

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 201 of 2025

IN THE MATTER OF:

Pankaj Tandon

...Appellant

Versus

**Isolux Corsan India Engineering & Construction Pvt.
Ltd. Through its Liquidator CA Rajeev Bansal**

...Respondent

Present:

For Appellant : Ms. Ishita Jain, Mr. Mudassir, Advocates.

For Respondent : Mr. Abhinav Mishra, Ms. Jagriti Dosi, Ms. Archisha Singh, Mr. Priyanshu Singh, Mr. Hardik Dimania, Mr. Kratiney Goel, Ms. Damani Juneja, Advocates.

ORDER
(Hybrid Mode)

02.09.2025: Heard learned counsel for the Appellant and learned counsel appearing for the Liquidator. This appeal has been filed against order dated 12.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh by which IA No.1308 of 2022 filed by the Liquidator seeking ex-post facto approval/ ratification/ regularization of the criminal complaints filed against the Ex-management is allowed.

2. Learned counsel for the Appellant submits that although this Tribunal in ***Slimline Realty (P) Ltd. vs. Jigar Bhatt, 2024 SCC OnLine NCLAT 685*** has held that the Adjudicating Authority has jurisdiction to grant ex-post facto approval but for the ex-post facto approval granted in the impugned order no reasons have been given nor any special facts have been mentioned

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due to which ex-post facto approval could have been granted. It is submitted that according to the own case of learned counsel for the Liquidator, Liquidator came to know in December, 2021 that amount has been withdrawn by the Ex-management but the complaint has been made after ten months in September, 2022.

3. Learned counsel for the Liquidator submits that the Liquidator after being appointed has been pursuing the amount of refund of Rs.12 Crore which was required to be received by the Corporate Debtor and was also mentioned in the Information Memorandum. He submits that the Adjudicating Authority itself in an earlier order passed on 28.04.2022 has permitted the Liquidator to pursue all litigations listed in Annexure 'C-2' and consequential proceedings civil/ criminal, which clearly authorise the Liquidator to file criminal complaint.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. The Adjudicating Authority by the impugned order has granted ex-post facto approval. Earlier the Liquidator filed an application IA No.405 of 2021 in which order was passed on 28.04.2022, which order is as follows:

“IA No. 405/2021

2. IA No. 405/2021 has been filed by applicant-Liquidator under Section 60(5) read with Sections 33(5) & 35(1)(k) of the I&B Code, 2016 seeking permission to defend all of any of the suit, prosecution of other legal proceedings, civil or criminal in the nature of and on

behalf of the corporate debtor initiated both prior and post the commencement of liquidation proceedings of the corporate debtor. Vide order dated 29.11.2021, learned counsel for applicant was directed to submit a detailed chart of initiation of the legal proceedings/litigation related to corporate debtor and also for making amendment in IA No. 405/2021. The compliance to that effect has been filed vide Diary No. 00633/4 dated 28.12.2021. The said list is Annexure C-2 with the said affidavit. Keeping in view the facts and circumstances mentioned in the application, IA No. 405/2021 is allowed. The applicant-Liquidator is at liberty to defend all the litigation mentioned in the list Annexure C-2 i.e. prosecution or other consequential proceedings civil as well as criminal nature. IA No. 405/2021 is allowed and disposed of accordingly.”

6. The main challenge of the Appellant to the impugned order is that no reasons have been given by the Adjudicating Authority for granting ex-post facto approval. The learned counsel for the Respondent has referred to paragraph 11 of the impugned order in which paragraph the Adjudicating Authority has noticed following:

*“11. The next issue for consideration before us is **“Whether approval granted by this Tribunal in I.A. no. 405 of 2021 in CP(IB) No. 97/Chd/Hry/2018 was a blanket approval and whether cover the criminal proceedings for which the post facto approval has been sought”**,*

(i) The Applicant filed I.A. no. 405 of 2021 in CP(IB) No. 97/Chd/Hry/2018 before this tribunal

seeking blanket approval to initiate/ defend all suits/litigations both civil and criminal in nature against the entities/ individuals on behalf of the Corporate debtor, which was allowed vide this Tribunal order dated 28.04.2022.

- (ii) *During the proceedings of that application, the Applicant was directed to submit a detailed chart of litigation. The detailed chart submitted by the applicant included the litigation with regard to refund from VAT department as below-*

“There exist a refund of INR 12,00,000,00/- (Approx) to be released in favour of the corporate debtor by Bihar Commercial Tax department, Sasaram Circle in relation to the NH-2 Project i.e. Six laning of Varanasi Aurangabad Section of NH-2 from Km 786.000 to Km 978.400 (total Km: 192.400) in the state of UP/Bihar on design, build, finance, Operate and Transfer ("DBFOT") Toll Basis under NHDP Phase-V. The Applicant/ Liquidator has already segregated the documents pertaining to the VAT refund in favour of the Corporate Debtor, which are voluminous and incomplete in nature, and is in constant communication with the officials of the VAT department, Sasaram Circle towards procuring the refund amount. If the said amount is not refunded by the Bihar Commercial Tax Department, Sasaram Circle in favour of the CD, the Applicant in his capacity as the liquidator of the CD will be faking appropriate legal action against the Bihar Commercial Tax Department by filing an Appeal before the Deputy Commissioner (Appeals) in lieu of procuring the said refund”

- (iii) *Therefore, it is clear from the above, that this Tribunal vide its Order dated 28.04.2022 had allowed the liquidator for taking appropriate legal action against the Bihar Commercial Tax*

Department by filing an Appeal before the Deputy Commissioner (Appeals) in lieu of procuring the said refund. The VAT refund has been received and deposited/ credited in the bank account of the Corporate Debtor.

- (iv) Since the criminal proceedings, which have been initiated by the Applicant against the Respondent, are with regard to alleged misappropriation of the fund from the bank account of the Corporate Debtor, which cannot be said be covered under the approval given by this Tribunal vide its Order dated 28.04.2022, we are of the considered view that approval of this Tribunal Order dated 28.04.2022 does not include directly or indirectly the criminal proceedings initiated in this IA.*

- (v) However, we observe that during the course of communication with the VAT department, the Applicant got information that the refund has already credited, however, it is alleged that for receiving the refund, the Respondent has impersonated as Director after ceasing to be a Director, which would be the related matter, for which this Tribunal has given its approval in IA 405/2021 vide Order dated 28.04.2022. Moreover, the Applicant filed criminal complaints on 12.09.2022 and 13.09.2022, and the present IA has immediately been e-filed on 14.09.2022 (physical filing on 28.09.2022) without any delay.*

(vi) As a sequel to the discussion above, the present application is allowed and disposed of, without going into the merits of the criminal complaints.”

7. Learned counsel for the Respondent has specially referred to Para 11(v), which was earlier order 28.04.2022. The facts which have been noticed in Para 11(v) are itself the reasons which persuaded the Adjudicating Authority to grant ex-post facto approval, hence, we are not satisfied with submission of the Appellant that the impugned order does not contain any reason for granting ex-post facto approval. The Adjudicating Authority itself had permitted the Liquidator, by order dated 28.04.2022, to take all consequential proceedings civil as well as criminal nature and the Liquidator has rightly file complaint on 12.09.2022 and 13.09.2022. We, thus, do not find any error in the order of the Adjudicating Authority grating ex-post facto approval. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn