

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT)(CH)(Ins) No. 415/2024
(IA Nos. 1133/2024)

In the matter of:

STATE BANK OF INDIA,

Stressed Asset Recovery Branch (SARB),

Red Cross Building, Montieth Road,

Egmore, Chennai – 600 008

Represented by its Chief Manager

... APPELLANT

V

MR. CHANDRAMOULI RAMASUBRAMANIAM,

Liquidator of M/s. Effimax Engineers Pvt. Ltd.,

Flat No.3, Plot No. 1051,

'T' Block, 18th Main Road, Anna Nagar West,

Chennai – 600 040.

...RESPONDENT

Present :

For Appellant : Mr. ML Ganesh, Advocate

For Respondent : Ms. Pavithra Dhayalan, Advocate

For Dr. S. Sathiyarayanan, Advocate

ORDER

(Hybrid Mode)

[ORAL JUDGMENT: Justice Sharad Kumar Sharma, Member (Judicial)]

01.06.2026:

The genesis of the controversy at hand, as it engages consideration in the instant company appeal, is filing of an IA being IA(IBC) No. 500 of 2024 on 17.02.2024 that was preferred by the Appellant by invoking the provisions contained under Section 60 (5)(c) of I & B Code, 2016.

2. In the application thus preferred, the Appellant had modulated certain reliefs, seeking a direction to the Respondent therein, i.e., the Liquidator,

- (a) to transfer or release a sum of Rs. 5,21,000/- to the Applicant forthwith, i.e., the State Bank of India,
- (b) not to claim or raise a bill towards the remuneration with effect from 01.12.2023 and
- (c) to refund a sum of Rs. 4,72,000/- being claimed towards remuneration for the period from August 2023 to November 2023 to the Applicant State Bank of India because no services have been rendered for the said period.

On this application, which was numbered as IA(IBC) No. 500 of 2024, Ld. NCLT has passed the order dated 24.06.2024, directing the Liquidator to distribute Rs. 5,21,000/- to stakeholders and also directing Stakeholders Consultation Committee (SCC) to bear the liquidation expenses till the Liquidator completes the liquidation proceedings and relieved of his duties. It is this order which is being challenged in the instant appeal.

3. Primarily, the solitary argument as extended to be pressed by the Ld. Counsel for the Appellant while giving a challenge to the impugned order had been that, the impugned order passed on the application happens to be procedurally bad and without application of mind, because it has been passed by Ld. NCLT without considering the grounds that, has been agitated by the Appellant/Applicant while pressing upon the application and without recording

its finding for accepting or not accepting the grounds that have been raised by the Appellant/Applicant in the application qua the relief that was sought therein.

4. The Appellant's case is that, as a consequence of filing of an application under Section 9 of the I & B Code by the Operational Creditor, Mr. Narendra Sakariya, the proprietor of M/s. Madras Steels and Tubes against the Corporate Debtor (CD), M/s. Effimax Engineers Private Limited, the proceedings of the CP (IB)/36(CHE)/2021 was initiated, and the Corporate Debtor was directed to be admitted to the CIRP by an order passed of 15.12.2021, and Mr. T. Sivagurunathan was appointed as IRP to conduct the CIRP proceedings.

5. He has further submitted that the Respondent herein was appointed as RP on 08.03.2022 and Form G inviting of Expression of Interest was issued on 04.05.2022 calling for submission of the Resolution Plan by 09.06.2022. In the 4th CoC meeting on 14.06.2022, the Respondent informed CoC that only one Prospective Resolution Applicant (PRA) had submitted their Resolution Plan, and that it was found to be ineligible as the net worth criteria as mandated by the CoC was not complied with by the PRA. In the same meeting, CoC by 100% voting in favour, resolved to liquidate the CD as CIRP period of 180 days ended on the same day.

6. In terms of the decision of the CoC taken on 14.06.2022 an application being IA No. 688/2022, was preferred under Section 33 (2) of the I & B Code, for liquidation of the Corporate Debtor which was allowed by the Ld. Tribunal on 17.11.2022, consequent to which, the Respondent was appointed as the

Liquidator, and his remuneration was fixed at the rate of Rs. 1,00,000/- per month + 18% GST as per the Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016, to be read with Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which stood approved by the CoC in its meeting that was held on 14.06.2022. Though for the instant company appeal it is not relevant, but it is yet apt to mention that, though the liquidation order was subjected to challenge in the company appeal, being CA (AT) (INS) No. 146/2023 but in the absence of there being any interim order the liquidation process continued. Subsequent by the passing of the order of liquidation, the Stakeholders Consultation Committee (SCC) held a meeting on 23.11.2022, sent intimation letters to all the statutory departments who were likely to be affected on the commencement of liquidation process. The liquidation process is yet to be completed.

7. The Appellant has submitted that he had contended before Ld. NCLT that the Respondent / Liquidator had collected the receivables of Rs. 40,84,829/- from the DRDO on 30.11.2022 and 03.01.2023 and failed to distribute the same to stakeholders within 90 days, that he distributed only Rs. 19,58,457/- on 25.10.2023 only after repeated requests, that he did not conduct investigations into financial affairs of the CD despite prima facie evidence to show that the huge gap in the value receivables and sundry debtors, indicating the non-availability of stock/raw materials and did not take steps to file application under Section 66 of

IBC despite a request from the SCC on 14.02.2023 and that the Liquidator did not convene the SCC to discuss on the suspension of the Liquidator by IBBI.

8. He had further submitted before the Ld. NCLT that owing to the fact that the time period for completing liquidation process had expired on 16.11.2023, SCC had advised to file the necessary application for dissolution of the Corporate Debtor to further avoid unnecessary expenses, including the amount payable to the Respondent towards the remuneration, which the Liquidator failed to carry out.

9. The Appellant had further contended in the application that in the correspondence made on 30.11.2023 to the Respondent he had requested to release the amount of Rs. 5,21,000/- which was being withheld by the Liquidator to cover liquidation expenses in violation of the provisions contained under the Regulation 41(3) of the IBBI (Liquidation Process) Regulations 2016, which was not done. Instead, the Liquidator raised the invoices for the period from August 2023 to November 2023 for an amount of Rs. 4,72,000/- which he was not legally entitled to, owing to the fact that no business operations were carried out during the said period.

10. Under the aforesaid backdrop, when the Applicant/Appellant had preferred the said application IA (IBC)/500/2024, praying for a direction to the Liquidator to release the said amount of Rs. 5,21,000/- unlawfully withheld, to refund Rs. 4,72,000/- already claimed towards the remuneration for August-November 2023 and not to raise any claim for remuneration with effect from 01.12.2023 as no

liquidation operations were being carried out. But the impugned order passed on the said application directed the Liquidator to release Rs. 5,21,000/- only. It did not touch the other two reliefs sought for. Instead, it directed SCC to pay the liquidation expenses.

11. Under the aforesaid backdrop, Ld. Counsel for Appellant has argued that in a judicial proceedings where the issue involves determination and distribution of the financial assets and liabilities adjudication of the same can only be done when the Ld. Tribunal considers the grounds taken by the Appellant in the application, and applies its judicious mind to either to accept or not to accept the grounds raised by the Appellant, in the application for the grant of relief as it was prayed in IA(IBC) No. 500 of 2024. However, in the instant case, the impugned order doesn't reveal as to whether the Ld. Tribunal have at all assigned any reasons while rejecting the application preferred by the Appellant, and therefore the order suffers from non-application of mind, being an unreasoned order without application of mind.

12. During the course of arguments, when we called upon the Ld. Counsel for the Respondent, who was opposing the proceedings of the instant company appeal, to answer the solitary ground extended by the Ld. Counsel for the Appellant, that the impugned order happens to be perverse because no finding on merits has been recorded qua the pleadings raised in the application, no plausible reply was forthcoming from him, and rather it was tacitly accepted that the order was passed by the Ld. Tribunal without application of mind, and without

expressing any opinion on merits of the matter, qua the relief claimed by the Appellant in the IA(IBC) No. 500 of 2024.

13. The basic governing principles of adjudication is that whatever plea has been taken by the parties to the proceedings in a judicial proceeding, that has to be considered by the Court/Tribunal while deciding the controversy inter se between the parties in order to repose confidence among the litigants that their matter has been considered on merits, to avoid any arbitrariness that may come in and to attach fairness to the proceedings that, is being adjudicated upon by the Ld. Court/Tribunal. In any adjudicated matter, in which the pleadings, raised by the parties are not considered and no finding are recorded either accepting or denying the contentions raised by the parties to the proceedings, the resultant order will have to be treated as vitiated because it will amount to be an order which is non-speaking. Passing of an order without assigning any reasons goes against the tenets of the adjudication of a case on merits, which is the basic spirit contemplated for the purposes of an effective adjudication of a controversy between the parties. Passing of an order without assigning reasons on the pleadings raised by the parties, would vitiate the very purpose of adjudicatory role which has been assigned to the courts/ the Tribunals to settle the controversy between the parties, on merits. At the least, a litigant is entitled to learn the reasons for not accepting his plea, and that can be possible only when the court discloses its mind by assigning reasons.

14. In view of the above, the impugned order of 24.06.2024 would hereby stand quashed. The matter is remitted back to the NCLT Division Bench, Chennai to redecide the application, IA(IBC) No. 500(CHE)2024, exclusively on its merits. Nothing observed by this Appellate Tribunal in the above order may be construed to be a finding on merits of the matter and any adjudication, which will follow a sequel to this order, would be independent to any of the findings recorded.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SN/MS/AK