

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/1066(CHE)2021

in

IBA/243/2019

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

*In the matter of **M/s. Thiru Arooran Sugars Limited***

The Government of Tamil Nadu,
Rep. by Tmt. G. Bharathy, Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Taluk Office Building 2nd Floor,
Spurtank Road, Chetpet,
Chennai-600 031

... Applicant

-Vs-

Mr. Ramakrishnan Sadasivan,
Liquidator,
M/s. Thiru Arooran Sugars Limited,
Having its Registered Office at
New No. 28, Old No. 28,
Menod Street, Purasawalkam,
Chennai-600 007

... Respondent

And

IA(IBC)/969(CHE)2021

in

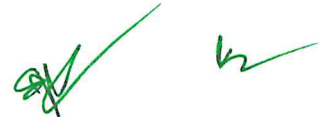
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No.88, Mayor Ramanathan Salai,
Taluk Office Building 2nd Floor,
Spurtank Road, Chetpet,
Chennai-600 031

... Applicant

-Vs-



M/s. Thiru Arooran Sugars Limited,
No. 112, Uttamar Gandhi Salai,
Eldarado Building,
Chennai-600 034

... Corporate Debtor

Order Pronounced on **2nd August, 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant:

Mr. C. Harsharaj, Advocate (IA(IBC)969 & 1066(CHE)2021)

Mr. A. Arun, Advocate (IA(IBC)969 & 1066(CHE)2021)

Ms. R. Aishwarya, Advocate (IA(IBC)969 & 1066(CHE)2021)

For Respondent:

Mr. B. Dhanaraj, Advocate (IA(IBC)969 & 1066(CHE)2021)

COMMON ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

The Government of Tamil Nadu through its Assistant Commissioner (ST) Smt. G. Bharathy has filed IA(IB)/969(CHE)2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") for setting aside the order dated 26.04.2021 passed by the Respondent/Liquidator whereby part claim of the Applicant was admitted under the category of the Operational Creditor. Along with this application, an IA(IB)/1066(CHE)2021 has been filed seeking condonation of delay of 84 days in filing the Interlocutory Application challenging the partial rejection of claim by the Liquidator.

2. It is stated that the Corporate Debtor M/s. Thiru Arooran Sugars Limited was assessed for the years 2011-12 to 2017-18 under Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) and Central Sales Tax Act, 1956 (CST Act, 1956) and was found liable for a sum of Rs.1,53,57,958/- (Rupees One Crore Fifty Three Lakhs Fifty Seven Thousand Nine Hundred and Fifty Eight only). The Applicant had filed a claim before the Liquidator on 19.04.2021 which the Liquidator accepted except the claim for the CST 2017-18 order amounting to Rs.35,55,969/- (Rupees Thirty-Five Lakhs Fifty-Five Thousand Nine Hundred and Sixty-Nine only) citing the reason that the demand for the above order is after the liquidation commencement date. It is stated that the Applicant had filed C-Forms for the value of Rs.37,96,53,175/- (Rupees Thirty-Seven Crores Ninety-Six Lakhs Fifty-Three Thousand One Hundred and Seventy-Five only) pertaining to the Assessment Year 2017-18 with its letter dated 10.10.2019. Since there was an order of moratorium with effect from 07.06.2019, no action could be initiated against the Corporate Debtor. The order under CST Act was issued for the year 2017-18 on 19.04.2021 i.e. within a week after the liquidation commencement date. It is stated that if the Assessment order passed by the Applicant is not taken into account for the period 2017-18, it would result into increased burden to the liquidation assets. It is stated that liability of the Corporate Debtor was existing before the liquidation commencement date itself. It was not a fresh

demand as according to Section 10-B of the CST Rules, 1957, the Corporate Debtor should have filed the Declaration Forms for each quarter on or before 20th day of the succeeding quarter endings as inserted by the Notification No. SRO A-16(b)/2010 dated 25.05.2010 and as amended in G.O.Ms.No.70 dated 25.05.2010 and Circular issued by the Commissioner of Commercial Taxes in Act Cell-IV/23187/2009 dated 18.06.2009.

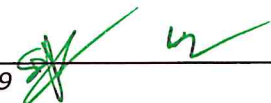
3. It is stated in the application for condonation of delay that there is a delay of 84 days in filing the application. Reference is made to an order of the Hon'ble Supreme Court dated 08.03.2021 in Suo Motu Writ Petition (Civil) No. of 3 of 2020 to state that the delay may be condoned.

4. The Liquidator filed the reply stating that the Applicant had preferred the claim originally before the IRP on 05.12.2019 claiming a sum of Rs.1,17,38,629/- (Rupees One Crore Seventeen Lakhs Thirty-Eight Thousand Six Hundred and Twenty-Nine only) towards the dues of the sales tax from the Corporate Debtor which claim was admitted by the IRP on 18.07.2020. Vide order dated 08.04.2021, liquidation of the Corporate Debtor was ordered and the Respondent was appointed as the Liquidator. Pursuant thereto, the Applicant had preferred Form-C towards the dues for the years 2011-12 to 2017-18 on 19.04.2021 along with the copies of the Assessment Orders. At Serial No.4 of the Claim Form, the Applicant claimed

Rs.35,55,696/- (Rupees Thirty-Five Lakhs Fifty-Five Thousand Six Hundred and Ninety-Six only) for the year 2017-18 based on the Assessment Order dated 19.04.2021 which is after the date of commencement of the liquidation. Reference is made of Regulation 16(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to state that the Respondent is not liable to entertain any claim which arises after the liquidation commencement date. It is stated that the Respondent has rightly rejected the claim taking recourse to the above Regulation. Reference is made of the cases "**National Plywood Industries Ltd. vs. Union of India and Anr. (WP(C)1059/2020) dated 17.02.2020 and Dishnet Wireless Limited vs. The Deputy Commissioner of Income Tax (WP/24097-98/2018) dated 18.12.2018**". It is stated that the moratorium under Section 14 of IBC, 2016 is intended to the proceedings which are in the nature of debt recovery and cannot be extended to merely assessment proceedings which have no adverse impact on the assets of the debtor during the CIRP.

5. We have heard Ld. Counsel for the parties and perused the records.

6. The liquidation in the present case was ordered on 08.04.2021. The Applicant had preferred Form-C towards the dues for the years 2011-12, 2017-18 on 19.04.2021. In the claim form i.e. Form-C, the Applicant has claimed Rs.35,55,969/- (Rupees Thirty-Five Lakhs Fifty-Five Thousand Nine Hundred and Sixty-Nine



only) for the year 2017-18 based on the Assessment Order dated 19.04.2021 which is after the date of commencement of the liquidation.

7. Regulation 16(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that a person shall prove his claim for debt or dues to him, including interest, if any, as on the date of liquidation commencement date. A reading of the said regulation would show that no claim which arises after the liquidation commencement date can be entertained.

8. It is evident from the record that the CIRP against the Corporate Debtor was initiated on 07.06.2019. The order of moratorium came into effect from 07.06.2019. The order of liquidation was passed on 08.04.2021 meaning thereby that the moratorium was in force till 08.04.2021.

9. Since Liquidation commenced in the matter vide order dated 08.04.2021. The last date for filing the claim before the Liquidator was 08.05.2021. It is admitted that the claim was filed before the Liquidator on 19.04.2021. A Scheme under Section 230 of the Companies Act, 2013, was already under consideration before the Liquidator. This Tribunal, vide order dated 24.01.2022, has approved the first motion application. Final scheme was approved by this Tribunal in CP(CAA)/309(CHE)/2022 vide order dated 02.05.2022. Pursuant to the approval of the scheme, the Company



has since been handed over to the Scheme Proponent. The Successful Scheme Proponent is continuing with the operations of the Company. When the present application was e-filed on 09.02.2022, there were certain defects which were rectified and it was filed physically only on 12.07.2022.

10. Thus, it is clear that the present application seeking condonation of delay was received by this Tribunal in physical form only on 12.07.2022 around six months after the approval of the Scheme by this Tribunal. Further, we accept the plea of the Ld. Liquidator that admission of new claim after approval of the Scheme would defeat the time bound manner of liquidation process of the Corporate Debtor as has been observed by the Hon'ble NCLAT in ***Company Appeal No. (AT)(Ins)1525 of 2019*** in the matter of ***The Deputy Commissioner, Commercial Taxes (Audit), Raichur Vs. Surana Industries Ltd (in Liquidation) & Anr.*** Considering the same this Tribunal is of the view that this application deserved to be dismissed.

12. Accordingly, both IA(IBC)1066(CHE)2021 and IA(IBC)/969(CHE)/2021 are **dismissed** with no orders as to costs.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

Suguna