

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1472/KB/2023

In

Company Petition (IB) No. 1106/KB/2019

***An Application under Section 42 of the Insolvency and
Bankruptcy Code, 2016***

IN THE MATTER OF:

**Assistant Commissioner, CGST & CX, Joka Division, Kolkata South
Commissionerate**

... Applicant.

Verses

**M/s. Environ Energy Corporation India Private Limited, (In
Liquidation) represented by its Official Liquidator, Mr. Rakesh
Kumar Aggarwal**

... Respondent/ Official Liquidator.

Date of Pronouncement: January 22, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/ physically)

For the Applicant in I.A. (I.B.C)/1472(KB)2023:

Mr. Kausik Dey, Adv.

Ms. Aishwarya Rajyashree, Adv.

Mr. Chandra Gupta Kamal, Adv.

For the Liquidator:

Mr. Aishwarya Kumar Awasthi, Adv.

For ESI Corporation in I.A. (I.B.C)/1408(KB)2023:

Mr. T.K. Chatterjee, Adv.

For the Respondents in I.A. (I.B.C)/354(KB)2021:

Ms. Tanvi Luhariwala, Adv.

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Ms. Madhuja barman, Adv.

For ICICI Bank in I.A. (I.B.C)/1408(KB)2023:

Mr. Avishek Guha, Adv.
Ms. Arunika Dutta, Adv.
Mr. Kaustav De Sarkar, Adv.

ORDER

PER D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.
3. This application has been preferred under Section 42 of the Insolvency and Bankruptcy Code, 2016 (IBC) by the **Assistant Commissioner, CGST on Central Excise, Joka Division, Kolkata South Commissionerate**, (hereinafter referred to as 'Applicant / GST Department') against **M/s. Envaron Energy Corporation India Private Limited** (in Liquidation) represented by its Official Liquidator Mr. Rakesh Kumar Agarwal (hereinafter referred to as Corporate Debtor/Respondent).
4. **Under Section 42 of the IBC, the Applicant has sought the following relief:**
 - a) To direct the Official Liquidator to accept and consider the claim of the applicant;*
 - b) Delay in preferring the instant applicant (if any), be condoned by this Tribunal for the interest of justice;*
 - c) Delay of 664 days to prefer the claim before the Official Liquidator be condoned by this Tribunal for the interest of justice;*

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- d) Accept the claim of the Applicant as mentioned in the Order-in-Originals stated in paragraph no. 2 hereinabove;*
- e) Such other and further order may be deemed fit and proper.*

5. Factual Matrix:

- 5.1.** The GST department had issued show cause notice and consequent orders in original Demanding Service Tax on the Corporate Debtor through 3 separate orders annexed as Annexures A1, A2 and A3 to the application.
- 5.2.** The order in original dated 10.03.2017, annexed as Annexure A1 demanded a sum of Rs.5,11,56,977/- along with interest and penalty of Rs.5,11,56,977/-.
- 5.3.** The Order in original dated 31.05.2018 issued by the GST Department, annexed as Annexure A2, demanded a sum of Rs.94,66,590/- along with interest and penalty of Rs.9,46,659/-.
- 5.4.** The Order in original dated 03.05.2019 which is annexed as Annexure A3 has demanded a sum of Rs.1,42,49,024/- along with interest and penalty of Rs.14,24,902/-, apart from late fee of Rs.59,100/-. All these orders were served on the Corporate Debtor , claims the Applicant.
- 5.5.** Subsequently, a show cause notice was served on the Corporate Debtor dated 28.06.2019 which is annexed as

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Annexure A4 demanding Rs.12,22,36,041/- along with interest, apart from proposing to levy a penalty of Rs. 22,22,36,041/-

- 5.6.** In response to the said show cause notice, the Corporate Debtor through its Liquidator had replied by submitting the order of NCLT, Kolkata Bench 19th May of 2021 informing about the liquidation order passed and the same was attached as the response to the show cause notice dated 28.06.2019.
- 5.7.** The GST department claims that this response to the show cause notice was received only on 16.03.2023 and consequently, they lodged their claim in the prescribed Form B of IBBI (Liquidation Process Regulations, 2016) on 13.04.2023.
- 5.8.** On 24.04.2023, the Applicant GST Department, received an e-mail from the liquidator of the Corporate Debtor informing that the Liquidation Process of the respondent company commenced on 19.05.2021 and the last date for filing the claim as per the public announcement made is 18th June 2021. The Official Liquidator, therefore, declined to admit the claim made by the Applicant on 13th April 2023, which is after a delay of 664 days. Consequent, to this e-mail received from the Liquidator on 24.04.2023 this application has been filed by the GST, Department on 30.08.2023 seeking the reliefs mentioned above.

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6. Applicant's Submission: -

6.1. The Learned Counsel for the appellant submits that they became aware of the liquidation of the company only on 16.03.2023 and immediately on becoming aware they filed the claim with the liquidator on 13.04.2023 in Form B as prescribed under the (IBBI), Liquidation Process Regulations, which is well within 30 days from the date of coming to the know of the Liquidation.

6.2. It is submitted that they were never informed about the commencement of Liquidation by the Corporate Debtor; therefore, this has resulted in a delay of 664 days to prefer the claim before the Liquidator

6.3. Considering that the revenue of more than 60 crores of rupees due to the National Exchequer is involved in this case, the delay in preferring this claim may be condoned under the above facts and circumstances and the Liquidator may be directed to admit the claim in the interest of revenue/nation.

7. Respondent's Submission per contra: -

7.1. Learned Counsel for the Liquidator claims that the advertisement for inviting claim as per IBBI Liquidation Process Regulation, 2016 was made in Form B of Schedule II within 5 days from the date of order of liquidation by NCLT on 19.05.2021. The public announcement was made in two large English papers as well as in the vernacular newspapers. The public announcement called upon all the stakeholders to

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submit their claims within 30 days from the date of advertisement.

7.2. As per Regulation 17 of the IBBI (Liquidation process) Regulation an Operational Creditor like GST Department will have to submit proof of the claim to the liquidator in the prescribed form with relevant documents to prove their claim.

7.3. The Regulation also provides that in case the Operational Creditor has submitted its claim during the CIR process the same shall be deemed to submitted under Section 38 of IBC which is the section that governs the submission of claims before the liquidator. Having not done so the Operational Creditor/GST department has lost the opportunity to submit their claim at this stage when liquidation is at the far end of the process.

8. Analysis and Findings:

8.1. As per the pleading and records placed in the application, we find that the Orders passed by the GST department are with reference to the demands made under the erstwhile service tax regime.

8.2. As per Section 87 of the Finance Act, 1994 (which govern the Levy and Collection of Service Tax) for Recovery of any amount due to the Central Government there is a recovery mechanism which includes attachment of the Bank Accounts/ moveable and immoveable properties etc. and the same can be

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done and such attached properties can be sold and dues to the Government could be recovered.

- 8.3.** In the given case nothing has been placed on record by the GST department that such recovery proceedings have been initiated for the recovery of such huge sums to the exchequer. In the absence of any such action placed on record, we will have to infer that no such action has been taken by the GST department. Having failed to do so they should have at least submitted their claim before the Resolution Professional during CIRP of the Corporate Debtor. Nothing has been placed on record to suggest that the GST department has submitted their claims during the CIR process with the Resolution Professional.
- 8.4.** Thus, they failed to take any action even during the CIR process. GST Department cannot claim ignorance of the commencement of CIRP of its own assessee, from whom large sums are due when such proceedings are made public at large by way of public announcement in newspapers apart from the announcement in the Insolvency Bankruptcy Board of India, website.
- 8.5.** The regulations made under IBBI do not provide for individual communication to creditors about the CIRP process or Liquidation Process as the same would delay the entire time-bound CIRP/Liquidation process. That is why we are of the view that the law has prescribed for public announcements in large newspapers.

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- 8.6.** Therefore, the claim of the department that they were not aware of the CIRP proceedings/liquidation proceedings cannot be accepted particularly when the department interacts with the assessee on a monthly basis through several Returns.
- 8.7.** In this case, they claim that they became aware when they received the response of the Corporate Debtor against the show cause notice dated 28.06.2019. The show cause notice dated 28.06.2019 would have been served within 10 days from the date of notice. Assuming that this was served during 1st week of July 2019, the response from the Corporate Debtor would have been received within 30 days from the receipt of show cause notice, as show cause notice mandates reply from the Corporate Debtor within 30 days from the receipt of show cause notice. If no such reply was received, GST Department can pass an *ex-parte* order after granting a hearing. Nothing of that sort has been done as per the records placed.
- 8.8.** It is not the claim of the department that the Applicant received the notice dated 28.06.2019 only in 2023, and consequently they received the response from the Applicant only 16.03. 2023. We see only delays and latches writ large on the part of the GST department.
- 8.9.** The rejection letter from the liquidator through email was received on 24.04.2023, whereas this appeal has been preferred before NCLT on 30.08.2023. As per Section 42 of the IBC, the stakeholders will have to file an appeal to the Adjudicating Authority against the decision of the Liquidator

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within 14 days of the receipt of such decision. In this case, they claim to have received the rejection on 24.04.2023. In that case statutory time limit for preferring appeal before this Adjudicating Authority ends on 8th May 2023.

8.10. Even in preferring an appeal they have taken nearly another four months beyond the statutory limit prescribed in IBC and filed it only on 30.08.2023. This clearly demonstrates the lackadaisical approach of the GST department in pursuing such large demands from the Corporate Debtor.

8.11. In view of the above, we find no merit in the application made by the GST department on both counts (i.e.) extraordinary delay in submitting the claim before the liquidator which is 664 days from the date the claim ought to have been filed and delay in filing this appeal before the Adjudicating Authority which is nearly four months beyond the statutory time limit, prescribed under Section 42 of IBC.

8.12. The Legal Positions:

- a. In ***The Deputy Commissioner Commercial Taxes (Audit), Raichur -Vs-Surana Industries Ltd. (In Liquidation) & Anr. in Company Appeal (AT) (Insolvency) No. 1525 of 2019 dated 07.02.2020***, wherein the Hon'ble NCLAT has dismissed the application filed by the Applicant in relation to the Appeal against the order of the Liquidator and also held that liquidation process is a time bound process, and the

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Liquidator has to conclude his proceedings within one year.

(Emphasis supplied)

- b. Further, we are fortified by the decision of a Coordinate Bench. NCLT, Chennai Bench in the matter of ***Employees State Insurance Corporation vs. Chinnam Poorna Chandra Rao*** reported in [2020] **ibclaw.in 180 NCLAT** where it was held that the extraordinary delay [...] in submission of claim by applicant, is devoid of merits. Further in interest of Justice also we could not condone the delay as sought for. If such extraordinary delay is condoned, it shall defeat the very purpose of the IBC, 2016.

(Emphasis supplied)

9. In the view foregoing, we **dismiss** this application being **I.A. (IB) No.1472/KB/2023 in Company Petition (IB) No. 1106/KB/2019** accordingly.
10. No cost upon the applicant herein.
11. Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 22nd Day of January, 2024.

Tiwari. V. [LRA]/ Bose, R. K. [LRA]/ Subhajit [Steno]