

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2138 of 2024

IN THE MATTER OF:

Southern Power Distribution Company of Andhra Pradesh Ltd.

Through Superintending Engineer (Operations)

...Appellant

Versus

Rakesh Kumar Singla

Liquidator of Apple Industries Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Rakesh K. Sharma, Mr. Nishant Sharma, Advocates.

For Respondents : Mr. Akshay Sharma, Advocate for R-3.

O R D E R
(Hybrid Mode)

07.02.2025: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against the order passed by the NCLT, New Delhi Bench, Court-2 in I.A. No. 5137/ND/2023 and I.A. No. 3446/ND/2022. There being difference of opinion in the two members of the NCLT, the matter was referred to third member, who has delivered his opinion on 14.06.2024. The Appellant - Southern Power Distribution Company of Andhra Pradesh Ltd. has filed this appeal challenging the order. In the appeal, the Appellant has prayed for following reliefs:

“a) Because of the preceding facts and circumstances, the Appellant humbly prays before this Hon'ble Appellate Tribunal to pass the following appropriate and necessary Order and/or direction:

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I. Admit and allow the present appeal by setting aside against impugned order dated 14.06.2024 passed in I.A. NO. 3446/ND/2022 IN Company Petition No. (IB)- 204(ND)/2019 by the Ld. National Company Law Tribunal, New Delhi Bench;

b) pass order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. In the impugned order conclusions are recorded in Para 26, which is to the following effect:

“Conclusion

26. In light of the aforesaid observations, keeping in view the facts and circumstances of the case and various judicial pronouncements, I am of the opinion that when the Corporate Debtor has been sold as a going concern under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016, and the proceeds of the sale of Corporate Debtor as a going concern has been distributed as per the order of priority provided in Section 53 of the IBC, 2016, the remaining unpaid outstanding liabilities of the Corporate Debtor shall be extinguished without putting the individual/ authority concerned to notice. I further make it clear that extinguishment of liability shall only be of the Corporate Debtor and it will not be available to any person who was involved in the affairs of the Corporate Debtor, if he is liable by virtue of any law.

Thus, I agree with the view taken by Hon'ble Technical Member."

3. The grievance of the Appellant is that the blanket extinguishment of the liabilities without hearing the Appellant may cause prejudice in extinguishing the liabilities pertaining to the CIRP cost and liquidation cost.

4. The present appeal arises out of the liquidation proceeding in which the Appellant has also filed its claim which is an admitted fact. Under Section 53, the distribution has been undertaken to the all stakeholders including the Appellant. It goes without saying that the liabilities which are subject matter of the liquidation proceeding are liabilities as existing on the liquidation commencement date.

5. When all claims which relate to liquidation commencement date has to be dealt with as per Section 53 of the I&B Code and claims of all stakeholders has been satisfied, we are of the view there is no error in the observation of the Adjudicating Authority that remaining unpaid outstanding liabilities of the Corporate Debtor shall be extinguished without putting the individual/authority concerned to notice.

6. We only clarify that all such liabilities shall extinguish which were existing on the liquidation commencement date with regard to which claims are filed and dealt with in the liquidation proceeding.

7. Learned counsel for the Respondent submits that in the appeal there are no foundation as to what claims have been extinguished, which may prejudice the appellant, by the impugned order.

8. We having already clarified that extinguishment shall be only with respect to the claims as on liquidation commencement date, we see no reason to entertain this appeal. With aforesaid clarification, we dispose of this appeal.

**[Justice Ashok Bhushan]
Chairperson**

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

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

Archana/nn