

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

I.A. No. 584 of 2022

in

Comp. App (AT) (CH) (INS) No. 269 of 2022

In the matter of:

Mr. Chinna Rao,

JSCO Quarters,
No. D 17/1, Chagallu Mandal,
West Godavari Dist.,
Andhra Pradesh

..... Applicant1

Mr. A. Sivakumar,

Ex-DGM Factory,
Distillery Quarter, Chagallu Post,
West Godavri District,
Andhra Pradesh

..... Applicant2

The Principal,

Sri Velagapudi Ramakrishna
Public School,
Chagallu – 534342

..... Applicant3

The Secretary,

Co-operative Society,
Indian Oil Retail Outlet,
The Jeypore Sugar Company Ltd.,
Chagallu – 534342

..... Applicant4

V

V. Venkatasivakumar

Erstwhile Liquidator of
M/s. The Jeypore Sugar Co. Ltd.
No. 10/11, Dr. Subbarayan Nagar Main Road
Kodambakkam,
Chennai – 600024

..... Respondent1

IDBI Bank Limited

Branch Office
115, Anna Salai,
Saidapet,
Chennai – 600015

..... Respondent2

Insolvency Bankruptcy Board of India (IBBI)

Represented by Deputy General Manager,
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus,
New Delhi – 110001

..... Respondent3

**Indian Institute of Insolvency Professionals
of ICAI (IIPI)**

Represented by Managing Director
ICAI Bhawan, 3rd Floor, Hostel Block,
A-29, Sector-62, Noida,
Uttar Pradesh – 201309

..... Respondent4

Present:

For Applicants : Mr. P. Nagesh, Senior Advocate
For Mr. Ramasamy Meyyappan
For Respondent No.1 : Mr. V. Venkatasivakumar, erstwhile
Liquidator (in person)

WITH

I.A. No. 585 of 2022

in

Comp. App (AT) (CH) (INS) No. 269 of 2022

In the matter of:

R. Prabhu,

No. 29, Satyanarayana Avenue,
Boat Club, R.A. Puram,
Chennai – 600028

Represented by Power of Attorney

C H Venkat Rathnam

308, First Floor, 17E, Main 5th Block,
Kormangala, Bangalore – 560034

..... Applicant1

Anita Prabhu,

No. 29, Satyanarayana Avenue,
Boat Club, R.A. Puram,
Chennai – 600028

Represented by Power of Attorney

C H Venkat Rathnam

308, First Floor, 17E, Main 5th Block,
Kormangala, Bangalore – 560034

..... Applicant2

V

V. Venkatasivakumar

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of ICAI (IIPI)**

Represented by Managing Director
ICAI Bhawan, 3rd Floor, Hostel Block,
A-29, Sector-62, Noida,
Uttar Pradesh – 201309

..... Respondent4

Present:

For Applicants : Mr. Sriram Panchu, Senior Advocate
For Mr. Ramasamy Meyyappan
For Respondent No.1 : Mr. V. Venkatasivakumar, erstwhile
Liquidator (in person)

ORDER
(VIRTUAL MODE)

Justice M. Venugopal, Member (Judicial):

I.A. No. 584 of 2022 in Company Appeal (AT) (CH) (INS) No. 269 of 2022:

Applicants' Submissions:

According to the Learned Senior Counsel for the Applicants, the Appellants in Comp. Appeal (AT) (CH) (INS) No. 207 of 2022, before this 'Tribunal', on being dissatisfied with the 'impugned order' dated 02.03.2022, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai) providing Police protection to the 'Liquidator' to take over the custody of the 'School' and the 'Petrol Pump' that was functioning so far, on the properties, leased out to 'Rajeswari Educational Society' and the 'Indian Oil Corporation' by the 'Corporate Debtor' to run the 'School' and the 'Petrol Pump'.

2. It is represented on behalf of the 'Applicants' / 'Proposed Impleaders' that the 'Liquidator' secured the 'Police protection' for getting the 'Trust Management' and the people running Petrol Pump, evicted from the respective premises in I.A. No. 229 of 2021, filed by the 'Liquidator' which is linked to I.A. No. 1155 of 2020, moved by the 'Workers Union', explaining numerous problems, they are facing from the 'Liquidator', including the Liquidator's trails, to evict the management of 'Petrol Pump' and 'School' and IA/1155/2020 moved by the 'Workers Union' and the person running the 'School' and the 'Petrol Pump' is still pending before the 'Adjudicating Authority'.

3. The Learned Counsel for the Applicants point out that the persons running the School and those running the Petrol Pump were put to hardship, though they have filed IA/1155 of 2020, before the 'Adjudicating Authority; ('Tribunal') stating that the 'Trust' is running the School on the land leased out by the 'Corporate Debtor' to the 'Educational Trust' and the 'Petrol Pump' is run by the 'Co-operative Society' on the land leased out by the 'Corporate Debtor'.

4. The Learned Counsel for the Applicants comes out with a plea, that the 'Liquidator', at best, can step into the shoes of the 'Corporate Debtor' as 'Lessor', but not to see them evicted from the 'School' and also from the 'Petrol Pump' based on the 'impugned order' of 'Police protection'. Further, the 'Applicants' believe that their hardships shall also be heard before determining as to whether the 'impugned order', passed by the 'Adjudicating Authority' on 01.07.2022 is to be set aside or not, for which, they may be permitted to be impleaded as Respondents No. 4 to 7 in Company App (AT) (CH) (INS) No. 269 of 2022.

5. Per contra, it is the submission of the erstwhile 'Liquidator' Mr. V. Venkatasivakumar (appearing in person) that the 'Promoters' in connivance with the IDBI Bank Officials had started relentless attacks on the 'Liquidator' and further, that the correspondences with Mrs. Anitha Prabhu which establishes that the workers / officials are not at all bothered about the Managing Director / Promoters and inspite of the directions issued by the 'Adjudicating Authority' (NCLT, Division Bench – II, Chennai) in IA/420/2021 dated 13.07.2021 in CP/1307/IB/2018, IA/229(CHE)/2021 in IA/1155/IB/2020 dated 02.03.2022, the workers have not complied with the Orders, showing total disrespect and disregard for the 'Liquidator', who is

only implementing the orders of the `Tribunal` and the provisions of the Code.

6. The `1st Respondent/erstwhile Liquidator` of The Jeypore Sugar Company Limited points out that the company was shut down in 2015 and since then, there is no economic activity and that all the `workers` were paid their dues and there is no litigation pending in any `Court of Law`, in regard to the payment of `wages`.

7. Continuing further, it is the plea of the `1st Respondent/erstwhile Liquidator` that the `Promoters` being aged, are not in a position to control their `Clerks`, who became `Senior Officials` by forging the documents and claiming control over the `School`, `Petrol Bunk` and `Gas Agency`, had not shown the evidence of ownership/control against the said `Assets`, which at the moment is being exploited by these persons and many of the Signatories have no connection whatsoever, to the issues raised in the IA/584/2022.

8. Besides these, the `Applicants / Proposed Impleaders`, have approached this `Appellate Tribunal`, with unclean hands, without fulfilling the `Orders` of the `Adjudicating Authority`, Chennai, and as such, they

have no right to agitate and pray for relief before this `Tribunal`, and

IA/584/2022 is liable to be dismissed by awarding heavy costs.

I.A. No. 585 of 2022 in Company Appeal (AT) (CH) (INS) No. 269 of 2022:

Applicants' Contentions:

9. According to the Learned Senior Counsel for the Applicants / Appellants (husband and wife) are not parties to the instant Comp. App (AT) (CH) (INS) No. 269 of 2022, before this `Tribunal, Further. the Applicants in IA/585/2022 had earlier preferred I.A. Nos. 340 and 341 of 2022 in Appeal No. 302 of 2021, seeking `relief` in permitting the `Applicants` to pay off the total admitted claims, against the `Corporate Debtor` and for the release of the `Corporate Debtor` from Insolvency.

10. According to the Learned Counsel for the Applicants that it is the version of the `Applicants` in IA/585/2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022, that in I.A. Nos. 340 and 341 of 2022, it was mentioned as to how the `1st Respondent/erstwhile Liquidator` of `The Jeypore Sugar Company Ltd`, had acted detrimental to the interests of the company and said that the `Assets Value`, being more than the `liability value`, the

`Shareholders' have more interest in the Company, rather than the `Creditors', hence their grievances shall be heard and adjudicated while determining any of the `applications', pending before the `Adjudicating Authority' as well as before the `Appellate Authority', because today, the `Promoters' are ready to pay the whole claims against the company and to bail out the company from `Liquidation'.

11. The main plea of the `Applicants' is that they have interest in adjudication of the present `Appeal', and further that when the `Appellant', was working as `Resolution Professional', he initially obtained `Valuation Reports' for `Land and Building' and `Plant and Machinery' separately, wherein the `Valuer' issued `Valuation Report' for `Land and Building' dated 29.05.2019 disclosing that the value of Rayagada Lands would be Rs.1087.89 Crores, etc.

12. It is represented on behalf of the `Applicants' that in Writ Petition (C) 4490 of 2015, the erstwhile management of the company filed a Writ Petition before the Hon'ble Orissa High Court, assailing the order passed by the Addl. District Magistrate in an `Appeal' filed against the `Order' dated 30.09.2014, seeking further exemption of lands from the ceiling surplus on

the ground that more land is required for dumping `Ferro Manganese Slag, etc.

13. The Learned Counsel for the `Applicants` submit that the `Appellant` has been selling `Ferro Manganese Slag` for the last two years at the rate of Rs.900/- per tonne and the present market rate is Rs.3,500/- per tonne. Further, the `Applicants` were able to take the Watsapp copy of the times office register reflecting eight lorries `Ferro Manganese Slag` which was lifted from Rayagada Lands on 06.07.2022, i.e., after this `Appellant` was removed as `Liquidator`. Moreover, in previous proceedings that this `Liquidator` had shifted the company's office to his `House` and his `Family Members` had started interfering in relation to the discharge of duties by the `Liquidator`.

14. It is pointed out on behalf of the `Applicants` that this Appellant paid off one Operational Creditor's (Lakshmi Organics Limited's Claim) during these proceedings, despite there is a mandate under Section 53 of the I & B Code, 2016, that payment to the Creditors shall be made only as per `waterfall mechanism`, specified under Section 53 of the Code. Besides this, the Applicants filed IA/579/2022, upon seeing the scrap purchaser cutting

the machinery of Chagallu sugar factory into scrap, which is worth Crores of Rupees.

15. The categorical stand of the 'Applicants' is that the 'company' belongs to them and the said 'value' of the 'company', as on today, is not less than three times to that of the liability of the company. In the past, they could not generate sources for payment, now, they have resources to pay back the money and take the 'company', since they are not asking to take back the 'company' either under Section 30 of the I & B Code, 2016, and or under the Section 230 of the Companies Act, 2013, or to purchase it in 'Liquidation' sale.

16. The other contention advanced on behalf of the 'Applicants' before this 'Tribunal' is that Section 29A of the I & B Code's, 2016, applicability will come into picture, only when the 'Promoters' come forward to take back the 'company' under any of the avenues and even as per Section 29A of the Code, it is mentioned that the person hit by Section 29A is eligible to submit a 'Resolution Plan', as per Section 30 of the Code, if such person makes payment of all overdue amounts.

17. In the present case, the `Applicants` are ready to pay the total claims, and they are not be deprived of taking back the company, which they have developed for more than eight years.

18. Continuing further, it is the submission of the Applicants that this Appellant is always against the `Creditors`, the `Promoters` and the `Workers`, who are actual `Stakeholders` of the `Corporate Debtor` and if this Appellant is permitted to continue as `Liquidator`, the whole factory will be sold as scrap. In short, the actions of the `Appellant` are detrimental to the interests of all the `Stakeholders`, `Workers`, `Creditors` and the `Shareholders`, as such, they pray for allowing them to be impleaded as Respondents No.4 and 5 in Comp. App (AT) (CH) (INS) No. 269 of 2022.

Discussions:

19. At the outset, this `Tribunal` points out that in IA/584/2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022, the Applicants have prayed for their impleadment as `Respondent Nos. 4 to 7` in the main `Appeal` filed by the erstwhile `Liquidator` of `The Jeypore Sugar Company Ltd.`.

20. A mere perusal of the contents of IA/584/2022 filed by the `Applicants` in Comp App (AT) (CH) (INS) No. 269 of 2022 clearly indicates that it is averred among other things, that `those who run the `School` and who run the `Petrol Pump` have been put to hardship, though IA/1155/2020 was filed before the `Adjudicating Authority` by the `Workers Union` stating that the `Trust` is running the `School` on the land leased out by the `Corporate Debtor` to the `Educational Trust` and the `Petrol Pump` is run by the `Co-operative Society` on the `Land` leased out by the `Corporate Debtor` and therefore, it was mentioned that the `Liquidator`, at best, can step into the shoes of the `Corporate Debtor` as `Lessor`, but not to see them, evicted from the `School` and also from the `Petrol Pump`, based on the `impugned order` of the `Police protection`.

21. It is the plea of the `Applicants` that because of the hardships caused by the `Liquidator`, if he is permitted to continue as the `Liquidator`, it will be an irreparable loss to the `company`, to the persons managing the `School` and `Petrol Pump`, to the `Creditors`, and the `Shareholders`. As such, the `Applicants` hardships shall also be heard, prior to the `adjudication`, as to the aspect of the `impugned order`, passed by the

`Adjudicating Authority' on 01.07.2022 is liable to be set aside or not, for which, they may be permitted by this `Tribunal', to be arrayed as R8 and R9 in the instant Comp. App (AT) (CH) INS. No. 269 of 2022, on the file of this `Tribunal'.

22. Conversely, it is the contention of the `1st Respondent / erstwhile Liquidator' that the IA/584/2022 and IA/585/2022, filed by the `Applicants' in main Comp. App (AT) (CH) (INS) No. 269 of 2022, are liable to be dismissed, because of the fact that the `1st Respondent / IDBI Bank Officials' (in main `Appeal') and erstwhile `Promoters' are hand in glove in subverting the system and process for achieving their illegal goals unmindful of the economic interest of our country. Further, the Bank Officials had disregarded the `Order of Interim Injunction', passed by the `Hon'ble Madras High Court' in WP No. 4458 of 2021 to achieve their illegal goals, etc. That apart, it is the stand of the `1st Respondent/erstwhile Liquidator' that a `stranger' cannot be permitted to meddle in any proceedings, unless he satisfies this `Tribunal' that he falls within the purview of `Aggrieved Person'. Furthermore, only a person who had suffered or suffers from legal injury can assail the act / action / order, etc., in a `Court of Law'/'Tribunal'.

23. In effect, it is the contention of the `1st Respondent/erstwhile Liquidator` that the two `Interlocutory Applications` are to be dismissed by this `Tribunal`, since the `Applicants` therein are not `necessary parties` to be arrayed as the `Respondents` in the main Comp. App (AT) (CH) (INS) No. 269 of 2022.

Appraisal:

24. It transpires that the `1st Respondent/erstwhile Liquidator` in I.A. Nos. 584 & 585/2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022 is the Appellant in main Comp. App (AT) (CH) (INS) No. 269 of 2022, as an `Aggrieved Person`, on being dissatisfied with the `impugned order` dated 01.07.2022 in IA/815/IB/2020 in CP/1307/IB/2018, he has preferred the instant Comp. App (AT) (CH) (INS) No. 269 of 2022.

25. It comes to be known that the `1st Respondent/IDBI Bank` in main Comp. App. (AT) (CH) (INS) No. 269 of 2022 has filed IA/815/IB/2020 in CP/1307/IB/2018 under Section 60 (5) of the I & B Code, read with Rule 11 of the NCLT Rules and Section 276 of the Companies Act, 2013 to remove

the `Appellant / erstwhile Liquidator Mr. V. Venkatasivakumar' of the Jeypore Sugar Company Ltd.

26. The Appellant/erstwhile Liquidator Mr. V. Venkatasivakumar, figured as Respondent in IA/815/IB/2020 in CP/1307/IB/2018, before the `Adjudicating Authority' (NCLT, Division Bench – II, Chennai). The `Adjudicating Authority' had allowed the IA/815/IB/2020, and appointed Mr. S. Hari Karthik as the `Liquidator' of the `Corporate Debtor' / `The Jeypore Sugar Company Ltd.', by directing the erstwhile `Liquidator' to handover the charges to the newly appointed `Liquidator', within 7 days from the date of passing of the order.

27. In this connection, it is not out of place for this `Tribunal' to make a pertinent mention that the `Applicants' in IA/584/2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022 before this `Tribunal' has preferred Comp. App (AT) (CH) INS. 207 of 2022 against the erstwhile `Liquidator' Mr. V. Venkatasivakumar, Appellant in Comp. App (AT) (CH) (INS) No. 269 of 2022 and 6 Others, as against the `Order' passed by the `Adjudicating Authority', NCLT, Chennai Bench in IA/229(CHE)/2021 in IA/1155/IB/2020 in CP/1307/IB/2018.

28. In reality, IA/229(CHE)/2021 in CP/1307/IB/2018, the Official Respondents Nos. 7 to 11 therein, were directed to provide Police protection to the 'Liquidator' (Mr. V. Venkatasivakumar) so as to enable him to discharge his duties as 'Liquidator'.

Arraying of Parties:

29. It must be borne in mind that there is no provision in the I & B Code, 2016, that enables the 'Creditors' other than those who triggered the 'Insolvency Resolution Process', to be impleaded as 'Parties'. In law, the 'Impleadment of Parties', is ultimately, within the ambit of exercise of discretion by a 'Tribunal' / 'Authority', as the case may be. More importantly, no person, can be added, unless he is a 'necessary party'. A 'necessary party' means that a person is very much necessary to the 'Constitution' of 'Suit' / an 'Appeal' in a given 'Proceeding' before a 'Court of Law' / 'Tribunal' / 'Authority'. In fact, whether a person has an enforceable legal right is to be looked into by a 'Tribunal' in regard to the 'impleadment of parties'. To array a person as a 'prospective / proposed Respondent(s)' is not a 'Substantive Right', but undoubtedly, it is one of the

`procedure' and the `Tribunal' is to exercise its `judicial discretion', of course, in a subjective manner, diligently.

30. It cannot be gainsaid that, an `Individual' will not be added as a `Party', just because he will be affected by the `Tribunal' incidentally, when it passes an `Order' in a given `proceedings', before it.

31. An `Appellant / Plaintiff' in a given legal proceeding is the `dominus litis'. He cannot be coerced to include a person as `Party" against whom, he does not want to contest, unless it is a compulsion of Law. It must be borne in mind that a `necessary party' is one without whom no `Order' can be passed effectively, in a given case. A `proper party' is one in whose `absence' an effective `Order' can be made, but `whose presence is necessary', for a complete and final decision on the `questions', involved in a given `Proceeding'. Further, a mere interest of a `Party' in the fruits of a `litigation', cannot be a `yardstick' / `test' for his being impleaded as a `Party'.

32. Be that as it may, in the light of the aforesaid detailed discussions and in view of the fact that the main Comp. App (AT) (CH) (INS) No. 269 of 2022 is filed by the erstwhile Liquidator, Mr. V. Venkatasivakumar' as an 'Appellant' before this 'Tribunal', and he being the '1st Respondent' in I.A. Nos. 584 and 585 of 2022, who assails the 'impugned order' dated 01.07.2022 in IA/815/IB/2020 in CP/1307/IB/2018, in and by which, he was directed to hand over the charge to the newly appointed 'Liquidator Mr. Hari Karthik', and also this 'Tribunal' keeping in mind the entire conspectus of the attendant facts and circumstances of the present case in a holistic fashion, comes to an inevitable and inescapable conclusion that the 'Applicants' in I.A. Nos. 584 and 585 of 2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022 are not 'necessary'/'proper' parties, to be arrayed as 'Respondents' in the main Comp. App. (AT) (CH) (INS) No. 269 of 2022 and even without their presence, this 'Tribunal' can 'dispose of' the main 'Company Appeal', of course, on merits, based on the 'available material on record'. Viewed in that perspective, the I.A. Nos. 584 and 585 of 2022 filed by the 'Applicants' in Comp. App (AT) (CH) (INS) No. 269 of 2022 are devoid of merits.

Conclusion:

In fine, I.A. Nos. 584 and 585 of 2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022 are dismissed. No costs.

**[Justice M. Venugopal]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

12/08/2022

SR/TM



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BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE