

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 699 of 2018**

(Arising out of Order dated 14<sup>th</sup> September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in CA No. 84/2018 in CP (IB) No. 07/Chd/Hry/2017)

**IN THE MATTER OF:**

**RMS Employees Welfare Trust**

**...Appellant**

**Vs.**

**Anil Goel**

**...Respondent**

**Present: For Appellant: - Mr. Sanyam Goel, PCS, Mr. Sumant Batra, Ms. Pooja Mahajan, Mr. Mohtashim Kibriya, Ms. Srishti Kapoor and Ms. Mahima Singh, Advocates.**

**For Respondent:- Mr. Akshay Goel, Mr. Sugam Seth and Mr. Kinshuk Chatterjee, Advocates.**

**Mr. Rajiv Ranjan, Senior Advocate, Amicus Curiae assisted by Mr. Sanyam Seth, Advocate.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by the Appellant- 'RMS Employees Welfare Trust'- ('Resolution Applicant') against part of the impugned order dated 14<sup>th</sup> September, 2018, wherein the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, while

approving the 'Resolution Plan' submitted by the Appellant observed as follows:

*“We find that in para C.4 of the minutes of the meeting of COC held on 23.03.2018 (Annexure Q of the petition), it is inter alia stated that no payment under the resolution plan is envisaged for Government dues. The matter relating to the waiver of Government dues, including waiver of MAT liability under Section 115J of the Income Tax Act 1961, may be considered by the respective Government Department.”*

2. The Appellant has challenged the part of the impugned order aforesaid on the ground that the debts payable to the Central Government or the State Government or any other authorities are 'Operational Debt' within the meaning of Section 5(21) and are payable in accordance with Section 30(2) (b) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short). Therefore, the Adjudicating Authority cannot direct the Central or State Government to consider the case of waiver.

3. Learned counsel for the Appellant relied on different provisions and the decisions of the Hon'ble Supreme Court including **“B. Premanand and Others vs. Mohan Koikal and Others— (2011) 4 SCC 266”**, **“M/s.**

***Hiralal Rattanlal Etc. vs. State of UP and Another etc.— (1973) 1 SCC 216***” and ***“Babu Manmohan Das Shah & Ors. vs. Bishun Das— AIR 1967 SC 643”*** to suggest that there is no necessity to seek aid from anywhere else for the purpose of providing any purposive interpretation if there is no ambiguity in the meaning of ‘Operational Debt’.

4. Other arguments were also advanced, but it is not necessary to record all the submissions in view of the fact that the matter stands decided.

5. Mr. Rajiv Ranjan, Senior Advocate along with Mr. Sugam Seth, Advocate appeared as Amicus Curiae relied on extract of ‘UNCITRAL Legislative Guide’ on Insolvency Laws and extract of the ‘Interim Report of the Bankruptcy Law Reform Committee’ submitted in February, 2015. Reliance has also been placed on the ‘Final Report of the Bankruptcy Law Reform Committee’ submitted in November, 2015 and extracts of the ‘Finance Bill, 2018’ to suggest that the debt payable to the Central Government or the State Government or legal authority pursuant to existing law do not come within the meaning of ‘Operational Debt’.

6. Similar issue fell for consideration before this Appellate Tribunal in ***“Pr. Director General of Income Tax (Admn. & TPS) v. M/s. Synergies Dooray Automotive Ltd. & Ors.— Company Appeal (AT) (Insolvency) No. 205 of 2017 etc.”***, wherein this Appellate Tribunal held as follows:

“27. In **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018”**, the Hon’ble Supreme Court while dealing with the different provisions of the ‘I&B Code’, including Section 5(20), observed as follows:

“23. A perusal of the definition of “financial creditor” and “financial debt” makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an ‘operational debt’ would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”

28. *From the plain reading of sub-section (21) of Section 5, we find that there is no ambiguity in the said provision and the legislature has not used the word 'and' but chose the word 'or' between 'goods or services' including employment and before 'a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, and State Government or any local authority'.*

29. *'Operational Debt' in normal course means a debt arising during the operation of the Company ('Corporate Debtor'). The 'goods' and 'services' including employment are required to keep the Company ('Corporate Debtor') operational as a going concern. If the Company ('Corporate Debtor') is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues*

*including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'.*

30. *For the said very reason, we also hold that 'Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&B Code'."*

7. In view of the aforesaid findings, we hold that the part of the impugned order passed by the Adjudicating Authority, as quoted above, relating to waiver of Income Tax is without jurisdiction. The debt of the Central Government or the State Government arising out of the existing law being 'Operational Debt', the question of asking for waiver does not arise as per the 'Resolution Applicant' to decide how much to be paid to the Central Government or the State Government against the 'Operational Debt' (Income Tax or G.S.T or any other statutory debt), which should not be less than the amount to be paid to the 'Operational Creditors' in the event of a liquidation of the 'Corporate Debtor' under Section 53.

8. The part of the impugned order dated 14<sup>th</sup> September, 2018 as quoted above is set aside. The rest part of the impugned order approving the 'Resolution Plan' is upheld.

The appeal is allowed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI  
30<sup>th</sup> May, 2019  
AR