

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1653 of 2023

IN THE MATTER OF:

**CA Rajeev Bansal
Liquidator of Isolux Corsan India
Engineering & Construction Pvt. Ltd.**

...Appellant

Versus

...Respondent

Present:

**For Appellant: Mr. Abhinav Mishra, Ms. Nivedita Chauhan, Ms.
Jagriti Dosi, Ms. Komal Singh, Advocates.**

For Respondent:

**ORDER
(Hybrid Mode)**

01.02.2024: Heard learned counsel for the Appellant. This Appeal has been filed against the order dated 29.11.2023 passed in I.A. No.1081/2023 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh. Brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) The Appellant before us was appointed as Liquidator on 06.02.2020 with respect to the Corporate Debtor – ‘Isolux Corsan India Engineering & Construction Pvt. Ltd’. The Liquidator filed an I.A. being I.A. No.405 of 2021, where the applicant prayed for following reliefs:

“PRAYER

Thus, in the light of above-stated facts and circumstances, it is most respectfully prayed, that this Hon'ble Tribunal may be pleased to:

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- A. *To authorize the Applicant/ Liquidator to defend all of any of the suit, prosecution or other legal proceedings, civil or criminal in the nature of and on behalf of the Corporate Debtor initiated both prior and post the commencement of liquidation proceedings of the Corporate Debtor.*
- B. *To provide a requisition to the Courts, Tribunals and such government authorities for expeditious disposal of matters pending in the name of and against the Corporate Debtor*
- C. *To dispense with the requirement for a formal application including payment of fee for future directions to be sought from this Hon'ble Tribunal with respect to initiating future litigation(s) from time to time in the liquidation of the Corporate Debtor.*
- D. *Pass Directions in the nature of blanket/ de-facto approval for the institution of the suit or any other legal proceedings by the Liquidator on behalf of the Corporate Debtor in near future so as to ensure appropriate recovery in favour of the Corporate Debtor for its beneficial liquidation.”*

(ii) Application I.A. No.405 of 2021 was allowed by the Adjudicating Authority by its order dated 28.04.2022. The order passed by the Adjudicating Authority in I.A. No.405 of 2021 is as follows:

“IA No. 405/2021

2. IA No. 405/2021 has been filed by applicant-Liquidator under Section 60(5) read with Sections 33(5) & 35(1)(k) of the 188 Code, 2016 seeking permission to defend all of any of the suit, prosecution or other legal proceedings, civil or criminal in the nature of and on behalf of the corporate debtor initiated both prior and post the commencement of liquidation proceedings of the corporate debtor. Vide order dated 29.11.2021, learned counsel for applicant was directed to submit a detailed chart of initiation of the legal proceedings/litigation related to corporate debtor and also for making amendment in IA No. 405/2021. The compliance to that effect has been filed vide Diary No. 00633/4 dated 28.12.2021. The said list is Annexure C-2 with the said affidavit. Keeping in view the facts and circumstances mentioned in the application, IA No. 405/2021 is allowed. The applicant-Liquidator is at liberty to defend all the litigation mentioned in the list Annexure C-2 i.e. prosecution or other consequential proceedings civil as well as criminal nature. IA No. 405/2021 is allowed and disposed of accordingly.”

- (iii) A Compliance Affidavit was filed by the Liquidator after order dated 28.04.2022 bringing list of litigations which the Liquidator was to file and defend. The said list has been brought on the record by the Liquidator at page 162 of the Appeal, filed along with Affidavit titled as ‘Compliance Affidavit’. The list contains heading as follows:

“Detailed list of pending litigations filed by/against
Isolux Corsan India Engineering & Construction
Private Limited in liquidation pending adjudication/

Litigations to be initiated before the different courts/tribunals pan India except this Hon'ble Tribunal in compliance of order dated 29.11.2021."

(iv) In the said list at Item No.7 following has been captured:

Sr. No.	CASE TYPE & TITLE	NATURE	REMARKS & FUTURE COURSE OF ACTION
7.	Case Type: Appeal. Case Title: Isolux Corsan India Engineering & Construction Pvt. Ltd. through its Liquidator Vs. Bihar Commercial Tax Department, Sasaram.	There exists a refund of INR 12,00,000,00/- (Approx.) to be released in favour of the Corporate Debtor by Bihar Commercial Tax Department, Sasaram Circle in relation to the NH-2 Project i.e., Six laning of Varanasi - Aurangabad Section of NH-2 from Km 786.000 to Km 978.400 (Total Km 192.400) in the state of UP/Bihar on Design, Build, Finance, Operate and Transfer ("DBFOT") Toll Basis under NHDP Phase-V. The Applicant/ Liquidator has already segregated the documents pertaining to the VAT refund in favour of the Corporate Debtor which are voluminous and incomplete in nature, and is in constant communication with the officials of the VAT department, Sasaram Circle towards procuring the refund amount.	If the said amount is not refunded by the Bihar Commercial Tax Department, Sasaram Circle in favour of the CD, the Applicant in his capacity as the Liquidator of the CD will be taking appropriate legal action against the Bihar Commercial Tax Department by filing an Appeal before the Deputy Commissioner (Appeals) procuring the said refund.

- (v) The Appellant Liquidator subsequently come to know that the Re-Assessment Proceedings has been initiated by the Commercial Tax Department. To protect the interest of the Corporate Debtor, the Appellant – Liquidator immediately filed a Writ Petition being Writ Petition No. C.W.J.C. No.13042 of 2022 seeking necessary direction for quashing the Re-assessment order and the demand raised thereon. When the Writ Petition was heard, objection was raised on behalf of the Respondent that the Liquidator has not sought prior approval from the Adjudicating Authority for preferring the Writ Petition.
- (vi) Consequently, the Appellant filed an application before the Adjudicating Authority being I.A. No.1081 of 2023, where following prayers were made:

“PRAYER

Thus, in the light of above-stated facts and circumstances, it is most respectfully prayed, that this Hon'ble Tribunal may be pleased to:

A. To grant the Applicant/Liquidator, the de facto approval/ratification/regularization of filing and continuation of the Writ Petition [C.W.J.C. No. 13042 of 2022] filed before the Hon'ble High Court of Patna, to quash the Order dated 07.10.2021 and the Demand Notice dated 09.10.2021, passed and raised by the JSCT, Bihar in the Re-Assessment hearing under Section 33 of the BVAT Act, 2005, initiated on account of the audit objections raised by the Accountant General (Audit), Bihar vide IR No. 25/2020-21, para 06, regarding the Input Tax Credit ("ITC") claimed over

hire charges of machineries, for the A.Y. 2012-13, on the returns filed on behalf of the Corporate Debtor for the said period.

B. Grant the Applicant/ Liquidator the de facto approval/ratification/ regularization to pursue/defend/initiate any other incidental and consequential proceedings on behalf of in the name of the Corporate Debtor, which may arise out of the said Writ Petition (as stated in Prayer A).

C. Pass any other such Order(s), which this Hon'ble Tribunal may deem fit in the interest of justice, equity and good conscience.

All of which is most respectfully prayed for.”

(vii) The application I.A. No.1081 of 2023 which was filed by the Liquidator came to be dismissed by the impugned order, aggrieved by which order this Appeal has been filed.

2. Learned counsel for the Appellant challenging the order dated 29.11.2023 contends that when the order dated 28.04.2022 in I.A. No.405 of 2021 is taken into spirit and connotation, the order gives permission to the Liquidator to prosecute any proceedings to protect the interest of the Corporate Debtor. The Writ Petition was filed by the Appellant to protect the interest of the Corporate Debtor and I.A. No.1081 of 2022 was filed only for regularization or ex-post facto approval to enable the Liquidator to meet the objection of the Respondent that Writ Petition was filed with due prior permission of the Adjudicating Authority. The Adjudicating Authority by the

impugned order has rejected the application without considering the true effect and consequence of its earlier order passed in I.A. No.405 of 2021.

3. We have considered the submission of the Appellant and perused the record.

4. There cannot be any exception to requirement of law as contained in Section 33(5) of the Code i.e. legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority. When the application was filed by the Liquidator being I.A. No.405 of 2021, this was with intent and purpose to obtain prior approval of the Adjudicating Authority to instituted legal proceeding on behalf of the Corporate Debtor, which application was allowed by the Adjudicating Authority by the order passed on 28.04.2022, which we have already extracted above. The subsequent application became necessary as the objection was raised to the maintainability of the Writ Petition on the ground that there is no prior approval with regard to filing of the Writ petition. Though it is not disputed that there was no specific approval for filing Writ Petition, however, when the Adjudicating Authority has allowed the Liquidator to prosecute on behalf of the Corporate Debtor, we are of the view that the Adjudicating Authority ought to have issued necessary order as prayed in I.A. No.1081 of 2023 to clarify that the Liquidator was fully entitled to peruse the Writ Petition on behalf of the Corporate Debtor. We are of the view that the impugned order cannot be sustained. Order dated 29.11.2023 is set aside. I.A. No. 1081 of 2023 is allowed holding that the proceedings which was initiated by the

Liquidator by filing Writ Petition being Writ Petition No. C.W.J.C. No.13042 of 2022 was fully covered by the approval as given by the Adjudicating Authority by order dated 28.04.2022 in I.A. No.405 of 2021. The Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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