

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Ct.551 12.11.25

Item No.05 Sws.M

WPA 27722 of 2024

**M/s. Rabirun Vinimay Pvt. Ltd. & Anr.
Vs
Union of India & Ors.**

Mr. Rahul Dhanuka
Mr. Mayank Jain
Ms. SreejaChakraborty

...for the petitioners

Mr. DebasishChoudhary
Mr. Amit Sharma
Mr. Abhishek Kr. Agrahari

....for the Union of India

Mr. Uday Sankar Bhattacharya
Mr. Tapan Bhanja
Ms. Banani Bhattacharya

...for the respondent Nos. 2& 3

1. At the outset, upon it being pointed out by the learned Advocate appearing for the Respondent that the writ petitioners have challenged the vires of the Notification No. 56 of 2023 - Central Tax, the learned Advocate appearing for the petitioners submits that the petitioners are not pressing prayer (c) in the writ petition whereby the petitioners have sought for quashment of Notification No. 56 of 2023- Central Tax dated 28 December, 2023 issued by the Respondent No. 1. Accordingly, this writ petition is being taken up only in respect of prayers other than prayer (c).

2. This writ petition assails an order in original dated August 31, 2024 passed by the Joint Commissioner, CGST and Central Excise, Kolkata North Commissionerate under Section 73 of the CGST Act, 2017 whereby the petitioner no. 1 has been saddled with a tax demand of Rs. 4,28,33,922/- together with interest thereon and penalty for the tax period April 2019 to March 2020 (Financial Year 2019-2020).
3. UCO Bank had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016. The same was admitted by the National Company Law Tribunal, Kolkata Bench (hereafter “NCLT”) on March 07, 2019 and accordingly, Corporate Insolvency Resolution Process (hereafter “CIRP”) was initiated against the petitioner no.1.
4. Such, CIRP failed to result in a viable resolution plan. The petitioner no. 1 was therefore admitted into liquidation by an order dated March 5, 2020 passed by the NCLT.
5. In liquidation, the petitioner no. 1 was sold as a going concern. Such sale as a going concern was ultimately confirmed by the NCLT by an order dated December 11, 2023 observing, *inter alia*, as follows:

“21. With respect to the waivers with regard to extinguishment of claims which arose prior to the initiation of CIRP and which have not been claimed are granted in terms

of **Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd reported in (2021) 9 SCC 657:MANU/SC/0273/2021** wherein the Hon'ble Apex Court has held that *once a resolution plan is duly approved by the Adjudicated Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, and State Govt or any local authority, guarantors and other stakeholders.* On the date of approved of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court further laid down that *all the dues including the statutory dues owned to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.*

22. With respect to the waivers sought in relation to guarantors, the judgment of **Lalit Kumar Jain v. Union of India** reported in **MANU/SC/0352/2020:(2021) 9 SCC 321** laid down that *the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a*

discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.

23. Now, the only question is that craves answer is the applicability of the ratio of above two judgments to the present question where the Corporate Debtor has been sold as a going concern. In our opinion, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the aforementioned judgments shall be applicable in the present case as well.”

6. Subsequent to the passing of the said order, a notice to show-cause dated May 31, 2024 was issued to the petitioner no. 1 under Section 73 of the said Act of 2017 in respect of the financial year 2019 – 2020 (Tax period April 2019 to March 2020). The petitioner No. 1 did not reply thereto. Ultimately the order impugned was passed on August 31, 2024 thereby holding the petitioner No. 1 liable for tax, interest as well as penalty as indicated in the said order.

7. The petitioner No. 1 assails such order on the ground that upon the petitioner No. 1 being sold in liquidation as a going concern and such sale having been confirmed by the NCLT, the petitioner no. 1 can no longer be held liable for the past dues (i.e. dues

prior to the date of sale as going concern and its confirmation) especially in view of the order passed by the NCLT, whereby it was observed that *‘the sale of a corporate debtor as a going concern is akin to a de-facto CIRP’*. It is submitted that the “clean state” principle applicable to corporate debtors having undergone successful CIRP would be equally applicable to the petitioner no. 1 as well. In support of such contention, attention of this Court is also drawn to an order in original dated January 17, 2025 whereby the respondent / CGST authorities themselves dropped a proceeding initiated against the petitioner No. 1 in respect of the financial year 2017 – 2018 relying on the order dated December 11, 2023 passed by the NCLT whereby the sale of the petitioner no. 1 in liquidation as a going concern was confirmed. A copy of such order handed up to Court by the learned Advocate for the petitioners is taken on record.

8. It is further submitted by the petitioner no. 1 that in the present context there is little difference in the initiation and adjudication of the two proceedings by the respondents inasmuch as both the periods (i.e. Financial Year 2017-18 and Financial Year 2019-20) fall prior to the sale of the petitioner No. 1 as a going concern in liquidation and therefore the same reason for which the proceedings in respect of Financial

Year 2017- 2018 had been dropped would also apply to proceeding in respect of Financial Year 2019 – 2020.

9. Heard learned advocates for the respective parties and considered the material on record.
10. It is now well settled that upon successful completion of a CIRP or upon a corporate debtor being sold in liquidation as a going concern on a “clean state” basis, all the past dues of the corporate debtor shall stand frozen and extinguished. In such case the creditors would be entitled to their dues only in terms of the waterfall mechanism contemplated under Section 53 of the Insolvency and Bankruptcy Court, 2016.
11. This Court in the case of ***Kashvi Power and Steel P. Ltd. and another vs. West Bengal State Electricity Distribution Co. Ltd. and others***, reported at **2022 SCC OnLine Cal 4617 : (2023) 21 Comp Cas-OL 718** has discussed the scope of Section 53 in the context of a corporate debtor that is sold in liquidation as a going concern. Paragraph 51 to 58 of the report are relevant to the context. The same are extracted hereinbelow:

“51. Hence, the powers of the liquidator are on a similar footing as those of a resolution professional in a resolution proceeding. It is also noteworthy that section 5(18) of the IBC

stipulates that a liquidator has to be a resolution professional in the first place.

52. Section 53 provides for distribution of assets in liquidation and sets out the order of priority of distribution of proceeds from the sale of the liquidation assets. The sixth category in such pecking order is section 53(1)(f), “any remaining debts and dues”. Clause(f) is the only provision in section 53 which confers rights on the operational creditors to recover their dues.

53. As such, section 53 is the culmination of the entire endeavour of the liquidator and the order of priority given therein cannot be overridden by any of the operational creditors of the corporate debtor by jumping the queue in contravention of the priorities enumerates in section 53.

54. What is next relevant is regulation 32 of the Insolvency and Bankruptcy Board of India(Liquidation Process) Regulations, 2016. The different types of sale of asset have been enumerated therein. Up to clause (d) of regulation 32, sale of assets is dealt with. Clause (e)provides for sale of the corporate debtor as a going concern. Again, clause(f) contemplates the business of the corporate debtor being sold as a going concern.

55. Regulation 32A of the said Regulations provides for sale as a going concern. Sub-regulation (2) of regulation 32A stipulates that for the purpose of sale under sub-regulation(1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be sold as a going concern.

56. On the other hand, regulation 32A(3) provides that where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and to be sold as a going concern, in consultation with the consultation committee.

57. It is evident from the scheme of the IBC, in respect of liquidation, is that the pecking order as stipulated in section 53 of the IBC cannot be superseded by any of the categories as provided therein. The said provision is set out below for convenience:

“53. Distribution of assets.-(1)

Notwithstanding anything to the contrary contained in any law enacted by Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:-

(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 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 ;

(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 ;

(g) preference shareholders, if any ; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant

recipient shall be distributed after such deduction.

Explanation. – For purpose of this section-

(i) It is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and class of recipients ; and

(ii) the term ‘workmen’s dues’ shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013(18 of 2013).”

58. Thus, the operational creditors, who fall within category (f), that is, “any remaining debts and dues”, cannot claim any priority over the preceding categories in having their debts paid off.”

12. There is no reason for this Court to take a divergent view from the one taken by this Court in **Kashvi Power Steel P. Ltd.** (supra). In fact promotion of corporate revival is the avowed object of the Insolvency and Bankruptcy Code, 2016 and a buyer of a corporate debtor as a going concern should, in cases like the one at hand, not be saddled with past

dues. In such view of the matter, the proceeding in respect of the financial year 2019 – 2020 that has been initiated by the respondent/CGST authorities and that have culminated in the order impugned could not have been initiated at all.

10. The order impugned dated August 31, 2024 is, therefore, quashed.
11. **WPA 27722 of 2024** stands **disposed of**.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)