



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

IA(IBC)/1534(CHE)/2022

In

IBA/1263/2019

(filed under Section 42 of the Insolvency & Bankruptcy Code, 2016)

In the matter of *Ultra Tile Private Limited*

M/s. EMPLOYEE STATE INSURANCE CORPORATION

Represented by Social Security officer,
No. 143, Sterling Road, Nungambakkam,
Chennai – 600 034

... Applicant

-Versus-

MR. L V SHYAM SUNDAR,

Liquidator of M/s. Ultra Tile Private Limited
3rd Floor, No. 17, Gandhi Road,
Alwarthirunagar, Opp. To Vinayagar Temple,
Above Samyuktha Scans, Chennai – 600 087

... Respondent/ Liquidator

Order Pronounced on 05th October 2023

CORAM

SHRI SANJIV JAIN, MEMBER (J)

SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (T)

Appearances:

For Applicant : Mr. S P Srinivasan, Advocate

For Respondent : Mr. Sriram Venkatavaradan, Mr. Sai Sudharsan
Sathiyamoorthy & Varshini A, Advocates

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

1. Under Adjudication is IA(IBC)/1534/(CHE)/2022, filed by the Employees State Insurance Corporation under Section 42 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as



'the Code') against the order of the Liquidator seeking reliefs as follows,

- a) *Set aside the order of rejection communicated by e-mail dated 25.11.2022, passed by the Respondent/Liquidator Mr. L V Shyam Sundar, of M/s. Ultra Tiles Private Limited.*
 - b) *Further, direct the respondent/liquidator to consider the claim of the applicant submitted to him by e-mail dated 31.03.2022 in Form C for Rs. 1,28,97,437/- along with supporting documents and treat the applicant on par with other Operational Creditors as per Section 53(1)(e) of the IBC Code, and pass such order or orders as may be deemed fit and thus render justice.*
2. It is stated that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 30.03.2021. Thereafter, Liquidation was ordered on 01.03.2022. The Respondent herein was appointed as the Liquidator.
3. It is stated that the Employees State Insurance Corporation (Region wise) had filed the following claims before the liquidator,
- i. *With respect to Chennai Regional Office for the Main Code No.51000539030000406, for the period from 4/2013, 6/2013 to 9/2013, 10/2013 to 9/2014, 10/2014 to 01/2015, 10/2014 to 01/2015, 02/2015 to 04/2015, 07/2016 to 30/03/2021, 31/03/2021 to 01/03/2022 an amount of Rs.35,10,911.*
 - ii. *With regard to the Regional Office, Telangana- Sub Code No.525105390300104006, for the period 03/2015 to 2017, 03/2017 to 02/2021 an amount of Rs.18,87,468/-.*
 - iii. *With regard to Regional Office, Telangana - Sub Code No.52510539030010499, for the period 12/2016 to 02/2021 an amount of Rs. 32,29,875/-.*
 - iv. *With regard to Sub Regional Office, Pune - Sub Code No.33510539030000500, for the period 04/2011 to 01/2015, 04/2011 to 01/2015, 10/2010 to 12/2010, 01/2011 to 10/2015 an amount of Rs. 9,46,216/-.*



- v. With regard to Sub Regional Office, Combatore - Sub Code No.56510539030010406, for the period 02/2011 to 10/2014, 03/2011 to 10/2014 an amount of Rs. 1,181/-
- vi. With regard to Regional Office, Kolkatta - Sub Code No.41510539030010406, for the period 02/2017 to 01/03/2022, 03/2011 to 11/2014, 03/2011 to 11/2014 an amount of Rs. 60,777/-.
- vii. With regard to Sub Regional Office, Ernakulam - Sub Code No.47510539030010406, for the period 01/2004 to 06,2015, 10/2004 to 03/2005, 01/2011, 07/2015 to 11/2015, 03/2017 to 02/2022 an amount of Rs. 15,96,221/-.
- viii. With regard to Sub Regional Office, Vishakapatnam - Sub Code No. 70510539030010405, for the period 04/2017 to 02/2022, 04/2011 to 01/2015, 04/2011 to 01/2015, 01/2011 to 03/2011, 02/2015 and 07/2015 an amount of Rs. 16,64,788/-.

The grand Total of the entire claim amount of Rs.1,28,97,437/-.

4. It is stated that part of the claims filed before the Liquidator were determined on ad hoc basis. A notice calling the Liquidator to take part in the enquiry proceedings was sent. The Liquidator sent an e-mail dated 30.04.2022 seeking the applicant to file revised claims on actual data. A reply e-mail dated 31.05.2022 was sent by the Applicant explaining as to why the quantum was arrived at on adhoc basis mentioning that they are open to revise the claim if necessary documents are submitted to prove actual contribution dues.
5. It is stated that the Liquidator vide an e-mail dated 18.11.2022 had written that the ad hoc claim submitted cannot be considered. And that Rs. 32,29,875/- (Rupees thirty two lakh twenty nine thousand eight hundred seventy-five only) remains as the final determination.



6. Thereafter, on 24.11.2022 the applicant vide e-mail had requested for a clarification on the amount admitted and rejected. In response to the same, the Liquidator vide e-mail dated 25.11.2022 had replied as under,

"Since the orders were passed after the commencement of the CIRP the same cannot be accepted." It is stated further in para 4, We further wish to highlight the matter in the case Swiss Ribbons Pvt Ltd & Anr. Vs. Union of India and others (Writ Petition Civil No.99 of 2018) the Hon'ble Supreme Court had observed that, the Resolution Professional does not have adjudicatory powers and a Resolution Professional is entrusted with certain duties that are enunciated under Section 18 of the code, 2016. The Hon'ble Supreme Court further observed that the Resolution Professional is given administrative powers as opposed to quasi-judicial powers. Therefore the Resolution Professional is to vet, verify and determine the claim of a creditor and not adjudicate on the claim.

5. In view of the above and considering the facts the Books of Accounts of the Corporate Debtor do not reflect the claim amount, we are rejecting the entire claim."

7. It is stated that the Liquidator's order suffers from non-application of mind. The code only prohibits recovery and not assessment for which the Applicant has placed reliance on the case of *Bhupinder Singh –Vs- Unitech Ltd. (civil Appeal No. 10856 of 2016, decided on 20.01.2020)* and *M/s. Embassy Property Developments Pvt. Ltd. –Vs- The State of Karnataka and others (Civil Appeal No. 9170 of 2019 decided on 03.12.2021 (SC))*.
8. The Respondent/Liquidator by way of reply has stated that, the Applicant herein had submitted its claim amounting to Rs.



1,28,97,437/- (Rupees One Crore Twenty- "Eight Lakhs Ninety- Seven Thousand Four Hundred and Thirty- Seven Only) in Form C for the first time on 30.03.2022 based on the ad-hoc orders passed by ESI Corporation. Consequently, *vide* reply dated 30.04.2022, the Respondent disallowed the claim submitted by the Applicant in accordance with the provisions of the Code as the same was calculated on an ad-hoc basis. The Respondent had also asked the Applicant herein to file a revised claim.

9. Thereafter, *vide* email dated 31.05.2022, the Applicant once again approached the Respondent seeking additional information and to accept its claim. In response to the said e-mail, the Respondent herein, *vide* e-mail dated 18.11.2022, reiterated that the claim of the Applicant could not be admitted as the same was not in compliance with the provisions of the Code and had also stated that the Applicant should approach NCLT if it was aggrieved by the decision of the Liquidator.
10. It is stated that despite the above, the Applicant again approached the Respondent, *vide* e-mail dated 24.11.2022 asking the latter to accept its claim. However, *vide* e-mail dated 25.11.2022, the Respondent herein reiterated that the claim of the Applicant was rejected as the same was not in accordance with the provisions of the Code.
11. It is stated that, it is apparent from the above events that the claim submitted by the Applicant was rejected as early as on 30.04.2022 and not *vide* email dated 25.11.2022. However, the Applicant



herein, neither submitted the revised claim nor filed an Appeal under Section 42 of the Code against the decision of the Liquidator dated 30.04.2022. The Applicant instead kept contesting the rejection order with the Respondent and has filed the instant Application on 08.12.2022 with a delay of more than 7 months from the date of rejection of the claim by the Respondent.

12. In response to the averments in Paragraph 5(b) of the Application, it is stated that the averments made therein are with respect to the alleged entitlement to priority claimed by the Applicant in the liquidation process. It is stated that the same cannot be gone into at this stage. It is stated that the dues pending towards ESI cannot be equated with government dues and such dues are to be treated at par with the claims filed by operational creditors as held by the NCLT, Ahmedabad Bench Court - I in *Vinod Kumar Agarwal, In re., IA/542(AHM)/2022 in CP (IB) 213 of 2018, dated 13.12.2022 (NCLT - Ahmedabad)*. The relevant portion of the said decision is as hereunder:

"We have considered the resolution plan, an amount of Rs. 1.26 lakh has been earmarked for ESI claim. We have considered this aspect in view of the judgment in the matter of "State Tax Officer Versus Rainbow Papers Limited" [2022 SCC online SC 1162]. In Rainbow Paper (Supra) judgment the Hon'ble Supreme Court has observed that the payment receivable by the Government from the Corporate Debtor has to be considered as Government being a Secured Creditor. In our considered opinion the ESI claim cannot be equated with the statutory dues of the Government because the ESI is the scheme which has to be implemented by the corporate bodies for the welfare of their employees only and the Government machinery is to supervise the implementation of that scheme.

S. Venkatesh

[Signature]



Hence, we hold that the ESIC dues are classified as operational debt and not debt as secured debt."

13. With respect to Paragraphs 5(c) to 5(d), it is submitted that the Respondent had vide email dated 30.04.2022 rejected the claims of the Applicant calculated on ad-hoc basis and had asked the Applicant to file a revised claim. However, the Applicant failed to submit a revised claim and had instead sought for additional documents from the Respondent vide email dated 31.05.2022. Consequently, vide email dated 18.11.2022, the Respondent had once again reiterated that the claims calculated on ad-hoc basis could not be admitted. The Respondent had also informed the Applicant that it could file an Appeal before the NCLT if it was aggrieved by the order rejecting its claims. Despite the said communication, the Applicant had neither chosen to submit a revised claim nor to approach the NCLT as provided under Section 42 of the Code. Instead, the Applicant had once again chosen to approach the Respondent and sought further information *vide* email dated 24.11.2022. Only upon receiving an email from the Respondent on 25.11.2022 wherein the rejection of claims was once again reiterated, the Applicant has chosen to file the instant Application.

14. It is stated that, it is a well-established principle of law that no legal proceedings shall be initiated or continued against the Corporate Debtor during the pendency of the moratorium imposed under the Code. Further, in the email dated 25.11.2022, the Respondent herein had brought to the notice of the Applicant

S. Venkatesh



that the claims submitted by the Applicant were based on the orders passed during the moratorium and therefore cannot be accepted.

<i>Date of Order</i>	<i>Amount (in Rs.)</i>
14-Mar-2022	414,508
29-Dec-2021	3,229,875
16-Mar-2022	35,646
16-Mar-2022	1,396,395
16-Mar-2022	1,522,059

15. In order to buttress the submission, the Liquidator has relied upon the decision of the Hon'ble High Court of Calcutta in *SREI Equipment Finance v. Additional/Joint/Deputy/Assistant Commissioner of Income Tax, (2022) ibclaw.in 112 HC* wherein the Hon'ble High Court set aside the assessment order passed by the Assessing Officer, Kolkata - II, as the same was passed during the period of moratorium imposed and, therefore, is in violation of Section 14 of the Code and restored the matter to the file of the assessing officer and directed the same to be kept in abeyance till the completion of the insolvency proceedings. The relevant extract from the decision is reproduced as hereunder:

"7. At this juncture, it would be important to note the decision the Hon'ble Supreme Court in the case of Alchemist Asset Reconstruction Company (supra), wherein the Hon'ble Supreme Court had pointed out that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. This legal principle

S. Venkatesh

[Signature]



should have been borne in mind by the assessing officer before he proceeded to pass the assessment order. Therefore, we are of the clear view that the assessment order dated 30th March, 2022 has to be set aside and the matter has to be restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings."

16. It is also submitted that the decision of the Hon'ble Supreme Court in *Bhupinder Singh v. Unitech Ltd.* (Civil Appeal No. 10856 of 2016, decided on 20-01-2020) referred by the Applicant is in relation to an Application under Sections 241 and 242 of the Companies Act, 2013 and the said decision cannot be considered as the same is distinct of facts of the instant case.

17. It is stated that the Respondent had promptly, *vide* e-mail dated 21.05.2022, responded to the letter dated 10.05.2022 from the ESI, Corporation calling for a personal hearing of the Respondent herein. In the said email dated 21.05.2022, the Respondent had brought to the notice of the ESI Corporation that the Corporate Debtor was admitted to Liquidation by the Hon'ble NCLT, Chennai Bench *vide* order dated 01.03.2022. Further, referring to Section 33(5) of the Code, the Respondent had also requested the ESI Corporation not to proceed with the personal hearing. The relevant portion of the email dated 21.05.2022 is extracted hereunder:

"Dear Sir/Madam,

We acknowledge the receipt of your letter dated 10th May, 2022 to Ultra Tile Private Limited ("corporate debtor") for appearing for a personal hearing on 25th May, 2022. We reiterate that the corporate debtor has been admitted into Liquidation Process vide

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the order of The Hon'ble NCLT dated 01st March, 2022 and the undersigned has been appointed as the liquidator. A copy of the said order is attached herewith.

Further, we would like to invite your attention to Section 33(5) of The Insolvency and Bankruptcy Code, 2016 which states as under:

"when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor"

In view of the above section, we request you to not proceed with the personal hearings in the matter of the corporate debtor. We also wish to inform you that the corporate debtor has stopped operations from the year 2019 and there are no employees engaged with the corporate debtor. Also, contributions calculated on an adhoc basis do not stand the test of the principle of natural justice.

For the above-said reasons/clarifications, we request you to not convene any personal hearing in the matter"

18. Thereafter, vide email dated 31.05.2022, the Respondent herein had replied to the Show Cause Notice dated 23.05.2022 issued by the ESI Corporation wherein the Respondent had brought to the notice of the ESI Corporation that the Corporate Debtor was not operating any business post 2nd May 2019 and that during the period from 01.04.2020 to 31.03.2021 and 01.04.2021 to 31.03.2022 there were no attendance registers, wages registers, vouchers, bills. In the said e-mail dated 31.05.2022, the Respondent had also reiterated that the Corporate Debtor was under liquidation and therefore in terms of Section 33(5) of the Code, personal hearing could not be conducted. The relevant portion of the email dated 31.05.2022 is extracted hereunder:

S. Venkatesh

[Signature]



“We wish to state that for the period 1st April 2020- 31st March 2021 and 1st April, 2021 - 31st March, 2022, the company was not pursuing any business and therefore there was no attendance registers, wages registers, vouchers, bills. Also, the Profit and Loss Account for the period is under preparation and once prepared, we will share the same with you. We further request you to note that the company has leased out all its plant and machinery, moulds and other assets vide a Hire Purchase agreement dated 2nd May, 2019, post which no business has been carried on. This is for your kind information and records.

We also reiterate that The Hon'ble NCLT had vide its liquidation order (attached for your reference) enforced Section 33(5) in the matter of the corporate debtor which states as below:

“when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor”

In view of the above section, we request you to not proceed with the personal hearings in the matter of the corporate debtor.”

19. The Applicant in its Rejoinder ^{stated} denied the statement made by the Respondent that the instant application has been filed with delay of 7 months. It is stated that Respondent/Liquidator had not adjudicated the whole claim on 30.04.2022, but had only asked to file the revised claims which were passed on ad-hoc basis. Reply was given to the said communication and final order of rejection was passed only on 25.11.2022.

20. It is stated that the Corporate Debtor neither intimated their cessation of work nor filed NIL returns of Contribution. Thus, the claims were issued on ad-hoc basis. A personal hearing opportunity was provided to the Liquidator in respect of C-18 ad-hoc Claims. The ESI claims arise every month, unless the change



of circumstances is intimated as per ESI General Regulations 10C. The said position was intimated to the respondent/Liquidator vide email dated 31.05.2022 and he was requested to consider claims submitted vide claim Form dated 30.03.2022

21. It is stated that, the Respondent/ Liquidator had sent an e-mail dated 31.05.2022 to drop the personal hearing proceedings but had not informed the applicant regarding admission/rejection of the claim submitted.
22. It is stated that, rejection of claim by the Respondent/Liquidator had to be done on wholesome basis and not on piecemeal basis. The total claim made against the Corporate Debtor is for Rs.1,28,97,437/-. Various offices of the Respondent have ESIC dues, which are liable to be paid, where the determination has attained finality, however, the Respondent remained silent, except refusal on ad-hoc claim alone.
23. It is stated that the Applicant had not approached the Liquidator to accept its claim vide email dated 24.11.2022 as contended in the counter filed by the Respondent/Liquidator, instead a clarification email was sent by the Applicant Corporation to the Liquidator seeking the quantum of admission/rejection to which the Liquidator had replied on 25.11.2022 again pointing out the five claims stating that they were issued during moratorium period.

"In view of the above and considering the facts the Books of Accounts of the Corporate Debtor do not reflect the claim amount, we are rejecting the entire claim."



24. Since the Liquidator has communicated the rejection/adjudication of the entire claim only on 25.11.2022, the current application has been filed on 09.12.2022 (i.e within 14 days) in time as per section 42 of IBC. Hence, the Applicant cannot be made responsible for the delay in communication of admission/rejection after verification of claims by the Liquidator as stipulated under section 39 and 40 of IBC 2016 read with IBBI Liquidation Regulation 30.

25. With regards to passing of 45-A assessment order dated 29.12.2021 during moratorium under section 14 of IBC with respect to the Corporate Debtor, it is stated that section 14 only bars for the recovery proceedings but not the assessment of dues. For which, the decision of the Hon'ble Supreme Court in the matter of '*Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs*' Civil Appeal No.7667 of 2021 order dt. 26 August 2022 is relied upon. Relevant extract of Judgment is reproduced hereunder:

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.

45 From the above discussion, we hold that the respondent could only initiate assessment or reassessment 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. The interim resolution professional. Resolution professional or

S. Venkatesh

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the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

26. We have heard the Ld. Counsels for the parties and perused the documents on record.

27. From the arguments made and the documents on record, it is seen that the Applicant Corporation is an autonomous corporation under the Ministry of Labour & Employment under the Government of India functioning for the benefit of the employees. It is seen that the Applicant had submitted the claims before the Liquidator including the claims on ad-hoc basis. The same were rejected by the Liquidator. In the instant case, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 30.03.2021. Thereafter, Liquidation was ordered on 01.03.2022. The Applicant had filed its claims on 30.03.2022. An order rejecting the entire claim was passed on 25.11.2022. The application has been filed on 09.12.2022, which is well within the time limit prescribed under the code. On perusal of the earlier e-mail communications between the parties, it is seen that only vide e-mail dated 30.04.2022, the Applicant was informed about non-operation of the Corporate Debtor. It is also seen that vide the same e-mail dated 30.04.2022, the Liquidator had raised the queries on the following claims,

<i>S. No.</i>	<i>Date of Order</i>	<i>Amount (in Rs.)</i>
1	14-Mar-2022	414,508
2	29-Dec-2021	3,229,875
3	16-Mar-2022	35,646



4	16-Mar-2022	1,396,395
5	16-Mar-2022	1,522,059

28. It is seen that the assessment order in Serial No. 2 of the above extracted table was made on 29.12.2021 which was during the Corporate Insolvency Resolution Process period of the Corporate Debtor. As to the other four entries, it is seen that the Liquidator was called upon vide e-mail date 31.05.2022 to appear before the authorised officer for revision of claims. In response to the above, the Liquidator replied to the Corporation that no suit or proceedings shall be instituted as the same is contradictory to Section 33(5) of the code.

29. It is seen from e-mail dated 31.05.2022, that the entries other than S. No. 2 in the above table are the claims in Form C18 Ad-hoc and not 45A order.

30. At this Juncture, it is relevant to refer, the case of *M/s. Embassy Property Developments Pvt. Ltd. -vs- The State of Karnataka & Ors.* Wherein, the Hon'ble Supreme Court highlighted the obligation of the IRP/RP, depending on the circumstance, to legally represent and act on behalf of the Corporate Debtor in interactions with external parties. This duty encompasses the utilization of rights to further interests of the Corporate Debtor within both judicial and quasi-judicial proceedings. This responsibility arises from the time of assuming control and possession over assets owned by the corporate debtor, as well as subsequently. This legal principle signifies that the investigating body possesses the



authority to summon the IRP/RP for quasi-judicial inquiries under various regulations, with the intent of representing the position of the employer (corporate debtor). Additionally, the Hon'ble Supreme Court clarified that whenever the corporate debtor is required to exercise its rights in a judicial or quasi-judicial context, it should duly do so. Thus from the above, it is implied that the moratorium established under Section 14(1)(a) of the Code does not preclude quasi-judicial proceedings.

31. It is to be noted that when the Liquidator was keen in letting the Applicant know that no proceedings/assessments must be carried during Liquidation considering Sec 33(5) of the Code, he forgot to look at the proviso right below Sec. 33(5) of the code which empowers the Liquidator to initiate any legal action on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority when required. When the Applicant called down the Liquidator to revise the claims with sufficient documents, the Liquidator failed to act on behalf of the Corporate Debtor and continued not to act upon such claims made by the corporation.
32. It is observed that, the Liquidator vide his e-mail dated 30.04.2022, had requested for revised claim form as the entries as tabulated above in para 20 of the instant order are made on ad-hoc basis, however, the same were not filed by the Applicant. Instead, the authorities concerned sent an e-mail dated 31.05.2022 calling upon the Liquidator to revise the claims and proceed further. Thereafter, an order rejecting the entire claim was passed by the Liquidator on 25.11.2022. In the interregnum, the Liquidator had



communicated the applicant that no such proceedings/assessment shall be made during the Liquidation period. Therefore, it is seen that despite given an opportunity by the Applicant Authorities, the Liquidator has not acted upon. The rejection of the entire claim filed by the Applicant is not right on the part of the Liquidator, when the initial query was only regarding those of ad-hoc basis. ~~And that,~~ considering the facts and circumstances and taking into account the objects of the Applicant organisation, we deem it fit to set aside the order passed by the Liquidator dated 25.11.2022 and direct the Liquidator to adjudicate the claims in accordance with law.

33. Accordingly, the application stands **allowed and disposed of**

- Sol -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sol -

SANJIV JAIN
MEMBER (JUDICIAL)