NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

17.08.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

JATINDRANATH SWAIN, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.205/2023
(IA Nos.670 & 672/2023)

Sun Paper Ltd.
No. 11/6, Ratnapuri
2nd Street, Koyambedu,
Chennai- 600 107. **...Appellant**

Vs

S. Dhanapal, Liquidator,
M/s. Servalakshmi Paper Ltd.
(under Liquidation)
Kodaganallur Village
Vaduganpatti Post, I.C. Pettai
Tirunelveli - 627 010. **...Respondent**

(Arising out of Order dated 12.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Chennai Bench) in IA/846(CHE)/2020 in CP/514(IB)/CB/2017)

Present :

For Appellant **:** Mr. TK Bhaskar, Advocate

For Respondent **:** Mr. Karthik Seshadri, Advocate

JUDGMENT
(Hybrid Mode)

Per: Justice N. Seshasayee, Member (Judicial)

This appeal is preferred by the appellant, a scheme proponent, during the liquidation of the corporate debtor, challenging the impugned order of the learned Adjudicating Authority directing the appellant to deposit the bank guarantee amount of ₹.2.0 crores to the liquidation estate of the corporate debtor, which, according to the appellant, it is not liable to pay as it had withdrawn from the race.

2. The material facts relevant for the current purpose are:

a) The corporate debtor was ordered to be liquidated, and during the liquidation process, schemes were invited for the sale of the corporate debtor as a going concern in terms of Regulation 2B of the IBBI (Liquidation Process) Regulation. In response to the same, the appellant herein and M/s Seshasayee Paper and Boards Limited submitted their respective schemes. Both these schemes were eventually placed before the Adjudicating Authority, who directed the liquidator to place them before the CoC for evaluation of the viability of the schemes submitted. CoC evaluated both the schemes and approved the scheme of the appellant. It appears that the liquidator appeared to have expressed his opinion in favour of the scheme of M/s. Seshasayee

Papers. He would now move C.A 1266 of 2019, seeking to approve either of the two schemes submitted by the proponents.

b) The Adjudicating Authority would approve neither, and vide its Order dated 13.03.2020, it remanded the matter back to the CoC for a de novo consideration. This Order of the Adjudicating Authority came to be challenged by the appellant in C.A No 451 of 2020.

c) While things stood thus, Covid wave swept the country which according to the appellant, delayed things for the appellant as hearing of C.A.451 of 2020 was getting delayed due to it. On 28.08.2020, the appellant withdrew the appeal.

d) Be that as it may, even the scheme of M/s. Seshasayee Papers could not go through, but the reasons thereof are not very germane for the present. What is relevant is that the corporate debtor was eventually liquidated, and Seshasayee Papers eventually purchased the same in liquidation.

3. It may be now stated that when both the appellant and Seshasayee Papers submitted their respective schemes as referred to in paragraph 2(a) above, both of them had given a guarantee for EMD to the tune of ₹.2.0 crores. Upon the appellant withdrawing his appeal in C.A.451 of 2020, the liquidator moved the Adjudicating Authority with I.A. 846 of 2020 and I.A.844 of 2020 respectively against the appellant and Seshasayee Papers, for realising the said EMD amount. These applications came to be listed together. According to the appellant, it could not appear in I.A.846 of 2020 as the matter came to be listed during covid days whereas Seshasayee Papers contested the application that was filed against it through its counsel. Ultimately, on 12.05.2023, I.A 846 of 2020 came to be allowed, and the appellant was directed to pay a sum of ₹.2.0 crores to the liquidation estate of the corporate debtor. This order is now under challenge.

4. The learned Counsel for the appellant now makes two-fold submissions:

   (a) That the counsel whose name is noted in the order as representing the respondents before the Adjudicating

Authority, was never engaged by the appellant but was appearing only for the respondent in I.A No.844/2020.

(b) That I.A.846 of 2020 filed against the appellant herein was filed, prosecuted, and decided during the Covid wave, in the proceedings of which the appellant could not participate effectively due to the restrictions imposed by Covid Pandemic. But, at any rate, when the appellant had challenged the Order of the Adjudicating Authority dated 13.03.2020 remanding the appellant's scheme back to the desk of the CoC, it meant that the appellant's scheme was not accepted. Secondly, when this Order of remand was initially challenged by the appellant in C.A.451 of 2020, and was subsequently withdrawn, it only restored the issue back to where it was after the order of the Adjudicating Authority dated 13.03.2020. In other words, the appellant was left at the stage where its scheme was not accepted. Therefore, no legal obligation can be created against the appellant after its scheme was not accepted.

5. Per contra, Mr. Karthik Seshadri, the learned counsel for the liquidator, would submit that a mere withdrawal of C.A.451 of 2020 does not amount to withdrawing from the participation in submitting the scheme and hence the appellant is liable. He, however, fairly submitted that the corporate debtor was eventually sold as a going concern to M/s. Seshasayee Paper & Boards Ltd.

6. We gave careful consideration to the arguments advanced by the rival side and find the contention of the appellant to be reasonable and legally sustainable. The EMD in question is for submitting the scheme. The scheme of the appellant's choice indeed was submitted, but it was not accepted. Once the scheme was not accepted, it was for the appellant to decide whether to participate in the process or not. A scheme proponent only undertakes to submit a scheme of his/its design and not any scheme to the satisfaction of the CoC or the Adjudicating Authority. In that situation, once the initial scheme was not accepted, it then becomes a

choice of the scheme proponent to continue to participate in the process or not.

7. Further, there is a commercial angle where time may be a factor. No businessman or business entity that participates in a resolution or liquidation process are not doing charity to redeem the corporate debtor with their money but only to secure a commercial advantage when they smell a business opportunity for them. But they cannot be forced to look at the food in the plate without eating it for long. This is the reality of commerce. On the other hand, howsoever one may intend to have a fast-tracked dispute resolution mechanism, given the size of the population and the number of litigations instituted, it is a humungous task to actually resolve every dispute within a time frame. This is the reality of our legal system. But in the world of commerce time invariably is considered critical. Given these conflicting realities, a man in business only attempts to optimize his advantage within a time frame, and if he becomes impatient, he cannot be sentenced to force-stay in the race. The liquidator tries to maximise the advantage he

can secure. The appellant will try to maximise the advantage whatever he can within the time frame it had in his scheme of things. Whereas the liquidator may have to wait till the legal process is concluded, driven by pure commercial consideration, a scheme proponent has an option not to wait. And, both are realities of life, and they cannot be ignored.

8. Hence we are constrained to hold that when the appellant, impelled by its commercial acumen, opts to withdraw from the race when its scheme was not accepted for reasons which it considers relevant to its scheme of commercial decision, it only deserves to be respected and not punished. Set in the context, the liquidator, in requiring the appellant to pay the EMD guarantee amount, has not demonstrated how and why the appellant is liable in law to pay the EMD amount. We find that the claim of the liquidator is wholly unsustainable in law.

9. It is therefore, not so much about whether the appellant was justly set ex-parte or the application of the liquidator

was proceeded ex-parte unjustly. It is about its fundamental liability in law.

10. To conclude, we allow the appeal and set aside the order of the Adjudicating Authority dated 12.05.2023 passed in IA/846/2020 in CP/514/IB/2017. All pending interlocutory applications, if any, would stand closed. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK