

Mentioned Case

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03-06-2024 AT 10.30 A.M. THROUGH PHYSICAL HEARING:

PRESENT : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER : IA(IBC)/2308(CHE)/2023

PETITION NUMBER : CP(IB)/48(CHE)/2023

NAME OF THE APPLICANT : Mr. Ravindra Beleyur
Resolution Professional
Reliable Cashew Company Pvt Ltd

NAME OF THE RESPONDENT(S) : --

UNDER SECTION : SECTION 33(2) OF THE INSOLVENCY
AND BANKRUPTCY CODE, 2016

Suo -moto recalling of order dated 31.05.2024

1. Today 03.06.2024, Ld. Counsel Mr.T.Ravichandran for the Applicant in IA(IBC)/2308(CHE)/2023 mentioned that in the said case where order has been pronounced by this Bench on 31.05.2024 appointing Mr. GS Sudhir as a Liquidator by quoting the communication issued by the IBBI dated 18.07.2023. Relevant part of the order is extracted below,

“13. It is also noticed from the minutes that the CoC has recommended Mr.Ravindra Beleyur (Applicant herein) to act as the Liquidator of the Corporate Debtor. However, the IBBI vide its notification bearing No.Liq-12011/214/2023-IBBI/840 dated 18.07.2023 has recommended that the person other than IRP/RP of the Corporate Debtor to be appointed as the Liquidator in the case of liquidation the Corporate Debtor.

14. In the circumstances, we appoint Mr.SUDHIR GS Resolution Professional (e-mail: sudhircaip@gmail.com) bearing Reg No. IBBI/IPA001/IP-P02744/2022-2023/14183 having AFA valid till 18.09.2024 as the Liquidator of the Corporate Debtor to carry out the liquidation process subject to the following terms of the directions”

2. The Ld.Counsel brought to the notice of this Tribunal that in the Writ Petition WP.No.27043 of 2023 the above notification/circular dated 18.07.2023 issued by IBBI is challenged before the Hon’ble Karnataka High Court. Wherein, the Hon’ble Karnataka High Court had passed the following order on 09.01.2024.

“Heard the learned counsel for the petitioner and the learned Additional Solicitor General of India, Sri.AravindKamath representing the Insolvency and Bankruptcy Board of India (‘the Board’ for short).

The petitioner calls in question a Circular dated 18.07.2023 issued by the Board, which directs that the Resolution Professional should not continue as a Resolution Professional in the event the Company is said to be put in to Liquidation or act as a Liquidator for the process of liquidation of the said particular Company.

This the learned counsel for the petitioner submits is a sweeping direction, which disturbs the petitioner to act as Liquidator on the strength of him being appointed as a Resolution Professional and therefore submits that his rights are taken away of acting as a Liquidator. He would further contend that such sweeping directions cannot be given by the Board, invoking its power under Section 34(4)(b) of the IBC.

The matter would require consideration.

Learned ASGI seeks two weeks time to justify the issuance of the general directions by the Board.

Till such time, the petitioner insofar as he is appointed as Resolution Professional/Liquidator in the subject liquidation shall not be precipitated.

Registry to print the name of the learned counsel Smt.Anupama Hegde as appearing for respondent/Board.”

3. Ld. Counsel Submits that the above order passed by this Tribunal has failed to consider the above decision of Hon'ble Karnataka High Court in this matter, eventhough the said issue has been stated in the daily order dated 18.01.2024.

4. The Hon'ble Karnataka High Court ordered "*Till such time, the petitioner insofar as he is appointed as Resolution Professional/Liquidator in the subject liquidation shall not be precipitated.*" Upon perusing the order passed by the Hon'ble Karnataka High Court we find that due to inadvertence the same was not considered by this Tribunal in its order dated 31.05.2024. In order to rectify the same and to follow the due process of law, we invoke the power under Rule 11 of the NCLT Rules, 2016 and the order dated 31.05.2024 passed in IA(IBC)/2308(CHE)/2023 is hereby recalled.

4. List the IA(IBC)/2308(CHE)/2023 on **07.06.2024**.

5. **Registry is directed** to communicate this order to the parties concerned.

-Sd-

RAVICHANDRAN RAMASAMY
Member (Technical)

-Sd-

JYOTI KUMAR TRIPATHI
Member (Judicial)

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