

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

**IA(IBC)/427(CHE)/2022
in
IBA/1075/2019**

(filed under Section 42 of the Insolvency Bankruptcy Code, 2016)

In the matter of:

Employee State Insurance Corporation.

Represented by Social Security Officer

... Applicant

-VS-

Mr.B.Ramana Kumar,

Liquidator of Krishnaa Energy Private Limited,

... Respondent

in

In the matter of:

(filed under Section 10 of the Insolvency Bankruptcy Code, 2016)

Krishnaa Energy Private Limited

... Corporate Applicant

Order pronounced on 24th November 2022

CORAM:

Dr. DEEPTI MUKESH MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Memo of Parties

Employee State Insurance Corporation,
Represented by Social Security Officer
No.143, Sterling Road, Nungambakkam,
Chennai – 600 034.

... Applicant

-VS-

Mr.B.Ramana Kumar,
Liquidator of Krishnaa Energy Private Limited,
1st Floor, (rear side), 51(14),
Dr.Ranga Road, Mylapore,
Chennai – 600 004.

... Respondent

Present

For Applicant: Mr.S.P.Srinivasan, Advocate
For Respondents: Mr.B.Ramana Kumar, Advocate

ORDER

Per: Dr. DEEPTI MUKESH MEMBER (JUDICIAL)

This IA(IBC)/427(CHE)/2022 filed by **Employee State Insurance Corporation**, under Section 42 of the Insolvency Bankruptcy Code, 2016, seeking the following reliefs,

- a) *To set aside the order of rejection communicated by e-mail dated 28.03.2022, passed by the Liquidator of Krishnaa Energy Private Limited.*
- b) *To condone the delay of 48 days in filing the Addendum of Form-C before the Liquidator vide e-mail dated 25.03.2022, which was to be filed within the cut-off date 05.02.2022 for submission of claim by stakeholders.*
- c) *Direct the Liquidator to consider the claim of the Applicant submitted to him vide e-mail dated 25.03.2022 in an addendum to Form-C for Rs.42,65,973/- along with supporting documents.*

2. It was submitted by the Applicant that CIRP of Corporate Applicant was initiated under Section 10 of IBC, 2016 on 22.11.2019 wherein the Respondent was appointed as Interim Resolution Professional. Pursuant to that liquidation of the Corporate Applicant was ordered by this Tribunal vide order dated 06.01.2022 and the Respondent was appointed as the Liquidator. In the paper publication effected by the Liquidator on 08.01.2022, the last date of submission of the claim before him was fixed at 05.02.2022.
3. It was further submitted that the Applicant had filed its claim before the Respondent in Form-C dated 01.02.2022, for an amount of Rs.44,78,491/- as an ESI contribution towards the employees of the Corporate Applicant for the period between October 2009 to October 2019, which was accepted by the Respondent to the extent of Rs.32,61,545/-. Thereafter, the Applicant realised that the interest component and the damages were not included in the claim submitted to the Respondent, in Form-C.
4. Thereafter, Applicant passed an order on 15.03.2022, fixing liability on Corporate Applicant to the tune of Rs.44,78,491/- for a delay in making payments to the Applicant as per the ESIC Act, 1948.

5. Subsequently, the Applicant on 25.03.2022, sent the above order along with the revised Form-C dated 23.03.2022 to the Respondent and asked him to consider the same as an addendum of the Form-C submitted earlier. However, the Respondent rejected the said request on the ground that the claim was filed 48 days after the last date of submission of the claim viz. 05.02.2022 and he has no authority to condone the delay. Hence, the applicant preferred this application.

6. *Per contra*, it was submitted by the Respondent in the counter that the revised Form-C dated 23.03.2022, submitted by the Applicant comprising interest and penalty levied on the Corporate Applicant for a period between October 2012 and January 2022. Since the CIRP of Corporate Applicant was initiated on 22.11.2019, the above said period in the revised Form-C fell in the moratorium period and was hit by Section 14 of IBC, 2016.

7. Further, it is submitted by the Liquidator that the order dated 15.03.2022 passed by the Applicant against the Corporate Applicant was during the liquidation process of the Corporate Applicant which is against Section 33(5) of IBC, 2016, imposing moratorium.

8. In addition to that it is further pointed out by the Liquidator that, Section 36 of IBC, 2016 expressly excludes ESIC dues from



the definition of Liquidation estate and in view of the above contentions sought to dismiss this application.

9. Having heard the submissions of both parties. It is seen from the records that the Applicant submitted the addendum to Form-C dated 23.03.2022 to the Respondent vide e-mail dated 25.03.2022. The claims in the said addendum are reproduced below,

ADDENDUM TO FORM-C

This addendum is to amend the Claim Form-C dated 01.02.2022 which was submitted by this office vide email dated 03.02.2022.

1. In addition to the supporting proof (15 No.s) as mentioned in the Annexure of Claim Form-C, three more additional claims are hereby submitted for the same Accounting Unit for the period prior to the commencement of the Liquidation Process, i.e., 06.01.2022. The details of the same are mentioned below:

Sl. No	Claim	Period	Contribution	Interest	Further Interest (upto 06.01.22)	Damages	Cost	Amount Paid	Total Dues
16	C18 Adhoc dated 15.03.2022	11/19 to 06.01.22	7,01,882	---	---	---	---	---	7,01,882
17	C18 (I) dated 15.03.2022	10/12 to 09/13, 04/15 to 06/15 & 07/17 to 06.01.22	---	5,84,852	---	---	---	---	5,84,852
18	D18 dated 15.03.2022	04/12 to 06.01.22	---	---	---	29,79,239	---	---	29,79,239
TOTAL			7,01,882	5,84,852	---	29,79,239	---	---	42,65,973

On perusing the above, it is noted that the claims were crystallised based on the order dated 15.03.2022 passed by the ESIC against

the Corporate Applicant for the interest and the penalty imposed on it.

10. Here it is relevant to refer to Regulation 12(1) & (2) of IBBI (Liquidation Process) Regulation, 2016.

"Regulation 12. (1) *The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment.*

(2) *The public announcement shall-*

(a) *call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, **as on the liquidation commencement date**; and*

(b) *provide the last date for submission or updation of claims, which **shall be thirty days from the liquidation commencement date.**"*

and in the information mandated in serial No.3 of Form-3 of the IBBI (Liquidation Process) Regulation, 2016 (extracted hereunder) while submitting a claim provides as follows,

"3. Total amount of claim, including any interest, as at the liquidation commencement date and details of nature of claim (whether term loan, secured, unsecured)"

Referring the above provision, it is clarified that the total claim amount should be crystallised as at the **liquidation commencement date** and not thereafter and the revised claims should be submitted within 30 days from the liquidation commencement date. In the present case, the revised claim amount was finalized on 15.03.2022 which is much beyond the liquidation commencement date viz., 06.01.2022, and hence could

not be admitted at any stretch of imagination, which otherwise abrogates the very purpose of the IBC, 2016.

11. Moreover, it is noted that in the order dated 13.12.2019 passed in MA/268/IB/2019, this Tribunal had directed the Applicant herein to send the computation chart indicating all details of this alleged claim to the Liquidator, the extract of the order is reproduced below,

"8. Since the Liquidator has expressed his difficulty over the computation of the amount, R1 and R2 are hereby directed to send the computation chart indicating all those details to the Liquidator within ten days hereof and on receipt of the computation chart, in pursuance of it, the Liquidator shall release the said amount within one week thereof."

which was not complied by the Applicant. Thus, it is apparent that the Applicant is negligent in submitting the claim before the Respondent.

12. In view of the above discussion, we reasonably conclude that this application IA(IBC)/427(CHE)/2022 sans merit. Accordingly, application is rejected and **disposed of**.



SAMEER KAKAR
MEMBER (TECHNICAL)



Dr. DEEPTI MUKESH
MEMBER (JUDICIAL)

Gopishankar. D