

Case Snippets

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Mr. Savan Godiawala Vs. Mr. G. Venkatesh Babu, Managing Director, Lanco Infratech Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 715 of 2019) dated 29th May, 2020 (NCLAT).

**Section 35 read with Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Sections 276-B and 278-B of the Income Tax Act, 1961
- Powers and Duties of liquidator**

If the prosecution is launched against the Company as well as against the Managing Director of the Corporate Debtor in his personal capacity, even after the liquidation proceedings have been started the Managing Director has to face the trial in his personal capacity & ultimately if the offence is proved he will be punished.

In the instant case the CIRP commenced vide order dated 07.08.2017 by the Adjudicating Authority under Section 7 of the I&B Code and Mr. Savan Godiawala/Appellant was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional of the Corporate Debtor thereafter, vide order dated 27.08.2018 passed by the Adjudicating Authority, the Appellant was appointed as the Official liquidator of the Corporate Debtor i.e., Respondent No. 2. It is also admitted fact that on 31.03.2016 Income Tax Department filed a complaint under Section 276-B read with Section 278-B of the IT Act against the Respondent No. 1 being Managing Director and person responsible and in charge of day to day affairs of the Company and Respondent No. 2 i.e., Corporate Debtor with the allegation that the Tax deducted at source under various sections of TDS during the financial year 2012-2013 has not deposited the said tax to the Government account within the stipulated period.

The question involved in this Appeal is that actually who has committed the default by non-depositing the TDS in time certainly the alleged offence is committed during the financial year 2012-13.



NCLAT held as follows:

It is true that as per Section 35(1)(k) of the I&B Code, it is duty of the liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of on behalf of Corporate Debtor. Compounding of offence is a process whereby the person/entity committing default will file an Application to the compounding authority accepting that it has committed an offence and so that same should be condoned.

In the instant case as per the prosecution Respondent No. 1 has committed the offence under Section 276 -B read with Section 278-B of the Income Tax Act, therefore, he has filed the Application before the compounding authority. Liquidator has not committed the alleged offence therefore; he is not required to file Application before compounding authority accepting that he has committed an alleged offence. However it is true that the liquidator has to defend the Respondent No. 2 Company once he has taken the charge of the Company.

We are unable to convince with the findings of Ld. Adjudicating Authority that the Respondent No. 1 is appearing in the Criminal Case filed against the Company as he was the then Managing Director. Actually the prosecution is launched against the Company as well as against the Respondent No. 1 in his personal capacity. Therefore, even after the liquidation proceedings have been started the Respondent No. 1 has to face the trial in his personal capacity and ultimately if the offence is proved he will be punished.

With the aforesaid we are of the view that the Ld. Adjudicating Authority has misconstrued the provisions of Section 35(1)(k) of I&B Code, and directed the liquidator to reimburse the compounding fees to Respondent No. 1. Thus the impugned order is not sustainable in law and facts, hence it is set aside.

