

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT - I, MUMBAI BENCH

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IA No.1120/MB/2020

in

CP (IB) No.1479/MB/2017

(Application under Section 60(5) of the I & B Code, 2016)

Kshitiz Gupta,

Liquidator of Sonachi Industries Limited

Flat No. C/104, Lotus CHS, Gundecha

Valley of Flowers, Thakur Village, Kandivali

East, Mumbai – 400 101

...Applicant

*Versus*

Superintendent,

Central GST & Central Excise,

Range - III, Division - VI, Daman

Commissionerate, Udyog Bhavan, 66 KVA

Road, Amla Silvassa – 396 230

...Respondent

In the matter of:

CP (IB) No.1479/MB/2017

Biostadt India Limited

... Operational Creditor

*Versus*

Sonachi Industries Limited

... Corporate Debtor

Order Dated: 05.10.2020

Coram:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearances (Via Video Conference):

For the Applicant : Advocate Ajinkya Kurdurkar i/b Kurdurkar & Co.

For the Respondent : Mr. Ashish Mehta a/w Ms. Pranelee Pawar,  
Advocates i/b Ethos Legal Alliance

**ORDER**

*Per: V. Nallasenapathy, Member (Technical)*

1. The Applicant/Liquidator is seeking the following reliefs: -
  - i. *To pass appropriate directions against the Respondent more specifically the Superintendent of Central GST & Central Excise, Division- VI Silvassa, Daman Commissionerate, 1st Floor Udyog Bhavan, Vapi Silvassa Road, Silvassa-396230 to allow the Applicant to submit the copies of GST Returns manually physical form, including but not limited to, GSTRB – 3B, GSTR-1 Monthly, DRC -03, Annual Return GSTR 9, GSTR - 9C and Final Return GSTR -10 with respect to the transactions during the period.*
  - ii. *To pass such appropriate directions against the Respondent, more specifically the Superintendent of Central GST & Central Excise, Division- VI Silvassa, Daman Commissionerate, 1st Floor Udyog Bhavan, Vapi Silvassa Road, Silvassa-396230 regarding the Input Tax Credit (ITC) with respect to the Sale of the Factory Assets of the Corporate Debtor and enable the buyer of the factory assets to*

*avail the benefit of ITC on the basis of manual filing of GST returns and GST payment made through DRC -03 by Corporate Debtor.*

- iii. To pass such appropriate directions against the Respondent, more specifically the Superintendent of Central GST & Central Excise, Division- VI Silvassa, Daman Commissionerate, 1st Floor Udyog Bhavan, Vapi Silvassa Road, Silvassa-396230 to provide the necessary mechanism/ facility to generate E Way bill in respect of the movement of goods under the process of liquidation and to provide such mechanism to allow the Applicant to comply with other compliances as mandated under the provisions of the GST Act with respect to the Sale of the Factory Assets.*
- iv. To pass such additional directions as deemed necessary in the light of justice and equity.”*

2. The Applicant submits that Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an Order of this Tribunal dated 02.05.2018. Subsequently, this Tribunal ordered liquidation of the Corporate Debtor by an order dated 28.02.2019 in MA No. 719/2019 and appointed the Applicant herein as the Liquidator.
3. The Applicant further submits that during the liquidation process he sold some movable properties of the Corporate Debtor and was liable to make payment of Goods and Services Tax (GST). However, the Corporate Debtor, before the initiation of the CIRP had defaulted in making payment of GST and therefore, the Applicant presently could not file GST Returns.

4. The Applicant submits that he informed the Respondent about the challenges faced by him with respect to filing of GST Returns. The GST Returns could not be filed online as the GST Portal does not allow filing of the GST returns online if the registration is cancelled. The Applicant further sought clarification from the Respondent with respect to Input Tax Credit (ITC) facility at the time of sale of the assets, as the Corporate Debtor had failed to file the GST returns in the past. The Applicant, left with no choice, filed the GST returns manually in physical form and made payment of the GST charged on the sale of movable properties.
  
5. Further, the Applicant on 27.12.2019 sold land and building, plant & machinery belonging to the Corporate Debtor. As per the terms of the sale, the full and final payment against such sale would be made by the successful bidder within a period of 3 months from the date of sale. Upon making full and final payment, GST invoices has to be raised on the successful bidder on applicable terms. Thereafter, the Applicant once again sought intervention cum clarification from the Respondent, on the matters relating to manual filing of the GST returns, the Input Tax Credit with respect to the sale of plant and machinery for making the GST Payment, so that the purchaser of the Assets avails the GST Credit. The Applicant has annexed a letter dated 17.01.2020 addressed to the Respondent narrating the concerns and seeking clarification from the Respondent. The Applicant submits that the Liquidation process is in the final stages and due to the cancellation of the GST registration by the Respondent, the Applicant is unable to complete the sale transaction even when the buyer of the Factory Assets has complied with all the GST compliances as mandated under the GST Act and the

rules thereunder. Since the sold goods have to be moved from the point of sale to the place of the buyer, the Applicant is liable to prepare an 'E-Way bill' which could not be done due to the cancellation of the GST Registration.

6. In response to the Applicant's query the Respondent indicated that appropriate directions may be sought from this Tribunal as regards the manual filing of the GST returns and the 'E-Way bill' generation facility that is controlled by GST Number.
  
7. The Applicant submits that other Benches of this Tribunal have time and again held and directed the GST Department to allow the physical filing of Returns as well as generating of E-Way bill. The Applicant relied on the following judgments of NCLT:
  - i. *MA 1298/2019 in IBA 130/2019, T. R. Ravichandran, RP for Kiran Global Chem Ltd. Vs. The Asst. Commissioner (ST) & 12 Ors., dtd. 05.12.2019, NCLT Chennai;*
  - ii. *CA 470/2019 in CP 174/2018, Mr Sumit Gupta, RP Vs. Asst. Commissioner (ST) & Anr., dtd. 02.08.2019, NCLT Chandigarh.*
  - iii. *MA 4048/2019 in CP 02/2018, Abhijit Guhathakurta, RP for the 13 Videocon Group Vs. Central Goods & Services Department, dtd. 27.01.2020, NCLT Mumbai;*
  
8. Heard the Counsel for the Applicant as well as the Respondent. Mr Ram Sath (Superintendent - Central GST & Central Excise) attended this hearing through Video Conference. The Learned Counsel for the Respondent submitted that the Central Board of Indirect Taxes and Customs, GST Policy wing issued a Circular dated 23.03.2020 wherein

a clarification was issued under GST law for the Companies undergoing Corporate Insolvency Resolution Process (CIRP). It is submitted therein that there was discussion about the procedure to be followed for the Companies undergoing CIRP but, however, the circular is silent about the liquidation process of the companies. We have gone through the said Circular and we could not find any procedure for the Companies under the liquidation even though the procedure has been suggested for Companies under CIRP.

9. After hearing the Counsels on the either side and ongoing through the pleadings this Bench passes the following order:

- i. The Applicant is permitted to submit the copies of GST Returns manually in physical form.
- ii. The Respondent is directed
  - a. to accept the manual filing and process the same in accordance with law so that the benefits such as Input Tax Credit can be availed by the concerned parties.
  - b. to provide necessary facility to generate E-Way bill in respect of movement of goods sold under liquidation.
  - c. to send a copy of this order to the Central Board of Indirect Taxes and Customs so that the said Authority may take an appropriate decision in respect of companies under liquidation, in line with those for companies undergoing CIRP.

10. Accordingly, the Application is allowed and disposed of.

Sd/-  
V. Nallasenapathy  
Member (Technical)

Sd/-  
Mohammed Ajmal  
Member (Judicial)