

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 58 of 2020

(Arising out of Order dated 29th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in (IB) No. 1451(ND)2019)

IN THE MATTER OF:

**Mr. Harrish Khurana,
Liquidator of M/s. TEIL Projects Limited
(In Voluntary Liquidation)**

Appellant

Versus

M/s. Engineers India Limited & Anr.

Respondents

Present:

For Appellant: Mr. Harrish Khurana, Liquidator.

**For Respondents: Mr. Anil Kaushik, Mr. Abhishek Mishra and
Mr. Akash Bhardwaj, Advocates for R-1.**

J U D G M E N T

BANSI LAL BHAT, J.

The question for consideration in this appeal, as formulated on 16th January, 2020, is whether the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) can be made applicable under Voluntary Liquidation initiated pursuant to the Companies Act, 1956 and the procedure to be followed and in such case, whether the appeal under Section 42 of the 'I&B Code' is

maintainable before the Adjudicating Authority (National Company Law Tribunal).

2. The Appellant- Mr. Harrish Khurana, Liquidator of 'M/s. TEIL Projects Limited' has preferred the instant Appeal seeking setting aside of impugned order dated 29th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IB-1451(ND) 2019 with further direction to 'M/s. Engineers India Limited' (Respondent No.1) to approach the Hon'ble High Court of Delhi to claim the amount of Rs. 16,29,171/- which is not part of the Declaration of Solvency.

3. The impugned order came to be passed by the Adjudicating Authority in appeal under Section 42 of the 'I&B Code' which provides remedy against the decision of the Liquidator. It appears that 'M/s. TEIL Projects Limited' is undergoing Voluntary Liquidation Process. The Liquidator rejected claim of the Respondent No.1 vide letter dated 14th May, 2019 on the ground that the same was not part of the declaration dated 13th June, 2016. On appeal, the Adjudicating Authority found that the explanation by the Respondent No.1 in regard to non submission of claim for Rs. 16,18,118/- was plausible as the amount was due and payable which had been admitted by the Liquidator in its letter of rejection, but that the Liquidator had improperly rejected the same. The Liquidator was directed to admit the claim of the Respondent No.1 as per Form B which has already been filed by the Respondent

No.1. Consequently, the letter of rejection dated 14th May, 2019 was set aside to the extent of the rejection of the claim of the Respondent No.1.

4. Heard learned counsel for the parties and perused the record.

5. The controversy involved at the bottom of this appeal is very narrow and does not call for a very elaborate exercise as regards consideration of the issue raised in this appeal. It is beyond controversy that 'M/s. TEIL Projects Limited' is undergoing Voluntary Liquidation Process contemplated under Chapter V of Part II of the 'I&B Code'. It is indisputable that Section 59 of the 'I&B Code' incorporated in Chapter V of Part II of the 'I&B Code' providing for 'Voluntary Liquidation of Corporate Persons' stands duly notified vide S.O. 1005 (E) dated 30th March, 2017 and has been enforced w.e.f. 1st April, 2017. The provision is reproduced hereunder:

“59. Voluntary liquidation of corporate persons.-

(1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:—

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration under sub-clause (a), there shall be—

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such

resolution or the subsequent approval by the creditors, as the case may be.

(5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).

(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded

to the authority with which the corporate person is registered.”

6. The conditions necessary for initiating a Voluntary Liquidation Process, as enumerated in the aforesaid provision and coming to the fore on a plain reading thereof, are that such Voluntary Liquidation can be initiated by a Corporate Person which has not committed any default and the conditions and procedural requirements as may be specified by the Insolvency and Bankruptcy Board of India (hereinafter referred to as “Board”) are to be complied with. The provision further envisages a declaration from majority of the Directors of the Company regarding formation of an opinion that either the Company has no debt or that it would be able to liquidate its liability from sale proceeds of its assets with further requirements that the company is not being liquidated to defraud any person. The declaration has to be followed by Special Resolution within four weeks of such declaration passed in a general meeting with a further rider that in the event of company owing any debt to any person, creditors representing two thirds in value of the debt of the Company shall approve such resolution within seven days of passing of such resolution. It is significant to take note of sub-section (6) of Section 59, which reads as under:

“59. Voluntary liquidation of corporate persons.-

.....(6) The provisions of sections 35 to 53 of

Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.”

7. The aforesaid provision leaves no room for doubt that Voluntary Liquidation proceedings with necessary modifications shall, *inter alia*, be governed by provisions of Sections 35 to 53 of Chapter III and Chapter VII. The effect of application of such provisions is that admission or rejection of claims falling within the ambit of Section 40 of the 'I&B Code' lies within the domain of Liquidator and the decision of Liquidator rejecting any claim is appealable before the Adjudicating Authority. It is, therefore, futile on the part of the Appellant to contend that the Adjudicating Authority has no jurisdiction to adjudicate upon the claim of the Respondent No.1 in appeal.

8. As regards order dated 29th June, 2017 issued by the Ministry of Corporate Affairs in the form of S.O. 2042 (E), be it seen that such order has been issued to clarify the position and remove difficulties regarding transfer of proceedings relating to those cases of voluntary winding-up of a company where notice of the resolution by advertisement has been given under sub-section (1) of Section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017. The order seeks to substitute the third proviso to Section 434(1) (c) of the Companies Act, 2013 by providing that the proceedings relating to

cases of voluntary winding up of a company where notice of the resolution by advertisement has been given, but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959. The order in question operates in a different field and seeks to remove difficulties regarding transfer of voluntary winding up proceedings of a company pending consideration. The issue raised in this appeal is confined to legality of the impugned order by virtue whereof letter of rejection of claim of the Respondent No.1 has been set aside to the extent of rejection of such claim and issue of transfer of a pending winding up proceedings is not at all the subject of determination.

9. The initiation of process of voluntary liquidation of 'M/s. TEIL Projects Limited' has not been called, in question, in this appeal. The letter of rejection referred to hereinabove dated 14th May, 2019 has admittedly been passed after notifying of Section 59 of the 'I&B Code'. It is nobody's case that the winding up proceedings were pending before the Hon'ble High Court. Therefore, it would be absurd to hold that the Voluntary Liquidation Process initiated by 'M/s. TEIL Projects Limited' is not governed by Section 59 (Chapter V of Part II of the 'I&B Code'). It is significant to note that Section 2 of the 'I&B Code' clearly provides that the 'I&B Code' shall apply to any company incorporated under the Companies Act, 2013 or any previous company law, special Act, LLP Act

and other specified corporate bodies as also individuals other than personal guarantors, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be. It goes without saying that under Section 238 of the 'I&B Code, the provisions of the 'I&B Code' override other laws. Thus, there being specific provision in the 'I&B Code' dealing with admission or rejection of claim by the Liquidator with mechanism provided for questioning the same in appeal before the Adjudicating Authority and such provision being made applicable to voluntary liquidation proceedings explicitly in terms of the provisions embodied in Section 59(6) of the 'I&B Code', issue raised with regard to maintainability of the appeal and jurisdiction of the Adjudicating Authority are without substance and arguments raised on this score are repelled.

10. On careful consideration of the issue raised in this appeal, we are of the considered opinion that the jurisdiction exercised by the Adjudicating Authority is vested in it and cannot be termed improper. Despite being of the view that the claim initially left out by the Respondent No.1 was payable, the Liquidator proceeded to reject the same without any justifiable reason which cannot be supported.

11. In so far as objection raised with regard to maintainability of this appeal is concerned, be it noticed that Section 61 providing for remedy of appeal specifically speaks of appeal by any person aggrieved by the order of the Adjudicating Authority under Part II being maintainable

before this Appellate Tribunal. It goes without saying that Section 40 governing admission or rejection of claims by the Liquidator as also Section 42 governing appeal against the decision of Liquidator accepting or rejecting the claims as also voluntary liquidation of corporate persons governed by Section 59 of the 'I&B Code' are incorporated in Part II of the 'I&B Code', Thus viewed, the appeal under Section 42 before the Liquidator as also the instant appeal before this Appellate Tribunal are maintainable.

12. In view of the foregoing conclusion, we find no merit in this appeal. The appeal being devoid of merit is dismissed. No costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[V.P. Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

NEW DELHI
22nd May, 2020

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