NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.296/2024

In the matter of:

Joint Commissioner of Commercial Taxes &
GST, C.T. & GST Circle, Cuttack-1,
East, Odisha
Rep. by Smt. Bijaylaxmi Biswal, aged about 42 year,
Having its office at – C.T. & GST Office,
3rd Floor, OSFC Building, OMP Square,
Cuttack – 753003 (formerly known as
Deputy Commissioner of Commercial Tax
& GST, CT & GST Circle, Cuttack-1 East Odisha) **… Appellant**

V

Smt. Anuradha Bisani,
Liquidator of M/s. Lanco Infratech Ltd.
At / P.O-3-6-106/A, Om Sri Sai Towers,
Flat No. 102, Street No. 19,
Himayatnagar, Near Vijaya Diagnostic Centre,
Hyderabad, Telangana, 500029 **... Respondent**

Present :

For Appellant : Mr. Anand Das, Advocate

For Respondent : Ms. Anuradha Bisani, Liquidator

J U D G M E N T
(Hybrid Mode)

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

1. The Appellant in the instant Company Appeal (AT) (CH) (INS) No. 296 / 2024, which has been preferred under Section 61 of the I & B Code, 2016, challenges the Impugned Order dated 05.04.2024, as it was passed by the

Learned Adjudicating Authority in IA (IBC) No.1459 / 2023, as preferred in CP (IBC) No. 111 / 7 / HDB / 2017.

2. Consequent to the Impugned Order, the learned Adjudicating Authority had rejected the claim of the Appellant on the ground, that, it was barred by limitation, and there is an absence of proof of claim.

3. Besides that, the learned Adjudicating Authority has observed that since, admittedly the claim was submitted at a much belated stage, there is no provision available under law, to entertain any such claim, especially when the Plan which has already been approved by the Learned Tribunal and the Corporate Debtor has already been handed over to the Acquirer.

4. Consequent to the aforesaid stages of the proceedings, it was held that the claim of the Appellant as it was prayed for, could not be granted, subsequent to finality assigned to the Plan approved by the Ld. Tribunal.

5. The facts leading to the filing of the instant Company Appeal, as it has been preferred by the Appellant, was on the ground that, the Corporate Debtor was a Company, which was a registered Dealer and the Company which was functioning its business operations within the territorial jurisdiction of the Appellant and according to the contention of the Appellant, they were assessed under the Odisha VAT Act, OET and CST (Odisha) Rules for the Assessment Years for the period from 01.04.2011 to 30.06.2017.

6. The Appellant has contended that, for the aforesaid period of Assessment of the Corporate Debtor, there were certain Statutory Tax dues including, penalty which fell due to be paid which has been assessed to be of Rs.740,20,84,616/-.

7. It was contended by the Appellant that a number of Show Cause and Demand Notices were issued to the Corporate Debtor, but, neither the Corporate Debtor nor the Liquidator responded to the plea raised by the Appellant until he was informed by the local Counsel, about the pending Liquidation proceedings of the Corporate Debtor, which at that stage, was pending before the Ld. NCLT, Hyderabad.

8. So far as the proceedings of the CIRP is concerned, it stood initiated against the Corporate Debtor, as back as on 07.08.2017. Consequent to this, as there were no satisfactory Resolution Plans received, the Corporate Debtor was directed to be put to Liquidation by an Order of Ld. NCLT dated 27.08.2018.

9. After the Corporate Debtor was put to Liquidation by the aforesaid Order dated 27.08.2018, the Liquidator is said to have published Form A on 29.08.2018, thereby inviting the claims to be submitted by 26.09.2018, the fact of which has not been disclosed in the Appeal.

10. The Appellant contends that, the knowledge of the Liquidation proceedings of the Corporate Debtor, was imparted to him from a local Counsel only on 01.08.2020, and thereafter, on 02.09.2020, he has submitted his claim in

Form B, admittedly in accordance with the Invitation made by the way of Form A, as published on 29.08.2018. The Form B was submitted by the Appellant after lapse of two years and that too, a wrong Form was filed by the Appellant before the Liquidator.

11. To overcome the said restriction of having submitted an incorrect Form, the Appellant alleges that he had prayed for, that he may be permitted to rectify the defects, and pursuant to the same, he submitted his claim in Form C on 06.10.2020. However, nothing much could be crystallized, till the claim of the Appellant stood rejected by the Liquidator on 24.11.2020, and intimated to him by e-mail.

12. It is an admitted case of the Appellant that, as against the Order of rejection of claim by the Liquidator on 24.11.2020, the Appellant had preferred an Appeal under Section 42 of the I & B Code, 2016, by way of an Application, before the Ld. Adjudicating Authority, which was bearing an E-filing No. 3607130/01141/2020.

13. Apart from the fact that this said Company Application was defective, it was preferred at a much belated stage, beyond the limitation period as prescribed under the Statute, for filing of an Appeal against rejection of a claim by the Liquidator.

14. The Appellant has contended that after filing of Section 42 Application on 16.12.2020, he had followed up a number of times with the Registry of the

Ld. NCLT, Hyderabad, in order to rectify the defects as pointed in the Application / Appeal, preferred under Section 42 on 16.12.2020, but, it is an admitted case that, on 03.05.2023, the local Counsel of the Appellant was directed to re-file the Appeal under Section 42, as the previous filed Application was not traceable and Section 42 continued to remain pending, in the shape of a defective Appeal.

15. The Respondent contends that, it is an absolute false case, which has been raised by the Appellant and that too, without the same being substantiated from record, that the Ld. Adjudicating Authority itself on 03.05.2023, has advised the Appellant, to file another Application / Appeal under Section 42 of the Code, and the same was filed on 16.07.2023, and was numbered as IA (IBC) No. 1459 / 2023 in CP (IB) No. 111 / 7 / HDB / 2017.

16. It is the said Application which has been rejected by the Ld. Tribunal, by the Impugned Order, holding it to be not maintainable, owing to the bar of limitation as prescribed under the Statute, Section 42 of the I & B Code, 2016, for preferring an Appeal against the decision of the Liquidator. The provisions of Section 42 of I & B Code, 2016, contemplates that the Creditor may also file an Appeal against the decision of the Liquidator, before the Ld. Adjudicating either accepting or rejecting the claim, within 14 days from the receipt of such decision.

17. Apparently, in the instant case, admittedly the decision of the Liquidator to reject did take place on 24.11.2020, and the Appellant had preferred the initial Appeal before Ld. Adjudicating Authority on 16.12.2020, that is, after 22 days which is beyond the prescribed period of limitation; further, when the Appeal was reported to be defective, despite opportunity being granted, the same was not rectified and the status of the Appeal u/s. 42 remained pending as a defective Appeal, before Ld. Adjudicating Authority for more than two and half years. The Appellant had filed yet another Appeal under Section 42 of the Code on 16.07.2023, as against the rejection of claim by the Liquidator as passed on 24.11.2020, which quite obviously would be much beyond the period of limitation i.e. beyond 14 days as prescribed under law.

18. Another important factor, which is required to be considered by us is that, as to whether, during the pendency of a defective Appeal preferred by the Appellant prior in time, which was not rectified, the Appellant could have filed another Application in the shape of an Appeal under Section 42 of the Code on 16.07.2023, when particularly, he himself has opted out not to rectify the defect, thus pointed out by the Registry of the NCLT and the same was not rectified, within the prescribed time provided by the Registry. We are of the view that the subsequent Appeal preferred under Section 42 of the Code, would not be maintainable, because, the Appellant cannot take the advantage of his own wrong of not rectifying the defects of the initial Appeal filed as back as on

16.12.2020, and then preferring of a subsequent Appeal under Section 42 of the Code, is not maintainable in the eyes of law, apart from being barred by limitation.

19. Even otherwise also, if the entire controversy is taken into consideration, in the context of the observation, which has been made in the Impugned Order, as a matter of fact, as on today, nothing survives to be decided, because of the finding recorded in Para 13 of the Impugned Order that, the approval of sale of the Assets of the Corporate Debtor as a going concern has already been carried. Hence, owing to the aforesaid fact, when the claim which has been claimed, that too at the belated stage, cannot be permitted to be entertained and hence, the claim was rightly rejected by the Ld. Adjudicating Authority.

20. The aforesaid aspect, is quite apparent in view of the finding which has been recorded in Para 13 of the Impugned Order, where the Learned Tribunal has observed that in the absence of there being any provision available under law, to entertain any claim in a Plan which has already been approved by the Learned Tribunal that too, at the stage when the Corporate Debtor has already been sold as a going concern and has been, as of now taken over by the Acquirer, no claim of the Appellant as such, could be entertained at this belated stage, as observed in the Impugned Order.

21. The Learned Counsel for the Appellant had tried to diversify and elaborate the controversy beyond the issue before Ld. NCLT, from the

perspective, with regards to the allocation of shares and the sale of the Assets of the Corporate Debtor on a clean-slate basis. However, the said issue is not required to be adverted by us, owing to the facts which had already referred above, that once the Appellant himself has raised a claim at a belated stage and since, the Plan has already been approved and the Corporate Debtor has already been sold as a going concern, no interferences is required for at this stage.

22. The Learned Counsel for the Appellant, had particularly drawn the attention of this Appellate Tribunal to a finding pertaining to the implications of Regulation 16 as contained under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The said finding pertains to the provisions inserted by an amendment by way of Notification issued on 25.07.2019.

23. Hence, the process of submission of claim as contemplated under the amended provision as contained under Regulation 16 of IBBI (Liquidation Process), Regulations 2016, will not be applicable in the instant case, particularly when the claim herein relates to the Assessment Year 2011 to 2017 which is prior to the amendment. The amendment in itself will not have retrospective applicability.

24. Apart from it, there would be yet another reason, because in Regulation 16, as it was existing at the stage when the claim was to be considered, it required a ``**proof of claim**''. Reference of the term ``**proof of claim**'', as it

was then contained under the Regulation 16, the submission of claim was not relevant. What is more relevant to be considered is that, the person who intends to raise a claim, will have to establish by evidence, that he has got a legally sustainable claim to be considered and decided, that means, the burden of establishing the proof of the claim was required to be discharged by the Appellant herein under the then existing provisions of Regulation 16, as it was then existing in the Statute books.

25. Hence, ultimately, we can conclude that;

(1) The submission of a claim of the Appellant will not be falling under Regulation 16 of IBBI (Liquidation Process) Regulations 2016, as it existed prior to 25.07.2019.

(2) Since, the Appellant's first Application under Section 42 of the Code remain pending as defective and defects were not rectified, the second Application for the same cause of action is not maintainable.

(3) Admittedly, the claim of the Appellant stood rejected by the Liquidator as back as on 24.11.2020 and if at all, the Limitation prescribed under Section 42 of the Code is taken into consideration, filing of a claim on 16.07.2023, was barred by limitation and the same could not have been entertained.

(4) Besides that, more importantly since the Plan has already been approved in accordance with Para 13 of the Impugned Order, and the

interest has already been created in favour of the Acquirer, at this stage no claim as such of the Appellant could be directed to be considered on merits, since apparently it is being barred by limitation, due to final settlement of claim which has already been finalised.

26. Thus, the Company Appeal (AT) (CH) (INS) No. 296 / 2024 for the aforesaid reasons, lacks merit and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/06/2025

SR / MS