

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

**MA(IBC)/19/KOB/2022
IN
IBA/258/KOB/2019/CB**

*(Under Section 42 read with Section 60(5) of IBC, 2016 read with Rule 11 & 32 of NCLT
Rules, 2016)*

In the matter of:

Excel Glasses Limited;

MEMO OF PARTIES:

KERALA STATE ELECTRICITY BOARD LIMITE, Rep. by its Special Officer
(Revenue) Vydyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004;

... Applicant

-Versus-

RAVINDRA CHATURVEDI, Liquidator - Excel Glass Limited, BKC Center, 31-
E, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai- 400 053;

... Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Mr. S Satish, Advocate

For Respondent : Mr. Akhil Suresh, Advocate
Mr. Ravindra Chaturvedi,
Liquidator

**Order reserved on: 01.12.2022
Order pronounced on:25.01.2023**

ORDER

1. This Application has been filed under Section 42 read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code'), read with Rule 11 of the National Company Law Tribunal Rules, 2016, (hereinafter

called as the 'Rule'), by Kerala State Electricity Board Limited (hereinafter called as the Applicant) against Mr. Ravindra Chaturvedi (hereinafter referred to as 'Liquidator'), with a prayer to set aside the decision dated 24.05.2022 of the Respondent partially rejecting the claim of the applicant filed vide Form C dated 12.11.2019 and direct the Respondent to admit the Applicant's claim full on merits after duly considering the details, information and documents submitted by the Applicant.

2. The Appellant is a supplier of electricity to the Corporate Debtor and is the Operational Creditor (statutory creditor) of the Corporate Debtor. The Appellant submitted that Excel Glasses Limited was admitted into CIRP on 26.03.2019 and Claim in Form B dated 09.04.2019 was filed by KSEB with the Interim Resolution Professional in time making a total claim of Rs.52,84,28,681/- (Rupees Fifty-Two Crores Eighty-Four Lakhs Twenty-Eight Thousand Six Hundred and Eighty-One). As per the claim status made available by the Resolution Professional as on 17.04.2019, as against the total claim of Rs. 52,84,28,681/- (Rupees Fifty-Two Crores Eighty-Four Lakhs Twenty-Eight Thousand Six Hundred and Eighty-One) claim to an extent of only Rs. 2,68,34,529 (Rupees Two Crores Sixty-Eight Lakhs Thirty-Four Thousand Five Hundred and Twenty-Nine) stated to be the amount as reflected in the books of Corporate Debtor was admitted by the Resolution Professional. The balance amount was categorized as 'Claim under Verification'.
3. The appellant stated that while communications were being exchanged between RP and the appellant during CIRP, the Corporate Debtor was ordered to be Liquidated by this Tribunal vide order dated 21.10.2019 and the RP was appointed as the Liquidator. It was further stated that they were providing all the details and information sought by the Liquidator. The Liquidator has stated that the appellant was also made representative of the operational creditor in the SCC and during the 6th Stakeholders Committee Meeting held on 03.08.2021, conveyed the fact that the claim of the Appellant is yet to be

finalized. This was also pointed out by the appellant in its letter to the Liquidator dated 07.09.2021.

4. The learned counsel for the Appellant submitted that being perturbed by the unending communication and with the knowledge that the asset sale process of the CD under liquidation having commenced, the Appellant vide its letter dated 14.05.2022 required the Liquidator to pass final orders on the claims submitted and required the Liquidator to communicate the final orders on the claim submitted. The Liquidator vide his email reply dated 24.05.2022 wants to treat the communication dated 27.12.2019 as final communication in compliance of Section 40 (2) of IBC, 2016. The appellant state that the liquidator could have informed the appellant immediately of his rejection of claim under section 40(2) of IBC be that so the appellant could have approached the Tribunal earlier. As the Liquidation process of the Corporate Debtor is still an ongoing process, the appellant seeks to set aside the Liquidators order dated 24.05.2022 and to direct him to admit the claim of the appellant in full. The appellant contends that the liquidator has mechanically admitted the claim which is reflected in the books of accounts without application of his mind.
5. Respondent/ Liquidator stated that the primary contention of the Appellant is to challenge the decision of the Respondent Liquidator to admit Rs 2,68,34,529/— out of claim of Rs 54,42,58,339/. The correct position is that the decision Communication u/s 40 (2) IBC 2016 was sent by email dated 27.12.2019 and was reiterated thereafter on 20.08.2021 and 27.10.2021 and the position of admitted claim was uploaded on website of Corporate Debtor and submitted to the Tribunal and to IBBI. The Liquidator further stated that the appellant was part of the Stakeholders Committee (SCC) and all matters regarding the Liquidation Process were updated to SCC members through email and telephonic communications. and discussed in detail in SCC meetings in due compliance of the Code. Liquidator submitted that Liquidation process had progressed further to sale of assets, and come to the stage of starting

distribution u/s 53 IBC on the basis of claims admitted. In view of this, their contention that communication of status of claim was advised to them only on 24.05.2022 is incorrect as the order u/s 40 (2) was communicated on 27.12.2019 within prescribed timeline, and for the sake of clarity, it was reiterated on 20.08.2021 and 27.10.2021.

6. The Liquidator further stated that the Appellant has not replied to all issues raised and not provided justification to enable the entire claim to be admitted. After a reply mail on 23.01.2020 by the appellant stating that the matter has been taken up with the Director (Finance) of KSEBL and the decision will be informed to the Liquidator soon, no further email communication regarding the claim was received till September, 2020.
7. It was stated that appellant's letter dated 17.9.2020 received on 05.10.2020 was replied on 06.10.2020 reiterating the communication under Section 40 (2) dated 27.12.2019. Further a letter from appellant dated 14.05.2022 received on 17.05.2022 was replied on 24.05.2022 again reiterating the communication u/s 40(2) dated 27.12.2019 and recording all issues. The matter was also discussed in 10th SCC meeting held on 21.05.2022. Those queries to which the clarification from appellant sought but have not been provided till now are reproduced below:
 - Interest @ 24% is not applicable as delay was due to the matter pending in High Court Kerala and not due to fault of CD.
 - Calculation of the quantum of energy/power eligible for concession in tariff. In the present case, the old plant and machinery of the Corporate Debtor were completely scrapped before April 06, 1995, therefore, the category under which it should fall should be "(iii) in case where old units are scrapped and replaced with the new ones"
 - Segregation of old and new as demanded by KSEB was not possible, as the plant and machinery were already scrapped and no live load remained, it was not possible to segregate the old and new loads.

- As per the letter of Directorate of Industries and Commerce dated 27.01.1999, the CD was eligible for tariff concession for the entire consumption.
- corporate debtor's contention was upheld by hon'ble high court vide clause 14 of the judgment dated 02.12.2016, which states "*first of all, when the government order as well as the board order clearly indicates that for deciding the eligibility tariff concession the certificate issued by district industries centre shall be the basis, there is no reason to take a different approach in the matter*". liquidator had requested in the circumstances and the judgment of hon'ble high Court of Kerala dated December 02, 2016, to submit the claim to be recalculated and submitted in terms of the Pre-92 concessional tariff, providing concession on the entire consumption to the Corporate Debtor.

8. The Points for consideration are:

1. Whether communication dated 27.12.2019 sent by respondent to applicant is a final order in compliance with section 40(2) of IBC 2016?
2. Whether the order dated 27.12.2019 and 24.05.2022 are liable to be set aside?

9. Points No.1&2

10. The main contention of the applicant Is the respondent kept the claim request of the applicant for Rs.54,42,58,339/-submitted in C Form on 12.05.2019 pending for long time. The applicant also submitted further particulars, and information were called by the respondent. When the applicants sent a letter dated 14.05.2022 to the respondent requesting to pass a final order on its claim, then the respondent sent reply on 24.05.2022 informing to treat the communication dated 27.12.2019 as final order in compliance of section 40(2) of IBC 2016.

11. On perusal of 27.12.2019 communication and subsequent correspondences held between the parties disclose that the impugned communication dated 27.12.2019 appears that this is only suggestive letter not assertive order. Even though in the conclusion portion of the letter it is stated that “The communication is for your information and record and is in compliance with section 40(2) IBC 2016” but similar lines are appeared in the previous communication dated 04.12.2019 also the respondent mentioned the same sentences that this is in compliance of section 40(2) IBC 2016. In the communication dated 04.12.2019 the respondent asked the applicant to furnish the particulars pertaining to Authentication of signatory to claim and to submit proof I.D., basis for claiming 24% interest, if there is any written agreement in this regard, Production of invoices, proof for non-payment of amount by corporate debtor, proof that claim is not time barred, and the claim is in accordance with the order of High Court of Kerala etc., Even in 27.12.2019 communication the reply dated 04.12.2019 is enclosed, on casual reading of the communication dated 27.12.2019 divulge that the respondent reiterated the production of necessary documents as pointed out in letter dated 04.12.2019 from the applicant. Further in the communication dated 27.12.2019 it is also observed the admitted claim is subject to legal opinion. This factor shows that 27.12.2019 is not a final order, this communication dated 27.12.2019 looks like just a correspondence with the applicant.
12. The applicant on 31.12.2019 and on 10.01.2020 furnished all the particulars required by the respondent. The required particulars submitted by the applicant is not returned by the respondent since final order was already passed, but details submitted by the applicant were received by the respondent without any protest and remained silent. This gives an impression to the applicant its claim is still pending with respondent. The applicant sent communications on 23.01.2020, 01.03.2020, and 27.01.2020, requesting the respondent to accept entire claim of Rs.54,25,38,332/- there

is no concrete response from the respondent regarding final order was already passed, the mere silence leads the applicant to send letter dated 17.09.2020, 12.08.2021 and 07.09.2021 17.09.2020,12.08.2021. In response to 12.08.2021 communication the respondent sent reply dated 20.08.2021 ask the applicant to refer the order dated 27.12.2019. The applicant in correspondences dated 07.09.2021 and 14.05.2022 requested the respondent to pass final order on the claim petition. In response to letter dated 14.05.2022 the respondent sent detailed letter dated 24.05.2022 in this communication the respondent stated that the order dated 27.12.2019 is final order, then the applicant filed this application.

13. The correspondences exchanged between the parties shows that the applicant was under the impression that the final order needs to be passed but respondent construed that 27.12.2019 is final order, but the respondent not divulged that the order dated 27.12.2019 is final order, the respondent's communications after 27.12.2021 also not in a position to prove that the order dated 27.12.2019 is final order. It is true the appeal against the order of rejection to be preferred with 14 days' time but here the impugned order dated 27.12.2019 cannot be construed as a final order, because there it is mentioned that the order is subject to legal opinion. The conduct of the respondent misleads the applicant. Further the particulars required by the respondent were submitted before the Respondent only on 31.12.2019 and on 10.01.2021 post order dated 27.12.2019 so the order was passed without considering the details furnished by the applicant should be scrapped otherwise it will cause much prejudice to the Applicant. The applicant is a State controlled organization, the officials of course followed the claim of the KSEB pending with the respondent continuously but not perused the matter intelligently otherwise this kind of trouble would have been averted.
14. The liquidation process is in final stage of distribution of assets under section 53 of IBC 2016, but this alone will not justify the act of the respondent, and

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sole cause to deny the request of the applicant. This situation arises because of Respondent's inconclusive suggestive communication dated 27.12.2019 and his subsequent conducts made the applicant to believe that order dated 27.12.2019 is not a final order and final order is yet to be passed. For these conducts of the Respondent, the applicant should not be allowed to suffer.

15. In the circumstances we inclined to condone the delay and set aside the order of respondent dated 27.12.2019 and 24.05.2022 and direct the respondent to consider the claim of the applicant as a fresh, taking all the materials and particulars submitted by the applicant post 27.12.2019 and pass appropriate order without influencing anything observed in this order in accordance with law.
16. In the result the order of the respondent dated 27.12.2019 and 24.05.2022 are hereby set aside, the respondent/liquidator is directed to consider the claim of respondent as a fresh and pass necessary final order in accordance with law. Thus, this application is ordered and disposed of.
17. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
18. Certified copy of the order be issued upon compliance with requisite formalities.
19. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.01.25 12:46:09 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.01.25 13:04:39 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 25th day of January, 2023

Supriya. P.S