NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 339 of 2023

[Arising out of order dated 03.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Principal Bench, New Delhi in I.A. No. 2344/2021 in CP(IB) No. 933(PB)/2019]

IN THE MATTER OF:

M/s CLC & Sons Private Limited
Office No.419, 4th Floor,
PHD House, 4/2 Siri Institutional Area,
August Kranti Marg,
New Delhi 110 016 **...Appellant**

Versus

Deputy Commissioner of Income Tax,
Circle 4(2), C.R. Building,
New Delhi 110001 **...Respondent No.1**

Principal Commissioner of Income Tax-1,
C.R. Building, New Delhi – 110001 **...Respondent No.2**

RBL Bank Limited,
Through its Branch Manager,
Hauz Khas Branch,
Ground Floor, M-6, Hauz Khas,
New Delhi – 110016 **...Respondent No.3**

CLC Industries Limited
Through its Resolution Professional,
Mr. Subhash Kumar Kundra,
C-4-E/135, Janak Puri,
New Delhi 110 058 **...Respondent No.4**

Present:

For Appellant: **Ms. Purti Gupta, Ms. Henna Geroge, Advocates**

For Respondent: **Ms. Honey Satpal, Advocate for R-4**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 03.02.2023 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in I.A. No. 2344/2021 in CP (IB) No.933(PB)/2019. Aggrieved by this impugned order, the present appeal has been preferred by the present Appellant.

2. The brief facts to be noted for deciding this appeal are as follows:

- Chiranjee Lal & Sons, a partnership firm was taken over by the present Appellant - CLC & Sons Pvt. Ltd. ("**CLCS**" in short) on 01.04.2000.
- Based on a scheme of arrangement sanctioned by Hon'ble Delhi High Court, the Textiles Division of CLCS was de-merged as M/s Apro Biochem & Engineering Ltd. ("**Apro**" in short) with appointed date as 01.04.2001.
- On 18.07.2002 name of Apro was changed to CLC Global Ltd. ("**CLCG**" in short). On 23.11.2005, CLCG merged with M/s Spentex Industries Ltd. On 19.07.2018, the name of Spentex Industries Ltd., was changed to CLC Industries Ltd. ("**CLCI**" in short)
- For the 2001-2002 Assessment Year ("**AY**" in short), the Income Tax Department ("**IT Dept**" in short) had raised a demand against which assessment order an appeal was filed before ITAT leading to a refund being allowed on 28.05.2019.

- CLCI-Corporate Debtor claiming the income tax refund sent several communications to the IT Dept to remit the tax refund in their bank account.
- CLCI got admitted to insolvency proceedings on 03.01.2020 and Resolution Professional ("**RP**" in short) was appointed.
- CLCS addressed a communication on 03.04.2020 to the IT Dept claiming that the income tax refund be remitted to them besides informing the RP of CLCI that the refund belonged to CLCS and not to CLCI.
- On 02.06.2020, CLCS filed an application under Vivad Se Vishwas Scheme ("**VSV**" in short) and addressed a series of reminders thereafter to the IT Dept for releasing the income tax refund to them.
- The IT Dept remitted the tax refund to CLCI on 15.09.2020 in their bank account with RBL Bank Ltd. ("**RBL**" in short).
- Since the IT Dept did not remit the income tax refund to CLCS, it preferred a Writ Petition No. 3764/2021 before the Hon'ble Delhi High Court for the refund amount along with interest.
- On 10.05.2021, the Hon'ble Delhi High Court dismissed WP No.3764/2021 as withdrawn with liberty to CLCS to approach the Adjudicating Authority.
- Accordingly, on 31.08.2022, CLCS filed IA No. 2344/2021 in CP(IB) No. 933(PB)/2019 before the Adjudicating Authority which was, however, dismissed on 03.02.2023.
- Aggrieved by the above impugned order, the present appeal has been preferred.

3. The Learned Counsel for the Appellant-CCLS advancing his arguments contended that in terms of the orders of the Hon'ble Delhi High Court in WP No.3764/2021, it was binding on the Adjudicating Authority to decide the issue of income tax refund which had been wrongly credited by the IT Department to CLCI-Respondent No.4. However, the Adjudicating Authority wrongly dismissed the IA No. 2344/2021 filed by the present Appellant on grounds of want of jurisdiction to direct the IT Department and RBL Bank Ltd.

4. It was asserted that the income tax demand was raised against the Appellant and the same was also paid by the Appellant. Hence, the tax refund should have been remitted to them by the IT Dept being the rightful recipient. It has also been strenuously contended that the assessment order had also been challenged by the Appellant before the Commissioner, Income Tax as well as the ITAT and no challenge in this regard having been made by the CLCI-Respondent No.4, they could not have claimed the benefit of tax refund. Hence, the Appellant is legally entitled to the said refund and it cannot be treated as an asset of the Corporate Debtor. It is also been pointed out that CLCI cannot take advantage of the error on the part of the Income Tax Department and claim the amount which is not legally due and payable to them. It has been strongly contended that the RP of the Corporate Debtor ought to have refunded the amount and by withholding the same, it has led to the unjust and wrongful enrichment of CLCI-Corporate Debtor.

5. Submission was also made that the assessment order was in the name of CLCS. It was also claimed that the refunds arise out of tax challans which were in the name of CLCS. It was also CLCS which had pursued the matter before the ITAT since the refund amount belonged to them. It has also been submitted that

the IT Department in their letter dated 21.01.2021 had noted that the refund which had been credited to CLCI in their bank account maintained with RBL – Respondent No.3 belonged to CLCS. The income tax refund which legitimately belonged to CLCS could not have been claimed by CLCI being a separate assessee.

6. Making counter submissions, it is the contention of the Learned Counsel for the Respondent No.4 that CLCI had been consistently pursuing with the IT Dept claiming the income tax refund all along during the period prior to the commencement of CIRP. It was on account of their persuasive efforts that the amount of tax refund got credited to their account with RBL. It is also contended that in their communication to the IT Dept claiming the refund, they had adduced reasons to substantiate how and why the refund belonged to CLCI following which IT Dept credited the tax refund to their bank account in RBL. It was emphatically asserted that as per Clauses 2.6 and 2.10 of the Scheme of Arrangement approved by the Hon'ble Delhi High Court, the benefit of indirect/direct taxes of textile business of CLCS was to accrue to CLCI. Further, the benefit for tax refund was generated due to deduction on depreciation on goodwill arising out of restructuring and therefore refund amount became an asset of the Corporate Debtor.

7. Post the order of ITAT, the common promoters and tax consultants of CLCI and CLCS had written to the IT Department explaining the corporate restructuring and justifying how the refund pertains to CLCI. It was vehemently contended that only after CLCI went into CIRP and the CLCS came to realize that the refund money cannot therefore be utilized by the ex-management of the Corporate Debtor to their benefit that they wrote to the IT Dept for the first time on 22.02.2020 for crediting the refund to CLCS and not to the Corporate Debtor. It has also been

contended that even the tax consultant was also all along of the view that the refund was due to the CLCI-Corporate Debtor but surprisingly changed their stance once CLCI went into CIRP. Only after the commencement of CIRP of CLCI that the same set of common promoters and consultants revised their stand and started demanding remission of tax refund to the account of the CLCS.

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

9. It is the contention of the Appellant that the refund belonged to them as the tax-challans dated 28.02.2005, 03.10.2005, 17.12.2005 and 20.02.2006 show that payments were made by them. It is also stated that the refund had accrued only because of efforts made by the Appellant having filed an application under the VSV Scheme on 02.06.2020. Furthermore, CLCI had themselves sent a communication to the IT Department on 09.07.2019 to issue the refund in favour of CLCS but later on the wrong advice given by their tax consultant, they reversed their stand on 06.08.2019 claiming refund for themselves. Even, the IT Dept in its communication to the bank on 21.01.2021 also specifically stated that the refund amount had been wrongly credited into the account of CLCI maintained with RBL-Respondent No.3 and that the refund amount actually belonged to CLCS. It was further added that even while claiming the refund, CLCI never claimed that the refund amount belonged to them but sought the refund amount to help the company in managing its operations. The Learned Counsel for the Appellant strenuously contended that they were aggrieved by the fact that the Adjudicating Authority while, on the one hand, held that it does not have jurisdiction to decide on such matters and yet, on the other hand, held that there was nothing wrongful in the refund being remitted to CLCI-Corporate Debtor.

10. The first issue which requires our consideration, therefore, is the tenability of the contention raised by the Appellant in assailing the impugned order that the Adjudicating Authority while taking a view that it did not have jurisdiction yet went ahead and decided the matter on merits.

11. For a proper appreciation of this issue raised before us, we may first glance at the issues which came up for consideration in WP No. 3764/2021 filed by the Appellant before the Hon'ble Delhi High Court. The opening paragraph of the order of the Hon'ble Delhi High Court dated 10.05.2021 in the aforementioned writ petition sets out the subject matter very clearly which is as reproduced below:-

> *"1. The **singular issue**, which arises for consideration in this writ petition, is: **to whom should the refund amount (ordered to be paid by the Income Tax Department**, i.e., revenue) of Rs.71,02,982/-, be remitted to? The two claimants, to the said amount, are the petitioner and respondent No.4"*
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> ***(Emphasis supplied)***

12. Pursuant to the above orders of the Hon'ble Delhi High Court in the above-mentioned writ petition which gave liberty to the Appellant to file an application before the Adjudicating Authority, the following prayers were made in IA No.2344/2021:

> *"a. Declare that the refund amount of Rs.71,02,982/- for the AY 2001-02 belongs to the Applicant and was wrongfully credited to the Respondent No.4 and direct the Resolution Professional, Respondent No.4 to remit the said amount to the Applicant herein since the Respondent No.4 does not have the locus to claim the said refund amount.*
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> *b. In the alternative, direct the Respondent Nos. 1 & 2 to issue the refund of Rs 71,02,982/- for the AY 2001-02, alongwith the*

interest under Section 244A of the Act, either on its own account or by reversing the amount already credited to bank account of the Respondent No.4 and then crediting the same to the bank account of the Applicant and then the Income Tax Department may pursue its remedies against Respondent No.4;

c. *During the pendency of the instant application, Ad-interim directions be issued to the Respondent Nos. 1 & 2 to either extend the due date of deposit of the tax demand by the Applicant qua the cases to be settled under the VSV Scheme, i.e. 30.04.2021, to a date falling after release of the refunds due to the Applicant for AY 2001-02 or adjust the said demand under VSV Scheme against the above refund for the AY 2001-02 & credit the balance amount of refund to the bank account of the Applicant."*

13. When we look at the impugned order, the Adjudicating Authority has held that the prayer (b) above seeking interest on the refund amount has not been considered on the ground that the Adjudicating Authority has no jurisdiction to grant such relief. Similarly, prayer (c) seeking extension of time for deposit of tax demand has also not been considered on the ground of lack of jurisdiction. We are of the considered view that prayers (b) and (c) not having been raised before the Hon'ble Delhi High Court and not having been allowed as such to agitate these prayers, these should not have been raised before the Adjudicating Authority. Moreover, issues concerning payment of interest on tax refund and extension of time to pay tax are matters which intrinsically relate to conduct of assessment proceedings. Such an exercise squarely falls within the competent jurisdiction of the income tax assessing authority and cannot be arrogated by the Adjudicating Authority. We, therefore, do not find any error on the part of the Adjudicating Authority in refusing to look into the prayers set out at items (b) and (c) on jurisdictional grounds.

14. This brings us to the prayer contained at item (a) before the Adjudicating Authority. This prayer was for determination on the rightful claimant of the tax refund which was the "singular issue" raised before the Hon'ble Delhi High Court. We notice that the Adjudicating Authority has looked into this issue and deliberated upon it at length. Before analysing the findings of the Adjudicating Authority on this matter, we would like to first deal with the contention raised by the Appellant that the Adjudicating Authority had claimed that it suffered from lack of jurisdiction to decide on who was the rightful claimant of the tax-refund. A reading of the impugned order does not show that the Adjudicating Authority has anywhere raised the issue of want of jurisdiction on its part in dealing with prayer contained at item (a) unlike items (b) and (c) where it has distinctly raised the issue of jurisdiction. All that the Adjudicating Authority has recorded while applying its mind on the issue of who is the rightful recipient of the refund is not to stretch their powers to interpret the provisions of the Income Tax Act in a manner in which the Appellant wants to be done. In other words, the Adjudicating Authority has only spelt the need on its part to exercise abundant care and caution so as not to interpret the core assessment provisions of the Income Tax Act. We appreciate the modicum of restraint exercised by the Adjudicating Authority in not getting into computational aspects of income tax assessment or applying the assessment related provisions of the Income Tax Act and instead confining itself to the facts and circumstances on record to arrive at a conclusion as whether the Appellant or the Corporate Debtor was the rightful recipient of the tax refund. Hence, we hold that the contention of the Appellant that the Adjudicating Authority had raised the issue of lack of jurisdiction in

deciding prayer (a) is devoid of merit and misconceived and therefore not acceptable to us.

15. Having looked into the jurisdictional issue, we now shift our focus on the sustainability of the decision of the Adjudicating Authority of conforming with the IT Department in holding CLCI to be the rightful claimant of the tax refund.

16. Coming to the impugned order, we find that it has been noted therein that the refund pertained to FY 2000-2001. In all fairness, the impugned order also notes that CLCS had contended that since the effective date of Scheme of Arrangement of Hon'ble Delhi High Court is 01.04.2001, this has no bearing on the refund since it belonged to FY 2000-2001. The impugned order also notes that it would not be appropriate for the Adjudicating Authority to go into the merits of the Scheme of Arrangement as that would amount to sitting in appeal over the Scheme of Arrangement passed by the Hon'ble Delhi High Court.

17. The impugned order also correctly takes notice of the de-merger of the textile unit of CLCS and the coming into existence of CLCI with the merger of CLCG and Spentex on 23.11.2005. It has also noted that the IT Department had issued an assessment order on 26.03.2004 with respect to AY 2001-2002 and that the tax payable was paid by CLCG and CLCS. It has also noted that aggrieved by the tax assessment order, an appeal had been filed by CLCS before the ITAT which allowed the claim for deduction towards depreciation on goodwill which resulted into a refund. At the same time, it has noted that the Corporate Debtor - CLCI as well as the tax consultant had sent several letters to the IT Dept between 06.08.2019 to 21.11.2019 seeking refund and that these letters were never withdrawn. The impugned order has also noted that there is lack of clarity on

whether the refund was claimed on the strength of application filed by CLCS under VSV scheme on 02.06.2020 or on the basis of letters written by CLCI between 09.07.2019 to 21.11.2019.

18. After taking cognizance of the above facts, the Adjudicating Authority has held that if the ITAT appeal was pursued by CLCS, they could have very well asked for refund to themselves. Instead, they allowed the authorized representative to seek refund in favour of CLCI and therefore in the given situation there was nothing wrong on the part of the IT Department to refund the tax to CLCI-Corporate Debtor. For clarity, the relevant excerpts from the impugned order is reproduced below:

> *"When the ITAT appeal has been allowed, prudence requires that the Applicant should follow up the refund to their account. However, by the nature of transaction it appears to be that between sister concerns the same tax consultant was assigned its work of dealing with the issues and he or some other was the authorised representative in the case of refund claims that accrued to the Corporate Debtor. When these documents are not in dispute and there is no material to show an erroneous refund based on fraud or misrepresentation committed, we find no reason to discredit the claim in those letters in Annexure 18-23 page 217-223.*
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> *The Income Tax Department has also acted upon those representations and has granted refund though there is a claim by the Applicant that they have made a refund application belatedly. The Income Tax Department has also stated before the Hon'ble Delhi High Court and is recorded by the Hon'ble Delhi High Court that the letter of Income Tax Department dated 21.01.2021 has been withdrawn. Therefore, nothing turns on this letter of Income Tax Department.*
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> *In the light of the statement recorded by the Hon'ble Delhi High Court, we find no reason as to why we should not accept the stand of the Income Tax Department that there was no element ofwrongful refund in favour of the Corporate Debtor."*

19. We notice that the assessment order passed by the IT Dept on 26.03.2004 clearly shows CLCS to be the assessee. It is also undisputed that the assessment relates to the financial year 2000-2001. We also notice that while the tax demand was paid by CLCS vide challans dated 03.10.2005, 17.12.2005 and 20.02.2006, one challan was paid by CLCS and CLCG together on 28.02.2005. The impugned order has also noted correctly that tax was paid both by CLCS and CLCG. Thus, the assertion of the Appellant that tax was paid only by them is not correct.

20. We also cannot be unmindful that CLCI had addressed a series of communications to the IT Dept through their authorized representative on 09.07.2019, 06.08.2019, 16.09.2019, 13.11.2019, 19.11.2019, 21.11.2019 wherein the Department was requested to give effect to the order of ITAT and issue income tax refund to them. These letters barring that of 09.07.2019 categorically state that the refund amount payable to CLCS belongs to CLCI. It is also noteworthy that in these communications sent by CLCI to the IT Dept, it was explained at length that CLCS was de-merged and all the assets and liabilities of CLCS as on the date of de-merger had been transferred to Apro. These communications also go on to explain how Apro changed its name to CLCG and following amalgamation with Spentex, the name changed to CLCI. It was also highlighted to the IT Dept that since CLCI was under liquidity crunch and facing difficulty in managing cash flows for its operations, the refund should be credited to CLCI at the earliest. It is pertinent to note that all these communications are subject-captioned: "**Letter to the assessing officer to give appeal effect in case of M/s CLC & Sons Pvt. (PAN: AABCC7980K) (Now acquired by M/s CLC Industries Ltd. PAN: AABCS4997E) for assessment year 2001-02"**. Thus, from the given facts and circumstances, we do not find it be wrong on the part of the

Adjudicating Authority to have come to the conclusion that CLCS and CLCI collectively wanted the refund to go to CLCI-Corporate Debtor.

21. It has been contended by the Appellant that a series of letters were written between 05.06.2020 till 16.02.2021 by CLCS to the IT Department stating that the refund credited to CLCI was erroneous and that on 07.10.2020, CLCS registered this grievance on the Income Tax portal. Following this grievance registration, it was stated that a letter was issued by the IT Dept on 21.01.2021 directing RBL -Respondent No.3 to debit the bank account of CLCI in respect of the income tax refund amount.

22. Be that as it may, we notice that the grievance complaint filed on IT portal on 07.10.2020 by CLCS admits that there was confusion with respect to entity to which the refund was to be generated due to restructuring on account of de-mergers and mergers. It is also noted that CLCS subsequently applied for withdrawal of their grievance complaint on 08.02.2021. It is also an undisputed fact that the IT Dept had closed this grievance petition of CLCS and held that the refund had been credited to CLCI since the assessee in a letter dated 06.08.2019 had requested the refund to be paid to the account of CLCI maintained in RBL Bank Ltd. It is also an admitted fact that the IT Dept had withdrawn their earlier letter dated 21.01.2021 directing RBL -Respondent No.3 to debit the bank account of CLCI in respect of the income tax refund amount. The IT Department eventually had credited the refund to CLCI through their bank account. In any case, it is also not disputed that the tax refund did not get reversed to CLCS from CLCI.

23. It was vehemently contended by the RP-Respondent No. 4 that only after CLCI went into CIRP and the CLCS came to realize that the refund money cannot therefore be utilized by the ex-management of the Corporate Debtor to their

benefit that they wrote to the IT Dept for the first time on 22.02.2020 for crediting the refund to CLCS and not to the Corporate Debtor. There is force in this contention since the material available on record also substantiates that only after the CLCI-Corporate Debtor was admitted into CIRP on 03.01.2020, that CLCS started addressing communications to the IT Dept to issue refund to CLCS. Even the tax consultant had initially informed the RP that refund was due only to the CLCI but on 03.04.2020, the tax consultant changed its stand and informed the RP that the refund was due to CLCS. Thus we find that both the Appellant as well as the tax consultant have taken a somersault post CIRP of the Corporate debtor in claiming the tax refund for the Appellant without stating any credible grounds for the change in their stance. Given this backdrop, the Adjudicating Authority while deciding on the rightful claimant of tax refund has committed no impropriety in approbating the decision of the IT Department in holding that the refund was payable to the CLCI-Corporate Debtor.

24. We are satisfied that the Adjudicating Authority did not commit any error in dismissing I.A. No.2344 of 2021. We find no reason to interfere with the impugned order. There being no merit in the appeal, the same is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 18.09.2023

PKM