

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT NEW  
DELHI**

**Company Appeal (AT) Insolvency No.800 of 2019**

{Arising out of Order dated 28.06.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru) in I.A. No.267/2019 and I.A. No.268/2019 in Company Petition (IB) No.148/BB/2017}

**IN THE MATTER OF:**

**Mr. S. Shivaswamy** **... Appellant**  
**(Resolution Professional and Liquidator of  
Le Ecosystem Technology India Private Limited, Corporate Debtor}  
RF 4, Santara Magan Place, Dodakammanahalli, Hulimavu  
Bannerghatta Road, Bengaluru-560 076**

**Versus**

- 1. Concentrix Daksh Services India Private Limited  
(Operational Creditor)  
DLF Building No.8, Tower B, 4<sup>th</sup> Floor, DLF Cyber City,  
DLF Phase 2, Sector 25A, Gurugram-122002 ... Respondents**
- 2. National Company Law Tribunal, Bengaluru Bench**

**Present:**

**For Appellant: Mr. Saransh Jain, Advocate.**

**For Respondent No.1: None**

**For Respondent No.2 : None**

**JUDGMENT**

**VENUGOPAL M, J.**

The Appellant has focussed the present Appeal being dissatisfied with the impugned order dated 28.06.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru) in I.A. No.267/2019 and I.A. No.268/2019 in CP (IB) No.148/BB/2017.

2. In CP (IB) No.148/BB/2017 (under Section 9 of I & B Code r/w Rule 6 of the I & B (AAA) Rules, 2016), filed by the 1<sup>st</sup> Respondent/Operational Creditor against M/s Le Ecosystem Technology India Private Limited (Corporate Debtor), the Adjudicating Authority (NCLT, Bengaluru Bench) on 09.11.2018, admitted the Application and appointed Mr. S. Shivaswamy as an Interim Resolution Professional, the Appellant herein, to conduct the CIRP in respect of the Corporate Debtor.

3. In the impugned Order dated 28.06.2019, at paragraph 12(vi), the Adjudicating Authority had proceeded to observe the following:

“The fees of the Liquidator shall be proportionate to the liquidation estate assets as per Section 34(8) of the Code. As stated in the Order on I.A. No.141/2019, the Company is due to receive Income Tax Refund of Rs.2.20 crores for AY 2017-18. However in the interest of justice, the fees of the Liquidator shall not be recoverable from the pending Income Tax Refund or the Fixed Deposit Receipt due for the Company. Since the Income Tax Department has already determined the quantum of refund vide Communication reference No.CPC/1718/G14/201902220457881 dated 26<sup>th</sup> February 2019, the Liquidator has to pursue the same and get it converted to cash. Here virtually, no effort is required. The Liquidator, however, will be entitled for out of pocket expenses/travel expenses for obtaining the Income Tax Refunds.”

4. Assailing the legality and propriety of the impugned order dated 28.06.2019 in I.A. No.267/2019 and I.A. No.268/2019 in CP (IB) No.148/BB/2017 passed by the Adjudicating Authority, the Learned Counsel for the Appellant submits that the Adjudicating Authority had permitted the initiation of Liquidation process of the Corporate Debtor and appointed the Appellant as a Liquidator of the Corporate Debtor. In this connection, the submission of the learned counsel for the Appellant is that at paragraph 12(vi) of the impugned order, the Adjudicating Authority had observed, “....in the interest of justice, the fees of the liquidator shall not be recovered from pending Income Tax refund or Fixed Deposit Receipt due for the Company. Since Income Tax Department has already determined the quantum of refund...the liquidator has to pursue the same and get it converted to cash. Here, virtually, no effort is required.”, which is an incorrect and perverse one.
5. The Learned Counsel for the Appellant points out that the ingredients of Section 36(3)(h) of the Insolvency and Bankruptcy Code, 2016 specifically provides for inclusion of all such assets being any other assets belonging to or vested in the Corporate Debtor at the insolvency commencement date. Therefore, it is the stand of the Appellant that the Tribunal fell into a palpable error while making the observation that the quantum of the Income-Tax refund amount was already determined, the fees of the Liquidator shall not be recovered therefrom

and this observation is in gross violation of Sections 34(8) and 36(3)(h) of the Code read with Regulation 4(3) of Chapter II of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

6. It is represented on behalf of the Appellant that the Corporate Debtor (Le Ecosystem Technology India Private Limited), as on date, or even on the date of appointment of the Appellant as the Interim Resolution Professional had no tangible assets and all other receivables, except for the Income Tax refund amount, are uncertain to be realized being subject to assessment, reduction and addition after factoring in interest component. In short, the observation made by the Adjudicating Authority in the impugned order had unnecessarily jeopardized the efforts made by the Appellant in the entire Liquidation process.
7. The Learned Counsel for the Appellant makes an emphatic plea that the Adjudicating Authority had failed to take into consideration that Section 34(8) of the Code does not confer any manner of discretion to it in determining as to what would form the liquidation estate assets as well as what would be the fee charged by the Liquidator for the conduct of the liquidation proceedings.
8. The Learned Counsel for the Appellant projects an argument that the Adjudicating Authority had failed to appreciate that the IT refund sum, as and when received, shall be credited to the account of the Corporate Debtor/Company under liquidation and the said sum was already treated as 'Other Current Asset' vested within the Corporate Debtor Company or a property belonging to or vested in the Corporate Debtor Company on the insolvency commencement date.
9. The Learned Counsel for the Appellant takes a stand that the Income Tax refund amount from the 'Liquidation Estate' was excluded by the Adjudicating Authority and in this regard, the Adjudicating Authority exceeded its powers restricted by Section 34(8) of the I & B Code which provides that an 'Insolvency Professional' proposed to be appointed as

- a Liquidator shall charge such fee for the conduct of the Liquidation proceedings and in such proportion to the value of the 'Liquidation Estate' Assets as specified by the Board.
10. The Learned Counsel for the Appellant contends that the Adjudicating Authority being a creature of statute and being bound by the relevant provisions of the statute had acted beyond its power while passing the impugned order.
  11. It is the version of the Appellant that as on date, there are no 'Substantial Assets' other than the 'Asset of Income Tax Refund' which is available with the Corporate Debtor Company and a request for raising Interim Finance for the resolution process was already negated by the Adjudicating Authority. In short, the clear-cut stand of the Appellant is that the non-availability of funds to meet the Liquidator's fees will be prejudicial to the entire Liquidation process.
  12. Be it noted that the I.A.No.267/2019 was filed by the Appellant/Applicant (before the Adjudicating Authority under Section 34 of the I & B Code) seeking to appoint a Liquidator for the Initiation of Liquidation Process. I.A. No.268/2019 was filed by the Appellant/Applicant (under Section 33(2) of the I & B Code) seeking to accept and approve the Resolution passed for initiation of the 'Liquidation Process' which was approved by the 'Committee of Creditors' in their meeting that took place on 23.05.2019.
  13. It comes to be known that I.A. No.141/2019 in C.P. (IB) No.148/BB/2017 was filed by the Appellant/Applicant (under Section 60(5) of the Code) among other things seeking to direct the I.T. Department to expedite the process of their refund claim in respect of the Corporate Debtor (M/s Le Eco System Technology India Private Limited). In fact, the said I.A. No.141/2019 was disposed by the Adjudicating Authority on 22.03.2019, whereby and wherein the Commissioner of Income Tax was directed to expedite the process of refund of M/s Le Eco System Technology India Private Limited

(Corporate Debtor) in accordance with law within a period of six weeks from the date of receipt of the copy of the order.

14. The primordial grievance of the Appellant (Resolution Professional and Liquidator of M/s Le Eco System Technology India Pvt. Ltd.) is that the Adjudicating Authority, while passing the impugned order in I.A. Nos.267 and 268 of 2019 in C.P. (IB) No.148/BB/2017, at paragraph 12(vi), after observing that the fees of the Liquidator shall be proportionate to the 'Liquidation Estate' as per Section 34(8) of the Code, had proceeded to observe that the Income Tax Department had already determined the quantum of refund communication as per Reference No.CPC/1718/G14/201902220457881 dated 26<sup>th</sup> February 2019 and that the Liquidator has to pursue the same and get it converted into cash, etc., and opined that the Liquidator "however, will be entitled for out of pocket expenses/travel expenses for obtaining the Income Tax Refunds".
15. Section 34 of the I & B Code 2016 speaks of 'Appointment of Liquidator and fee to be paid'. In reality, the ingredients of Section 34(8) of the Code enjoin that 'the Fees of the Insolvency Professional appointed as Liquidator' shall be determined in proportion to the value of 'Liquidation assets'. A Liquidator is entitled to such 'Fee' and in such manner as determined by the 'Committee of Creditors' before a Liquidation order is passed under Section 33 (1)(a) or Section 33(2) of the Code. In respect of other cases, other than those covered under Sub-Regulation (2), the Liquidator shall be entitled to a percentage of the amount realised net of other 'Liquidation Costs' and of the sum distributed as provided in this Regulation. Further, Sub-Regulation (4) specifies that the 'Liquidator' shall be entitled to receive half of the fee payable on realisation under Sub-Regulation (3) only after such realised sum is distributed.
16. A 'Liquidator' will be entitled to remuneration for the services rendered by a member of his staff as per decision in **Jacob and**

**Ruddock v. UIC Insurance Co. Ltd.** (2007) 2 BCLC 46 (Ch. D.). In this connection, it is pertinent for this Tribunal to make a mention that a court/tribunal has a discretion to decide the fee or remuneration of a voluntary Liquidator but the fact of the matter is that where the expense are neither justified nor ancillary/incidental to the winding up, the same may not be reimbursed.

17. Be that as it may, on going through the impugned order passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru Bench), this Tribunal is of the earnest opinion that for the services to be rendered/rendered by the Liquidator in regard to the 'I.T. Refund Amount' and the same being converted into cash, even though much effort is not required, certainly, the Liquidator is entitled to claim remuneration for this 'outturn' of work, of course, in conformity with the I & B Code coupled with the IBBI (Liquidation Process) Regulations 2016. Viewed in this perspective, this Tribunal, to prevent an aberration of justice and in furtherance of substantial cause of justice, modifies the interim order passed by the Adjudicating Authority in I.A. No.267 and 268 of 2019 in C.P. (IB) No.148/2017, dated 28.06.2019 and disposes of the Appeal but without costs. I.A. No.2427/2019 is closed.

**Justice Bansi Lal Bhat**  
**Member (Judicial)**

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

**(Justice Anant Bijay Singh)**  
**Member (Judicial)**

**New Delhi**

**27th February, 2020**

Ssr/