

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(INS) No.236/2022 and
I.A. Nos.506 and 507 of 2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 03.06.2022 in
IA(IBC)579/CHE/2022 in CP/1307/IB/2018
passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Division Bench – II, Chennai)

In the matter of:

V. Venkata Sivakumar	... Appellant
V	
R. Prabhu	... Respondent

Present :

For Appellant	: Mr. Venkata Sivakumar (Chartered Accountant) / Liquidator
For Respondent	: Mr. Virender Ganda, Senior Advocate for R1 & R2 Mr. R. Kannan, PCS Mr. P. Wilson, Senior Advocate for R13 / Successful Bidder

ORDER
(VIRTUAL MODE)

29.06.2022: Heard Mr. Venkata Sivakumar, the Appellant / Liquidator appearing in person of The Jeypore Sugar Co. Ltd. This ‘Tribunal’ has heard Mr. Virender Ganda, the Learned Senior Counsel appearing for the Respondent Nos.1 and 2. Mr. P. Wilson, the Learned Senior Counsel appearing for the Respondent No.13 / ‘Successful Bidder’ is also heard by this ‘Tribunal’ in the ‘Instant Company Appeal (AT)(CH)(INS) No.236/2022.

According to the ‘Appellant’ / ‘Liquidator’, the Appellant has a good prima facie case on ‘merits’, in view of the fact that the ‘Impugned Order’ dated 03.06.2022 in IA(IBC)579/CHE/2022 in CP/1307/IB/2018 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai), is without due consideration of the relevant material facts and against the ‘objectives’ of the Insolvency & Bankruptcy Code, 2016.

The Appellant / Liquidator points out that the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) has not taken into consideration the Hon’ble High Court of Orissa’s ‘Order’, at the time of passing the ‘Interim Stay’, which has resulted in ‘jeopardising’ the ‘Liquidation Process’ and also in exposing the Land at ‘Rayada’ encroached by ‘Tribal’ people etc.

It is the submission of the Appellant / Liquidator that the ‘Impugned Order’ dated 03.06.2022 in IA(IBC)579/CHE/2022 in CP/1307/IB/2018 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) to be stayed taking into account of the Appellant / Liquidator’s interest to prevent an ‘aberration of Justice’ and in furtherance of substantial cause of Justice.

Conversely, it is the submission of the Learned Senior Counsel Mr. Virender Ganda appearing for the Respondent Nos.1 and 2 that the 'Liquidator' was directed not to interfere with any of the 'Assets' of the Corporate Debtor, till disposal of IA(IBC)579/CHE/2022 in CP/1307/IB/2018 and further in the 'Interim Order' in the said IA dated 03.06.2022 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) the 12th Respondent was restrained from proceeding with lifting any kind of 'machinery' or 'scrap' till the disposal of the present 'Application' and the said order is a 'fair', 'just' 'valid' and a 'balanced' one, based on the 'fact circumstances' of the 'Case'.

Moreover, if the 'Interim Order' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) dated 03.06.2022 is vacated by this 'Tribunal', then, it will be against the 'interest of the Corporate Debtor'.

Mr. Wilson, the Learned Counsel appearing for the 13th Respondent / Successful Bidder submits that the 'Successful Bidder' had paid a sum of Rs.2,30,00,000/- (Rupees Two Crore and Thirty Lakh Only) and in fact, the 'Committee of Creditors' had also found that the 'Iron Scraps' were lying and as such, the 'Interim Order', certainly was against the interest and well being of the Respondent No.13.

The ‘Other Grievance’ of the Learned Senior Counsel for the Respondent No.13 is that it has to be provided with an opportunity to file ‘Reply’ / ‘Response’ / ‘Counter’ in IA(IBC)579/CHE/2022 in CP/1307/IB/2018 (filed under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016) to the Application filed by the Promoter, since ‘in the Interim Order’ passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) it is mentioned that the matter is posted for ‘Final Hearing’ and ‘Disposal’ on 30.06.2022.

This ‘Tribunal’ has ‘Heard’ the Learned Counsels appearing for the parties and noted their contentions.

This ‘Tribunal’ after giving anxious consideration of the contentions advanced on ‘either side’ with great care, caution and circumspection is of the considered opinion that ‘ten days’ time is to be granted to the Respondent Nos.1 and 2 and to Respondent No.13 to file their ‘Replies’ / ‘Responses’ / ‘Counters’ in IA(IBC)579/CHE/2022 in CP/1307/IB/2018 and accordingly, grants the same. On receipt of the ‘Reply’ / ‘Response’ / ‘Counter’ of the ‘Contesting Respondents’ (who has entered appearance), it is open to the Appellant / Liquidator to file ‘Rejoinder’, if any, through ‘E-filing’ as well as through ‘Hard Copy’ and to serve a copy of the same to the other side within ‘one week’, thereafter.

The ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) is directed to take into account the ‘Reply’ / ‘Response’ / ‘Counter’ to be filed by the Respondent No.13 and other ‘Contesting Respondents’ ‘Replies’ / ‘Responses’ / ‘Counters’ ‘filed’ / ‘to be filed’ and also the ‘Rejoinder’, if any, filed by the ‘Appellant’ / ‘Liquidator’ and only thereafter is to pass a ‘Reasoned’ / ‘Speaking’ Order in a qualitative and quantitative term by adhering to the ‘principles of Natural Justice’ in the letter and spirit. It is made clear that without providing an adequate opportunity of ‘Hearing’, at any cost, the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) shall not pass an ‘Order’ in IA(IBC)579/CHE/2022 in CP/1307/IB/2018, on its file.

Besides this, the ‘other Respondents’ for whom the ‘Notices’ were ordered by the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) in the ‘Impugned Order’ dated 03.06.2022, will also complete their ‘Pleadings’ within ‘seventeen days’ from ‘Today’ and thereafter, the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) is to take up the matter for ‘Final Hearing’ and to pass ‘Orders’ on merits, after providing adequate opportunities to both sides to air their grievances (both on ‘Legal’ as well as on ‘Factual’ ‘Pleas’) and further, that the ‘Adjudicating Authority’ (National Company Law Tribunal,

Division Bench – II, Chennai) shall take into account of all the Pleas, deal with the same and pass ‘Orders’ within ‘two weeks thereafter’, of course, in the manner ‘known to Law’ and ‘in accordance with Law’, of course, uninfluenced and untrammelled with any of the ‘observations’ made by this ‘Tribunal’ in this ‘Appeal’.

Till the disposal of IA(IBC)579/CHE/2022 in CP/1307/IB/2018 on the file of the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) the ‘Interim Order’ dated 03.06.2022 passed by the said ‘Adjudicating Authority’ shall remain stayed.

With the above said observations / directions, the Instant Company Appeal (AT)(CH)(INS) No.236/2022 stands **disposed of**. The connected I.A. Nos.506 and 507 of 2022 are **closed**.

[Justice M. Venugopal]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

ghk/tm