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

IA(IBC)/765(CHE)/2022
IN
CP/550/IB/2018

(Application Filed Under Section 42 of The Insolvency and Bankruptcy Code 2016)

In the Matter of

The Assistant Commissioner of CGST and
Central Excise
Madhavaram Division,

... *Applicant*

-Vs-

Mr.C.Ramasubramaniam,
Interim Resolution Professional
M/s. Surana Corporation Limited

... *Respondent*

In

In the Matter of

State Bank of India

... *Financial Creditor*

Vs.

M/s. Surana Corporation Ltd

... *Corporate Debtor*

Order Pronounced on ***13th December 2022***

CORAM

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Memo of Parties

The Assistant Commissioner of CGST and Central Excise,
Madhavaram Division,
Chennai North Commissionerate,
No.2054, 1st Floor, Newry Towers,
12th Main Road, Anna Nagar, Chennai – 600 040.

... Applicant

-Vs-

Mr.C.Ramasubramaniam,
Interim Resolution Professional
M/s. Surana Corporation Limited
"RAJI", 3B1, 3rd Floor, Gaiety Palace,
No. 1L, Blackers Road, Chennai – 600 002.

... Respondent

Present

For Respondent: Mrs. Pavithra Dayalan, Advocate.

ORDER:

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This application has been filed by the Ld. The Assistant Commissioner of CGST & Central Excise, Madhavaram Division, Chennai North Commissionerate against the Liquidator of the Corporate Debtor M/s. Surana Corporation Limited with the following prayers:

a) To pass an order directing Shri. C. Ramasubramaniam, Liquidator, Surana Corporation Ltd., to accept the claim dt. 09.02.2022 submitted by the Assistant Commissioner of GST & Central Excise, Madhavaram Division;

b) To pass any other orders or orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case and thus render justice.

2. It is seen that this Application has been filed against rejection of claim which was much belatedly filed by the Applicant with the Respondent, on 09.02.2022.

3. The said claim was rejected by the RP vide communication dated 15.02.2022.

4. The Applicant has stated that they had initially issued Show cause notice on 24.11.2009. Three further Show cause notices were issued on the Corporate Debtor from 2010 to 2013. Based on the proceedings initiated through the Show cause notices, order in original No.06 to 09/2021 CH.N.GST dt.12.10.2021 was passed and several demands were raised on the Corporate Debtor.

5. Base on the above original order, the Applicant has filed claim before the Ld. Liquidator on 09.02.2022 which came to be rejected by the Ld. Liquidator on 15.02.2022.

6. The Applicant further states that the claim of excise duty and consequential reliefs and benefits could not be filed before the IRP on or before 24.11.2019 (last date for receipt of claim in Liquidation) as the claims had not crystallized by then. The order with regard to payment of excise duty and consequential reliefs and benefits for the period March 2005 to 16.03.2012 were passed only on 12.10.2021. It is also stated that the Corporate Debtor has filed a review before the Principal Chief Commissioner of GST &

Central Excise which was rejected only on 06.12.2021. Counter in the matter was filed vide S.R.No.5781 dated 25.10.2022 by the Ld. Liquidator. Ld. Liquidator states that he received the Form C through which the Applicant herein submitted a claim of Rs.55,78,36,885/-. The sole ground of rejection was delay of 808 days in filing the claim.

7. It was also stated in the reply that order dated 12.10.2021 was passed in contravention of the provisions of the Code. It is pertinent to mention herein there was a delay in filing this Application and there was a delay of 126 days in filing this Application. The Applicant herein has filed IA(IBC)/761(CHE) /2022 came to be ordered on 17.10.2022 and the delay of 126 days was condoned by this Tribunal. We are of the view that the delay of 808 days in filing this present Application has arisen because the process of assessment of the dues in furtherance to the various Show Cause notices which was going on and the final assessment resulted in order dated 12.10.2021.

8. The contention of the Applicant that he could file the claim only upon the crystallization of the amount is well received by this Tribunal. It is also noted that through the original order dated 12.10.2021, the Applicant has not undertaken any coercive steps for recovery. It is also seen that at the Liquidation

Commencement and CIRP date, the show cause notice is already existed.

9. Further, the Hon'ble Supreme Court in the case of ***Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes*** held as follows,

> *"44. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However,* ***the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context****.*
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> *45. From the above discussion, we hold that the respondent could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC.*
>
> *46. There is another aspect of this case that needs to be highlighted to portray the inconsistency of the Customs Act vis-a-vis the IBC during the moratorium period. In the present case, the demand notice dated 11.07.2019 was issued by the respondent under Section 72 of the Customs Act, in clear breach of the moratorium imposed under Section 33(5) of the IBC. Issuing a notice under Section 72 of the Customs Act for non-payment of customs duty falls squarely within the ambit of initiating legal proceedings against a Corporate Debtor. Even under the liquidation process, the liquidator is given the responsibility to secure assets and goods of the Corporate Debtor under Section 35(1)(b) of 1BC.*
>
> *Xxxx xxxx xxxx*
>
> *54. On the basis of the above discussions, following are our conclusions:*

*i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has **a limited jurisdiction to assess /determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act**.*

*ii) After such assessment, the respondent authority has to **submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority**.*

iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.
..."

10. Considering the above and after hearing Counsels for both the sides, we hereby direct the Ld. Liquidator to process the claim of the Applicant as per law and intimate the outcome of the same to the Applicant within seven days from the date of receipt of this order.

11. Accordingly, this **IA(IBC)/765(CHE)/2022** in **CP/550/IB/2018** is **allowed and disposed of**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Judicial Member Dr. Deepti Mukesh, on behalf of the bench comprising of Dr. Deepti Mukesh, Member (Judicial) & Sameer Kakar, Member (Technical).

M. Nalluchoccayal (Court officer)