

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1048 of 2022

IN THE MATTER OF:

DBS BANK INDIA LIMITED,

Express Towers, 19th Floor,

Nariman Point, Mumai –

Maharashtra - 400021

...Appellant

Versus

KULDEEP VERMA,

Liquidator of Eastern Gases Limited (Corporate

Debtor),

46, B.B. Ganguly Street,

Unit 501, Kolkata - 700012

...Respondent

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Utsav Mukherjee, Mr. Jaiveer Kant and Mr. Rajat Sinha, Advocates

For Respondent: Mr. Vivek Sibal, Sr. Advocate with Mr. Rahul Audy, Advocate

J U D G M E N T

ASHOK BHUSHAN, J:

1. This Appeal has been filed challenging the Order dated 14.07.2022 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as “**The Adjudicating Authority**”) in I.A. No. 883 of 2021 filed by the Liquidator which Application has been allowed by the Adjudicating Authority directing the Appellant to make the payment of 1.84 Crores to the liquidation estate along with interest at the rate of 6%.

2. Brief facts of the case necessary to be noted for deciding this Appeal are:-

- (i)** The 'Corporate Insolvency Resolution Process' against the Corporate Debtor-Eastern Gases Limited commenced on 08.11.2017.
- (ii)** The Appellant had sanctioned overdraft facility, short term loan and long term loan to the Corporate Debtor. An order of liquidation was passed by the Adjudicating Authority on 21.08.2018. Public Announcement was made by the Liquidator in Form-B on 26.08.2018. The Appellant on 18.09.2018 filed his claim in Form-D containing the total claim of the Appellant, of principal along with interest of different facilities extended to the Corporate Debtor.
- (iii)** The Appellant informed the Liquidator on 08.04.2019 about its decision to realize its security interest as per Section 52 (i)(b) of the Code in respect of long term loan by remaining outside the liquidation process to realize its debts. Liquidator agreed to hand over possession of assets to the Appellant. Appellant informed the Liquidator that realization of security interest would happen at a rate of Rs. 14.44 Crore. The liquidator informed the Appellant that no person has approached the liquidator willing to buy the assets at price higher than the price intimated by the Appellant. Sale of the assets took place on 22.10.2020. Sale proceeds were received by the Appellant. Appellant informed the completion of sale process. Liquidator enquired about the calculation of the amount realized from the sale of the exclusively charged assets. In meeting

of the Stakeholders Committee held on 13.09.2021, Appellant informed that it is entitled to retain the interest amount till the date of distribution to recover its debt and not only the amount at the time of filing of the claim in Form-D. Liquidator filed I.A. No. 883 of 2021 seeking following directions:

“i. Necessary direction upon the Respondent to pay a sum of Rs. 1.84 crores to the Liquidation estate on account of the excess realized moneys as per Section 52(7) of the Code;

ii. Necessary direction of interest @12% should be paid by the respondent on the withheld amount of Rs. 1.84 crores from 1st April, 2021 till the date of payment of this amount by the Respondent to the Liquidator Estate.”

(iv) The Adjudicating Authority after hearing both the parties had allowed the I.A. No. 883 of 2021. Following order has been passed in paragraph 9:

“For the foregoing reasons, we allow this IA and direct the respondent bank to pay an amount of Rs. 1.84 crores to the liquidation estate along with interest @6% on this amount from 1st of April, 2021, till the date of its actual payment by the respondent to the liquidation estate. IA 883/KB/2021 is disposed of and CP No. 482/KB/2017 is listed for progress report on 29 August, 2022.”

3. Mr. Krishnendu Datta, Learned Sr. Counsel for the Appellant contends that under Section 52 of the Code, the secured creditor is entitled to realize

its security interest. It is submitted that under Section 52(7) where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor is to account to the liquidator for such surplus. It is submitted that expression used in the sub-section is 'debt' hence the appellant could realize the entire amount with interest up to date and not only the claim which was submitted on the liquidation commencement date. It is submitted that expression 'debt' and 'claim' has been separately defined in Section 3 of the Code. The Appellant was entitled to also charge the interest in addition to the amount which was claimed in the Form D till date of actual realization was made by the Appellant. It is submitted that as per terms of contract between the Appellant and the Corporate Debtor, Appellant could have charged the interest up to date of realization of the amount and the Adjudicating Authority erred in issuing direction to return the amount of interest retained by the Appellant.

4. Learned Counsel for the Liquidator refuting the submissions of Learned Counsel for the Appellant submits that Appellant is only entitled for the amount as was claimed in Form D on the Liquidation Commencement Date. Appellant can not claim any amount above the amount as was claimed in Form D. Appellant can not claim entitlement of any interest as per the term of contract subsequent to filing of the claim in Form D till the date the amount was realized by the Appellant. The Adjudicating Authority has rightly after considering the relevant provisions has issued direction to make the payment of the amount illegally retained by the Appellant.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. Only question to be answered in this Appeal is as to whether the secured creditor's claim has to be confined to the amount of principal and interest as claimed in Form D filed by the secured creditor or secured creditor in addition to the amount claimed in Form D can also claim further amount in the facts of the present case.

7. The Liquidation Commencement Date in the present case is 21st August, 2018 in pursuance of which Liquidator made a public announcement on 26th August, 2018 and the Appellant filed its claim in Form D on 18.09.2018.

8. The claim which was filed in Form-D by the Appellant has been annexed as Annexure A/5 to the Appeal. Column No. 4 of the Form D deals with total amount of claim. It is useful to extract Column No. 4 of the Form-D which is to the following effect:

1.	Name of Financial Creditor	DBS Bank Ltd.			
4.	Total Amount of Claim including any interest. As at the Liquidation Commencement Date and Details of Nature of Claim (Whether Term Loan, Secured, Unsecured)	Facility	Principal	Interest	Total (In INR)
		Overraft	10,500,136	2,612,893	13,113,029
		Short Term Loan	70,000,000	13,700,822	83,700,822
		Long Term Loan	64,210,000	13,138,285	77,348,285
		Total	14,710,136	29452001	174,162,136

9. As noted above, the secured interest was created by the Appellant with respect to long term loan, for long term loan the Appellant in its claim has claimed principal amount of Rs. 6,42,10,000/- on which the interest amount of Rs. 1,31,38,285/- was claimed totaling to Rs. 7,73,48,285/-.

10. The amount which was realized from the sale of the secured assets according to the appellant himself is amount of Rs. 14.44 crores. The question to be answered in this Appeal is as to whether in addition to the interest which was claimed in the Form D by the Appellant whether he is also entitled to claim interest till the date when sale proceeds were received by the Appellant.

11. We need to examine the scheme of IBC and the Liquidation Process, Regulations 2016 in above respect. Section 52 of the Code permits secured creditors to realize its security interest. Section 52(1), 52(4), 52(7) and 52(8) are as follows:

“52. (1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

.....

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

.....

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.”

12. Learned Counsel for the Appellant has also referred to definition of ‘claim’ under Section 3(6) and ‘debt’ under Section 3(11) which are to the following effect:

“(6) “claim” means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is

reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;
(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”

13. We may also notice that under Section 53 the secured creditors are entitled to distribution in accordance with the debt owed to a secured creditor.

14. Liquidation Process Regulations provides for procedure and manner in which Liquidation Process begins claim are received and distribution of the amount take place to various stakeholders. Regulation 12 provides for public announcement by the Liquidator calling upon the stakeholders to submit their claims or update their claims submitted during the Corporate Insolvency Resolution Process. Regulation 16 deals with submission of claims. Regulation 16 is as follows:

“16. Submission of claim. (1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.”

15. Regulation 16(2) requires to prove his claim as on the Liquidation Commencement Date. Claims by the Financial Creditor has to be filed in Form D as per Regulation 18. Regulation 18 is as follows:

“18. *Claims by financial creditors.*

(1) *A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.*

(2) *The existence of debt due to the financial creditor may be proved on the basis of-*

(a) the records available in an information utility, if any; or

(b) other relevant documents which adequately establish the debt, including any or all of the following-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; and

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.”

16. Form D which is statutory form for proof of claim by Financial Creditor. Item No. 3 of Form D 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)	PRINCIPAL: INTEREST: TOTAL CLAIM:
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17. Form D also clearly mentions that total amount of claim including an interest, "As At The Liquidation Commencement Date". The Liquidation Regulation thus clearly contemplated the claim which also includes the interest "As At The Liquidation Commencement Date". Liquidation commencement date is a defined term in Section 5(17) to following effect:

"(17) "liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;"

18. In the present case, Liquidation Commencement Date is a date when the Adjudicating Authority passed the Order of Liquidation. Thus claim has to be with reference to the liquidation commencement date. The statute pegs the claim on a particular date for a purpose and object. When a claim is filed in Form D where interest and principal have been included up to the date of liquidation commencement date, claimants cannot be allowed to claim any further amount in addition to the amount which they have claimed in their Form D.

19. The submission of Mr. Datta that the expression 'claim' and 'debt' are not the same and since he has debt on the corporate debtor for realization of which debt, Appellant is entitled to receive interest till the date when sale proceeds are received, cannot be accepted. The IBC contains particular statutory scheme under which Liquidation Process has to be undertaken. The claim of all stakeholders are claims invited by the Liquidator as per the Liquidation Regulation and after receipt of the claims, further steps have to be taken in accordance with the claims received. Permitting any claimant to

increase his claim on any ground or reason will not be in accordance with the liquidation scheme as contemplated by the Liquidation Process, Regulations.

20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.

21. In view of the foregoing discussions, we do not find any error in the order passed by the Adjudicating Authority allowing an Application filed by the Liquidator. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

06th February, 2023

New Delhi
Basant