

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

IA(IBC)/1281(CHE)/2021 in IBA/839/2019

*(filed under Section 38(3), 40, 42 read with 60(5) of the Insolvency &
Bankruptcy Code, 2016)*

In the matter of Bharat Coal Chemicals Limited

The Deputy Commissioner of Customs

Paradeep Custom Division
Custom House
Paradeep
Odisha 754 142

..... Applicant

Vs

P. Sriram

Liquidator
Bharath Coal Chemicals Limited
New No. 10, Old No. 17
South Canal Bank Road
Mandaveli, Chennai 600 028

..... Respondent

Order pronounced on 20th June 2022

CORAM:

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

*For Applicant : Madhumitha Bhattacharjee, Advocate
For Respondent : S. Sathiyarayanan, Advocate*

ORDER

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

The application under consideration is filed by the Deputy
Commissioner of Customs, Paradeep Custom Division, Odisha under



Rule 11 of the National Company Law Tribunal Rules, 2016 read with section 38(3), 40, 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with chapter V of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 seeking an order to condone the delay of 586 days in filing the claim of Rs.248,45,86,995/- before the Liquidator of M/s. Bharath Coal Chemicals Limited (company under liquidation).

2. It was submitted that the Directorate of Revenue Intelligence, Kolkata unit had issued a show cause notice dated 16.03.2016 to the company under liquidation to pay sum of Rs.50,83,56,166/- along with penalty and interest under the various provisions of the Customs Act for the failure to comply with the conditions stipulated in the notification dated 11.09.2009 and various provisions of Foreign Trade Policy (2009-14) and availing zero duty EPCG licenses for imports made under bills dated 29.04.2011 and 29.04.2011 for the goods cleared from Haldia Customs Division under EPCG Scheme.

3. It was submitted that the Company under liquidation was answerable to different Commissionerate i.e. Kolkata and Bhubaneshwar as the imports of duty free capital goods were done through the said Commissionerate. Subsequently, Additional Director General DRI (Adjudication) Mumbai was appointed as a



Common Adjudicating Authority and after hearing the representative of the company under liquidation it was held vide its order dated 23.02.2018 that company under liquidation is liable to pay Rs.248,45,86,995/- after adjusting the bank guarantees to the tune of Rs.9,95,57,850/- which were encashed on 21.03.2020.

4. In the meantime, it was submitted that the Applicant came to know that this Tribunal had initiated CIRP of the company under liquidation on the basis of section 9 petition and appointed the present liquidator as IRP. As per the announcement of the IRP, the claims are to be submitted latest by 12.04.2020. The liquidator was well aware of the order dated 23.02.2018 made by the Additional Director General DRI (Adjudication) Mumbai and there was a direction this Tribunal to intimate the statutory authorities about the CIRP of the company under liquidation. However, the IRP, the present liquidator has not intimated the applicant as directed by this Tribunal. Further the Liquidator had also filed an application before this Tribunal against the Directorate of Revenue Intelligence, therefore, he is aware of the show cause notices issued by the applicant.

5. It was submitted that the Applicant came to know about the CIRP of the Company under liquidation and immediately filed claim for a sum of Rs.248,45,86,995/- on 18.11.2021 and upon receipt of



the claim for the Liquidator had sent an email wherein he had stated that the claim has been filed after the due date and asked the applicant to approach this Tribunal for getting condonation of delay. It was also stated that the Applicant is an arm of Union of India, Ministry of Finance and also having the responsibility of collecting the duties and taxes.

6. While reiterating the above averments, the Learned Counsel for the Applicant submitted that no prejudice would be caused to any person and in fact that when the claim is adjudicated it would be in accordance with the scheme of the Act. Therefore, he prayed that the application may be allowed and an order to condone the delay of 586 days in filing the claim for Rs.248,45,86,995/- may please be allowed.

7. The Liquidator, the Respondent herein has not filed any counter statement for the application.

8. We have considered the submissions made on behalf of the parties and also perused the documents. It is a fact on record that the Applicant is an arm of Union of India, Ministry of Finance and it has filed the claim for the lawful amount to be remitted to the Government of India. The Learned Counsel has also rightly said that no person will be prejudiced and it would be adjudicated in

accordance with the scheme of the Act. In our considered view, allowing the application will not prejudice any person the liquidation will be making payment of the claim after adjudication as per the provisions of the IBC Code and other provisions of any other law applicable to the issue.

9. In view of the above, we condone the delay of 586 days in filing the claim for Rs.248,45,86,995/- and also direct the Liquidator to adjudicate upon the claim submitted by the Applicant by taking into consideration the provisions of IBC, 2016 read with attendant Regulations.

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


ANIL KUMAR B
MEMBER (TECHNICAL)


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