

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/1318/IB/2020 in TCP/111/IB/2017

(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016)

In the matter of Daehsan Trading India Private Limited

State of Tamil Nadu

State Tax Department

Represented by its Assistant Commissioner (ST)

Tmt. P. Gangashree.,

T. Nagar Assessment Circle (FAC)

No.46, Greenways Road, Mylapore Taluk Office Building,

Third Floor, Chennai – 600 028

... Applicant

-Vs-

S. Rajendran,

Liquidator of M/s. Daehsan Trading India Private Limited

2nd Floor, Hari Krupa,

71/1, Mc Nicholas Road, Chetpet, Chennai – 600 031

M/s. Daehsan Trading India Private Limited

No.32, Venkatnarayana Road,

Chennai – 600 017

... Respondent

Order Pronounced on 25th January 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *B. Dinesh, Advocate*

For Respondent : *Elamathi, Advocate*

ORDER

(Hearing Conducted through VC)

IA/1318/IB/2020 is an application filed by the Applicant under Section 42 read with Section 60(5) of IBC, 2016 seeking relief as follows;

a) *In view of the above, it is prayed that the impugned communication rejecting the claim of Rs.33,47,67,880/- may kindly be modified and the claim may kindly be ordered to be accepted.*

2. This Tribunal vide its order dated 27.03.2018 had ordered for Liquidation of the Corporate Debtor and appointed the 1st Respondent herein as the Liquidator. The Liquidator caused the public announcement on 09.04.2018. The last date for submission of claims was fixed as 26.04.2018.

3. The Applicant herein has not filed its claim before the Liquidator. However, on 20.03.2019, the Liquidator sent a communication to the Applicant stating that as per the Assessment order dated 19.04.2018, a payment of Rs.1,74,245/- has been released to the Applicant in accordance with Section 53(1)(e) of IBC, 2016. Only thereafter, the Applicant on 11.05.2019 preferred the claim before the Liquidator in Form C for a sum of Rs.33.49 Crores.

4. In the 3rd SCC meeting held on 16.03.2019, it was discussed as follows;

4. *It may be noted that the Sales Tax Authorities did not file any claim under the Liquidation Process. However, vide letters dated 26th April, 2018, assessment order under CST was issued for Rs.1,74,245/- and notices under VAT was issued for Rs.1,95,81,292/-, Though the Liquidator was not bound to pay any amount to sales tax authorities as no claim was received, he clarified that as a matter of caution and concern on the outstanding to the government authorities, a due process will be followed to determine the amount payable based on the communications received from them after the Liquidation commencement.*

(emphasis supplied)

5. By the time, the Applicant filed its claim before the Liquidator, the distribution to the stakeholders as per Section 53 of IBC, 2016 has commenced. The distribution as per Section 53 of IBC, 2016 done by the Liquidator is extracted hereunder;

Annexure 2

Distribution as per Sec 53 of Code

(Amount Rs. in lakhs)

| Sr | Stakeholders under Section 53(1) | Amount Claimed | Amount Admitted | Amount Distributed | Amount distributed to the Amount Claimed (%) |
|----|--|----------------|-----------------|--|--|
| | Provident Fund dues | 43.89 | 43.89 | 43.89 | 100% |
| | Employee Gratuity dues | 62.93 | 49.66 | 49.66 | 100% |
| 1 | (a): CIRP Costs | - | 4.12 | 4.12 | 100% |
| 2 | (a): Liquidation Costs | - | 135.83 | 133.35 | 100% |
| 3 | (b)(i) Workmen's dues for the period of 24 months preceding the liquidation commencement date | - | - | - | - |
| 4 | (b)(ii) Debts owed to secured creditors | - | - | - | - |
| 5 | (c) Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date | 21.90 | 21.90 | 21.90 | 100% |
| 6 | (d) Financial debts owed to unsecured creditors | - | - | - | - |
| 7 | (e)(i) Amount due to the Central Govt. / State Govts | 9.27 | 6.69 | 6.69 (incl. Rs.1.74 lakhs to State Tax Dept.) | - |
| 8 | (e)(ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest | - | - | - | - |
| 9 | (f) remaining debts and dues | | | | |
| | Operational Creditors | 1910.99 | 1200.07 | 741.10 | 61.75% |
| | Employees more than 12 months | 185.54 | 58.25 | 35.97 | 61.75% |
| 10 | (g) Preference Shareholders, if any | - | - | - | - |
| 11 | (h) Equity Shareholders | - | - | - | - |
| | TOTAL | 2234.54 | 1520.42 | 1,036.70 | |

6. It is stated that after distributing the entire amount to the stakeholders as per Section 53 of IBC, 2016, the Liquidator has filed an Application seeking dissolution of the Corporate Debtor and the same is pending adjudication before this Tribunal.

7. The Applicant in his Application has nowhere mentioned the reasons for the delay in filing the claim before the Liquidator. Further, there are no averments made in the Application as to the delay in preferring the claim before the Liquidator. Further, it is noted that the Applicant had filed its claim before the IRP during the CIRP of the Corporate Debtor. So it cannot feign ignorance for not filing the claim before the Liquidator. However, for the reasons best known to them, the Applicant did not file the claim before the Liquidator within the stipulated time period. Further, as per the waterfall mechanism stipulated under Section 53 of IBC, 2016, the Liquidator has distributed the amount to the stakeholders and has also filed an Application seeking dissolution of the Corporate Debtor.

8. This Tribunal is also persuaded by the decision of the Hon'ble NCLAT in the matter of **The Deputy Commissioner Commercial Taxes (Audit), Raichur –Vs- Surana Industries Ltd. (In Liquidation) & Anr.** in *Company Appeal (AT) (Insolvency) No. 1525 of 2019* dated 07.02.2020, wherein the Hon'ble NCLAT dismissed the application filed by the Applicant in relation to the Appeal against the order of the liquidator and also held that liquidation process is a time bound process and the Liquidator has to conclude the proceedings within one year.

9. Under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator has been directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings. Regulation 44(2) stipulates that, after the expiry of one year, the liquidator shall file an application to the Authority to continue the liquidation period along with a report and explain why the liquidation has not been completed. Thus, it can be seen that the Liquidation is a time bound process and the Liquidator being made accountable is required to explain if there is any delay caused in the liquidation process.

10. The Hon'ble Supreme Court in **Gaurav Hargovindbhai Dave – Vs- Asset Reconstruction Company (I) Ltd. & Another** in *Civil Appeal No. 4952 of 2019*, in relation to the aspect of limitation has restated the well-established and well settled principle that “*there is no equity about limitation*”, we are unable to entertain this Application/Appeal.

11. In view of the reasons as stated above IA/1318/IB/2020 stands **dismissed**, however without costs.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond