

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2275 of 2024

(Arising out of Order dated 04.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in IA (IB) No.1124/KB/2024 in Company Petition (IB) No.1542/KB/2018)

IN THE MATTER OF:

Howen International Funds SPC

...Appellant

Versus

Raj Singhania

Liquidator of Gontermann Peipers India Ltd.

...Respondent

Present:

For Appellants : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Malpani, Advocate.

For Respondents : Mr. Kumarjeet Banerjee, Ms. Sanchari Chakraborty, Mr. Aadil Naushad, Mr. Devanshu Lahiry, Advocates.

With

Company Appeal (AT) (Insolvency) No. 2276 of 2024

(Arising out of Order dated 04.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in IA (IB) No.1493/KB/2024 in CP (IB) No.1542/KB/2018)

IN THE MATTER OF:

Howen International Funds SPC

...Appellant

Versus

Indian Bank & Anr.

...Respondents

Present:

For Appellants : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Akshat Malpani, Advocate.

For Respondents : Mr. Kumarjeet Banerjee, Ms. Sanchari Chakraborty, Mr. Aadil Naushad, Mr. Devanshu Lahiry, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed against the same order dated 04.10.2024 passed by National Company Law Tribunal, Division Bench,

Court No.II, Kolkata in IA (IB) No.1124/KB/2024 and IA (IB) No.1493/KB/2024. By the impugned order, the Adjudicating Authority allowed IA (IB) No.1493/KB/2024 filed by the Indian Bank and IA (IB) No.1124/KB/2024 filed by the Liquidator, the Adjudicating Authority rectified the inadvertent typographical error in order dated 10.05.2024 at Sl. No.12. The Appellant(s) aggrieved by the impugned order has come up in these Appeal(s).

2. Brief facts necessary to be noticed for deciding these Appeal(s) are:

- i. Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor (“**CD**”) – Gontermann Peipers India Ltd. commenced on 11.12.2019. Resolution Plan was submitted, which was not approved by the Committee of Creditors (“**CoC**”). Subsequently, liquidation order was passed on 30.04.2021.
- ii. In the liquidation, e-auction process was held in which Appellant was declared Successful Auction Purchaser. After the Appellant having been declared the Successful Auction Purchaser and deposited the total sale consideration, the Appellant filed an IA (IB) No.1277/KB/2023 praying for certain reliefs and concessions. IA (IB) No.1277/KB/2023 was heard by the Adjudicating Authority and by order dated 10.05.2024, the Adjudicating Authority allowed the Application, granting various reliefs and concessions sought by the Appellant.

- iii. After passing of the aforesaid order by the Adjudicating Authority, the Liquidator filed an Application being IA (IB) No.1124/KB/2024 pleading that an inadvertent error has been committed in the order dated 10.05.2024 insofar assigning of personal guarantees to the Successful Auction Purchaser, whereas the said relief was not granted. It was pleaded in the Application that during the course of hearing, the said relief was objected by the Liquidator. The Liquidator prayed for correction of inadvertent error at Sl. No.12 of table of reliefs and concessions in the order dated 10.05.2024.
- iv. Subsequently, another Application was filed by the Indian Bank praying for correction of inadvertent error with regard to Sl. No.12 in the order dated 10.05.2024. Both the Applications were opposed by the Appellant, who was Successful Auction Purchaser.
- v. The Adjudicating Authority vide order dated 04.10.2024, allowed the Application and rectified the inadvertent error in the order dated 10.05.2024 at Sl. No.12, by substituting word “**NOT GRANTED**” in placed of word “**GRANTED**” in the order dated 10.05.2024. Aggrieved by the said order these Appeal(s) have been filed.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant(s) and Shri Kumarjeet Banerjee, learned Counsel appearing for the Liquidator.

4. Shri Abhijeet Sinha, learned Senior Counsel for the Appellant(s) submits that the impugned order by deleting the word “**GRANTED**” from order dated 10.05.2024 and substituting with “**NOT GRANTED**” is nothing but review of the judgment dated 10.05.2024, which is not within the jurisdiction of the Adjudicating Authority. It is submitted that the relief was prayed for in the reliefs and concessions for extinguishment of personal guarantees and assigning of the same to the Successful Auction Purchaser and Adjudicating Authority has rightly allowed the said reliefs and concessions, which did not require any interference by the impugned order. It is submitted that there was no case of any inadvertent error, nor there was any such pleading before the Adjudicating Authority. It is submitted that by the impugned order by refusing to grant the reliefs and concessions, as prayed for, the Appellant remedy to challenge the decision of the Adjudicating Authority is lost. It is submitted that the Adjudicating Authority could not have passed the order in exercise of power under Rule 11 of NCLT Rules 2016. The Adjudicating Authority in exercise of power under Rule 154 of NCLT Rules, ought to have heard the matter on merits.

5. Shri Kumarjeet Banerjee, learned Counsel appearing for the Liquidator, opposing the submissions of the learned Counsel for the Appellant(s) submits that in the Resolution Plan, which was submitted before the CoC, there was also a clause for the extinguishment of personal guarantees, which was objected by the CoC and Resolution Plan was not approved by the CoC, not agreeing with the clause for extinguishment of personal guarantees. It is submitted that the auction in the liquidation

proceeding was ‘as is where is basis’ and there was no such condition in the auction sale that there shall be extinguishment of personal guarantees. The Stakeholders Consultation Committee has never taken any decision for extinguishment of personal guarantees. It is submitted that the Liquidator during the hearing has objected to Clause-12 and during the hearing the Counsel appearing for the Appellant has also agreed that said relief is contrary to settled legal position. However, by inadvertent error the word “**GRANTED**” was mentioned against the said relief. Learned Counsel for the Liquidator has referred to short note filed on behalf of the Respondent in IA (IB) No.1277/KB/2023, where the facts and submissions, which was transpired in the hearing has also been captured. Learned Counsel for the Liquidator submitted that in the Application filed by the Liquidator, there was specific pleading that the said relief was an inadvertent error, which needs to be corrected and which has rightly been corrected by the Adjudicating Authority.

6. We have heard learned Counsel for the parties and have perused the record.

7. We need to first notice the order dated 10.05.2024. Under the Heading ‘Reliefs and Waivers’, which is in three columns, is as follows:

12.	All security interests created or suffered to exist in favour of the financial creditors including third party guarantees, personal guarantees shall stand assigned fully in favour of the Applicant.	Granted
-----	---	----------------

8. After the order was passed on 10.05.2024, immediately thereafter, an Application was filed by the Liquidator. It is useful to note the pleadings in the Application, which was filed by the Liquidator for correction of inadvertent error. In paragraphs 23, 24, 25 and 26, following was pleaded:

“23. However, upon a careful perusal of the aforesaid order 25. dated 10.05.2024, it came to light that this Hon'ble Tribunal had inadvertently in the said order, **at serial number twelve (12) of the table of reliefs at page seventeen (17)**, corresponding to the relief for assigning all "personal guarantees" to the successful bidder, used the words "GRANTED". It appears that the word "GRANTED" was inadvertently indicated instead of "NOT GRANTED".

24. It is pertinent to note that during the course of the hearing on 30.01.2024, it was argued by the advocate appearing on behalf of the Liquidator that such relief for assignment of personal guarantees as claimed for by the successful bidder in its application being I.A. (1B) 1277 of 2023 is contrary to the settled legal position and provisions of the Code as held by the Hon'ble Apex Court in ***Lalit Kumar Jain vs. Union of India & Others reported in (2021) 9 SCC 321.***

25. Pursuant to the aforesaid argument being made by the advocate appearing on behalf of the Liquidator, it was fairly agreed during the course of the hearing on 30.01.2024 by the advocate appearing on behalf of the successful bidder that the said relief as claimed for is contrary to the settled position of law and had accordingly given up the said relief as sought by the successful bidder in its Application being I.A. (IB) 1277 OF 2023 at paragraph (1) of Clause VII.

26. Moreover, the written notes of arguments filed on behalf of the Liquidator, i.e. the Applicant herein, **at paragraph number nine (9) at page number six (6)** of the said written notes of argument filed • before this Hon 'ble Tribunal had specifically explained as to

why the said relief could not and should not be granted by this Hon'ble Tribunal.”

9. In the Application filed by the Liquidator, there was specific and categorical pleading that use of word “**GRANTED**” was inadvertently indicated, instead of “**NOT GRANTED**”. It was further pleaded that during the course of hearing of the Application – IA (IB) No1277 of 2023, reference of judgment of Hon'ble Supreme Court in **(2021) 9 SCC 321 – Lalit Kumar Jain vs. Union of India & Ors.**, where it was clearly held that approval of a Resolution Plan, personal guarantees does not *ipso facto* extinguished. We, thus, do not find any substance in the submission of the Appellant that the Liquidator vide his Application has prayed for review of the judgment. The present was not a case of asking of any review of the judgment dated 10.05.2024. The pleadings in the Application as noticed above makes it clear that the Liquidator's case was that it was inadvertent error, which has crept in the order, whereas before the Adjudicating Authority, judgment of the Hon'ble Supreme Court in **Lalit Kumar Jain's** case was also referred and it was submitted that personal gaurantees cannot be extinguished and the said relief, cannot be granted. The Adjudicating Authority after hearing the parties by the impugned order has allowed the Application and corrected the inadvertent error. The Adjudicating Authority in the impugned order has also referred to judgment of **Lalit Kumar Jain** of the Hon'ble Supreme Court and **Maharashtra State Electricity Board Bombay vs. Official Liquidator High Court, Irnakulam** of the Hon'ble Supreme Court. In paragraphs 13

and 14 of the impugned order, the Adjudicating Authority has made following observation:

“**13.** We have gone through the minutes of SCC, and we find no such approval has been given by the stakeholders approving the reliefs claimed by the successful auction purchasers mentioned in Sl. No. 12 at page 17 of the order dated 10.05.2024. A "going concern sale" of the corporate debtor in liquidation does not absolve the liability of the guarantor, and the guarantor shall remain liable for any outstanding debts owed by the debtor to the creditor. In *Lalit Kumar Jain (Supra)* relied on by the Learned Counsel for the applicant held that:

*"111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, **the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.**"*

(Emphasis Added)

14. Further, the Hon'ble Apex Court in ***Maharashtra State Electricity Board Bombay v. Official Liquidator High Court, Ernakulam***, reported in ***[2017] ibclaw.in 19 SC*** the Hon'ble Apex Court observed that the discharge may be secured by operation of law in the liquidation process by the Principal Debtor does not absolve the surety from its liability. The relevant para of the judgment is reproduced hereunder:

"The fact that the principal debtor had gone into liquidation would not have any effect on the Bank's liability as guarantor. Under section 128 of the Indian Contract Act the liability of the surety is co-extensive with that of the principal

*debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But **a discharge which the principal debtor may secure by operation of law in bankruptcy for in liquidation proceedings in the case of a company} does not absolve the surety of his liability.***"

{Emphasis Added}"

10. The Adjudicating Authority categorically held in paragraph-15 that after considering the materials available on record and minutes of the SCC meetings it find that it was an inadvertent typographical error in the Order dated 10.05.2024, where in place of "**NOT GRANTED**" the word "**GRANTED**" has occurred. The above conclusion and findings are returned in paragraph-15. The Adjudicating Authority was also conscious of the legal position that Adjudicating Authority cannot review its judgment, but it was held that Adjudicating Authority in exercise of power under Rule 154 and Rule 11 of NCLT Rules, 2016 can correct the inadvertent error. We may need to notice Rule 11, which preserve the inherent power of the NCLT, which is as follows:

"11. Inherent Powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."

11. Rule 154 of the NCLT Rules empowers the Tribunal to correct any clerical or arithmetical mistakes in any order of the Tribunal from any

accidental slip or omission. Rule 154 of the NCLT Rules provides as follows:

“154. Rectification of Order.- (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.

(2) An application under sub-Rule (1) may be made in Form No. NCLT. 9 within two years from the date of the final order for rectification of the final order not being an interlocutory order.

12. The Adjudicating Authority in paragraph-17 has rightly observed that present is not a case where Adjudicating Authority is reviewing its judgment, rather it is rectifying an inadvertent typographical error. In paragraph-17 of the order, the Adjudicating Authority made following observation:

“17. We are conscious of the legal position that the Adjudicating Authority is not vested with any power to review its own decisions. We make it clear that this order is being issued only to rectify that inadvertent typographical error in the Order dated 10.05.2024 in SL No. 12 at page 17, under Rule 154 read with 11 of the NCLT Rules, 2016.”

13. learned Counsel for the Appellant failed to refer to any material on record on the basis of which it can be held that Appellant was entitled for extinguishment of personal guarantees, including third party guarantees. The present was a sale of CD in liquidation as a going concern. There being no foundation for grant of relief of extinguishment of personal guarantees, the same was obviously held to be a typographical error by the Adjudicating Authority. The Adjudicating Authority passed the earlier

order dated 10.05.2024 and is fully empowered to correct any typographical error by using its inherent powers. When a Court is satisfied that inadvertent typographical error has been committed, the Court is fully empowered to correct such inadvertent typographical error. The Appellant cannot be allowed to take advantage or benefit of any error in judgment, which has occurred inadvertently.

14. We are, thus, satisfied that there is no error in the order dated 04.10.2024, rectifying the inadvertent typographical error in the order dated 10.05.2024. There is no merit in the Appeal(s). Both the Appeal(s) are dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

NEW DELHI

9th May, 2025

Ashwani