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

IA/326/IB/2020 in CP/570/IB/2017

*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of NCLT Rules, 2016)*

Along with

IA/496/IB/2020 in CP/570/IB/2017

*(Filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of NCLT Rules, 2016)*

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

M/s. Laxmi Engineering Works

Registered Partnership Firm

207, Town Center Andheri – Kurla

Road, Marol Andheri (East)

Mumbai – 400 059

Represented by its Authorized Representative

Mr. S.S. Matondkar

.. .. . Applicants

-Vs-

Mr. Raghavendran,

Liquidator of

M/s. Veensons Energy Systems Pvt. Ltd.,

Having office at

Flat No.3, Dhruvatara Apartments,

No.241, Dr. Rajendra Prasad Road,

Tatabad, Coimbatore 641 012

... Respondent

Present:

For Applicant : Sushil Kumar Tiwari, Advocate

For Respondent : B. Dhanaraj, Advocate

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 2nd August 2021

COMMON ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. The IA/326/2020 is an Application filed by the Applicant viz. M/s. Laxmi Engineering Works, under Section 42 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 11 of NCLT Rules, 2016, seeking to condone the delay of 18 days in preferring the Appeal under Section 42 of IBC, 2016 against the order of the Liquidator dated 02.01.2020. The said Appeal is numbered as IA/496/IB/2020.

2. It is averred in the Application that as against the order of the Liquidator dated 02.01.2020, due to certain business commitments the Applicant was not in a position to file the Appeal under Section 42 of IBC, 2016 before this Tribunal within a period of 14 days. For the reasons stated in the Affidavit, the delay of 18 days in filing IA/496/IB/2020 is hereby **condoned**.

3. IA/496/IB/2020 is the main Application filed by the Applicant under Section 42 of IBC, 2016 aggrieved against the order passed by

the Liquidator. It is seen from the documents that the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor was initiated by this Tribunal on 19.06.2017 and the Applicant herein has submitted the claim before the RP on 04.09.2017 during the CIRP period for the supplies made during the period from 01.04.2011 to 31.03.2016 to the tune of Rs. 25,782,227/-. The RP has verified the books of accounts of the Corporate Debtor and admitted the claim of the of the Applicant to the tune of Rs.22,53,146/-. Since there was no viable plan received during the CIRP period, the Corporate Debtor was ordered for liquidation by this Tribunal in CA/61/2017 vide its order dated 19.03.2018. Pursuant thereto, the Liquidator has caused public announcement on 24.03.2018 inviting claims from the stakeholders to be filed before the Liquidator on or before 18.04.2018. However, the Applicant herein has not filed the claim before the Liquidator.

4. It is also seen that after the receipt of all the claims, the final list of admitted claims was filed with this Tribunal by the Liquidator on 03.12.2018. The Applicant herein has submitted the claim before the Liquidator only on 13.09.2019, which came to be rejected by the Liquidator on 02.01.2020. The Liquidator vide its order dated 02.01.2020 has stated that the Liquidator process commenced immediately after the claims were submitted by the stakeholders and a



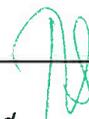
portion of the assets of the Company has already been sold and part distribution has also taken place and that the Applicant has submitted the claim only on 13.09.2019, which is almost one and a half year after the commencement of the liquidation process. Further, it is also stated in the rejection letter that the list of stakeholders has already been submitted to this Tribunal and that without the permission of this Tribunal the liquidator cannot alter the list of stakeholders.

5. Heard the submissions made by the Learned Counsel for both the parties. The Applicants who claim to be the Operational Creditors in relation to the Corporate Debtor have submitted their claims during the CIRP in relation to the Corporate Debtor but have failed to submit their claims during the Liquidation process of the Corporate Debtor.

6. It is to be noted here that the provisions of IBC, 2016 mandates 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.

7. As per the provisions of the IBC, 2016 read with the Regulation 19(4) of the IBBI (Liquidation Process) Regulations 201, the claim in respect of workmen and employees alone are required to be admitted by the Liquidator based on the books of accounts of the Corporate Debtor, eventhough the Workmen and Employees have not preferred a claim before the Liquidator as per Regulation 19(4) of the IBBI (Liquidation Process) Regulations, 2016, no such relaxation is granted / available to the Operational Creditor like the Applicants herein or for that matter for any other class of creditors. Thus filing of the claim with



the Liquidator during the Liquidation process within the time period stipulated thereunder is a mandatory requirement under the IBC, 2016 and also it must be noted here that the mere entry of debt in the books of accounts of the Corporate Debtor is also not evidential enough for the claims to be admitted and considered by the Liquidator.

8. It must be borne in mind that the IBC treats the CIRP and Liquidation process as two separate stages and the proof of claim is to be filed separately at each stage. It may also be seen that the Applicant during the CIRP period had 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 after the commencement of the Liquidation proceedings, which they have not done so. Further, there are no cogent reasons stated by the Applicant in the Application as to why there was a delay in filing the claim before the Liquidator.

9. Further, 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.

10. 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/496/IB/2020 stands **dismissed**, however without costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond