

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.296 of 2020

[Arising out of Order dated 03.02.2020 by National Company Law Tribunal,
New Delhi in C.A.-31/C-III/ND/2020 in IB-690/(ND)/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Rakesh Kapoor
(Sole Proprietor of
Hansa Electricals)
9, Mahalaxmi Market,
Bhagirath Palace,
Chandni Chowk,
New Delhi – 110006

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Appellant

Versus

1. Mr. Ashok Kumar Juneja
1203-1205,
Vijaya Building, 17,
Barakhamba Road,
Connaught Place,
New Delhi – 110001

Applicant

Respondent No.1

2. Andhra Bank,
Through its Branch
Manager,
A-9,
Pushpanjali Enclave,
New Delhi - 110092

Respondent

Respondent No.2

For Appellant:

Shri Satish Kumar, Advocate

For Respondents:

**Shri Ashok Kumar Juneja, Liquidator in person
Shri PBA Srinivasan and Shri Avinash Mohapatra,
Advocates (R-2)**

ORDER
(Virtual Mode)

07.04.2021 Heard Counsel for the Appellant. This Appeal has been filed by the Appellant who claims to be Proprietor of Hansa Electricals. The Appellant claims to have been Operational Creditor. As there was no Financial Creditor in the COC (Committee of Creditors), the Appellant was also member of COC of the Corporate Debtor – Mas Project Engineers Pvt. Ltd. One Operational Creditor – B.M. Pipes Pvt. Ltd. initiated Corporate Insolvency Resolution Process (CIRP – in short) against the Corporate Debtor and the same was admitted on 16th April, 2019. Subsequently, Liquidation Order came to be passed on 30th October, 2019. The Appellant had in his possession post-dated cheques issued by the erstwhile Directors of the Corporate Debtor. It is stated that two cheques were presented by Appellant on 19th November, 2019 to Respondent No.2 – Andhra Bank. The cheques were of the value of Rs.10 Lakhs each (total Rs.20 Lakhs). The cheques came to be passed and the Appellant received the money. The Respondent No.1 – Liquidator filed Application before the Adjudicating Authority (National Company Law Tribunal, New Delhi) and pointed out that the post-dated cheques which the Appellant had in his possession have been encashed although the official signatory in the Bank had been changed. The Respondent No.1 – Liquidator in person submits that the Bank claimed that by mistake it passed the cheques when they were presented. The Bank claimed before the Adjudicating Authority that the cheques were honoured by mistake. The Appellant submitted that his intention in presenting cheques before the Bank was to get them dishonoured so that he could proceed under Section 138 of the

Negotiable Instruments Act against the suspended Director. The Appellant claims that his object was bona fide. The Adjudicating Authority observed as under and passed the following Order:-

“4. Heard the Ld. Counsel for the Liquidator, the Ld. Counsel for the Andhra Bank, and the Ld. Counsel for Respondent No.2. In facts and circumstances of the case, it appears that Respondent No.2 being part of the COC and after filing his claim before the IRP/RP has acted with mala fide intention to present the cheques to take out the money of the Corporate Debtor, which forms part of liquidation estate assets. This appears to have been done to defeat the provisions of Section 53 of the IBC, 2016, and to have the professional payment in favour of Respondent No.2/Operational Creditor.

5. During the course of hearing, the Ld. Counsel for the Respondent No.2 has submitted that he is not liable to refund the money because he has acted with bona fide intention. However, he is putting blame on the Andhra Bank that the transaction has happened due to the negligence of Respondent No.1 (Andhra Bank). This authority fails to understand the stand being taken by the Respondent No.2 that his intention was only to get the cheques in question dishonoured for initiating the proceedings under Section 138 of the Negotiable Instruments Act and after being paid is not ready to pay the money back to the Corporate Debtor which is part of the Liquidation Estate Asset. The Respondent No.2 being the Member of the COC, in the event of admission of, his claim, has played fraud by withdrawing the money. Thus, Respondent No.2 being the Member of the COC has acted contrary to the responsibilities of the Member of the COC. In other words, receipt of Rs.20 Lakhs by Respondent No.2/Operational Creditor amounts to unjust enrichment by one of the Operational Creditors, which is not permitted by any of the provisions of the IBC during Liquidation, which certainly defeats the liquidation process of the Corporate Debtor.

6. In the above noted circumstances, Respondent No.2 is hereby directed to refund an amount of Rs.20 Lakhs along with interest @ 8% per annum and deposit it to the Account of the Corporate Debtor bearing No.164111100003873, running with Andhra Bank,

Branch A-9, Pushpanjali Enclave Delhi 110092, being the part of the liquidation estate assets of the Corporate Debtor within a period of 10 days and file an affidavit of compliance in the Registry on expiry of the period of time given.”

2. Against the above Impugned Order, the present Appeal has been filed by the Appellant. The Appellant claims that the Order passed is bad in law and the Appellant acted only bona fide and due to the negligence of the Bank, cheques were cleared. According to the Appellant, asking the Appellant to refund the amount would cause huge prejudice to the Appellant.

3. The learned Counsel for the Appellant added that out of Rs.20 Lakhs withdrawn, he has already deposited Rs.12 Lakhs. Respondent No.1 – Liquidator accepts this submission.

4. The Respondent No.1 – Liquidator in person submits that the action of the Appellant who was participating in the CIRP in COC and had also filed claim in liquidation proceedings on the basis of the post-dated cheques, cannot be justified. Only because he had in possession post-dated cheques, he could not have presented the cheques to the bank when liquidation proceedings were going on. It is argued that Appellant acted in violation of Sections 43 and 53 of the Insolvency and Bankruptcy Code, 2016 (IBC – in short).

5. Considering the facts of the matter, it appears to us that the Order passed cannot be faulted with. When the Appellant was part of COC and had also filed claim, it was not justified or appropriate on the part of the Appellant to present the cheques. Respondent No.2 claims to have passed the cheques

by mistake. The Appellant cannot take benefit of the mistake of the Respondent No.2.

6. For the above reasons, we do not find any reason to interfere with the Impugned Order.

The Appeal is dismissed. No Orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

rs/md