



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/33/KOB/2023

In

IA(IBC)/106/KOB/2021

In

IBA/52/KOB/2019

*(Under Section 42 of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s Propyl Packaging Limited*

**MEMO OF PARTIES:**

DEPUTY COMMISSIONER (ASSESSMENT),  
Special Circle, First Floor, SGST Tax Complex, Thrissur

... Appellant

**-Versus-**

GEORGE VARKEY, (LIQUIDATOR),  
Reg No. IBBI/IDA-001/IP-P00433/2017-2018/10756  
Building No. 110, Ground Floor, Surabhi Nagar,  
Near Collectorate, Kakkanad, Kochi 682030

... Respondent

**Coram:**

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing)**

For Petitioner : Mr. Arun Chandy, Advocate  
For Respondent : Mr. Akhil Suresh, Advocate

**Order reserved on: 01.03.2023**  
**Order pronounced on: 04.05.2023**

**ORDER**

1. This application has been filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') by the Deputy Commissioner (Assmt.), Special Circle, Thrissur, Central Sales Tax against Mr. George Varkey, the Liquidator of M/s Propyl Packaging Limited (hereinafter



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- referred to as 'Liquidator'), with a prayer to direct the respondent/Liquidator to accept the A2 claim of the appellant, creditor.
2. M/s Propyl Packaging Limited ('Corporate Debtor') was admitted into Corporate Insolvency Resolution Process by order of this Tribunal dated 14.02.2020 in IBA/52/KOB/2019. The respondent was appointed as the Interim Resolution Professional by way of the same order. At the first meeting of the Committee of Creditors of the corporate debtor, the respondent was appointed as the resolution professional. Consequently, this Tribunal passed an order under section 33(1) in IA(IBC)/106/KOB/2021 in IBA/52/KOB/2019 dated 18.11.2021 admitting the corporate debtor into liquidation.
  3. The corporate debtor was a registered dealer under the Central Sales Tax Act, 1956 ('CST Act, 1956') falling under the jurisdiction of Deputy Commissioner (Assmt.), Special Circle, Thrissur bearing TIN: 32081015452.
  4. The appellant, on completion of assessment under the KVAT Act, 2003 and CST Act, 1956 for the years 2009-10, 2012-13, 2014-15, 2015-16, 2016-17 and 2017-18, determined that the corporate debtor has a liability of tax and interest amounting to Rs. 4,60,11,238. The details of each assessment are as follow:-

Assessment Year	Under Act	Pre-assessment notice dated	Acknowledge of notice	Reply filed by dealer	Assessment order dated	Tax	Interest
2009-10	VAT	10.12.2015	15.12.2015	24.12.2015	22.11.2020	75589/-	106580/-
2012-13	VAT	16.02.2019	Closed & left	NIL	22.03.2019	372758/-	391396/-
2014-15	VAT	16.06.2020	18.08.2020	01.11.2020	22.11.2020	325289/-	263484/-
2014-15	CST	10.10.2017	10.10.2017	28.11.2018	28.01.2020	138541/-	112218/-
2015-16	CST	19.10.2020	Closed & left-23.10.2020	NIL	16.12.2020	969930/-	552860/-
2015-16	VAT	19.10.2020	Closed & left-23.10.2020	NIL	16.12.2020	3294908/-	1878098/-
2016-17	CST	10.10.2017	10.10.2017	13.07.2017	16.07.2020	4416517/-	3047397/-
2016-17	VAT	13.07.2020	09.09.2020	06.11.2020	22.11.2020	16707205/-	11527971/-
2017-18	CST	15.10.2019	22.10.2019	22.12.2020	27.10.2021	1262412/-	568085/-
Total						27563149/-	18448089/-
						<b>4,60,11,238/-</b>	



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5. The appellant submitted his claim in Form C on 20.12.2021 in response to the public announcement by the liquidator on 24.11.2021 calling for stakeholders to submit their claims by 22.12.2021.
6. The liquidator rejected the claim of the appellant in Form C for Rs. 4,60,11,238 vide email dated 11.11.2022 as given below:

*"You have submitted your claim in Form C on 20.12.2021 for Rs. 4,60,11,238/-, against the public notice of Liquidation Process of M/s. Propyl Packaging Ltd. Your claim amount was based on various Assessment Orders passed after 14.02.2020. As you are aware, the Corporate Insolvency Resolution Process (CIRP) of M/s. Propyl Package Ltd was ordered on 14.02.2020 by Hon'ble National Company Law Tribunal (NCLT). Kochi Bench vide order No. IBA/52/KOB/2019/184 dated 17.04.2020 (the said order). The copy of the said order is attached herewith. By this said order, Hon'ble NCLT has ordered for the commencement of moratorium as envisaged under Sec. 14(1) of Insolvency and Bankruptcy Code, 2016 which "prohibits the institution of suits or continuation of pending suits or proceedings against M/s. Propyl Packaging Ltd. including execution of any judgment. decree or order in any court of law, tribunal, arbitration panel or other authority" (page 6 and 7 of the said order attached herewith). By this order it prohibits any proceedings which include the tax assessments by the governments. It is also the view of the Hon'ble NCLT in the recent cases as appeared in the Court that all the Tax assessments during the CIRP process are void. Various decisions by the Hon'ble Supreme Court of India also are in line with the said*



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*order. At the beginning I took the view that the claim can be admitted in the Liquidation process. But based on the said order, various decisions of the Apex court and the legal opinion received. the liquidator is not permitted to admit the claim submitted by the state tax department where the claimed amount is based on assessments done during the CIRP process. Hence your claim cannot be admitted since your claim was based on the assessment orders passed during the CIRP period. Claimed amount: Rs. 4,60,11,238/-, Admitted amount: 0, Rejected amount: Rs. 4,60,11,238/-, it is the intimation for rejection of claim under Section 40(2) of the Insolvency and Bankruptcy Code, 2016.”*

7. The learned counsel for the appellant has contended that the liquidator's decision to reject the claim is erroneous and that the claim of the appellant should be accepted by the liquidator on following grounds:-
- a) The claim of the appellant falls within the definition of 'claim' under section 3(6) of the Code and is admissible in eyes of the law.
  - b) The claim has been filed in Form C within the time specified in the public announcement i.e., 22.12.2021.
  - c) The liquidator was liable to communicate his decision on the admission or rejection of the claim within 7 days of the claim. However, the intimation has been sent only on 11.11.2022 after a delay of 10 months and 15 days.
  - d) The liquidator in his erstwhile position as the Interim Resolution Professional has not received the pre-assessment notices sent by the Department and therefore has violated the duties of the resolution professional under sections 17, 18, 20 and 35 of the Code.
  - e) Reliance has been placed on the verdict of the Hon'ble Supreme Court in **S.V. Kandeakar vs. V.M. Deshpande and another** (1972) 1 SCC 438, where it was held that the assessment proceedings for computing the



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amount of tax must be held to be such other legal proceedings as can be started or continued without the leave of the Liquidation Court under Section 446 of the Companies Act, considering Section 14 of the I & B Code is analogous (pari materia) to Section 446 of the 1956 Companies Act.

f) Further reliance has been placed on the judgement of **M/s Embassy Property Developments Pvt. Ltd. vs. The State of Karnataka and others** [2020] ibclaw.in 12 SC to hold that the liquidator does not have jurisdiction to interfere in the issuance of assessment order by a statutory body as such assessment orders fall within realms of public law and the Hon'ble Tribunal would not have the power of judicial review of such orders.

g) Additionally, the appellant has also submitted that the claim would have to be treated as a secured creditor under section 3(30) of the Code in view of the Supreme Court judgement in **State Tax Officer (1) Vs. Rainbow Papers Limited** (2022) ibclaw.in 107 SC read with Section 38 of the Kerala Value Added Tax Act, 2003

“Section 38: Tax payable to be first charge on the property: - Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any another person under this Act, shall be the first charge on the property of the dealer, or such person.”

8. The liquidator has made the following submissions in the counter affidavit dated 31.03.2023:

a) The claim filed by the appellant has been accepted by the liquidator and the same has been rejected vide email reply dated 11.11.2022. Further, the prayer sought in the appeal is the nature of condonation of delay and not challenge to the rejection of the claim and therefore not within the scope of Section 42

b) All the assessment orders were passed, except for the assessment year 2012-13, during the pendency of CIRP. The assessment order for the year 2012-13 had been appealed by the corporate debtor and a fresh order dated



05.08.2021 was passed during the pendency of the CIRP. Hence, all assessment orders were passed when a moratorium under section 14 of the Code was in force.

- c) The respondent has also placed reliance on paragraphs 8.2 and 8.11 of the Report of the Insolvency Law Committee of February 2020 regarding the purpose of Section 14.
  - d) Finally, it was submitted that the issue with respect to the admission of claims for assessment orders passed during the moratorium is res-integra placing reliance on the judgement of Hon'ble Karnataka High Court in the matter of **Associate Décor Limited vs. Deputy Commissioner of Commercial Taxes** in Writ Petition No. 17303/2021 dated 16.12.2021.
9. Having heard the arguments of both sides, the following are the points for consideration:
- 1) Whether the appeal under section 42 is maintainable?
  - 2) Whether the moratorium under section 14 of the Code would prevent the assessment of dues under the KVAT Act, 2003 and CST Act, 1956?
  - 3) Whether the order of the liquidator rejecting the claim of the appellant vide email dated 11.11.2022 liable to be set aside?

**Point No.1**

10. The respondent has contended that the appeal is not maintainable under section 42 as the claim has been accepted by the liquidator and the same has been rejected vide email reply dated 11.11.2022, hence the prayer sought in the appeal is the nature of condonation of delay (In para 5 of the counter affidavit). In para 11 of the counter affidavit, the respondent once again reiterated his submission that the claim has been accepted.
11. The provisions of the Code regarding admission or rejection of claims submitted by the creditors are given in section 40, which is reproduced below:
- “40. Admission or rejection of claims. –
- (1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:



Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.”

On perusal of the provisions of section 40 of the Code, the Code envisages that the liquidator, on submission of a claim by the creditor, shall either admit *or* reject the claim. The scheme of the Code does not provide for the acceptance of the claim, followed by rejection of the claim later – the liquidator must either admit or reject the claim.

12. Thus, the submission of the liquidator that he had accepted and later rejected the claim is contrary to the provisions of the Code. By extension, the respondent’s submission that the prayer sought in the appeal is the nature of condonation of delay is not correct.

13. Further, Regulation 30 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides:

“Regulation 30. Verification of Claims

The liquidator shall verify the claims submitted *within thirty days* from the last date for receipt of claims and may *either admit or reject the claim*, in whole or in part, as the case may be.”

14. It is seen from the application that the last date for submission of claims was 22.12.2021. The claim of the appellant was submitted within the time i.e., 20.12.2021. As per Regulation 30, the liquidator had to complete verification of the claim within thirty days i.e., 21.01.2022 and communicate his decision within seven days of admission or rejection i.e., 28.01.2022. However, the liquidator had communicated the rejection of the claim only on 11.11.2022 after a delay of nearly ten months from the timelines specified in the Code. Section 42 of IBC, 2016 clearly states that the appeal against the decision of liquidator either accepting or rejecting the claims to be filed before Adjudicating Authority within fourteen days from the date of receipt of decision.



15. On consideration of the above facts, Point No. 1 is answered in the affirmative and the appeal under section 42 is maintainable.

**Point No. 2**

16. The next question arises whether the assessment of dues under the KVAT Act, 2003 and CST Act, 1956 is prevented by the moratorium under section 14 of the Code.

17. The above question is a settled position of law which has been answered by the Supreme Court in the case of **Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs** (2022) ibclaw.in 103 SC where it was held as follows:

*“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.*

*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 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.*

18. Therefore, the Supreme Court has held that statutory authorities have limited jurisdiction to determine the amount due from the corporate debtor, and the



moratorium does not operate in the way of taking steps to determine the tax, interest, fines or any penalty which is due. Further, the jurisdiction is only to initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundaries and proceed to initiate recovery from the corporate debtor.

19. The Supreme Court had rendered this verdict in the context of the Customs Act, 1962 but the ratio of the judgement would be applicable to assessments under other statutes also.
20. Point No. 2 is answered in the negative - assessments (or reassessments) under the KVAT Act, 2003 and CST Act, 1956 for **would not** be barred by moratorium under section 14 of the Code.

**Point No. 3**

21. Whether the order of the liquidator rejecting the claim of the appellant vide email dated 11.11.2022 is liable to be set aside depends on whether the action taken by the appellant under section 25(1) of the KVAT Act, 2003 and Rule 6(5) of the Kerala CST Rule, 1957 falls within the purview of 'assessment' for determination of dues or whether it is an action for recovery of dues.
22. The perusal of the provisions of section 25(1) of the KVAT Act, 2003 and Rule 6(5) of the Kerala CST Rule, 1957 would indicate that the section only provides for the assessment of escaped turnover and does not provide for any coercive/recovery action that would result in the diminution of the assets of the corporate debtor. Thus, the determination of dues under section 25(1) of the KVAT Act, 2003 and Rule 6(5) of the Kerala CST Rule, 1957 falls within the purview of 'assessment' and would not be barred by the moratorium.
23. Further, the appellant on the determination of dues under section 25(1) of the KVAT Act, 2003 and Rule 6(5) of the Kerala CST Rule, 1957 has correctly filed Form C with the liquidator for an amount of Rs. 4,60,11,238 in accordance with provisions of the Code.
24. It is seen that the respondent has not raised any objection or filed any appeal against the amount determined by the appellant but rather rejected the claim on



the sole ground that tax assessments during the CIRP are void and the liquidator is not permitted to admit the claim.

25. If the respondent is/was aggrieved by the merit of the orders passed by the appellant, the respondent is required to approach the appropriate appellate authority under which the order is passed. The decision of the apex court in **M/s Embassy Property Developments Pvt. Ltd. vs. The State of Karnataka and others [2020] ibclaw.in 12 SC** as given below hold true:

*“40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”*

26. The respondent has wrongly placed reliance on the judgement of the Karnataka High Court in the matter of Associate Décor Limited for two reasons. *First*, where a judgement of the Hon’ble Supreme Court exists on the same matter, it shall hold precedential value over the judgements of the High Courts. Therefore, the ratio of the apex court judgement in ‘Sundaresh Bhatt, Liquidator of ABG Shipyard’ (supra) shall hold precedential value in the matter. Secondly, a closer reading of the judgement in Associate Décor Limited (supra) would indicate that the judgement was passed staying/suspending notices issued by tax authority under Section 65 of the KGST Act and CGST Act. Section 65 of the CGST Act, 2017 is for audit by tax authorities, which is not in the nature of assessment and cannot be considered analogous to section 25(1) of the KVAT Act, 2003 or Rule 6(5) of the Kerala CST Rule, 1957. Therefore, the judgement would not have precedential value in the present matter.
27. Since the grounds for rejection by the liquidator of the claim of the appellant have been found to be without basis in law or judicial pronouncements, Point No. 3 is answered in the affirmative and the order of the liquidator rejecting the claim of the appellant vide email dated 11.11.2022 is set aside



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28. In these circumstances and noting the fact that the delay of twenty-two days in filing the appeal under section 42 against the decision of the liquidator rejecting the claim of the appellant has been condoned by the Tribunal, the respondent is hereby directed to reconsider the claim of the appellant afresh, taking all materials and particulars submitted by the appellant into consideration. The respondent is to pass appropriate orders taking into consideration the observations in this order and in accordance with the law. Thus, this application is ordered and disposed of.
29. 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.
30. Certified copy of the order is to be issued upon compliance with requisite formalities.
31. File to be consigned to records.

SATYARANJAN PRASAD

Digitally signed by SATYARANJAN PRASAD  
Date: 2023.05.04 14:30:33 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN  
MOHAN RAJ

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MOHAN RAJ  
Date: 2023.05.04 13:07:05 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 4<sup>th</sup> day of May, 2023.

Kaushal P.S.