

National Company Law Appellate Tribunal, New Delhi

Principal Bench

Company Appeal (AT) (Ins) No. 714 of 2021

IN THE MATTER OF:

**Bhatpara Municipality
Through its Chairperson
Having its Office at
1/1, West Ghoshpara Road,
Post Office-Kankinara,
District – North 24 Parganas.
Pin - 743126.**

....Appellant

Vs.

**Nicco Eastern Pvt. Ltd.
(previously known as
Sourennee Experiences Private Ltd.)
Having its office at
Tripura Enclave, Unit-III,
7Th Floor, 59, Ballygunge Circular Road,
P.S. Ballygunge,
Kolkata-700019 and
Having its Factory Unit
“Shyamnagar Cable Unit”
Ghoshpara Road (East) P.O. Athpur,
P.S. Jagatdal,
District – North 24 Parganas, Pin – 743128...Respondent No. 1**

**Nicco Corporation Limited,
Represented by Vinod Kumar Kothari,
Liquidator of the Corporate Debtor
Having its office at
1006-1009, Krishna Building,
224, A.J.C. Bose road,
P.S. Karaya, Kolkata-700001.**

... Respondent No. 2

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**The Executive Officer,
Bhatpara Municipality
1/1 West Ghoshpara Road,
Post Office – Kankinara,
District – North 24 Parganas.
PIN – 743726.**

... Proforma Respondent

For Appellant: Mr. Shiv Shankar Banerjee and Madhurima Ghosh, Advocates

**For Respondents: Mr. Ratnanko Banerjee,, Sr. Advocate with
Mr. Ashish Mukherjee, Ms. Shruti Gupta,
Advocates for Respondent No. 1
Mr. Sanjay Bajoria, Respondent No. 1
(Authorized Representative)**

**JUDGMENT
(Date: 22.11.2021)
(Through Virtual Mode)**

{Per: Dr. Alok Srivastava, Member (T)}

This Appeal has been filed under section 61(1) of Insolvency and Bankruptcy Code, 2016 (in short IBC) arising out of the Impugned Order dated 13.07.2021 in IA(IB)/264/KB/2021 in CP (IB) No. 03/KB/2017 passed by NCLT, Kolkata (The Adjudicating Authority).

2. By the Impugned Order the Adjudicating Authority has rejected the claim of the Appellant in respect of past dues of property holding numbers 70, 71, 73 and 74 located in E.G.P. Company Appeal (AT) (Ins) No. 714 of 2021

Road, 27B N.C. Road, 1 and 2 Uttarpara Road, Bhatpara Municipality, District North 24 Parganas which are in possession of Respondent No. 1, Nicco Eastern Private Limited and quashed the related demand notice for pending dues of property tax issued by the Appellant to Respondent No. 1.

3. In brief, the facts of the case are that the property Shyam Nagar Cable Manufacturing Unit was sold by the liquidator of the Corporate Debtor, Nicco Corporation Limited (Respondent No. 2) which is in liquidation. The sale was effected in accordance with terms and conditions stipulated in the invitation for Expression of Interest (in short EOI), wherein in clause 12.1 it is stated that the proposal will be conducted on “As is Where is and Whatever There is Basis” and “No Recourse Basis”. The purchaser of the said property (Respondent No.1), after the auction and confirmation of sale applied to the Appellant for obtaining trading licence and mutation of the said property in its name. In response to these applications, the Appellant issued a demand notice dated 1.2.2021 to the auction-purchaser (Respondent No. 1) to liquidate outstanding dues of property tax of the above mentioned properties from the 1st quarter of 2015-2016 to the 4th quarter of 2020-2021 amounting to Rs. 68,09,123.61.

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4. It is further claimed by the Appellant that Respondent No. 1 was not party to the proceedings under IBC before the Adjudicating Authority, but is only auction-purchaser and therefore, he cannot claim any protection under IBC. The Appellant has claimed that the Adjudicating Authority has exceeded its jurisdiction by adjudicating dispute regarding Municipal Tax on a third party.

5. The Appellant has provided a list of important dates relevant to the present appeal, which is given below:-

17.10.2017	Vide order of NCLT, Kolkata, Vinod Kumar Kothari was appointed as the Liquidator of Respondent No. 2
23.09.2020	Liquidator invited EOI for sale of Shyam Nagar Cable Manufacturing Unit by auction at reserve price of Rs.20.63 crores.
05.10.2020	E-auction started. Ms. Vinita Bajoria emerged as highest H-1 bidder at Rs. 23.33 crores. Liquidator accepted the bid.
07.10.2020	Ms. Vinita Bajoria nominated Respondent No. 1 to complete the sale of Shyamnagar Unit in its favour.
09.10.2020	Possession of sold unit handed over to Respondent No. 1.
02.12.2020	Respondent No. 1 changed its name from Sourenee Enterprises Pvt. Ltd. to Nicco Eastern Pvt. Ltd.
04.01.2021	Respondent No. 1 sent letter to Appellant to accept payment of 3 rd quarter of Municipal tax and allow rebate and also to issue instructions for issue of mutation form for effecting mutation, issue trade licence application and grant trade licence.
01.02.2021	Demand notice to liquidate outstanding dues of property tax from 1 st quarter of 2015-16 to 4 th

	quarter of 2020-21 against holding nos. 70, 71, 73 74, E.G.P. Road, 27B NC Road, 1 and 2 Uttarpara Road of total amount Rs. 68,09,123.61
15.02.2021	IA(IB)/264/KB/2021 in CP (IB) No. 03/KB/2017 for declaring null and void and quashing the Demand Notice of municipal tax dated 1.2.2021.
13.07.2021	NCLT, Kolkata Bench allowed the said IA and absolved Respondent No. 1 from all liabilities with reference to tax dues prior to date of sale confirmation.

6. The arguments of the parties were heard by us. The Learned Counsel for Appellant has argued that the auction sale of the property in question was carried out after passing the order for liquidation by the Adjudicating Authority. Once the auction sale is completed and the property is transferred in the name of the auction-purchaser, it goes out of the liquidation estate. He has pointed out that the demand notice was issued on 1.2.2021, whereas the sale was completed much earlier on 8.10.2020, and sale certificate was executed in favour of Respondent No. 1. Thereafter the possession of the said properties was delivered to the auction purchaser on 9.10.2020. He has further argued that this appeal is therefore not covered under sub section (a), (b) and (c) of section 60(5) of the IBC. Therefore, the Adjudicating Authority does not have jurisdiction to adjudicate any dispute between the auction- purchaser (Respondent No.1) and Appellant Bhatpara Municipality. The Learned Counsel for appellant has

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also contended that the auction-purchaser, if aggrieved by the Demand Notice dated 1.2.2021, has other remedies which include representation to the Chairman of Bhatpara Municipality or Assessment Authority or in the writ jurisdiction of the relevant Hon'ble High Court. The purchaser did not take course to any such remedy. He has further referred to section 3(33) of the IBC to show that the transfers of the properties have taken place after completion of the transaction of auction sale. He has adverted to the judgment of Hon'ble Supreme Court in the matter of **Embassy Property Developments v. State of Karnataka [2019 SCC Online SC 1742]** wherein it has been held that the NCLT does not get jurisdiction to adjudicate any dispute relating to the property in liquidation once the property is out of the liquidation process. The Learned Counsel for Appellant has thus argued that the Adjudicating Authority has quashed the demand notice and also directed that the trade licence be given, when the said properties were not in the purview of IBC and the NCLT did not have jurisdiction to pass such order.

7. The Learned Counsel for Respondent No. 1 has stated that during the pendency of this appeal, the Bhatpara Municipality has granted trade licence to Respondent No.1 and also effected Company Appeal (AT) (Ins) No. 714 of 2021

mutation in its name vide certificates attached at pp. 145-152 of the reply affidavit filed by Respondent No. 1 and therefore, the appeal has become infructuous. She has argued that the CIRP of the Corporate Debtor commenced on 18.1.2017 and the Bhatpara Municipality (Appellant) did not file any claim with the Resolution Professional (RP) in the CIRP. She has referred to the judgment of Hon'ble Supreme Court in the matter of **AI Champdany Industries Ltd. vs. The Official Liquidator & Anr. (2009) 4 SCC 486**, wherein it has been held that dues of municipal tax do not create any encumbrance. She has pointed to page 149 of the Appellant's appeal to show that the dues of property tax are prior dues, which have accrued before the properties were purchased by the Respondent No. 1 in auction sale. She has also referred to the judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra & Sons vs. Edelweiss (2021 SCC Online SC 313)**, wherein the principle of clean slate has been propounded. On this basis, she has claimed the same principle will be applied in the process of liquidation and the liability of old outstanding dues of property tax is attached not to the property in question but to the erstwhile Corporate Debtor. Finally she has argued that the Appellant is now participating in the liquidation proceedings, evidenced by page 106 of the Appeal paperbook, and it has filed its Company Appeal (AT) (Ins) No. 714 of 2021

claim to the liquidator and therefore the appeal should be dismissed.

8. It is undisputed that the said properties were auctioned by the liquidator through an Invitation of EOI (attached at pp.98-119 of Appeal Paperbook). The terms and conditions of the proposed sale include the following clause 12.1 and clause 12.10:-

“12.1 The proposed sale will be conducted on “AS IS WHERE IS AND WHATEVER THERE IS BASIS” AND “NO RECOURSE BASIS”. The liquidator of the Company will undertake no liability as to any continuing, pending litigation, dispute, etc. to vacate premises, or any other liability whatsoever in relation to Sale Asset”.

Furthermore clause 12.10 is as follows:-

“The Applicant should thoroughly satisfy itself about the nature, conditions and quality of the Sale Asset. The Liquidator gives no guarantee or warranty as to title, encumbrance and state of the Sale Asset or the conditions of the assets/material or/its quality for any specific purpose or use. It should be clearly understood that no claim/complaint about the stability/quality/condition/fitness for use will be entertained by the Liquidator. The Liquidator gives no assurance as to clear possession of the Sale Asset/Property or any part thereof, or connected litigation.”

9. The terms and conditions of the proposed sale insofar as clause 12.1 is concerned should be taken to mean that the seller does not take responsibility for the size, dimension, shape and

overall quantity and quality of property in liquidation and that the purchaser will have no recourse in case any deficiency or shortcoming is discovered in the property, after the sale has been confirmed.

10. The Appellant has contended that once the liquidation sale has been completed and the certificate of sale executed followed by giving possession to the auction purchaser, any action relating to such property ceases to be under the purview of IBC. It is undisputed that the auction sale was completed on 5.10.2020 and the possession of these sold units was handed over to Respondent No. 1 on 9.10.2020. Thus, Respondent No. 1 became the owner of said properties on 9.10.2010. Thereafter a demand notice was issued to Respondent No. 1 of an amount of Rs. 68,09,123.61 on 1.2.2011, over 4 months after the auction sale was completed. This demand of outstanding property tax relates to the period before the sale confirmation.

11. The Learned Counsel for Respondent No. 1 has referred to the judgment of Hon'ble Supreme Court in the matter of **AI Champdany Industries Ltd. vs. The Official Liquidator & Anr.** (supra) to claim that dues of municipal tax do not create any Company Appeal (AT) (Ins) No. 714 of 2021

encumbrance on the properties in question. They are simply a charge on the properties which is akin to claim of an unsecured creditor, and hence such a charge should stand in queue of claims to be paid out of sale assets, if such a claim has been filed in accordance with law and regulations.

12. Duty has been cast upon the liquidator to make a public announcement in Form B of Schedule II under with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to issue a public announcement calling upon the stakeholders to submit their claims in stipulated time period. Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is reproduced hereunder:-

“12. Public announcement by liquidator- (1) *The liquidator shall make a public announcement in Form B of Schedule II within five days from the appointment.*

(2) The public announcement shall –

(a) call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and

(b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.]

(3) The announcement shall be published –

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(a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;

(b) on the website, if any, of the corporate debtor; and

(c) on the website, if any, designated by the Board for this purpose.”

13. Furthermore Regulation 34 of the said Regulations (supra) casts on the liquidator the duty to prepare Asset Memorandum specifying certain details. Regulation 34 is reproduced hereunder:-

“ 34. Asset memorandum – *(1) On forming the liquidation estate under section 36, the liquidator shall prepare an asset memorandum in accordance with the regulation within seventy-five days from the liquidation commencement date.*

(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realize by way of sale:-

(a) value of the asset, valued in accordance with regulation 35;

(b) value of the assets or business(s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;

(c) intended manner of sale in accordance with regulation 32, and reasons for the same;

(d) the intended mode of sale and reasons for the same in accordance with regulation 33;

- (e) expected amount of realization from sale; and*
 - (f) any other information that may be relevant for the sale of the asset.*
- (3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation(2) -*
- (a) value of the asset;*
 - (b) intended manner and mode of realization, and reasons for the same;*
 - (c) expected amount of realization; and*
 - (d) any other information that may be relevant for the realization of the asset.*
- (4) The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.*
- (5) The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.”*

14. Thus the liquidator had a duty to prepare an asset memorandum containing the value of the assets. Clause (f) of sub regulation 2 of regulation 34 stipulates the inclusion of “any other information that may be relevant for the sale of the asset”. Regulation 13 of the said Regulations (supra) enjoins upon the liquidator to submit a preliminary report to the Adjudicating Authority with the Asset Memorandum. Therefore, the liabilities

with respect to the assets should have been brought to the notice of the Adjudicating Authority by the liquidator.

15. Clause (g) of sub section 1 of section 55 of the Transfer of Property Act, 1882 binds the seller as hereunder:-

“(1)The seller is bound –

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.”

16. The outstanding dues of the property tax relating to period prior to sale confirmation are thus dues that are akin to claim of an unsecured creditor (Bhatpara Municipality in the present case) and should be discharged in terms of the properties regarding distribution of assets given in section 53 of IBC. The auction-purchaser cannot be held liable to pay any such dues relating to period prior confirmation of sale as has been held by the Hon’ble Supreme Court in the matter of **AI Champdany Industries Ltd. vs. The Official Liquidator & Anr.** (supra).

17. In the above mentioned situation, we are unable to accept the plea made by the Appellant that Respondent No. 1 should not Company Appeal (AT) (Ins) No. 714 of 2021

be absolved from paying outstanding dues relating to the property stated in the demand notice dated 1.2.2021 amounting to Rs.68,09,123.61. The demand notice is quashed. The appeal fails and the Impugned Order is upheld. The auction-purchaser is held to be not liable to pay to the Appellant the amount as demanded by its notice dated 1.2.2021. No order as to costs.

(Justice M. Venugopal)
Member (Judicial)

(V.P. Singh)
Member (Technical)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
22nd November, 2021

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