

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1022 of 2024

[Arising out of order dated 01.05.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi, Principal Bench), in I.A.
961/2024 in (IB) – 630(PB)/2019]

IN THE MATTER OF:

MEENAKSHI AND KUSHAL GOYAL

Through Mr. Rahul Mehandru
Sector 4-C, Shashri Nagar,
Mangi Gobindgarh, Distt. Fatehgarh Sahib,
Punjab-147301

...Appellant

Versus

1. AMIT AGARWAL

11-63, Vijay Chowk,
Laxmi Nagar, New Delhi – 110092.

...Respondent No. 1

2. COMMITTEE OF CREDITORS

Through State Bank of India
Stressed Asset Management Branch (SAMB)
Sco No. 99-107,
1st Floor, Pragati Bhawan
Sector 8-C, Chandigarh – 1600009.

...Respondent No. 2

3. EXCISE AND TAXATION OFFICER-CUM-ASSESSING AUTHORITY

Room No. 303, 2nd Floor,
Mini Secretariat, Kaithal – 136027
Kaithal, Haryana.

...Respondent No. 3

Present:

For Appellant : Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Raghav Dembla, Mr. Shaurya Shyam and Mr. Ashish Dhaka, Advocates.

For Respondents : Mr. Pankaj Agarwal and Mr. Shashwat Srivastava, Advocates for R-1.

Mr. Amit Agarwal, Advocate for RP.

Mr. Ankur Mittal and Ms. Preety Choudhary, Advocates for R-2/CoC.

Mr. Virender Ganda Sr. Advocate with Ms. Akansha Mathur and Mr. Asraf Belal, Advocates for R-4/ Objector.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Successful Resolution Applicant (SRA) has been filed challenging the Order dated 01.05.2024 passed in I.A. 961/2024 filed by the Resolution Professional (RP). The Adjudicating Authority allowed Prayer (c) of the Application, aggrieved by which Order, this Appeal has been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- i. The Corporate Debtor, Mastana Foods Private Limited came to be admitted in Corporate Insolvency Resolution Process (CIRP) by Order dated 18.09.2019.
- ii. In response to 'Form-G' issued by the RP, Resolution Plan was submitted and in the 10th Committee of Creditors (CoC) Meeting held on 07.11.2020, Resolution Plan of the Appellant along with the Addendum dated 12.10.2020 was duly approved by 100% CoC.
- iii. The Excise & Taxation Officer, Officer-Cum-Assessing Authority, Kaithal State of Haryana filed an I.A. 95/2021 & I.A. 1374/2021 before the Adjudicating Authority which was allowed on 16.02.2021 and 16.04.2021.
- iv. This Appellate Tribunal vide Order dated 22.03.2022, set aside the Orders of Adjudicating Authority dated 16.02.2021 and 06.04.2021.

- v. On 06.09.2022, the Hon'ble Supreme Court delivered its Judgment in the matter of '**State Tax Officer' Vs. 'Rainbow Papers Limited'**', reported in **(2022) SCC OnLine SC 1162**.
- vi. Hon'ble Supreme Court vide its Order dated 31.10.2022 stayed the operation of the Order dated 22.03.2021 passed by this Appellate Tribunal.
- vii. Hon'ble Supreme Court vide Order dated 22.01.2024 allowed the Civil Appeals filed by the Excise & Taxation Officer, Officer-Cum-Assessing Authority setting aside the Order dated 22.03.2022 passed by the Appellate Tribunal in view of the decision of the Hon'ble Supreme Court in '**State Tax Officer' (Supra)**.
- viii. After the Judgment of the Hon'ble Supreme Court I.A. 961/2024 was filed by the RP before the Adjudicating Authority. Adjudicating Authority who has reserved the Judgment in I.A. 5283/2022, i.e. Plan approval Application de-reserved the same.
- ix. By Order dated 01.05.2024, Adjudicating Authority disposed of the Application, I.A. 961/2024, allowing the Prayer (c), aggrieved by which Order this Appeal has been filed.

3. We have heard Learned Counsel Mr. Sumesh Dhawan appearing for the Appellant, Learned Counsel Mr. Ankur Mittal appearing for the CoC, Learned Sr. Counsel Mr. Virender Ganda appearing for the Intervener, Learned Counsel Mr. Pankaj Agarwal appearing for R-1 and Learned Counsel Mr. Amit Agarwal appearing for the RP.

4. Learned Counsel for the Appellant submits that the Resolution Plan of the Appellant has been approved by the CoC with 100% votes and after the Judgment of the Hon'ble Supreme Court dated 22.01.2024, Appellant has filed an Affidavit on 18.03.2024, where it offered to undertake the entire liability of Excise & Taxation Officer, Officer-Cum-Assessing Authority. It is submitted that what Hon'ble Supreme Court directed on 22.01.2024 was to comply with the Judgment of the Hon'ble Supreme Court in '**State Tax Officer**' (*Supra*) and when Appellant has agreed to accept the entire liability of Excise & Taxation Officer, Officer-Cum-Assessing Authority, no further steps were required except to consider the Plan approval Application which is pending before the Adjudicating Authority. It is submitted that RP may issue fresh 'Form-G' by starting the CIRP Process *denovo*, which has never the intention of the Hon'ble Supreme Court while passing its Order dated 22.01.2024. Hon'ble Supreme Court only intended that Order of the Hon'ble Supreme Court in '**State Tax Officer**' (*Supra*) be complied with, no direction was issued to start the CIRP Process *denovo*.

5. Learned Counsel appearing for the CoC submitted that CoC is bound to comply with the Order of the Hon'ble Supreme Court and RP's Application was only seeking directions to conduct the ongoing CIRP which has allowed by the Adjudicating Authority. Appellant has no cause to file this Appeal. The Hon'ble Supreme Court has granted time to complete the process within 90 days which clearly proves that process has to be undertaken and completed.

6. Learned Counsel for the RP submitted that in pursuance of the Order passed by the Adjudicating Authority, RP proposed to place an agenda before the CoC seeking its decision for future course of action, but on account of

pendency of this Appeal, agenda could not be placed before the CoC. Counsel for the RP submits that it is the CoC which is empowered to take all decision regarding CIRP Process and CIRP Process is conducted under the CoC. Hence it is for the CoC to take a call with regard to further steps. It is submitted that there is no ground to interfere with the Impugned Order.

7. Learned Sr. Counsel Mr. Virender Ganda appearing for the Intervener/Unsuccessful Resolution Applicant submits that the clear intendment of the Order of the Hon'ble Supreme Court was that a fresh CIRP process be conducted. It is submitted that had the Hon'ble Supreme Court not intended to initiate fresh CIRP Process, there was no occasion to grant 90 days time for completing the process.

8. We have considered the submissions of the Counsel for the Parties and perused the record.

9. From the facts as noticed above, it is clear that Resolution Plan which was submitted by the Appellant was approved on 07.11.2020 by the CoC. It was the Excise & Taxation Officer, Officer-Cum-Assessing Authority filed its Application before the Adjudicating Authority for accepting its claim which was allowed by the Adjudicating Authority. However, the said Orders was reversed by this Appellate Tribunal, against which, **Civil Appeal No. 7514–7515/2022** was filed. The Order of the Hon'ble Supreme Court has been brought on record by the Appellant. The Order of the Hon'ble Supreme Court dated 22.01.2024 is as follows:

“IA No.180405 of 2022

The learned counsel appearing for the original respondent has no objection for allowing this

application, as now the respondent sought to be substituted has been appointed as the Resolution Professional. Accordingly, the application is allowed.

Civil Appeal Nos.7514-7515 of 2022

These appeals were kept pending, as the Review Petitions filed in the case of State Tax Officer v. Rainbow Papers Limited¹ (Civil Appeal No.1661 of 2020 etc.) on which reliance has been placed were pending. Now, the Review Petitions have been dismissed.

In the light of the decision dated 6th September, 2022 in the case of State Tax Officer v. Rainbow Papers Limited, we set aside the impugned order dated 22nd March, 2022 passed by the National Company Law Appellate Tribunal. It is obvious that these appeals will be governed by the directions issued in the said decision.

The appeals are accordingly allowed on the above terms.

Cause Title be amended accordingly.

We grant 90 days' time to the substituted Resolution Professional to complete the entire process.”

10. The Hon’ble Supreme Court in the above Order has referred to the directions issued in the Judgment of the Hon’ble Supreme Court in ‘**State Tax Officer’ (Supra)**. The Judgment of ‘**State Tax Officer’ (Supra)**, where in Paragraphs 55 to 59, following has been laid down:

“55. In our considered view, NCLAT clearly erred in its observation that Section 53 IBC overrides Section 48 of the GVAT Act. Section 53 IBC begins with a non obstante clause which reads:

*“53. **Distribution of assets.**—(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority....”*

56. *Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*

57. *As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines "secured creditor" to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of "secured creditor" in IBC does not exclude any Government or Governmental Authority.*

58. *We are constrained to hold that the appellate authority (NCLAT) and the adjudicating authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.*

59. *The appeals are allowed. The impugned orders [Tourism Finance Corpn. of India Ltd. v. Rainbow Papers Ltd., 2019 SCC OnLine NCLAT 910] · [STO v. Chandra Prakash Jain, 2020 SCC OnLine NCLAT 536] are set aside. The resolution plan approved by the CoC is also set aside. The resolution professional may consider a fresh resolution plan in the light of the observations made above. However, this judgment and order will not prevent the resolution applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant."*

11. It was after the Judgment of the Hon'ble Supreme Court in Appeals filed by Excise & Taxation Officer, Officer-Cum-Assessing Authority that I.A. No. 961/2024 was filed by the RP. In I.A. No. 961/2024, following prayers were made by the RP:

“(a) Take judgement/ final order dated 22.01.2024 passed by Hon’ble Supreme Court of India in Excise And Taxation Officer Of State Tax vs. Ashok Kumar Juneja in Civil Appeal Nos.7514-7515 of 2022 on record;

(b) De-reserve order and Dispose the I.A. No. 5283 of 2020 filed by Erst While/ Resolution Professional namely Mr. Ashok Kumar Juneja for seeking the Approval of the Resolution Plan.

(c) Direct and Pass appropriate orders for Applicant to conduct the ongoing Corporate Insolvency Resolution Process for M/s Mastana Foods Private limited.”

12. Prayers (a) & (b) already allowed by the Adjudicating Authority by Order dated 13.03.2024 and by Order impugned dated 01.05.2024 for Prayer (c) has been allowed. Directions issued by the Hon’ble Supreme Court in **‘State Tax Officer’ (Supra)**, have been noticed by the Adjudicating Authority in the Order and has thereafter disposed of the Application. The Prayer (c) was “direct and pass appropriate Orders for Applicant to conduct the ongoing Corporate Insolvency Resolution Process for M/s. Mastana Food Private Ltd”. From the facts noted above, it is clear that under the Order passed by the Hon’ble Supreme Court in the Appeal filed by Excise & Taxation Officer, Officer-Cum-Assessing Authority, the process was to be completed within 90 days and for taking steps in pursuance of the Order of the Hon’ble Supreme Court dated 22.01.2024, I.A. was filed by the RP. Adjudicating Authority by the Impugned Order has allowed the Application in terms of Prayer (c) but has not issued any direction as to what process, RP has to conduct. The expression used is “conduct the ongoing Corporate Insolvency Resolution Process for M/s. Mastana Foods Private Limited”.

13. Learned Counsel for the RP very fairly has submitted that RP has proposed an agenda to be placed before the CoC for taking a call regarding

ongoing process. Learned Counsel for the RP has also relied on the Judgment of the Hon'ble Supreme Court in the matter of '**M.K. Rajagopalan' Vs. 'Dr. Periasamy Palani Gounder & Anr.'**' reported in **(2024) 1 SCC 42**, decided on 03.05.2023 to support his submission that Hon'ble Supreme Court has held in the above case that whatever be the reason, the Plan has to be presented to the CoC and could have been presented to the Adjudicating Authority only after final approval of the CoC. Thus, in view of the Order of the Hon'ble Supreme Court, the CoC has to take a final call with regard to Resolution Plan or modification therein or to take such steps as has been directed by the Hon'ble Supreme Court.

14. Learned Counsel for the RP submitted that it intended to place agenda, but on account of pendency of the Appeal, CoC Meetings could not be convened.

15. Learned Counsel for the CoC also submits that it is for the CoC to take a decision for compliance of the directions of the Hon'ble Supreme Court dated 22.01.2024.

16. In view of the facts and Orders passed by the Hon'ble Supreme Court, as noted above, we are of the view that ends of justice be served in disposing the Appeal permitting the RP to place an agenda before the CoC with regard to necessary steps which are required to be taken in the CIRP of the Corporate Debtor in pursuance of the directions of the Hon'ble Supreme Court dated 22.01.2024 in **Civil Appeal No. 7514–7515/2022**. It is the CoC which is in overall control of the entire CIRP Process to take such steps as required by law.

17. We see no reason to keep this Appeal pending any further and dispose of the Appeal with liberty to the RP to place appropriate agenda before the CoC, who may take decision and complete the process of CIRP as directed by the Hon'ble Supreme Court.

Appeal is disposed of accordingly.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

18th November, 2024

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