

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

IA/1297/IB/2020 in IBA/839/2019

*(filed under Section 35(1)(k) read with 60(5) of the Insolvency &
Bankruptcy Code, 2016)*

In the matter of Bharat Coal Chemicals Limited

P. Sriram

Liquidator

Bharat Coal Chemicals Limited

(Company under liquidation)

.....Applicant

Vs

Chief Executive Officer

Office of the Chief Executive Officer

Haldia Development Authority

Haldia Unnayan Bhawan

City Centre. PO Bebhog

Purba Medinipur

Haldia District, West Bengal – 721 657

.....Respondent

Order pronounced on 20th June 2022

CORAM:

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : S. Sathiyarayanan, Advocate

For Respondent : Madhumitha Bhattacharjee, Advocate

ORDER

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

The application under consideration is filed by the Liquidator of M/s. Bharath Coal Chemicals Limited (company under liquidation) under section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016



read with Section 60(5) and also read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking an order directing the Respondent herein to pay the outstanding amount of Rs. 5,00,00,000/- along with interest at 12% p.a. till realization.

2. The brief facts of the application are that upon filing of a Petition under section 9 of the IBC, 2016 in IBA/839/2019, this Tribunal ordered for CIRP of the Company under liquidation and initially the Applicant was appointed as IRP, thereafter as RP and finally as Liquidator for the Company under liquidation vide its order dated 13.03.2020. The Company under liquidation was carrying on its business under the name and style of M/s. Haldia Chemicals and later it was changed to M/s Bharath Coal Chemicals Limited.

3. It was submitted that Haldia Development authority had offered land admeasuring to 98 acres at Mouza Bhuniaraichak, JL No 122 P S Durgachak, dist Purba Medinapur for setting up of an Ammonia manufacturing unit vide its memo dated 02.12.2009. According the said memo dated 02.12.2009 the land was to be allotted for lease for a period of 90 years and premium of land was fixed as Rs. 15 lakhs per acre. The total premium amount to be paid by the Company under liquidation was Rs. 15 crores. Further, rent of total land premium er year was 0.25% and the same will be enhanced at the rate of 5% annually during the lease period.

4. It was submitted that as per term No. 4 of the memo dated 02.12.2009 the company under liquidation had to pay the entire premium amount within a period 30 days, as per term no. 6, the Respondent should deliver the possession of the said land. As per term No. 8, the Company under liquidation had to start construction of the project within a period 6 months and the unit should come into operation within a period 2 years, failing which lease shall be terminated and the land premium paid shall be refunded to the Company under liquidation.

5. It was submitted that the Company under liquidation made an initial payment of Rs. 5 crores on 30.01.2010 and vide its letter dated 29.01.2010 had requested the Respondent to grant a time period of 2 months to pay the remaining premium. However, the Respondent had not responded to the request of the Company under liquidation.

6. It was submitted that the Pollution Control Board working under Union Ministry of Environment and Forest declared the Haldia District as Critically Polluted Industrial Cluster with a CEPI Score of 75.43. Further it had taken a policy decision not to grant permission for establishing of new industries in the region of Very Critically/Critically Polluted Industrial Cluster. The Union Ministry of Environment and Forest had also given a detailed Office

Memorandum on 15.03.2010 in this regard and owing to the notification of the said Ministry, the Company under liquidation could not make the entire premium for the land. It was also decided by the Company under liquidation to shift the project out of Haldia to Paradeep Odisha. The Respondent has not taken any steps on the letter dated 29.01.2010 and also not refunded the initial premium amount paid by the Company under liquidation. It was submitted that the Respondent neither returned the initial premium amount paid by the Company under liquidation nor allotted the land as per the terms of memo dated 02.12.2009. The project not getting materialized should be directly attributable to failure of Respondent to deliver the physical possession of land.

7. The Liquidator, vide his letter dated 18.11.2019 when he was the RP has demanded the Respondent to refund the said Rs.5 Crores, however, the Respondent neither refunded the said amount nor responded to the letter. The amount receivable from the Respondent is a part of the liquidation estate of the Company under liquidation and non-repayment would substantially affect the liquidation process as well as the creditor, shareholders and other stakeholders.

8. It was submitted that while reiterating the above facts, submitted that unless the respondent refund the entire amount of Rs.5 Crores along with interest calculated @ 12% p. a, the Company

under liquidation would be put to heavy loss and irreparable hardships. Therefore, he prayed to allow the application and direct the 2nd Respondent to refund the said Rs. 2 crores along with 12% interest p.a.

9. The Respondent has filed its counter statement and also written submissions and *inter-alia* submitted that pursuant to the memo dated 2.12.2009 of the Company under liquidation, the Respondent had allotted 98 acres for 90 years long lease with a condition that the premium amount of Rs.15,00,00, 000/- has to be remitted to the Respondent within 30 days from the date of allotment. The Company under liquidation has remitted only Rs.5,00,00,000/- on 30.01.2010 that is also after 30 days and sought extension of time of 2 months to remit the balance amount of Rs. 10,00,00,000/- vide its letter dated 30.01.2010 which was accepted by letter dated 17.03.2010. The Company under liquidation had also promised that the balance premium amount would be paid by 31.10.2010. Upon the clarification sought for by the Respondent, the Company under liquidation again sought time till up to May 2011 and it was also brought to the notice of the Respondent that the name of the Company was changed from Haldia Chemical Limited to Bharat Coal Chemicals Limited. As per the policy of the Respondent, in case of change of name of the allottee, the allottee has to pay transfer charges @10% of the total market

value of the land. The Respondent requested the Company under liquidation to deposit 10% of the total market value vide its letter dated 01.09.2015. However, the Company under liquidation has not remitted the said amount as such the change of name could not be recorded. The Respondent had also issued various reminders to the Company under liquidation to deposit the balance premium amount.

10. It was submitted that the Respondent and the Company under liquidation had a meeting and in the said meeting the Company under liquidation promised to set up the project on the premises, therefore, a revised offer vide letter dated 08.05.2018 was issued where the Company under liquidation was requested to remit Rs.77,02,62,400/- as against the current market value. However, the Company under liquidation has not accepted the revised offer and did not respond.

11. It was submitted that the case of the Company under liquidation was that the Ministry of Environment and Forest declared the Haldia district as critically polluted area, therefore, it could not implement the project, whereas though initially the said ministry has put temporary restrictions, lifted the moratorium vide its OM No. 17.09.2013. The Respondent submitted that the Company under liquidation has not approached the Tribunal with clean hands and the Respondent had extended its full cooperation to the Company

under liquidation. The Respondent never cancelled the allotment made to the Company under liquidation and it has not allotted the land to any third party. The land was allotted on 02.12.2009 and till date it has not been cancelled. Since the premium amount has not been paid to the Respondent, there was a huge loss to the Respondent and the initial premium of Rs. 5,00,00,000/- was never paid as a refundable security. It was also stated that the Respondent never executed lease agreement to the Company under liquidation in view of the failure of payment of premium amount. The question of refund of premium amount would arise only when the lease is terminated and in the present case even the lease has not been entered at all. It is further stated that the limitation period to exercise the right to seek refund of the par premium expired in the year 2013.

12. We have heard the submissions and also perused the pleadings.

13. It is the contention of the Applicant that it was proposed to setup its project in the State of West Bengal and accordingly approached the Haldia Development Authority, the Respondent, to allot land. The Respondent had also allotted 98 acres of land for 90 years lease. The Company under liquidation initially made a payment of Rs.5,00,00,000/- towards premium amount out of

Rs.15,00,00,000/- . Since, the Ministry of Environment and Forest declared the Haldia district as critically polluted area and banned establishing any new industry, the Company under liquidation cannot set up its project and it had no option except to shift the project to some other place and accordingly shifted to the State of Odisha. Since, the land was not allotted to the Company under liquidation and situation was 'force majeure' situation, the project could not be set up in the State of West Bengal. Therefore, the amount of Rs.5,00,00,000/- paid as premium amount for the land has to be return back to the Liquidator as it forms part of huge liquidation estate. *Per contra*, the contention of the Respondent is that the land allotted to the Company under liquidation was never cancelled till date and it is subsisting. The refund would only be considered if there is a lease agreement and termination of the said lease agreement, but there is no such lease agreement between the Respondent and the Company under liquidation. Even if it is admitted that the part premium payment is refundable, the claim is barred by the law of limitation.

14. It is a fact borne on record that the Haldia Development Authority has directed the Company under liquidation to deposit Rs.15 crores of premium towards the land to be allotted and it is also on record that the Company under liquidation has paid an initial payment of Rs.5 Crores. It is also on record that the Union Ministry

of Environment and Forest declared the Haldia area and critically polluted and taken a policy decision not to allow any new industrial establishment in the area. Even according to the submissions of the Respondent, the Ministry of Environment and Forest put restriction on the development of Haldia District and it had many time withdraw the said policy and reintroduced the same policy and permanently lift the restriction only during the year 2013. The initial restriction was made in the month of January 2010 and it is also on record that the land was allotted on 02.12.2009. Within one month from the allotment of land the restriction was made by the Ministry of Environment and Forest and it was permanently lifted only on 17.09.2013. It is also on record that the Respondent had never entered into any lease agreement and the refund of premium amount only would arise when the lease agreement is terminated.

15. Further, it is required to be seen that the Respondent though had allotted the land as per the memo dated 02.12.2019, failed to enter into any lease agreement for want of balance premium amount to be paid. When the lease agreement was not entered, the question of termination do not arise. Thus, the Respondent ought to have refunded the initial premium amount, and now cannot take a plea that the claim is barred by limitation. Even according to the Respondent, the lease agreement was not entered and even it is entered, the Company under liquidation could not have setup the

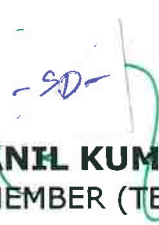
project due to the policy decision of the Ministry of Environment and Forest. At this point of time, the Respondent can very well say that it has not cancelled the allotment, but could not extend any help to the Company under liquidation when the restriction by the Ministry of Environment and Forest was in vogue.

16. Since, the amount is withheld by the Respondent without allotting the land, and the Respondent ought to have refunded the same and due to its failure, it cannot claim that the claim of the Company under liquidation is barred by limitation. Therefore, in our considered view, the Respondent ought to have refunded the initial premium amount when it has not entered into any lease agreement and it is also well aware that the project has been shifted to the State of Odisha. Therefore, the question of keeping the land for the Company under liquidation does not arise at all. It was also rightly contended by the Learned Counsel for the Liquidator that the amount of Rs.5 crore is part of liquidation estate of the company under liquidation and non-payment would affect the interest of the other creditors, shareholder and other stakeholders. Since, the land was not allotted and any lease agreement was not entered into, the Respondent cannot withhold the amount of Rs.5,00,00,000/- for self which will be prejudice the interest of the other creditors, shareholders and other stake holders.



17. In view of the above observations, we allow the application with a direction to the Respondent to refund the amount of Rs.5 crores with 12% interest p.a. till its realization to the liquidation account of the Company under liquidation within a period of 30 days from the date of this order. The Liquidator is directed to serve a copy of this order on the Respondent.

18. With the above directions, the application stands **disposed of**.


ANIL KUMAR B
MEMBER (TECHNICAL)


Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)