

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 324 & 325 of 2022**

In the matter of:

Jai Vardhman Khaniz Pvt. Ltd. & Ors.Appellants

Vs.

**Hindustan Paper Corporation Through Liquidator & ...Respondents
Ors.**

For Appellants: Mr. Abhijeet Sinha, Mr. Anand Varma, Ms. Apoorva Pandey, Advocates.

**For Respondents: Mr. Vivek Sibal, Senior Advocate with Mr. Kuldeep Verma, Mr. Rahul Sharma, Advocates for R1.
Mr. Kuldeep Verma (R1- Liquidator)
Mr. Sumant Batra, Ms. Apoorva Choudhury, Advocates for R4.
Mr. Pranay Agrawala, Advocate for R6.**

JUDGMENT

(03rd June, 2022)

Ashok Bhushan, J.

1. These Appeals have been filed against the two orders passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II dated (i) 26.04.2021 in I.A No. 3150/2020 filed by the Liquidator, (ii) order dated 07.03.2022 passed in I.A No. 3770/2020 filed by 'Mahalaxmi Continental Limited' by which order Application for submitting a Scheme under Section 230 of the Companies Act, 2013 was withdrawn.

2. 'M/s. Alloys & Metals (India)'- Operational Creditor filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code" for short) seeking recovery of Rs. 98 Lakhs from 'Hindustan Paper Corporation

Ltd.’- (Corporate Debtor). The Adjudicating Authority vide order dated 13.06.2018 admitted Section 9 Application and initiated Corporate Insolvency Resolution Process (CIRP). The Adjudicating Authority vide an order dated 02.05.2019 directed for liquidation in light of the fact that the CIRP period of 270 days was over and no Resolution Plan was received. The Corporate Debtor filed an Appeal against the order dated 02.05.2019 in this Tribunal which Appeal was disposed of on 29.05.2019 upholding the order of liquidation. This Tribunal also directed the Liquidator to ensure that the Corporate Debtor remains a going concern. The Liquidator filed CA No. 1255/2019 before the Adjudicating Authority for extension of time for exploring a scheme under Section 230 by a period of 90 days. On 22.10.2019, ‘Mahalaxmi Continental Limited’ sent a letter to the Liquidator communicating interest in submitting proposal for revival under Section 230. The Union of India through Department of Heavy Industries filed an Affidavit stating that the Department was unable to offer a scheme or an arrangement under Section 230 of the Companies Act, 2013 nor was it in a position to make available Rs. 54 Crores. On 25.11.2019, the Adjudicating Authority disposed of the Application filed by the Liquidator being C.A No. 1255/2019 as no scheme was received under Section 230 and directed the Liquidator to liquidate the assets of the Corporate Debtor. On 09.01.2020, the Liquidator issued a Public Announcement inviting Expression of Interest from bidders for selling certain non-core assets of the Corporate Debtor. On 18.02.2020, this Tribunal granted time for consideration of the Schemes under Section 230 of the Companies Act, 2013 after ‘Mahalaxmi Continental Limited’ apprised the

Court that they are interested in submitting a scheme for revival of the Corporate Debtor. The Liquidator on 03.03.2020 has made a Public Announcement inviting prospective bidders for submission of Scheme of Compromise or Arrangement under Section 230 of the Companies Act, 2013. Liquidator issued a fresh invitation on 09.06.2020 for submission of a Scheme under Section 230 along with a Process Document. On 29.06.2020, 'Mahalaxmi Continental Limited' submitted a Scheme for Compromise of the Corporate Debtor. The Adjudicating Authority on 26.08.2020 directed the Liquidator to convene a meeting of the Committee of Stakeholders and consider the Scheme submitted by 'Mahalaxmi Continental Limited' and file status report. The Liquidator convened meeting of Committee of Stakeholders on 02.09.2020. In the meeting of the Committee of Stakeholders, 42.32% of admitted claim supported the Scheme. The consortium led by 'Mahalaxmi Continental Limited' filed an Application I.A 3770/2020. On 26.04.2021 the Liquidator filed an Application I.A 3150/2020 praying for directions permitting the Liquidator to proceed with the liquidation of the Corporate Debtor in accordance with the law. On 26.04.2021 (one of the impugned order), the Adjudicating Authority disposed of I.A of the liquidator directing the Liquidator to proceed as per direction given by this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 585 of 2019. On 01.06.2021, the Liquidator issued an e-auction sale notice for the sale of the Corporate Debtor for a reserve price of Rs. 1139 Crores. On 22.06.2021, Liquidator issued another e-auction sale notice for the sale of the Corporate Debtor for a reserve price of Rs.969 Crores. On 25.11.2021, Liquidator issued an e-auction sale notice for

the sale of assets of the Corporate Debtor in lots, with cumulative reserve price of Rs.800 Crores. Further notice dated 09.12.2021, cumulative price fixed as Rs.700 Crores. Further, e-auction notices were issued by the Liquidator where cumulative price was gradually reduced as per the Regulation. It was on 07.03.2022 that I.A 3770/2020 filed by 'Mahalaxmi Continental Limited' for consideration of Scheme under Section 230 of the Companies Act, 2013 was dismissed as withdrawn. On 28.03.2022, e-auction was held. In pursuance of the e-auction notice dated 03.03.2022, e-auction was held on 28.03.2022 where the bid of 'Assam Industrial Development Corporation' for Rs. 375 Crores was accepted and in pursuance of highest bid payment were also made by the highest bidder.

3. This Appeal was filed in this Tribunal on 24.03.2022 before holding of e-auction, in the Appeal, following prayers have been made:-

“(i) That this Hon’ble Appellate Tribunal may be pleased to allow the present appeal, and set aside the impugned final order dated 26.04.2021 in IA No. 3150/2020 and final order dated 07.03.2022 in IA No. 3770/2020 passed by the Hon’ble National Company Law Tribunal, Bench II, New Delhi.

(ii) That this Hon’ble Appellate Tribunal may be pleased to quash the e-auction notice dated 03.03.2022 issued by Respondent No.1 Liquidator for sale of assets of the Corporate Debtor.

(iii) That the Hon’ble Appellate Tribunal may be pleased to direct the Liquidator to facilitate a proper consideration of scheme submitted under Section 230;

(iv) That this Hon'ble Appellate Tribunal may pass any other or further order as this Hon'ble Appellate Tribunal may deem fit in the facts and circumstances of the case."

4. The Appellant prays for quashing both the order dated 26.04.2021 directing for Liquidation as well as order dated 07.03.2022 permitting withdrawal of I.A 3770/2020. Further prayer is to quash e-auction.

5. Shri Abhijeet Sinha, Learned Counsel appearing for the Appellant submits that the Appellants in this Appeal are all Operational Creditors who were long standing suppliers and service provider to the Corporate Debtor. It is submitted that the Appellants are ready to offer higher amount to one which has offered by highest bidder to take the Corporate Debtor and run the same. It is submitted that the Appellants were not given opportunity to submit any Scheme which they were ready and willing to submit offer of higher amount. It is submitted that the e-auction has been held on a partly sum of Rs.375 Crores whereas the Public Announcement on 01.06.2021 for a reserve price of Rs. 1139 Crores.

6. Learned Counsel appearing for 'Assam Industrial Development Corporation' submits that they are the highest bidder and they have already made the payment and distribution of the amount has already been undertaken. It is submitted that the Appellants have no locus to challenge both the impugned orders.

7. We have considered the submissions of the Learned Counsel for the parties and perused the record.

8. There has been earlier order of this Tribunal in Company Appeal (AT) (Ins.) No. 585 of 2019 which was filed challenging the order dated 02.05.2019 passed by the Adjudicating Authority for liquidation. This Tribunal has made observations in paragraph 6 to the following effect:-

“6. Apart from the fact that Liquidator will ensure that ‘Corporate Debtor’ remains a going concern, we are of the view that the Liquidator should approach the Union of India through the concerned Department for realization of the funds to ensure that the ‘Corporate Debtor’ remains a going concern. Union of India though party before us in one of the appeal, is expected to release certain funds from the Consolidated Fund, if permissible for ensuring that the ‘Corporate Debtor’ remains a going concern and scheme or arrangement may be reached under Section 230 of the Companies Act, 2013 or it can be sold as a going concern along with its employees/workmen to a third party. Both the Appeals stand disposed of with the aforesaid observations and directions. No cost.”

9. It was as early as on 29.05.2019 that observation was made and Scheme of Arrangement under Section 230 be explored. It is on the record that an Application was filed by ‘Mahalaxmi Continental Limited’ being IA 3770/2020 which was a consortium of Operational Creditors and other persons submitting a Scheme for Arrangement under Section 230. However,

the said Application was withdrawn on 07.03.2022 which is an order challenged in the present Appeal. When an Application is withdrawn by Applicant himself, no exception can be taken to order dated 07.03.2022 and we see no reason to interfere with the order dated 07.03.2022 at the instance of the Appellants in the present Appeal.

10. Now coming to the impugned order dated 26.04.2021 by which Adjudicating Authority while deciding IA 3150/2020 filed by the Liquidator has observed that the Liquidator is well advised to proceed as per the directions given by this Tribunal in Company Appeal (AT) (Insolvency) No. 585/2019. The Adjudicating Authority in the impugned order has noticed the interest shown by 'Mahalaxmi Continental Limited' and other steps for obtaining a Scheme under Section 230. In paragraphs 27 to 30, Adjudicating Authority has observed:-

"27. In the light of the submissions, now we consider the prayer of the liquidator and we notice that the Liquidator as well as the Respondent no. 5 in its reply have enclosed the order passed by the Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) no. 585/2019 dated 29.05.2019 the para 5 of which reads that:

"Taking into consideration the aforesaid facts and circumstances, we are not inclined to interfere with the impugned order dated 2nd May, 2019, but direct the Liquidator to follow the decision of this Appellate tribunal in

*Company Appeal (AT) Insolvency)
No.224 of 2018".*

28. *Since, a direction as mentioned above has already been given by the Hon'ble NCLAT, while disposing of the Appeal, therefore, in our considered view, there is no law which permits this Adjudicating Authority to reconsider/review the order already passed by the Hon'ble NCLAT, the Liquidator is well advised to proceed as per the directions given by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 585/2019.*

29. *So far as the points raised by the Respondent no 5 is concerned, these have already been decided by the Hon'ble NCLAT. Further, as informed by the parties, the matter of applicability of the IBC, 2016 to the Corporate debtor is pending before the Hon'ble High Court of Delhi as well as Hon'ble High Court of Guwahati.*

30. *Hence, in our considered opinion, there is no need to give any further direction to the Liquidator. The Liquidator is well advised to proceed as per the direction already given by the Hon'ble NCLAT. Accordingly, the prayer of the Applicant (Liquidator) is hereby rejected."*

11. When no Scheme could be submitted or approved under Section 230, there was no option left to the Adjudicating Authority except to direct the Liquidator to proceed further in the liquidation process. The Appellate Authority while considering the Appeal filed against the order of the Liquidation has clearly stated that the Appellate Authority is not inclined to

interfere with the impugned order dated 02.05.2019 which observation was made in Company Appeal (AT) (Ins.) No. 585 of 2019 as noted in paragraph 27 of the Adjudicating Authority order. The mere fact that the Appellants in this Appeal claims that they are interested to offer a higher amount to one which the Corporate Debtor has been auctioned cannot be a ground to entertain this Appeal or interfere with the impugned order. Everyone including the Appellants had ample opportunity before the Adjudicating Authority when proceedings were on to submit appropriate Scheme Under Section 230. As noted above, a Scheme under Section 230 was submitted by 'Mahalaxmi Continental Limited' an Operational Creditor which was a consortium of Operational Creditors including some of the Appellants also. The Scheme was subsequently withdrew by the Applicant. It is amply clear that there is no Scheme under Section 230 which may obviate proceeding in the liquidation. We thus, are of the view that no grounds have been made out to interfere with the impugned orders. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Naresh Salecha]
Member (Technical)

New Delhi
Anjali