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

IA(IBC)/1264/CHE/2021 in CP/104/IB/2018

(Filed under Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016)

In the matter of ***Harshavardhan Cotton and Synthetics Private Limited***

Employees State Insurance Corporation,
Represented by Social Security Officer,
No.143, Sterling Road, Nungambakkam,
Chennai - 600034

... Applicant / Operational Creditor

-Vs-

CA. Mahalingam Suresh Kumar,
Liquidator of Harshavardhan Cotton and Synthetics Private Limited,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore - 641 045

... Respondent / Liquidator

Present:

For Applicant	:	*S.P.Srinivasan, Advocate*
For Respondent	:	*M.Jayaprakash, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on **17th November 2023**

ORDER

(Hearing Conducted through VC)

This IA(IBC)/1264/CHE/2021 has been filed by an Applicant / Operational Creditor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016seeking the following releifs;

a. *To set aside the Order of rejection communicated by letter dated 24.11.2021 passed by the Respondent/Liquidator, Mr.C.Ramasubramaniam of Harshavardhan Cotton and Synthetic Mills Private Limited.*

b. *To direct the Respondent /Liquidator to consider the claim of the Applicant submitted to him by letter dated in Form G for Rs. 11,63,541/- along with supporting documents and also by condoning the delay in filing the claim within the cutoff date of 17.12.2018 being the last date of submission of claim and treat the Applicant on par with other Operational Creditors as per section 53(1)(e) of the IBC Code, and pass such Order or Orders as may be deemed fit and thus render justice.*

2. It is stated that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor viz. Harshavardhan Cotton and Synthetics Private Limited by this Tribunal on 12.03.2018 and subsequently Liquidation was ordered by this Tribunal vide Order dated 03.12.2018. Pursuant to that the Liquidator caused Paper Publication dated 07.12.2018 and the last date for submission of claim was fixed as 03.01.2019.

3. It is stated that the Applicant had submitted its claim in Form B on 17.11.2021 to the Respondent/Liquidator. However, the Liquidator rejected the claim on the ground of late filing. The extracts are hereunder:

> *"It is to be noted that, no claim form was received from the department of Employees State Insurance Corporation on or before the last date of submission of claims. Further, the list of stakeholders were finalized and filed before the Hon'ble NCLT on 15th February, 2019 including all the claims received within the last date. Also, the process of realization and distribution to the creditors has been completed.*
>
> *At this juncture, I am not empowered to consider your claim and make modification in the stakeholders list, unless authorised by the Adjudicating Authority. Hence, I request you to seek the direction of the Adjudicating Authority (Hon'ble NCLT, Chennai Bench) for modification of the Stakeholders list, so that your claim can be verified & included in the list."*

4. It is stated that the reason for belated submission of claims is that, the legal department in ESIC did not have knowledge and also due to Covid pandemic, it was not feasible to immediately collect the details, entire records and files from the other branch.

5. It is stated that the Applicant had filed application to the Respondent/RP only on 17.11.2021 after retrieval of files pertaining to the defaulting company. The delay is neither willful nor wanton but for the above said circumstances only. Hence, IA has been filed to condone the delay in filing the claim Form B for an amount of Rs.11,63,541/- and direct the Respondent to consider the claim of the Applicant. The period of claim relates to 2009 to 2012.

6. It is stated that the Corporate Debtor was allotted ESI code No.57000477530000101 and had defaulted in payment of ESI contribution. The Applicant has made a claim to tune of Rs. 11,63,541/- towards contribution, interest and Damages which is due from the Corporate Debtor.

7. The Learned Counsel for the Applicant placed plethora of Judgments in para IV. (g) to (n) of the application in order to buttress the submission of the claims.

<u>REPLY FILED BY THE RESPONDENT:</u>

8. The Learned Counsel for the Respondent filed the counter. It is stated the Applicant had submitted its claim form vide letter dated 17.11.2021 for a sum of Rs 11,63,541/. The last date for filing the claim form as per Form B was 03.01.2019. But the Applicant filed its claim form with a delay in excess of 1,000 days. It is stated that in view of the delay in filing the claim form, the Liquidator had no other option but to reject the claim form filed by the Applicant.

9. The Liquidator has also filed the list of stakeholders during February 2019 stating that he has distributed the assets to the stakeholders as per Section 53 of IBC, 2016.

FINDINGS OF THIS TRIBUNAL:

10. Heard the submissions made by both the parties and perused the record.

11. It is seen that there is a delay of more than 1000 days in preferring the claim before the Liquidator. It is stated by the Applicant that the legal department of ESIC did not have knowledge of the Liquidation of the Corporate Debtor and due to Covid – 19 Pandemic, it was not feasible for the Applicant to collect the details in respect of the Corporate Debtor from the year 2009 onwards.

12. We are unable to accept the reasons stated by the Applicant for the delay in filing the claim before the Liquidator. As per the provisions of the IBC, 2016, the Applicant is required to submit the claim to the Liquidator in such form and in such manner along with supporting documents as specified. Thereafter, upon submission of the claim, the Liquidator is required to verify the claims within the time limits specified by the Board. 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. He may either admit or reject in whole or part as the case may be of such claim.

13. 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 be seen that the Applicant during the CIRP period had not filed any claim before the IRP / RP. It has preferred the claim only at the time of liquidation, that too at a belated stage, more particularly after expiry of a period of more than 1000 days. Further, the entire sale proceeds have been distributed to the stakeholders. The Respondent has filed an Application seeking dissolution of the Corporate Debtor under Section 54 of IBC, 2016 in IA(IBC)/116/(CHE)/2022.

15. It is to 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.

16. 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.

17. Hence extraordinary delay of more than 1000 days in submission of claim by applicant, is devoid of merits. If such extraordinary delay is condoned, it will defeat the very purpose of the IBC enactment.

18. In view of the fact that it is a time bound process and that the entire sale proceeds have been distributed to the stakeholders and the Respondent

has filed an Application seeking dissolution of the Corporate Debtor under Section 54 of IBC, 2016, the present Application filed by the Applicant to admit its claim in IA(IBC)/1264(CHE)/2021 stands **dismissed**. No costs.

-Sd-

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)