



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH(Court-II)
KOLKATA**

IA.(IB)No. 1087/KB/2021

In

C.P (IB) No.354/KB/2018

In the matter of

An application under section 42 of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of National Company Law Tribunal,2016.

And

In the matter of:

Falta Special Economic Zone, South 24 Parganas, Ministry of Commerce & Industry, a Government Body, having its office at 2nd MSO Building ,4th Floor, Nizam Palace, 234/4, AJC Bose Road, Kolkata, West Bengal -700020.

...Applicant

Versus

M/s Enfield Solar Energy Limited (Under Liquidation) represented by the Liquidator Shri Bijay Murmuria, having its office at Sumedha Management Solutions Pvt.Ltd., 6A Geetanjali Apartment, 8 B Middleton Street, Kolkata-700071, West Bengal.

... Liquidator/

Respondents

Date of hearing :20/02/2023

Order Pronounced on : ...//2023



Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Physically/ Video Conference

Mr. Raja Satyajit Banerjee, Adv.] For Falta Economic Zone
Ms. Krishnika Chatterjee, Adv.]

Mr. Parikshit Poddar, Adv.] For the Liquidator
Mr. Bijay Murmuria, Liquidator]

ORDER

Per: Balraj Joshi, Member (Technical)

1. **IA(IBC)/1087/KB/2021**, this is an application filed by Falta Special Economic Zone seeking direction upon the Liquidator to accept the remaining claim of the applicant by condoning the delay of 451 days and to consider the claim of the applicant and other consequential reliefs.

Submissions by parties :

2. It is submitted that the applicant is an Operational Creditor of the Corporate Debtor (under Liquidation) having an undisputed principal rental dues of Rs.50,60,001/- (Rupees Fifty Lakhs Sixty Thousand and one only) out of the total rental dues of Rs.95,53,316/-, and as such the applicant is also one of the members of the Stakeholder's Consultation Committee in the said matter.
3. That on 19.07.2021, an E-auction for the sale of the corporate debtor as going concern was conducted and M/s Thakur Prasad Sao & Sons Pvt. Ltd. was the successful bidder with Rs.3,98,80,000/-, being the bid amount.
4. It is pertinent to mention here that along with the aforesaid rental dues claim of the applicant authority which has been partly admitted by the Liquidator on 10.01.2020, the applicant is also entitled to claim the Customs Duty on imported goods plus interest pending claimed by the Specified Officer, Customs, of Rs.21,33,64,568/- as its remaining claim against the corporate



debtor (under liquidation).

5. That aforesaid Customs Duty claim of Rs.11,46,71,628.15/- was placed before the Liquidator vide letter dated 04/05/2021 and revised further to total claim against Customs Duty and Interest of Rs.21,33,64,568/- vide letter dated 01/09/2021 along with the balance Rental dues of Rs.44,93,315/- but the said claims have not been admitted by the said liquidator due to delay in submission of filing of claims, which he mentioned vide his email dated 25.05.2001 that in the matter of Enfield Solar Energy Limited the liquidation commenced w.e.f 10.01.2020 and thus, the last date for receipt of claims was 09/02/2020. He further stated that the claims can be admitted only to the extent of the amount that stands due on liquidation commencement date i.e. Rs.50,60,001. No further up gradation of the amount of the dues can be accommodated nor can be admitted. Copy of the details of customs duty claim is annexed as Annexure-A. Copy of the remaining rental dues claim is annexed as Annexure-B.
6. It is submitted that the Liquidator did not consider the facts that the claim of the applicant is bonafide and in public interest.
7. In reply to the petition, the respondent has filed reply affidavit, in which it has been stated that the liquidation process has already been closed vide order dated 20/10/2021 by the Adjudicating Authority.
8. It has been averred that the total rental dues of the applicant was INR 95,53,316/- is false and denied. It is submitted that the Applicant claimed an amount of INR 50,60,001/- only vide Form C dated 22/01/2020 as truly indebted to them as on the Liquidation Commencement date which was fully admitted by the Respondent herein and the same was intimated to the Applicant vide email dated 05/03./2020 and the Applicant formed part of the Stakeholders' Consultation Committee. The same is evident from "Annexure B" in page nos. 14-21 as annexed in the main application. The total rental dues of INR 95,53,316/- includes the claim amount and is payable as on 30/09/2021 i.e. after a period of more than one year from the Liquidation Commencement



date. It is pertinent to mention that the amount of INR 95,53,316/- was not claimed by the Applicant and the Respondent herein was only intimated vide letter dated 29/07/2021 to clear the dues on account of accrued rent to their designated bank account at the earliest. A copy of the said emails dated 05/03/2020 and letter dated 29/07/2021 is annexed as Annexure F collectively.

9. It is submitted that the claims of the Applicant that its rental dues were partly filed is false and hence denied. As already stated above, the applicant claimed an amount of INR 50,60,001/- vide Form C dated 22/01/2020 as truly indebted on the Liquidation Commencement date i.e, 10/01/2020 which was fully admitted and intimation of such admission was duly made by the Respondent herein vide email dated 05/03/2020. The contention that the applicant is entitled to claim the Customs duty on imported goods plus interest pending claimed by its Specified Officers, Customs of INR 21,33,568/- as its remaining claim against the corporate debtor is an afterthought and made with gross delay. Further, the Applicant vide letter dated 04/05/2021 intimated the Respondent to include the outstanding custom dues as claim in the Liquidation Process of the Corporate Debtor. It is submitted that the claim was not filed in the specified Form C and the Applicant provided no supporting documents towards the said amount. Furthermore, as the amount was claimed after a period of more than one year from the Liquidation Commencement date, the said could not be admitted as per the provisions of the Code, 2016. A Copy of the order dated 04/05/2021 as sent by the Applicant is annexed as Annexure-G.
10. It is pertinent to mention that the Applicant being the member of the Stakeholders' Consultation Committee requested the Respondent herein to process the custom dues of INR 11,46,71,628.15/- only vide letter dated 04/05/2021 i.e., after a period of more than one year and at the last leg of completion of the Liquidation Process of the Corporate Debtor. Furthermore, the letter dated 01/09/2021 has been issued by the Superintendent of Customs & Authorised Officer, FSEZ to the Deputy Development Commissioner, Falta SEZ after the distribution of the proceeds from the sale of the Corporate Debtor



as per Section 53 of the Code, 2016, and the application has been filed after approval of closure of the Liquidation Process by this Tribunal vide Order 22/10/2021. A copy of the email dated 25/05/2021 by the Respondent rejecting further claims made by the Applicant is annexed as Annexure-H.

11. In view of the above facts and circumstances, the respondent submits that the IA is without any merits and is liable to be dismissed with cost.

Analysis and finding:

12. We find that this application has been filed under Section 42 of the IBC which provides for making an appeal against the decision of the liquidator in accepting or rejecting the claim within Fourteen days of the receipt of such a decision.
13. In the instant case the major part of the subject claim comprising of the Custom duty backlog, was lodged before the liquidator on 04.05.2021 and was again revised on 1.9.2021, whereas the last date for submission of claims was 22.01.2020. It is also to be noted that the applicant was a member of the Stake Holders' consultation committee which was formed by the liquidator on 11.03.2020. The fourth meeting of the SCC was held on 13.5.2021 and the minutes of meeting were routinely provided to the applicant. It is also pertinent to note that the liquidation process came to a close and the closure order was issued by this Adjudicating Authority, upon an application made by the liquidator on 22.10.2021, which is after the completion of entire exercise of the e-auction, sale of the Corporate Debtor as a Going concern and distribution of the entire sale proceeds, whereas this IA has come to be filed on 14-12-2021.
14. While the delay in filing the claim by the claimants has been allowed by this Adjudicating authority, but only in cases where the process flow is not jeopardized and the time lines are not violently surpassed, we do not find any occasion to do so in the present case, considering the fact that the entire process as envisaged under law has already been culminated and as such the said application is without any merit and liable to be dismissed.
15. Accordingly, we dismiss the ***IA.(IB)No. 1087/KB/2021***



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16. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the.....day of September,2023..

PJ