

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT-I

I.A No. 780 of 2024

IN

C.P (IB) No.237/9/HDB/2020

**[Under Section 42 of Insolvency and Bankruptcy Code, 2016, r/w Rule
11 of National Company Law Tribunal Rules, 2016]**

**IN THE MATTER OF M/s. ACTION GROUP ASSOCIATES Vs. M/s. BEML
MIDWEST LIMITED.**

Between:

M/s. BEML Limited

Having its registered office at
BEML Soudha, No.23/1, 4th main
SR Nagar, Bengaluru – 560 027
Represented by its Authorized Representative

...Applicant

AND

Smt. Padma Priyanka Vangala

Liquidator of
M/s. BEML Midwest Limited
H.No.2-2-1150/1A& 1B, HSR KBR Enclave
Flat No.504, Street No.16, Brahmin Hostel Lane
Tilak Nagar, New Nallakunta,
Hyderabad – 560 044

....Liquidator of Corporate Debtor/Respondent

Date of Order: 16.04.2026

Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsels Present

For Applicant : Mr. Sai Pranav, Ld. Counsel

For Respondent : Mr. G Bhupesh, Ld. Counsel

The Application is filed by M/s. BEML Limited (Applicant) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) seeking to set aside the order dated 19.12.2023 passed by the Respondent/Liquidator of M/s. BEML Midwest Limited (Corporate Debtor) rejecting its claim and to allow its claim amounting to Rs.2,57,21,105/-.

APPLICANT'S SUBMISSIONS

1. The Applicant entered into a joint venture with Midwest Granite Private Limited, resulting in the incorporation of the Corporate Debtor. A Shareholders' Partnership Agreement dated 17.09.2005 was executed between the joint venture partners.
2. During the course of business of the Corporate Debtor, the Applicant noticed various irregularities committed by the directors of Midwest Granite Private Limited and consequently filed CP No.55 of 2008 before the erstwhile Company Law Board (CLB), Chennai. The CLB, by order dated 01.06.2012, directed the Central Government to appoint an Inspector to investigate the affairs of the Corporate Debtor. Aggrieved thereby, the Applicant preferred Company Appeal Nos. 7 of 2013 and 12 of 2013 before the Hon'ble High Court of Andhra Pradesh, which set aside the CLB order and remanded the matter for fresh adjudication while permitting the investigation to continue.
3. Subsequently, an application under Section 9 of the Code was filed by M/s. Action Group Associates against the Corporate Debtor, which came to be admitted by this Tribunal on 26.09.2022, and Smt. Padma Priyanka Vangala was appointed as Resolution Professional. Thereafter, by order dated 20.10.2023, the Corporate Debtor was ordered into liquidation and the said Resolution Professional was appointed as Liquidator.
4. Upon receipt of the CIRP admission order, the Applicant filed its claim in Form-F on 27.10.2022¹. The claims comprised of (i) payment made

¹ Page 40 of the Application

on behalf of the Corporate Debtor amounting to Rs.1,35,50,892/-, (ii) payment made towards One Time Settlement (OTS) to State Bank of India amounting to Rs.1,82,91,144/- as Corporate Guarantor, and (iii) equity investment of Rs.5,42,25,000/-, while seeking liberty to claim uncrystallized amounts. However, the Liquidator rejected the said claim on 31.10.2022² on the ground that it was filed beyond the prescribed time.

5. Aggrieved thereby, the Applicant approached this Tribunal, where by order dated 10.04.2023³, the delay in filing the claim was condoned and the Liquidator was directed to examine the claim in accordance with law. Pursuant thereto, the Liquidator sought additional documents, which were duly furnished by the Applicant on 20.04.2023⁴.
6. It is submitted that, as per the Annual Report of the Corporate Debtor, there was an outstanding amount of Rs.230 lakhs payable to the Operational Creditor, out of which Rs.135.51 lakhs had been paid by the Applicant. Upon request of the Liquidator, the Applicant set off the outstanding amount with the advance amount and paid the balance amount of Rs.94.49 lakhs to the Liquidator on 28.04.2023⁵.
7. Thereafter, the Liquidator again sought further information on 28.07.2023, and within a span of four days, i.e., on 02.08.2023 which included intervening holidays, rejected the claims on the ground of non-submission of documents. It is contended that such rejection was made in haste without affording reasonable opportunity. Despite rejecting the claims, the Liquidator, by email dated 04.08.2023, sought an amicable settlement.
8. The Applicant submits that the Liquidator, without appreciating the documents, held that the claims were unsupported by evidence such

² Page 44 of the Application

³ Page 53 of the Application

⁴ Page 55 of the Application

⁵ Copy of the letter dated 28.04.2023 is produced in Page 66 of the Application

as statements of accounts. According to the Applicant, all relevant documents had been furnished, and the rejection within a short span of time demonstrates prejudice and non-application of mind. The Applicant also contends that the Liquidator acted contrary to the provisions of the Code and Regulations and exhibited hostility in correspondence.

9. The Applicant challenged the rejection dated 02.08.2023 before this Tribunal in IA No.1617/2023. In the interregnum, the Liquidator filed IA No. 1483/2022 alleging non-cooperation by the Applicant, despite the Applicant having furnished the required documents. It is contended that the directions issued by this Tribunal vide order dated 10.04.2023⁶, were against the suspended management of the Corporate Debtor, yet the Liquidator repeatedly sought information from the Applicant. The Liquidator also filed proceedings under Section 70 of the Code against the Applicant and its officers despite there being no direction against the Applicant.
10. Subsequently, a demand notice⁷ dated 13.09.2023 was issued by the Liquidator seeking Rs.135.50 lakhs, which was replied to by the Applicant⁸. Thereafter, a Section 9 petition was filed against the Applicant before the NCLT, Bengaluru. According to the Applicant, these actions demonstrate bias and lack of adherence to the Code of Conduct.
11. After commencement of liquidation of the CD, the Applicant again filed its claim on 28.11.2023 and, upon being asked by the liquidator to submit the claim in appropriate form, filed the claim in Form-G on 05.12.2023⁹ for an amount of Rs. 2,57,21,105/-. The Liquidator, by order dated 19.12.2023, rejected the claim¹⁰.

⁶ Page 74 of the Application

⁷ Page 122 of the Application

⁸ Page 135 of the Application

⁹ Page 162 of the Application

¹⁰ Page 165 of the Application

12. The impugned order is stated to be contrary to the provisions of the Code and the Liquidation Process Regulations. The Applicant had furnished books of accounts, statements, One Time Settlement documents, no-dues certificate issued by SBI, order of DRT, Hyderabad, and other supporting material evidencing payments made as guarantor and otherwise. Despite this, the Liquidator rejected the claim on the ground of absence of guarantee documents and alleged incomplete ledger, without proper verification or reference to the material placed on record.
13. The order is also stated to be unreasoned and passed without consideration of the documents placed on record, despite the adjudication of claims being a quasi-judicial function requiring application of mind and recording of reasons. Reliance placed by the Liquidator on the investigation report in CP No. 55 of 2008 is also challenged, particularly in the absence of independent enquiry or financial audit, and despite objections to the evidentiary value of such report.
14. Rejection of the claim on procedural grounds, including filing under Form-G instead of Form-D and alleged non-compliance with Regulation 18, is also contested, in light of the documents furnished evidencing the debt. The reliance placed on the judgment in *Phoenix ARC Private Limited v. Spade Financial Services Limited*, (2021) 3 SCC 475, is misplaced, as the Corporate Debtor is already under liquidation and the Committee of Creditors is no longer in existence.
15. The Liquidator has wrongly alleged suppression of material facts with respect to set-off, whereas the Applicant had clearly explained the set-off in its letter dated 28.04.2023 and stated 'None' in the relevant column of the claim form as there were no mutual credits or debits.
16. The Applicant contends that the rejection of its claim is arbitrary, and that the impugned order is vitiated by bias. Accordingly, being aggrieved

by the order dated 19.12.2023 passed by the Liquidator, the Applicant has preferred the present Application seeking setting aside of the impugned order and admission of its claim of Rs.2,57,21,105/- along with other reliefs.

COUNTER BY RESPONDENT

17. At the outset, the Liquidator denies the averments made in the Application and submits that the Applicant has raised several allegations which are not concerned with the subject matter of rejection of claim.
18. It is submitted that the Applicant had initially filed its claim in Form F during the CIRP period, which was rejected. After commencement of liquidation on 20.10.2023, the Applicant again filed its claim in Form G dated 05.12.2023.
19. The claim was rejected primarily on the following grounds: (i) lack of documentation regarding the financial debt claimed, (ii) improper classification of creditor and submission of improper form, (iii) the corporate guarantee and related transactions were found to be fraudulent and collusive in nature, (iv) lack of account reconciliation and documents with respect to the amounts claimed, (v) the Applicant being a related party of the CD, and (vi) lack of details regarding mutual credit/debit between the CD and BEML Limited which may be set-off against the claim.
20. With respect to the claim amount, it is submitted that the claim comprises of: (i) Rs.1,82,91,144/- towards OTS payment made to SBI along with Rs.66,50,961/- as interest at 12% till 04.12.2023; (ii) future interest at 12% on the said amount; (iii) Rs.6,71,000/- towards rent at Rs.11,000 per month from March 2018 to March 2023; (iv) Rs.1,08,000/- towards rent at Rs.12,000 per month from April 2023 to December 2023; and (v) future rent with interest. However, the

guarantee documents and rent agreements were not provided for verification and no records were available with an information utility.

21. The debts claimed arise from alleged payment under corporate guarantee and lease of office space and fall within the nature of financial debt. The Applicant was required to file the claim in Form D under Regulation 18 of the IBBI (Liquidation Process) Regulations, 2016 along with supporting documents. Instead, the claim was filed in Form G without adequate proof. Reliance is placed on ***Orbit Towers vs. Sampurna Suppliers Private Limited (C.P. (IB) No. 2046/KB/2019), NCLT Kolkata Bench, and Promila Taneja vs. Surendri Design Pvt. Ltd., 2020 SCC Online NCLAT 1105, NCLAT New Delhi.***
22. It is further submitted, that based on the Investigation Report dated 29.03.2022 of the Regional Officer, Southeast Region and scrutiny of records, it was found that BEML Limited along with its Chairman & Managing Director, while being in control of the Corporate Debtor, had engaged in fraudulent and collusive transactions detrimental to the interests of the Corporate Debtor and its creditors. In light of these findings, the claim was rejected as arising out of sham and illusory transactions. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Phoenix ARC Private Limited v. Spade Financial Services Limited and ors. (2021) 3 SCC 475.***
23. The Liquidator has also presented that the amounts claimed are not reflected in the ledger submitted to the Liquidator. According to the Liquidator, the ledger is incomplete, omits transactions prior to 25.09.2008, and lacks essential references and narrations. Despite repeated requests by the Resolution Professional and directions of this Tribunal in IA 1483/2022, the Applicant failed to provide relevant documents. Proceedings have also been initiated under Section 70 of the Code due to such non-compliance.

24. The Investigation Report also records that the Corporate Debtor's income tax returns were filed without supporting books of accounts and that the explanation given regarding inability to finalize accounts was found to be incorrect, with BEML Limited being in control of the finances. This raises concerns regarding suppression of facts and lack of reconciliation of accounts.
25. The Applicant is a related party holding 45% shareholding in the Corporate Debtor. In terms of Section 21(2) of the Code, a related party financial creditor has no right of representation, participation or voting in the committee of creditors. Reliance is again placed on the judgment of the Hon'ble Supreme Court in *Phoenix ARC Private Limited v. Spade Financial Services Limited and Ors (Supra)*.
26. In the claim form, the Applicant has stated "NONE" against details of mutual dealings. However, correspondence dated 24.04.2023 issued by the Resolution Professional records outstanding amounts payable by the Applicant to the Corporate Debtor. In response dated 28.04.2023, the Applicant acknowledged payment of Rs.94,49,800.85/- and stated that the balance was to be adjusted against the OTS amount. Despite this, no set-off details were disclosed in the claim form, indicating suppression of material facts.
27. The Applicant has failed to establish its claim with documentary evidence. On the contrary, an amount of Rs.1,35,00,000/- is stated to be payable by the Applicant to the Corporate Debtor, and proceedings under Section 9 of the Code in CP(IB) No.151/BB/2023 are pending adjudication.
28. The Application is also barred by limitation. The rejection was communicated on 19.12.2023 and the statutory period of 14 days expired on 02.01.2024. The present Application was filed on 03.01.2024 without seeking condonation of delay. The statement that

the Application was filed within limitation is incorrect, and even the supporting affidavit bears e-stamp dated 03.01.2024.

29. It is submitted that the Application is further not maintainable as multiple reliefs have been sought in a single proceeding instead of filing separate applications. The prayer seeking stay of liquidation proceedings is untenable, particularly in view of the Applicant's conduct during CIRP and liquidation, including failure to provide documents and filing of belated claims. Even if admitted, the Applicant would remain a related party shareholder.
30. In view of the above, the Respondent submits that the rejection of the claim is justified and the Application is devoid of merit and liable to be dismissed.

WRITTEN SUBMISSIONS OF THE APPLICANT

31. The Applicant has, apart from reiterating its submission in the Application has advanced the following contentions: It is contended that under Section 5(8)(h) of Code, a financial debt includes any counter-indemnity obligation in respect of a guarantee. The Liquidator in the impugned order has also treated claims arising out of corporate guarantee and rent as financial debt. Accordingly, the amounts paid by the Applicant under the corporate guarantee and towards rent constitute financial debt.
32. It is contended that merely because the Applicant is a shareholder, it is not barred from maintaining a claim as a financial creditor so long as a financial debt is owed. Reliance is placed on decisions in ***India Power Corporation Limited v. Menakshi Energy Limited and Ors, 2020 SCC OnLine NCLAT 644*** and ***LICHFL Trustee Company Pvt. Ltd. v. JBM Homes Pvt. Ltd., 2021 SCC OnLine NCLT 33059***.
33. With regard to the filing of claim in the wrong form, the Applicant submits that it was due to oversight and inadvertence. Reliance is placed on the decision of the **Hon'ble Supreme Court in Greater**

Noida v. Prabhjit Singh Soni (2024) 6 SCC 767, wherein it has been held that even if a claim is filed in an incorrect form, it must be considered if it is otherwise verifiable from records. It is further submitted that the Applicant had initially submitted its claim by email dated 28.11.2023. The Liquidator, by email dated 01.12.2023, directed filing in appropriate form but did not specify the form and retained the Form G submission. The rejection on this ground is therefore not justified.

WRITTEN SUBMISSIONS OF THE RESPONDENT

34. The Respondent, in addition to the contentions raised in the counter, has relied upon judicial precedents to contend that a guarantor cannot claim the status of a financial creditor or exercise the right of subrogation in proceedings under IBC, including decisions in **Mr. Guduru Sivaramakrishna v. Mr. Rajesh Chillale, IA (IBC) No. 227 of 2021 in CP (IB) No. 277/9/HDB/2019, Lalit Mishra & Ors. v. Sharon Bio Medicine Ltd. & Ors., Company Appeal (AT) (Insolvency) No.164 of 2018, Nikhil Gandhi & Ors. v. Sudip Bhattacharya, Company Appeal (AT) (Insolvency) Nos. 1109, 1112 and 1155 of 2022, and State Bank of India v. Shri Ghansham Surajbali Kurmi, CP(IB). No.297/95/HDB/2021**. It is further stated that the rejection of the claim is supported by these rulings and that proceedings under the Code are not in the nature of recovery proceedings but are intended for resolution and maximization of assets, and therefore the claim of the Applicant is not maintainable.
35. We have heard the learned counsels for both the parties and have also gone through the entire record.

ANALYSIS AND FINDINGS

36. The primary contention of the Applicant is that the rejection of its claim by the Liquidator is arbitrary and contrary to the material placed on record, whereas the Respondent/Liquidator has sought to justify the

rejection on multiple grounds including lack of supporting documents, improper classification of the claim, allegations of fraudulent and collusive transactions, etc.

37. Before advertng to the merits of the claim, it is necessary to first deal with the preliminary objection raised by the Respondent with regard to limitation. The rejection of the claim was communicated on 19.12.2023 and the statutory period of 14 days expired on 02.01.2024. The present Application was admittedly filed on 03.01.2024, as reflected in the case status on the website¹¹. Although IBC, 2016 provides for a time-bound process, the timelines provided under the Code cannot be applied in a hyper-technical manner so as to defeat substantive justice, particularly when the delay is minimal and no prejudice is demonstrated to have been caused. Considering that the delay, if any, is only of one day, we are inclined to examine the matter on merits rather than dismissing the Applicant on a technical ground.
38. The next issue that arises for consideration is whether the rejection of the claim on the ground of filing in an incorrect form is justified. The Respondent has contended that the claim, being in the nature of financial debt, ought to have been filed in Form D in terms of Regulation 18 of the Liquidation Process Regulations, whereas the Applicant has filed the claim in Form G. The Applicant has explained that the filing in Form G was inadvertent and that all material particulars and supporting documents were furnished.
39. In this regard, it is relevant to note that the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni & Anr, Civil Appeal Nos.7590-7591 of 2023***, has held that the claim of a creditor cannot be rejected merely on the ground that the claim was submitted in a different form. The Hon'ble Supreme Court held that the form in which a claim is to be submitted under the IBBI

¹¹ Page 32 of the Counter

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') is directory and not mandatory, and what is material is whether the claim is supported by proof. Even if a claim is submitted in a form other than that prescribed, the same is required to be considered if it is otherwise verifiable from the records of the Corporate Debtor or from the documents furnished by the creditor. The said principle would equally apply to liquidation proceedings under the IBBI (Liquidation Process) Regulations, 2016. Therefore, when the claim is supported by proof, the same ought to be considered by the Liquidator even if it is filed in an incorrect form.

40. The core issue, however, relates to the nature and validity of the claim of the Applicant. The claim comprises of (i) Principal Claim of Rs.1,82,91,144/- (towards OTS payment made to SBI); (ii) Interest amount of Rs.66,50,961/- at 12% Per Annum from 23.11.2020 (i.e. date of payment made to SBI till 04.12.2023); (iii) future interest at 12% until realization; (iv) Rs.6,71,000/- towards rent at Rs.11,000 per month from March 2018 to March 2023; (v) Rs.1,08,000/- towards rent at Rs.12,000 per month from April 2023 to December 2023; and (vi) future rent with interest since March 2018.
41. The Respondent has contended that the guarantee documents and rent agreements were not provided for verification and that no records were available with an information utility. However, upon perusal of the documents placed on record, it is observed that there exists a Deed of Guarantee dated 06.02.2008¹² executed by the Applicant in favour of State Bank of Hyderabad for an amount of Rs.42.50 Crores. Further, the statement of accounts of the Applicant reflects a specific entry towards transfer of Rs.1,82,91,144/- to SBI SAM Branch on 23.11.2020¹³.

¹² Page 3 of the Memo Filed by Applicant

¹³ Page 15 of the Memo Filed by Applicant

42. It is further observed that State Bank of India has issued a No Due Certificate dated 23.11.2020¹⁴ stating that the loan account of the Corporate Debtor was closed under the SBI OTS 2020 Scheme and that the entire amount as per the OTS settlement had been paid. Further, another letter dated 27.11.2020¹⁵ issued by SBI records that the Deed of Guarantee executed by the Applicant on 06.02.2008 stood cancelled in view of the settlement of the account of the Corporate Debtor. Both these letters were issued to the Applicant herein. These documents demonstrate the existence of the guarantee agreement and the subsequent discharge of liability by the Applicant under the OTS scheme.
43. Insofar as the claim towards lease rentals is concerned, it is observed that the Applicant had filed CA No.185 of 2017 in CP No.55 of 2008 before this Tribunal seeking permission to shift the registered office of the Corporate Debtor to “C-91, BEML Janatha Flats, Punjagutta, Hyderabad-500082”, and the same was allowed vide order dated 19.12.2017¹⁶. This indicates that the Corporate Debtor was operating from premises belonging to the Applicant. However, no lease agreement or document evidencing the agreed rent or terms of tenancy has been placed on record. In the absence of such documents, it is not possible to ascertain the exact nature of the arrangement or the quantum of rent payable. While the factum of occupation of premises is evident, the basis for computation of rent and the liability thereof is not supported by sufficient material.
44. Therefore, in the absence of complete documentation, the claim requires proper verification. Accordingly, the Respondent is directed to reverify the claim of the Applicant, and the Applicant is directed to file

¹⁴ Page 16 of the Memo Filed by Applicant

¹⁵ Page 17 of the Memo Filed by Applicant

¹⁶ Page 20 of the Memo Filed by Applicant

the claim afresh in the proper form along with all relevant documents substantiating its claim.

45. Insofar as the reliance placed by the Respondent on the Investigation Report dated 29.03.2022 of the Regional Officer, Southeast Region, is concerned, it is pertinent to take note of the order of this Tribunal dated 25.07.2023 passed in CP No.55 of 2008, wherein it has been observed as under:

“5. Pursuant to establishment of National Company Law Tribunal, the company petition was transferred to this Tribunal for adjudication. The investigation was conducted by V.G. Sathiya Moorthy, Joint Director, Registrar of Companies and the investigation report was filed before this Tribunal on 30.05.2022. The Petitioner as well as Respondent No.2 have filed detailed objections to the investigation report and sought for rejection of the said report, which is pending for consideration.”

A perusal of the above makes it evident that the said investigation report has been specifically objected to by the parties therein and the issue regarding its acceptance or rejection is still pending consideration. Further, the present status of the said proceedings has neither been placed on record nor clarified by either of the parties. In such circumstances, reliance placed by the Respondent solely on the said investigation report to conclude that the transactions are fraudulent and collusive, without any independent verification or adjudication, cannot be sustained. The Respondent is, however, at liberty to initiate appropriate proceedings seeking necessary reliefs with respect to the alleged fraudulent transactions. However, the claim of the Applicant cannot be rejected solely on this basis without proper adjudication.

46. The Respondent has further contended that the Applicant is a related party and therefore disentitled from participating in the Committee of Creditors. However, the restriction on related parties is limited to participation in the Committee of Creditors under Section 21(2) of the Code, and does not extend to the liquidation stage. IBC and the

Liquidation Process Regulations do not prohibit a related party of the Corporate Debtor from filing its claim before the Liquidator.

47. This position has been affirmed by the Hon'ble NCLAT, New Delhi, in ***Times Innovative Media Ltd. Vs. Pawan Kumar Aggarwal & Anr. Company Appeal (AT) (Insolvency) No.1139 of 2024***, wherein it was observed as follows:

“17. ...With respect to filing of the claim as per Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, the claim by the financial creditors can be filed as per Regulation 18. Scheme of Regulations 2016 does not indicate that related party is excluded from filing a claim.”

48. In view of the above, it is evident that the rejection of the claim by the Liquidator is not based on a complete and proper examination of the documents placed on record. The impugned rejection order therefore warrants interference under Section 42 of the Code.
49. Accordingly, the present Application is allowed and the impugned order dated 19.12.2023 passed by the Liquidator is set aside. The Applicant is granted liberty to file a fresh claim in the appropriate form, along with all supporting documents substantiating its claim, within 10 (ten) days from the date of this Order. In the event such claim is filed, the Liquidator shall verify the claim in accordance with law.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)