

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

**IA/1163/IB/2020 in IA/1162/IB/2020 in
TCP/510/IB/2017**

(Filed under Rule 11 of NCLT Rules, 2016)

And

IA/1162/IB/2020 in TCP/510/IB/2017

*(Filed under Section 42 read with Section 60(5) of Insolvency and
Bankruptcy Code, 2016)*

In the matter of M/s. Veesons Energy Systems Private Limited

T V Krishnan

(on Behalf of him and his family members as Authorized Agent),
Residing at 32, Alpha Nagar, 3rd Street,
Karumandapam,
Trichy – 620 001

.. .. Applicant

-Vs-

Raghavendaran,

Liquidator

M/s. Veesons Energy Systems Private Limited
Flat No.3, Dhruvtara Apartments 241,
Dr. Rajendra Prasad Road,
TATABAD,
Coimbatore – 641 012

.. .. Respondent

Present:

For Applicants : Arun Saravanan, Advocate
For Respondent : B. Dhanaraj, Advocate

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

Order Pronounced on 26th April 2021

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. IA/1163/IB/2020 is an urgent Application filed by Applicant viz. T V Krishnan, under Rule 11 of NCLT Rules 2016 seeking for listing and early hearing of IA/1162/2020, which is an Application filed under Section 42 of IBC, 2016. Since the IA/1162/IB/2020 is taken for hearing on 25.01.2021, nothing survives in IA/1163/IB/2020 and hence the same stands **closed**.

2. IA/1162/IB/2020 is an Application filed under Section 42 of IBC, 2016 by the Applicant viz. T V Krishnan, seeking relief as follows;

(i) to condone the delay in submitting the claim before the Liquidator;

(ii) To direct the Liquidator to accept the claim of the Appellant and grant such other further orders which are deemed fit and necessary and thus render justice

3. From the relief as extracted above, it is seen that the Applicant has not mentioned the exact number of days of delay of which condonation is sought for. Further, in the averments made in the Application, no where the Applicant has specified the number of days of delay for filing the claim before the Liquidator and condonation in relation to the same is sought. Apparently, these defects ought to have

been raised by the Registry while scrutinizing the Application and should have been rectified by the Applicant, before numbering the Application and posting the same for hearing before this Tribunal. It is a fundamental law of limitation that each and every day delay is required to be explained by the Applicant while filing an Application of present nature. Without mentioning the number of days of delay, the Applicant seeks for condonation, which we find it quite bizarre. Keeping in mind the said defects as pointed out herein, we will proceed giving our findings in relation to the facts of the case.

4. The Applicant viz. Mr. T V Krishnan, is an Authorized Representative for a total of seven Applicants. A total of 8 claims, including the claim of the Applicant were filed before the Liquidator which came to be rejected on the ground of delay and also on merits by the Liquidator. All the eight claimants including the Applicant are family members who have authorized the Applicant to file the present Application.

5. The Learned Counsel for the Applicant submitted that the Applicant is a senior citizen who got retired from the services of BHEL in the year 2012 and has invested a sum to the tune of Rs.73,48,500/- by way of a Fixed Deposit in the Corporate Debtor Company viz.

Veelsons Energy Systems Private Limited. It was submitted that the Managing Director of the Corporate Debtor on many occasions persuaded the Applicant to invest funds through the Fixed Deposit in his Company viz. M/s. Veelsons Energy Systems Private Limited with an assurance that a monthly interest amount will be credited to the said amounts deposited towards the Company. It was submitted that the Applicant started his transactions with the Corporate Debtor from the year 2003 and at the initial stages the Applicant has paid his amounts by way of a Fixed Deposits receipts in the name of his father, mother, daughter, son, wife and mother-in-law. It was also submitted that the Applicant was receiving interest for the deposits which he had made in the Corporate Debtor company and thereafter when the Applicant got retired from his service during the year 2012, the Corporate Debtor approached the Applicant and requested him to invest his retirement funds in the Corporate Debtor's company and promised to pay the interest towards the same.

6. The Learned Counsel for the Applicant submitted that the entire fund which has been invested in the Corporate Debtor Company is in a total sum of Rs.66.35 Lakh as principal amount by the Applicant and his family members. It was further submitted that after the year 2017 there were some discrepancies / default in payment of the interest by

the Corporate Debtor, however the Managing Director of the Corporate Debtor stated that the same would be resolved. Subsequently, it was submitted that during 2016 and 2017 the Applicant was engaged in arranging the marriage alliance for his son and related activities and also the father of Applicant died during the year 2017.

7. The Learned Counsel for the Applicant submitted that during the year 2018, the Applicant was put to utter shock and surprise the public announcement which was made by way of advertisement on 24.03.2018 stating that the Corporate Debtor company was ordered into liquidation on 19.03.2018. Immediately thereafter, it was submitted that the Applicant rushed to the office of the Corporate Debtor where he was not able to find any known person and an officer from State Bank of India has informed and misguided the Applicant that he cannot make his claim to the Liquidator. It was further submitted that the Applicant tried several times to meet the Managing Director of the Corporate Debtor, however all his efforts went in vain and that the Applicant met the Liquidator in the month of January 2019 and the Liquidator has also not guided him to submit his claim.

8. The Learned Counsel for the Applicant submitted that the Applicant is completely unaware of the proceedings and was trying to

contact the Managing Director of the Company who was his only acquaintance and hope, however it was submitted that due to the pandemic of Covid-19 there was a delay in filing the claim before the Liquidator. It is seen that the Applicant has filed the claim before the Liquidator on 07.09.2020, which came to be rejected by the Liquidator on the ground that it was submitted with a delay and also the debts have not been reflected in the books of accounts maintained by the Corporate Debtor. Hence, the Applicant has filed the present Application seeking to condone the delay in filing the claim before the Liquidator and also to direct the Liquidator to accept the claim of the Applicant.

9. The Liquidator has filed counter and the Learned Counsel for the Liquidator submitted that the Applicant has preferred the claim after an inordinate delay of 873 days and the Liquidator could not entertain the claim of the Applicant as the claim is barred by Limitation. The Liquidator has filed the sequence of dates in relation to the events which happened in respect of the Corporate Debtor and they are as follows;

S. No.	DESCRIPTION	DATE
1	Date of CIRP Order	19.06.2017
2	Date of publication calling for claims during CIRP	22.06.2017
3	Last date for receiving claims during CIRP period	03.07.2017
4	Date of Liquidation order	19.03.2018
5	Date of publication calling for claims during Liquidation period.	22.03.2018
6	Last date for receiving the claims	18.04.2018
7	Date of publication after filing of the final list of claims by the Liquidator with the Tribunal	03.12.2018
8	Date on which the claim of the Applicant was received	07.09.2020

10. It was submitted by the Learned Counsel for the Liquidator that there is no entry in the books of the Corporate Debtor in relation to the monies as claimed by the Applicant and further it was also submitted that in the Directors Report in the Financial Statements for the Financial Year ended 31.03.2017, it is stated that there are no public deposits having been accepted by the Corporate Debtor.

11. The Learned Counsel for the Liquidator further submitted that the books and records of the Corporate Debtor not even reflect the receipt

of the monies from the Applicant under the caption Fixed Deposits. It was further submitted that the Liquidator by way of email dated 11.04.2018 had requested the Auditor of the Corporate Debtor to confirm as to whether all the amounts received by the Corporate Debtor have been duly recorded in the Books of Accounts and further requested the Auditor to provide the details of the Fixed Deposit Receipts, if any, to which the Auditor by his e-mail dated 12.04.2018 had categorically informed the Respondent that all the amounts are brought into the Books of Accounts and the Corporate Debtor had not received any Fixed Deposits. Further, it was also submitted that neither the Books of Accounts of the Corporate Debtor nor the Audited Financial Statements reflect the entries for the payment of interest as claimed by the Applicant in their Application. Under such circumstances, the Liquidator prayed for the dismissal of the present Application.

12. Heard the submissions made by the Learned Counsel for both the parties. It is a fact borne on record that the Applicant has failed to submit the claim during the Corporate Insolvency Resolution Process and that it is averred in the Application that the Applicant came to know about the Liquidation process of the Corporate Debtor only when the public announcement was made on 22.03.2018. The public

announcement is being made only for the sake of the stakeholders to submit the claim before the Liquidator and the Applicant as per the averments made in the Application, being aware of the fact that the public announcement has been made has failed to submit the claim before the Liquidator. Hence, the Applicant came to know about the order of Liquidation passed against the Corporate Debtor as early as on 22.03.2018 and thus cannot take a plea that they came to know about the Liquidation of the Corporate Debtor only on a subsequent date.

13. It is to be noted here that the provisions of IBC, 2016 mandate that the Claimants are required to submit the claim to the Liquidator in such form and in such manner along with such supporting documents as specified by the Board. Thereafter, upon submission of the claim, the Liquidator is required to verify the claims within the time limits specified by the Board and in this connection referring to the relevant Regulations namely, IBBI (Liquidation Process) Regulations, 2016 and more specifically under Regulation 30, the Liquidator is required to verify the claim submitted within a period of 30 days from the last date of receipt of the claims and may either admit or reject in whole or part as the case may be of such claim. Section 40 of the I&B Code, 2016 mandates the Liquidator to record the reason in writing for rejection of the claim and the same is also required to be communicated to the

Applicant. In relation to his decision of admission or rejection, the Liquidator is required to communicate to both the creditors and the Corporate Debtor within seven days of such admission or rejection of the claim. As against the rejection of the claim, Section 42 of I&B Code, 2016 provides for a time window of 14 days upon receipt of such decision to the creditor to file an appeal to the Adjudicating Authority against the said decision of the Liquidator.

14. It may also be seen that the Applicants during the CIRP period also has not preferred to file a claim before the IRP / RP and as per the provisions of IBC, 2016 the Applicant ought to have filed the claim before the Liquidator at least after the commencement of the Liquidation proceedings, immediately after the public announcement was made of, which the Applicant is very much aware of.

15. Further, 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 has dismissed the appeal filed by an Applicant similar to the present application filed by the Applicant against the order of the liquidator and

also held that liquidation process is a time bound process and the Liquidator has to conclude his proceedings within one year.

16. It may be noted that under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator is directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings and 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 is being made accountable and required to explain, if there is any delay caused in the liquidation process.

17. Further, 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. In view of the IBC, 2016 being a time bound process as well as the Learned Liquidator being under a compulsion to complete the liquidation process within a period of one year from the date of

commencement of liquidation, the IA/1162/IB/2020 stands **dismissed**,
however without costs.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond