.04 crore. Further, it was contended that the Appellant's claim of settlement with EPFO and Income Tax Department is incorrect as these stakeholders had neither withdrawn their claim nor provided any no-objection

certificate to the liquidator. Further the petition filed by the Appellant before the Hon'ble Delhi High Court in respect of settlement of dues qua ESIC have also not been pressed and still pending.

19. It has also been submitted that the liquidator called a meeting of the Stakeholder Consultation Committee (**'SCC'** in short) to discuss the possibility of settlement. However, the SCC meeting which was attended by representatives from GST, EPFO and ESIC had declined to accept the settlement. It was submitted that during this meeting held on 02.09.2022, the authorized representative of CGST had informed that the current market value of the property is more than the amount offered by the Appellant and therefore they did not want to settle the matter with the Appellant but preferred to go through public action and that this view was shared by other members also. The Learned Counsel of the liquidator therefore contended that the Appellant by making settlements which were not acceptable to the statutory creditors was only delaying the completion of liquidation proceedings and that the creditors are suffering by way of increase in the liquidation cost. Hence, it was contended that the liquidator had proposed auction of the subject property so that the Government can recover the sum from the sale thereof as recommended in the interim forensic audit report as placed at Annexure A-8 in Appeal Paper Book in CA-344/2023.

20. It was further submitted that the Appellant is not authorized to make any settlement on behalf of the Corporate Debtor in terms of the provisions of the IBC and the rules and regulations framed thereunder. It has also been claimed that third party/shareholders are not allowed to settle claim of the creditors on the

behalf of the Corporate Debtor as held by this Tribunal in Company Appeal (AT) (Ch) (Ins.) No.142 and 174 of 2022.

21. We have duly considered the arguments and submissions advanced by the Learned Counsel for the parties and perused the records carefully.

22. The moot point for consideration is whether the liquidation proceedings should be allowed to proceed or whether an opportunity with a strict time-frame can be given to the Appellant to settle the dues of the Corporate Debtor in the interest of justice, fairness and equity.

23. There is no quarrel over the fact that the Corporate Debtor had taken a loan of Rs.36,59,250/- from ICICI on 30.04.2004 for acquiring the subject property and that the said asset is registered in the name of present Appellant though he was only a co-applicant of the loan. It is also a factual statement that the forensic audit report while estimating the value of subject property at Rs. 4 crore had also observed that the subject property should be transferred to the Corporate Debtor so that Service Tax due could be recovered from sale of the subject property to safeguard the interests of stakeholders particularly the Service Tax Department, Government of India.

24. We further notice that the final forensic audit report dated 02.01.2019 has confirmed diversion of fund from Corporate Debtor to the personal estate of the Appellant. It is the case of the liquidator that the forensic audit report having noted that the total amount diverted along with interest is Rs.65,29,836.56 and that the Corporate Debtor had evaded Service Tax of Rs.3,91,04,886/- for which the GST Department levied a penalty of Rs.4,13,29,014/- aggregating Rs.8.04

crore. That being so, the Learned counsel for the liquidator contended that it was only reasonable that the subject property should be transferred to the Corporate Debtor so that dues of the statutory creditors could be recovered from sale of the subject property. The liquidator had therefore prayed for initiating liquidation proceedings and issue of warrants of attachment of the subject property which has been allowed by the impugned order.

25. The Learned counsel for the Appellant submitted that the claim of EPFO amounting to Rs.62,232/- has been settled on 27.02.2023; claim of Rs.1,23,290/- of the Income Tax Department has been settled on 16.02.2023 and settlement with ESIC has also been allowed by the Hon'ble High Court of Delhi in its order 10.03.2023. The liquidator has however not acknowledged that the dues of these statutory creditors have been settled and that such denial to place the record the settlement of dues with statutory creditors goes against the principles of natural justice. The Appellant has therefore contended that the liquidator has been deliberately trying to defeat the settlement steps taken by the Appellant to protect the Corporate Debtor from liquidation by objecting to every endeavour made by the Appellant to clear the dues of the Corporate Debtor. Stating that the liquidator is unnecessarily pressing for liquidation thus causing grave injustice to the Corporate Debtor, it is, therefore, the case of the Appellant that when it is willing to settle all dues of the statutory creditors, it should be given a chance to extinguish the claims rather than allow the auction process to proceed with the presently fixed low reserve price.

26. We have taken notice that there were only four statutory creditors of the Corporate Debtor at the time of initiation of liquidation of the Corporate Debtor.

We note that all these four creditors of the Corporate Debtor in the present case are statutory creditors being government departments. In respect of two statutory creditors, namely, EPFO and Income Tax Department, the amounts due and payable by the Corporate Debtor have been settled by the Appellant and the payments made. A copy of the settlement dated 21.01.2023 submitted to the EPFO office on 27.09.2023 is at Annexure A-2 in Appeal Paper Book No.275 of 2023. As regards, the third statutory creditor namely ESIC, the settlement proposal was placed before the Hon'ble High Court of Delhi for taking on record. Thus, prima-facie, the claim of three statutory creditors appears to have been settled and therefore can be considered to have been more or less extinguished. The sole surviving statutory creditor is the Department of GST which undisputedly happens to be the creditor with majority share.

27. Keeping in view that the reserve price for auction of the subject property has been kept at Rs.1.75 crore by the liquidator, while the claim of the GST department is Rs.8.04 crore, prima- facie, it appears that even after liquidation, there is a likely possibility that the dues of this statutory creditor may remain unmet. We are also inclined to accept the contention of the Appellant that there is no material on record to show that visible steps have been taken by the liquidator with the GST department to reduce the interest component on Service Tax/penalty liability of the Corporate Debtor. While we note that that in the SCC meeting which was held on 02.09.2022 for the first time after five years since the initiation of liquidation proceedings, the stakeholders had preferred to go through the auction mode, yet we find that subsequent thereto three of the creditors had chosen to settle their dues with the Appellant. Thus, the Appellant having

successfully met the dues of three statutory creditors, there is no reason to deny an opportunity to the Appellant to settle the dues of the fourth statutory creditor. It has also weighed with us that if the dues of GST Department are also cleared by the Appellant, no useful purpose will be served by pressing ahead with liquidation.

28. On the issue of locus standi, we find that it has been the contention of the Respondent that the Appellant lacks the authority to offer settlement proposals to the statutory creditors. In support of their contention, they have relied on a judgment in delivered by this Tribunal. In so far as facts of that case is concerned it related to CIRP proceedings and not to liquidation proceedings and thus clearly distinguishable. We, therefore, do not find the ratio to help the Respondent in taking the stand that the Appellant has no role to play in settling the dues of the statutory creditors and in discharging the liabilities of the Corporate Debtor.

29. We have taken note of the fact that the GST Department for the purposes of assessment and recovery of service tax has been corresponding with the Appellant as Director of the Corporate Debtor as is placed on record at Annexure A-7 in the APB in CA(AT)(Ins.) No.277/2023. It is also an undisputed fact that the Appellant has been a promoter, ex-Director and CEO of the Corporate Debtor. Furthermore, when the present creditors are Govt. Departments which have well laid down mechanism to recover their dues and for this purpose and they have been following up with the Appellant for clearing of liabilities due from the Corporate Debtor, it does not stand to reason for the liquidator to question the locus of the Appellant. For the same reasons, we hold that the Adjudicating

Authority has committed an error in rejecting the request of the Appellant to take on record the settlement proposal with EPFO on grounds of locus standi.

30. Keeping in view the peculiar facts of the present case and the ground situation, we hold that the liquidator should assume a more positive approach in resolving the distressed position of the Corporate Debtor and not shun the bona-fide efforts being made by the Appellant in this direction to clear the debt of the Corporate Debtor.

31. The spirit, tenor and objective of IBC being that of a beneficial legislation and not penal, we are of the considered view that the Adjudicating Authority instead of penalizing the Appellant by allowing attachment of the subject property where he was residing, ought to have given an opportunity to the Appellant to settle with the fourth statutory creditor rather than straightway allowing the auction of the subject property.

32. Given that the Appellant has all along been making genuine efforts to settle the claims of the statutory creditors, we see no harm in giving a chance to the Appellant to arrive at a settlement with the statutory creditor but we hasten to add that this settlement has to complete within a limited and stringent time frame. This would be a step in the direction which would balance the interests of all the stakeholders. In any case, if the Appellant fails in his endeavours, the liquidation proceedings will commence.

33. For the foregoing reasons, the impugned order dated 22.02.2023 is set aside. The e-auction notice published by the liquidator in the newspapers and warrant of attachment of subject property is stayed. In the interim, the Appellant

is allowed to settle all dues of the statutory creditors by complying to the following directions:

(i) The Appellant will submit a full and final proposal for settlement of dues of all statutory creditors including for those statutory creditors where the dues have been settled. These proposals shall be submitted by the Appellant to the liquidator within two weeks of the uploading of this order.

(ii) The liquidator in turn shall transmit these settlement proposals to the concerned statutory creditors within a period of 10 days from the date of receipt for seeking their concurrence/acceptance of the said proposals. The liquidator shall provide a time-frame of one month to statutory creditors for their response.

(iii) The response of the statutory creditors will be forthwith communicated to the Appellant and the Appellant in turn will have to clear all outstanding dues as per the settlement proposal concurred in by the statutory creditors within a period of one month from the date of receipt of the same from the liquidator.

(iv) In the event of any of the statutory creditors not having agreed to the settlement proposal within the stipulated period, the liquidator shall proceed with liquidation proceedings and the Appellant will have to vacate the subject property forthwith. An undertaking to this effect will be given by the Appellant to the liquidator before sending the settlement proposals for transmission to the statutory creditors.

(v) In case all the statutory creditors agree to their respective settlement proposals and payments are made within the above stipulated timelines, the liquidation proceedings shall stand extinguished. In such event, the Appellant shall bear the lumpsum amount of liquidator's fees & expenses which is fixed at Rs.20 lakhs.

(vi) In case any of the statutory creditors fails to respond to the settlement proposal, it will be deemed that they have not agreed to the same and liquidation proceedings will commence forthwith. In such event, the liquidator shall claim his fees and expenses in terms of IBBI (Liquidation Process) Regulations, 2016.

All the appeals are disposed of in view of the above terms. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 21.04.2023

PKM