

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

**I.A No.40/KOB/2020
in
MA No.7/KOB/2019 in IBA/258/CB/2019**

(Section 33 read with Section 53 of the IBC 2016 and Rules 11 And
32 of NCT Rules, 2016)

ORDER DELIVERED ON :: 08.09.2020

Coram:

Shri Ashok Kumar Borah, Member (Judicial)

Applicant:

Ex-Excel Glasses Association,
Kausthubham House, Varanam PO
Allepey-688555 represented by
R.Rajendran Nair, Secretary.

Versus

Respondent:

Ravindra Chaturvedi,
Insolvency Professional/Liquidator,
Excel Glasses Limited (In Liquidation)
31-E, BKC Centre, Laxmi Industrial Estate,
New Link Road, Andheri (W)
Mumbai-400 053.

Parties/Counsels Present (through Video Conferencing):

For Applicant : Shri S.M.Ameerul Millath, Advocate
For Respondent :: Shri Joseph Kodianthara, Senior Advocate along with
Shri Akhil Suresh, Advocate

ORDER

This IA/40/KOB/2020 is filed by Ex-Excel Glass Association seeking the following reliefs:

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(a) the Applicant herein may be heard in the above proceedings as a necessary party and the debtor directed to serve in future a copy of all his Reports/Filings before the Hon'ble Tribunal to the Counsel of the Applicant.

(b) To direct the Liquidator to arrange with prior notice to the Applicant for a sitting for a minimum period of a week to enable the Workmen to prefer their claim afresh by enlarging the period for preferring their claim for a further period of three months or till the disposal of the assets, whichever is earlier, and obtain clarification from the Workmen and thereafter issue a speaking order citing reason for rejecting their claim item wise. Further the Liquidator may be directed to decide and intimate the amount due to each workman as Gratuity, Pension and Provident Fund dues which have not been remitted by the company and pay the same separately without including it in the waterfall mechanism envisaged under Section 53 of the 'I&B Code'.

(c) Direct the Liquidator to include the nominee of the applicant in the Stakeholders Consultation Committee Viz. Rajesh. R as workmen representative in place of the present incumbent Shri Venugopal, who is actually a management representative, within a time to be fixed by the Hon'ble Tribunal.

(d) Direct the Liquidator to decide and admit the amount due to each Workmen in the same format as Annexure- W-5, irrespective of whether they have preferred a claim, based on the books and records of the company especially as some of the workmen may have expired and their legal heirs may not be aware of the Liquidation proceedings. Payment as and when due can be made to the Legal Heirs of the deceased Workmen on production of valid documents.

2. The brief facts leading to the IA are as follows: -

An application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor (Excel Glasses Limited) before the National Company Law Tribunal, Chennai Bench, by Boon Investment and Trading Company Private Limited. The said application was admitted by the National Company Law Tribunal, Chennai Bench, vide

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its Order dated March 26, 2019 and accordingly, the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated. Since no resolution plan was received during CIRP period, the orders for Liquidation of the Corporate Debtor was issued vide the Order dated October 21, 2019 by this Bench and the Respondent herein, Mr. Ravindra Chaturvedi, was appointed as the Liquidator of the Corporate Debtor.

Pursuant to that, the liquidator made a public announcement on October 24, 2019 in Form B under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the "Liquidation Regulations"). The respondent herein stated that in furtherance to the aforesaid public announcement, he has received several claims from the workmen/employees of the Corporate Debtor amongst other creditors of the Corporate Debtor. He has examined and processed all the claims received from the workmen/employees.

The applicant in this IA submitted that the details of Workmen/Employees published by the Liquidator on the website of the Corporate Debtor, in which the claims of only 454 workmen have been admitted by the Liquidator, when the actual number of Workmen to whom dues are payable are much higher. It is further stated that Liquidator has admitted the total employees' dues as per books as on 21.10.2019 of ₹ 5,44,59,509 the claim admitted by him is only to the extent of ₹ 3,86,20,022. It is not known on what basis and modalities he has worked out the dues, the basis on which the amount admitted has been arrived at and the reason for rejecting the amount has not been explained. It is neither a speaking order nor an order issued after application of mind. In the light of Section 40 of I & B Code, rejection of claim partially or in full without specifying reasons for such rejection is not in conformity with the law. The Liquidator has also admitted in the footnote that he has considered claims from

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Workmen as received up to 20.12.2019 and that the Liquidator has badly erred and has failed to appreciate the onerous duty cast upon him as per Regulation 19 (4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The applicant stated that it is only just and proper that all workmen claims, irrespective of whether claims have been preferred or not are decided on the basis of books and records of the company and payment made to deceased workmen on production of appropriate valid documents.

3. The applicant further stated that the Liquidator has adjudicated the claim without application of mind. There is every reason to believe that the Ex-Workmen would be deprived of their rightful dues which would be an absolute miscarriage of justice. In order to protect the interest of the workmen, it would be necessary for proper rendering of justice that the applicant herein is impleaded as a necessary party in the above proceedings.

4. It is further stated that in the Stakeholders Consultation Committee under Regulation 31A of IBBI (Liquidation Process) Regulation 2016, the representative of Workmen and employees is one Mr. Venugopal. It is not known as to how his name has been included. It is seen that in various proceedings he was part of the management and hence not eligible to represent the workmen. The Liquidator has badly erred in including him as the Workmen's representative. It is stated that the applicant's nominee viz Shri. Rajesh. R is nominated on the aforesaid Committee as the Applicant represents large number of Workmen and hence would be in a better position to represent the cross section of the Workmen whereas the present incumbent would be only figure head nomination and that too of the management. The applicant has relied on the decision of the Hon'ble Apex Court in the case of J.K Jute Mill Mazdoor Morcha vs. Juggilal Kamlapat Jute Mills (Civil Appeal No. 20978 of 2017)-to

say that a Trade Union would come under the definition of Person' under Section 3(23) of the Insolvency and Bankruptcy Code 2016.

5. The respondent filed counter as also a written submission stating the following objections:

The applicant herein is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Section 3 of the Act 1995 reads thus:-

“3. Societies formed by memorandum of association and registration.

“Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 32 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves into a society under this Act.”

Section 3 provides that any seven or more persons associated for any literary, scientific or charitable purpose may form themselves into a society under the Act. As per section 9 of the Act, the society may sue or be sued in the name of the president, chairman or principal secretary or trustees.

6. The respondent further submitted that the application of the judgment relied on by the applicant [J.K Jute Mill Mazdoor Morcha vs. Juggilal Kamapat Jute Mills (Civil Appeal No. 20978 of 2017)] is confined to Trade Unions defined under the Trade Unions Act and not a Society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955 and that the Ex-Excel Glasses Association, before this Bench, is not a registered Trade Union under the Trade Unions Act who are authorised to collectively bargain on behalf of its employees. The respondent further submitted that the applicant has nowhere in the applicant mentioned the number of members in the Association but for the office bearers listed in the paper book of IA. It is to be noted that 7 office bearers of the applicant

association are already members of Registered Trade Unions under the Trade Unions Act.

7. It is further submitted that the present application has been filed under Section 33 read with Section 53 of the Insolvency and Bankruptcy Code 2016 read with Rule 11 and 32 of the National Company Law Tribunal Rules, 2016. On a careful reading of the aforesaid provisions, it is clear that there is no provision to make an application of this nature neither under Section 33 nor under Section 53 of the Insolvency and Bankruptcy Code, 2016. Whereas, in view of Section 42 of the Code, a creditor is at liberty to approach the Adjudicating Authority being aggrieved against the decision of the Liquidator within 14 days of receipt of such determination. This decision of the Liquidator was made on 27.12.2019 and this application was filed on 29.01.2020 which is clearly after 14 days. In view of the above, the present application is not maintainable under Section 33 read with Section 53 of the Insolvency and Bankruptcy Code, 2016 and is, therefore, liable to be dismissed.

8. The learned senior counsel for the respondent further submitted that the claims were processed as per Regulation 25 read with Regulation 19(4) of Liquidation Process Regulations, 2016 verifying the audited books of accounts of Corporate Debtor and intimated to all workmen/employees regarding their claims under Sec 40(2). Consequently, the list of stakeholders was published on the website and filed before this Bench with the following remark:

"The claim amount admitted is subject to further scrutiny based on subsequent information/ documents sought from the Corporate Debtor / Creditors, and the Liquidator may modify / correct the list of claims under Regulations 31(3) and 31(4) of the IBBI (Liquidation Process) Regulations, 2016, on the direction of the NCLT"

9. It is also stated that the respondent had sought opinions from 3 leading advocates, who opined that the lock-out was legal and hence only gratuity dues were

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to be paid till the date of liquidation. Consequently, a Registered Actuarial Valuer was appointed by the Liquidator on 27.12.2019 to ascertain the gratuity liability upto the date of liquidation. Pursuant to that he had filed a report on 10.02.2020. In view of the above developments and further to the receipt of various modifications/ clarifications in the claims from claimants, and also 71 new claims received subsequent to 20.12.2019, the Liquidator pursued and filed an Application No. MA/78/KOB/2020 under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 for modification in the stakeholders list with this Bench for accepting the gratuity liability till the date of liquidation and accordingly the accepted claim amount has been enhanced to a sum of ₹ 7,39,20,867.

10. In this regard the learned senior counsel for the respondent further submitted that pursuant to the orders in MA/78/KOB of 2020, the respondent is in the process of issuing fresh orders under Section 40(2) of the I & B Code clearly categorizing the amounts accepted and the amounts rejected with reasons. The respondent further stated that once those orders are issued, the applicants are at liberty to approach this Tribunal under Section 42 of the I & B Code. Hence the respondent prays that this IA is to be dismissed as premature.

11. The learned counsel for the applicant filed Rejoinder to the counter reiterating most of the facts stated in the IA, and the respondent filed sur-rejoinder reiterating most of the contentions he made in the counter. Both the parties also have filed their written argument notes.

12. I have gone through the case records and submissions made by the learned counsel for the applicant as well as the learned senior counsel for the respondent-Liquidator. After hearing the arguments made by both parties through video conferencing and considering the argument notes on record, it is found that according

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to the learned counsel for the applicant , the purpose of forming the association was to collectively agitate before all the forums including this Bench and that there are 132 former workmen of the Company in Liquidation who are the members of this association, who have joined together to bring the issues before this Bench relating to the said workmen. Along with the written submission the learned counsel has submitted a copy of the members list, whereas, in the IA the applicant has not mentioned the number of employees in the association and only the signatories of Memorandum were annexed, in which only 7 members name are mentioned. Therefore, it is apparent from the records that the applicant Association itself is not sure as to how many workmen the association filed this application for the reliefs sought. The last prayer in this IA is to admit the amount due to each workman irrespective of whether they have preferred a claim, based on the books and records of the company especially as some of the workmen may have expired and their legal heirs may not be aware of the liquidation proceedings. As per Regulation 19 (4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:

“ The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim.”

Therefore, I do not find it relevant to consider this prayer at this moment as there is provision open for the aggrieved to approach the Adjudicating Authority by way of Appeal under Section 42 of the I & B Code.

13. On the other hand, it appears from the records that a similar decision of the respondent for another workman was preferred before the Hon'ble High Court of Kerala in OP (C) 484 of 2020, wherein the Hon'ble High Court was pleased to hold that a decision made by the liquidator is appealable under Section 42 of the Insolvency and Bankruptcy Code, 2016. The Relevant portion of the Order is extracted below: -

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“The decision taken by the liquidator is appealable under Section 42 of the Code. The applicants, in order to file appeal under Section 42 of the Code, filed an application to condone the delay in filing the appeal. It has been submitted that the said delay condonation petition had been already allowed by the Tribunal. Now, the applicants have to file appeal as provided under Section 42 of the Code.”

Therefore, it is clear that the workmen who are entitled to get their claim can approach this Bench of the Tribunal after obtaining the order under Section 40 (2) of I & B Code.

At this juncture, it is pertinent to note that this Bench has passed an order dated 10.08.2020 in MA/78/KOB/2020 as under:

“In view of the above the Liquidator is permitted to appropriately modify the entry or entries in the List of stake holders Report in the subject matter. The Liquidator is directed to meticulously adhere to the Rules and Regulations while carrying out the above exercise.”

14. The respondent stated that Mr. Venugopal Karta have expressed his inability to continue as a member and representative of Stakeholder's Consultation Committee and accordingly the Liquidator communicated the same to the claimants having admitted claim amount higher than Mr. Venugopal Karta (as per the modified list dated 20.03.2020) to accept the nomination for a member of Stakeholder's Consultation Committee. In response, the Liquidator received consent of Mr. P. A. Mathew Tharakan who is the highest claimant in the modified list of stakeholders and the Liquidator has considered the same as per Regulation 31 A (4) of IBBI (Liquidation Process) Regulations, 2019. It is further stated that the class of creditors can recommend a nominee as a representative of the workmen and employees as per Liquidation Regulation and the Respondent is willing to comply with the same.

15. Considering the above order dated 10.08.2020 in MA/78/KOB/2020 and the submissions made by the respondent in this regard that the respondent is in the process of issuing fresh orders under Section 40 (2) of the I & B Code clearly

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categorizing the amounts accepted and the amounts rejected, with reasons, I am of the view that the application filed under Section 33 read with Section 53 of the I & B code, 2016 and Rules 11 and 32 of the National Company Law Tribunal Rules, 2016 cannot be accepted. In case the applicants are aggrieved by the order passed by the liquidator as ordered in MA/78/KOB/2020, the applicants are at liberty to approach the appropriate forum under Section 42 of the I & B Code.

16. Regarding prayers (a), (b) and (c), since this Tribunal is not accepting the claim under Section 53 of the Code, those prayers can be raised at the appropriate time while filing the appeal, if so advised.

17. For the aforesaid reasons, the IA filed by the applicant stands rejected with liberty to file fresh application under Section 42 of Code, if so advised.

Dated the 8th day of September, 2020.

Sd/-

**(Ashok Kumar Borah)
Member (J)**