NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
COMPANY APPEAL (AT) (CH) (INS) NO. 446/2024

IN THE MATTER OF:

GOVERNMENT OF TAMIL NADU,
Commercial Tax & Registration Dept.,
Rep by the Assistant Commissioner (ST),
Sriperumbudur Assessment Circle,
Varadharajapuram,
Poonamallee,
Chennai – 600 123
acsriperumbudur@gmail.com
9445195070 **…APPELLANT**

V

1. **NITHIYANANTHAM RAMACHANDRAN,**
   Liquidator of M/s. Chowel India Pvt. Ltd.,
   No. 3/176, Avin Nagar,
   Surveyor Colony, Madurai
   Tamil Nadu – 625007

2. **THE SUB-REGISTRAR,**
   Registration Department,
   Sriperumbudur,
   Kanchipuram District,
   Tamil Nadu. **...RESPONDENTS**

Present :

For Appellant : Mr. I Arvindhsamy, Advocate
Mr. P. Sathish, AGP
For Respondent : Mr. AG Sathyanarayana, Advocate for R1

JUDGMENT
(Hybrid Mode)

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

The Respondent No.1, is the liquidator of M/s. Chowel India Pvt. Ltd., the Corporate Debtor, against whom the proceeding under Section 9 of the I & B Code, 2016, stood initiated by M/s. Air Pack Gases, the Operational Creditor. The said proceeding under Section 9 of the I & B Code, 2016, was taken up by Ld. Adjudicating Authority and the Corporate Debtor was directed to be admitted into CIRP by the Ld. NCLT, by an order passed on it on 05.05.2020, appointing Respondent No.1 herein to act as an IRP and declaring a moratorium u/s 14 of the I & B Code, 2016. After having been appointed in the said capacity, Respondent No. 1 initiated the CIRP process, and made a public announcement under Section 15 of the I & B Code, 2016, on 11.05.2020 by carrying a paper publication, and after inviting claims and collating them, constituted the Committee of Creditors (CoC) with the Axis Bank as the sole member CoC on 21.07.2020, confirmed Respondent No.1 as the Resolution Professional (RP) of the Corporate Debtor to render the duty as mandated under Section 25 of the I & B Code, 2016. Committee of Creditors conducted a number of meetings thereafter to take CIRP process forward. However, on account of lack of revival prospects and of the fact that the Corporate Debtor ceased production from 20.05.2019, the CoC in its 8th meeting on 28.04.2024 resolved to liquidate the Corporate Debtor.

2. Accordingly, the RP/ Respondent No.1 herein filed an Application for liquidation being IA No. 610/CHE/2019, in IBA/1121/2019 which stood allowed by the Ld. Adjudicating Authority by an order dated 29.11.2021, appointing Respondent 1 as the liquidator.

3. Subsequent to appointment as Liquidator, Respondent 1 called for claims from the creditors and initiated the process of assets of the Corporate Debtor through e-auction. During the stage of verification of the credentials of the secured assets of the Corporate Debtor, which could have been put for the e-auction process, the liquidator came to know that with respect to one of the assets, encumbrance has been created by the Appellant herein, which has been described as to be the land to the extent of 4.41 acres and building therein measuring 66,728.30 sq.ft. lying in Survey No. 449, of Mannur Village, Sriperumbudur Taluk, Kanchipuram district. Respondent No.1 requested by letter dated 19.01.2022 the Appellant to withdraw the said charge, but the Appellant vide letter 03.02.2022 denied the same, claiming that they are secured creditors and they want to realize the security interest under the Revenue Recovery Act, 1864. Therefore, Respondent No.1 filed the Interlocutory Applications being IA No. 445/2022, before the Ld. Adjudicating Authority seeking directions to

remove the encumbrance made over the aforesaid property. Ld Adjudicating Authority vide its order dated 11.01.2024 allowed the Application and directed the Appellant herein to remove the attachment in the schedule property within 2 weeks to enable the liquidator to deal with it.

4. The Respondent No.1 in his Application filed before the Ld. Adjudicating Authority on 04.04.2022 had submitted that the encumbrance has been created by the Appellant for an amount of Rs.85,42,436/- for which they have submitted Form C in the liquidation process, that the encumbrance has been created under Section 14 of the Tamil Nadu Revenue Recovery Act, 1864, that the Appellant will not be able to realize its security interest under the Tamil Nadu Revenue Recovery Act, 1864, because as per section 14 the distress levied shall not be excessive which is not the case herein, and there in non-compliance of the provisions contained under Section 27, to be read with Section 36 of the Tamil Nadu Revenue Recovery Act, 1864, which mandates the issuance of attachment notice in the shape of Form 5, and its publication in the District Gazette, as well serving of notice for sale of the land in Form 7, on the director of the Company which were not done and therefore Revenue Recovery Act cannot be enforced, that Section 238 of the I & B Code, 2016 overrides all

other laws and therefore the encumbrance created by the Appellant on the said property deserves to be lifted.

5. In the said Application, the Respondent No.1 has modulated the relief in the following manner.

> *"The Applicant most humbly prays that this Hon'ble Tribunal may be pleased to pass the following orders in the interest of Justice:*
> *a) That this Hon'ble Tribunal may be pleased to direct the 1" Respondent to remove the attachment in the scheduled property of the Corporate Debtor;*
> *b) That this Hon'ble Tribunal may be pleased to declare the 1 Respondent attachment in the scheduled property of the Corporate Debtor is null and void;*
> *c) That this Hon'ble Tribunal may be pleased to direct the 2 Respondent to remove the 1" Respondent's attachment in the Encumbrance Certificate of the scheduled property of the Corporate Debtor and declare the same is null and void; or*
> *d) To pass such other orders or further orders which may be deemed to be fit and proper in the interest of justice."*

6. The said application came up for consideration before the Ld. Adjudicating Authority after being numbered as IA No.445(CHE)/2022, the Tribunal observed that the encumbrance which has been created by way of an attachment under the Revenue Recovery Act was for the purposes of the recovery of the amount due to be paid towards the tax liabilities of the Corporate Debtor, and that since the Appellant has already submitted its claim before the liquidator, lifting of the attachment would only facilitate in

the settlement of the said claim by way of sale of the said property and that allowing of the application for lifting of the attachment in the scheduled property as given in the attachment order as well as detailed in the application preferred in IA No. 445/2022 would rather achieve the object of the Appellant, that settlement of his claim.

7. We are of the view that allowing of the application lifting the attachment order was on the ground that since the claim at the behest of the Appellant has already become a subject matter for consideration before the liquidator, the directions to lift the attachment will facilitate settlement of the dues as claimed by the Appellant, and more particularly, when the lifting of an attachment has been done with an intent to meet the objective of the attachment as made by the orders passed by the subordinate courts. Thus, the lifting of the attachment apart from the fact that it hastens the process of settlement of dues by the liquidator and it also goes in consonance with the very purpose of attachment under the provisions of the Revenue Recovery Act more particularly when it relates to the GST dues which itself was a subject matter for consideration in the claim which was raised by the Appellant.

8. In that eventuality, the lifting of an attachment is not dehors to the interest of the Appellant and more particularly when he has already raised his claim, he cannot simultaneously press upon the claim for recovery of

the tax dues by continounce of the attachment of the assets of the Corporate Debtor. Thus, the order of lifting of an attachment will rather help in the hastening of the process of the liquidation. The claim of the Appellant that his claim has a precedence over the settlement of the liabilities and that he has the status of secured creditors, owing to the ratio laid down by the Hon'ble Apex Court in the matter of ***State Tax Officer (1) v. Rainbow Papers Ltd., 2022 SCC Online SC 1162***, the same will be taken case of by the liquidator as per the provisions of law and the lifting of the encumbrance created is not contrary to the provisions of law or the interest of the Appellant.

Hence, no interference is called for, the **Company Appeal (AT) (CH) (Ins) No. 446/2024** lacks merit, and the same is accordingly 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.06.2025
GKJ/MS/RS