



O.S.A.(CAD) No.115 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
14.10.2022	01.12.2022

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

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Cholamandalam Investment and Finance Company Ltd.
Represented by its Authorised Signatory,
'Dare House', No.2, N.S.C. Bose Road,
Parrys, Chennai 600 001. ... Appellant/Respondent

VS.

Navrang Roadlines Private Limited
Through its Liquidator
Mr.Sachin Dinkar Bhattbhatt,
G-7-8, 12-13, Vijay Plaza,
Opp. Abad Dairy, Kankaria,
Ahmedabad, Gujarat – 380 022. ... Respondent/Applicant

Prayer: Appeal filed under Order XXVI Rule 9 of O.S. Rules read with Sec.13(1) of The Commercial Courts Act, 2015 against the order, dated 22.06.2022 made in A.No.84 of 2022 in Application No.3703 of 2109.

For Appellant : Mr.D.Pradeep Kumar for
Mr.T.Danyakumar
For Respondent : Ms.Anusha Peri for
Ms.Ashwini Vaidialingam



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J U D G M E N T

D.KRISHNAKUMAR, J.

The challenge in the instant intra Court appeal is against the order permitting the Liquidator of the respondent Company to withdraw a sum of Rs.15,55,290.10 which is lying to the credit of Application No.3703 of 2019.

2. Brief facts leading to filing of the instant appeal are as follows:

2.1. M/s.Navrang Roadlines Private Ltd., the respondent herein entered into Trip Loan Agreement dated 17.04.2018 with the appellant/Non Banking Finance Company for a permitted limit of Rs.1,75,00,000/- and availed Trip loan facility from the appellant. The respondent utilized the said loan facility during the term of Agreement and availed a sum of Rs.50,00,000/- on 14.8.2018, Rs.35,00,000/- on 21.8.2018 and Rs.50,00,000/- on 21.8.2018 and Rs.40,00,000/- on 1.9.2018. However, the respondent had committed default in repayment of the loan amount and the tenure for repayment had also expired and accordingly, the respondent is liable to pay a sum of Rs.1,96,06,986.08 as on 15.5.2019 to the appellant. Therefore, the appellant invoked Section 9 of the Arbitration and



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Conciliation Act, 1996 by filing Application No.3703 of 2019 to prohibit the Garnishees to make payment to an extent of Rs.1,96,06,986.08 or any amount to the respondent and also directing the Garnishees to deposit the sum of Rs.1,96,06,986.08 or any amount to the credit of A.No.3703 of 2019.

2.2. This Court, in its order dated 07.06.2019 prohibited the Garnishees from making payment of a sum of Rs.1,96,06,986.08 to the respondent herein and subsequently by another order dated 06.11.2019, has directed the Garnishees to deposit the said amount, if any lying with them, upto a limit of Rs.1,96,06,986.08, which is due and payable by the respondent herein. The appellant had also initiated arbitration proceedings and final award was also passed in favour of the appellant in Arbitration Case (CHOLA) No.TL9 of 2019 dated 23.12.2019. While so, the Garnishee No.5 Viz., M/s.Havells India Limited deposited a sum of Rs.5,55,949.10 and Garnishee No.4 Viz., M/s.Carrier Midea India Private Ltd. deposited a sum of Rs.9,99,341/- to the credit of Application No.3703 of 2019. The respondent filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal



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(Ahmedabad Bench) wherein a moratorium under Section 14(1) of Insolvency and Bankruptcy Code, 2016 was declared, inter alia, against the continuation of pending proceedings against the respondent Company herein by order dated 24.2.2020. Further, National Company Law Tribunal (Ahmedabad bench) ordered liquidation of the respondent Company by order dated 17.9.2020. Pursuant to the liquidation of the respondent company, the Liquidator of the respondent Company has filed Arb. Application No.84 of 2022 praying to withdraw a sum of Rs.15,55,290.10 which is lying to the credit of Application No.3703 of 2019 and the same was permitted by this Court in the order impugned in the instant appeal.

3. The contention of the learned counsel for the appellant is that pursuant to the filing of Application No. 3703 of 2019 before this Court by the appellant herein, the Garnishees 4 & 5 have deposited the amount to the credit of Application No.3703 of 2019, in compliance of the order dated 06.11.2019. The appellant had also initiated arbitration proceedings which culminated into an award dated 23.12.2019 in their favour in Arbitration Case (CHOLA) No. TL9 of 2019, therefore the learned Judge ought not to have allowed the Arb. Application 84 of 2002 on the ground that the

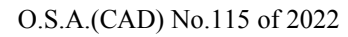


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appellant itself on its own volition had filed claim under Regulation 18 in Form D and having filed claim after filing application under Section 9 of the Arbitration and Conciliation Act, 1996 and after actual deposit of amount by two garnishees. Learned counsel for the appellant further contends that mere filing of claim before the liquidator and admitting of the same cannot tantamount to abandonment of right to secure the same amount deposited to the credit of Application No. 3703 of 2019.

4. Learned counsel for the respondent has submitted that the National Company Law Tribunal, in its order dated 24.2.2020, has held that a moratorium under Section 14 (1) of Insolvency and Bankruptcy Code, 2016 was declared, inter alia, against the continuation of pending proceedings against the respondent Company and appointed a Liquidator to the respondent Company. According to the respondent herein, the applicant, being a Liquidator of the Company under liquidation, attempted to recover the monies owed to the Company under liquidation. Further, the respondent has also submitted its proof of claim in the capacity as the Liquidator of the respondent Company claiming (i) principal amount of Rs.1,27,77,777.05 in terms of the Trip Loan agreement dated 17.4.2018; (ii) Legal charges of



6. In this context, it would be helpful to extract ***Section 53(1) of Insolvency and Bankruptcy Code, 2016*** which prescribes the order of priority of distribution of assets on liquidation.



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“The priority is as follows:

(a) The insolvency resolution process costs and the liquidation costs paid in full.

(b) The following debts which shall rank equally between and among the following:-

(i) workmen’s dues as assigned to it in section 326 of the Companies Act, 2013, for the period of twenty-four months preceding the liquidation commencement date and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52 of Insolvency Code, 2016.

(c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date.

(d) Financial debts owed to unsecured creditors.

(e) The following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.

(f) Any remaining debts and dues.



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(g) *Preference shareholders, if any, and*

(h) *Equity shareholders or partners, as the case may be.”*

7. Admittedly, the appellant finance company herein is an unsecured creditor. As per Section 53(1) of Insolvency and Bankruptcy Code, 2016, the priority to distribute the proceeds from the sale of the liquidation assets to the unsecured creditors shall be after distributing of workmen dues, wages and unpaid dues to employees.

8. The Hon'ble Supreme Court in the case of ***Kotak Mahindra Bank Limited Vs. A.Balakrishnan [2022 SCC Online SC 706]*** has held as under:

“once a claim has fructified into a final judgment post adjudication by a tribunal or court, the amount payable under the judgment, decree, order or recovery certificate, will give rise to fresh cause of action in favour of the creditor. It also held that such a decree could be used as proof of debt to initiate proceedings under the Insolvency and Bankruptcy Code'2016 within three years from the date of the decree.”



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9. The Hon'ble Apex Court in the judgment in ***Swiss Ribbons Vs. Union of India reported in (2019) 4 SCC 17*** had upheld the validity of Section 53(1) of Insolvency Code, which prescribes priority of distribution of assets in liquidation.

10. In the present case, the respondent has submitted its proof of claim in the capacity as the Liquidator of the respondent Company claiming (i) principal amount of Rs.1,27,77,777.05 in terms of the Trip Loan agreement dated 17.4.2018; (ii) Legal charges of Rs.24,135/-; and (iii) Additional Financial charges of Rs.77,56,165/- in respect of the very same claim. Therefore, the Liquidator of the respondent Company seeks to recover its dues qua the applicant/respondent Company in accordance with the procedure envisaged under Insolvency and Bankruptcy Code, 2016. According to the Liquidator of the respondent Company, Section 35 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the IBBI (Liquidation Process) conferred right to the Liquidator to recover and realize all assets and dues to the corporate debtor in a time bound manner for maximization of value for the stakeholders.



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11. We have also gone through the impugned order passed by the learned Single Judge. Learned Single Judge, after careful consideration of the provisions envisaged under Insolvency and Bankruptcy Code, 2016, has held that the amount lying in the deposit to be made available for distribution amongst the creditors qua M/s.Navrang Roadlines Private Limited, inter alia, in accordance with Section 53 of Insolvency and Bankruptcy Code, 2016 in the pending CIRP before NCLT i.e, National Company Law Tribunal, Ahmedabad Bench, vide proceedings bearing reference CP(IB) 368/NCLT/AHM/2019. The relevant portion of the order reads as follows:

“11. This Court also considered the position that IBC is a self-contained code and Section 53 captioned 'Distribution of assets' [as already alluded to supra] is an adumbration of priority order of creditors. A careful perusal of statutory priorities in the adumbration makes it clear that workmen dues, wages and unpaid dues to employees other than workmen take precedence qua financial debts owed to unsecured creditors. In the case on hand, applicant in Section 9 is an NBFC and admittedly, an unsecured financial creditor. Testing the matter on a demurrer, assuming there are some claims of wages



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i.e. workmen dues or wages of employees other than workmen qua Navrang, they definitely have a precedence to get their share of pie in this sum of a little over Rs.15 lakhs that is now available for distribution and a further axiomatic extension of this principle is, if there are none, NBFC would still get its monies and NBFC is not going to be deprived of it. It is only a question of prioritizing the creditors as NBFC has taken a nosedive economically and gone into liquidation. After all, NBFC itself has gone before NCLT (post deposit by Garnishees) and slotted itself in the queue. Therefore, from the equity perception also, this Court has no hesitation in coming to the conclusion that the prayer in the captioned application deserves to be answered affirmative.

12. *The sum sequitur is, captioned application is ordered with a rider that monies withdrawn would have to be made available for distribution amongst the creditors qua Navrang inter alia in accordance with Section 53 of IBC in the pending CIRP before NCLT i.e. National Company Law Tribunal, Ahmedabad Bench (Court No.2) vide proceedings bearing reference CP(IB) 368/NCLT/AHM/2019."*



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12. A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as “financial debt” within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.



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13. The appellant, as per Section 9 of Insolvency and Bankruptcy Code, 2016, is a Non Banking Finance Company and admittedly an unsecured financial creditor. As per the decisions laid down by the Hon'ble Supreme Court cited supra and Section 53 of Insolvency and Bankruptcy Code, 2016, the financial debts owed to unsecured creditors have to be distributed by the liquidator as per the preference set out under Section 53(1) of Insolvency and Bankruptcy Code, 2016 i.e after distributing the workmen dues, wages and unpaid dues to the employees. Learned Single Judge in our view, has carefully considered the statutory priorities of distribution of assets as prescribed under Section 53(1) of Insolvency and Bankruptcy Code, 2016 and the proposition laid down by the Hon'ble Supreme Court and finally has held that monies withdrawn would have to be made available for distribution amongst the creditors qua M/s Navarang Road lines Private Limited/respondent herein in accordance with Section 53 of Insolvency and Bankruptcy Code, 2016 in the pending CIRP before the National Company Law Tribunal, Ahmedabad Bench. Therefore, We do not find any reason to interfere with the decision of the learned Single Judge, hence, the instant appeal challenging the said order of the learned Single Judge is liable to be dismissed.



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14. Accordingly, the instant Original Side Appeal stands dismissed, confirming the order passed by the learned Single Judge of this Court in Arb.Application No.84 of 2022 in Application No. 3703 of 2019, dated 22.06.2022. No costs.

[T.R., A.C.J.,] [D.K.K.,J.]

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Index: Yes
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**T.RAJA., ACJ.,
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D.KRISHNAKUMAR, J.**

**Judgment in
OSA(CAD)No.115 of 2022**

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