

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

Company Appeal (IBC)/01/KOB/2023

IN

IA(IBC)/147/KOB/2021

IN

IBA/38/KOB/2019

(Under Section 42 of the IBC, 2016)

In the matter of

**M/s. Albanna Engineering (India) Private
Limited**

MEMO OF PARTIES:

DEPUTY COMMISSIONER,

Works Contract, Kerala State Goods and
Services Department, Ernakulam.

... Appellant

-Vs-

VINOD BALACHANDRAN FCA,

Liquidator, 70/1909, Asoka Road, Kaloor, Kochi-
682 017

... Respondent

Order delivered on: 11.09.2023

Coram:

Hon'ble Member (Judicial) : TMT. Justice T Krishna Valli (Retd.)

Hon'ble Member (Technical) : Shri. Shyam Babu Gautam

Appearances:

For the Appellant : Mr. Arun Chandy, Government Pleader

For the Respondent : Mr. Vinod Balachandran, Liquidator

ORDER

Per Coram

1. This Company Appeal is filed under Section 42 of the IBC, 2016 by Deputy Commissioner, Works Contract, Kerala GST Department against the Liquidator of M/s Albanna Engineering (India) Private Limited (the Corporate Debtor) for rejection of their claim in liquidation proceedings and to direct the liquidator to accept the Annexure A1 claim.

The Brief facts of the case are as follows: -

2. M/s. Albanna Engineering (India) Private Limited (hereinafter the 'CD') was admitted to CIRP vide order of this Tribunal dated 25.10.2019 and appointed the respondent as the IRP and later as the RP with approval of the COC. Subsequently the CD was admitted to liquidation by this Tribunal on 02.12.2021 and the respondent was appointed as the liquidator. It is stated that the CD is a wholly owned subsidiary of M/s. Albanna Engineering LLC, UAE and is a registered dealer under Kerala VAT Act having TIN:32072000387.
3. The appellant states that on verification of the assessment records for period 2016-17, certain irregularities were noted and notice under section 25(1) of the KVAT act was issued to CD. After considering the submissions from liquidator, vide order dated 26.09.2022, a demand of Rs. 5,96,23,334/- (Tax- Rs.3,59,17,671 and Interest- Rs. 237,05,663/-) was issued. It is stated that the public announcement of liquidation was made on 09.12.2021 and last date for filing claim was 16.01.2022. The appellant state that due to non-

intimation of the liquidation by the liquidator, the appellant filed Annexure A1 claim in Form C dated 29.09.2022 only on 01.10.2022.

4. It is stated that the liquidator vide Annexure A2 email dated 11.10.2022 rejected the claim as follows:-

"I am in receipt of Form C dated September 29,2022 works regarding contract liability claim for the assessment year 2016-17 amounting to Rs.5.9Cr. As mentioned before in my e- mail dated September 27, 2022 and also the meetings in your office on October 7, 2022, I am unable to accept the claim under Section 38 of 180, 2016 and Regulation 12(2), 17, 30 of IBBI (Liquidation process} Regulations, 2016 since the last date for submission of claims was Jan 6, 2022. The claim is now received in the 9 months of the Liquidation period when the Liquidation process is nearing completion."

5. The appellant states that the rejection of claim by liquidator is in violation of section 88(1) of the CGST Act, 2017 which state that the liquidator shall be bound to within 30 days of his appointment give intimation to the commissioner. The appellant further relies on **State Tax Officer Vs Rainbow Papers Ltd (2022 KHC 6921)** to state that the State is a secured creditor under section 3(30) of IBC and delay in filing of claim cannot be the sole ground for rejection of claim. Appellant further rely on section 38 of KVAT Act, 2003, being a non obstante provision state that the Tax payable by a dealer shall have first charge on property of such dealer irrespective of any law in time being in force. The Appellant state that there exist no wilful laches or delay on part of the appellant

and that it is due to administrative procedure in seeking approval from Joint Commissioner of Law that the claim was filed belatedly.

6. On respondent side, the liquidator state that after CIRP order dated 25.10.2019, the public announcement was made on 03.11.2019. Subsequently CD was put to liquidation on 02.12.2021 and the public announcement was made on 09.12.2021 for filing claims by 06.01.2022. It was during the liquidation moratorium period, the appellant issued notice dated 12.08.2022 under section 25(1) of KVAT Act, 2003 in respect of claim pertaining to period 2016-17. It is stated that the appellant had on 04.01.2022 filed a claim pertaining to period 2015-16 on time but failed to file the present impugned claim. It is stated that the appellant has dishonestly stated that he was unaware of the liquidation process as he had filed the earlier claim within time. The liquidator contends that the appellant issued this demand notice for Rs. 5,96,23,334/- dated 26.09.2022 without following principles of natural justice. It is further stated that this Tribunal had earlier rejected in IA /331/KOB/2022, the appeal of appellant for claim pertaining to period 2015-16 on ground that the demand order was passed during moratorium period.
7. The respondent state that even under KVAT Act, 2003 the present claim is not maintainable for reason that as per section 25 of KVAT Act, the assessing authority cannot make enquiries beyond 5 years from last date of year which return relate to. The period for

impugned 2016-17 ended on March 2022 and the notice u/s25 was issued later.

8. It is stated that the liquidator has already paid all secured creditor as per IBC on July, 2022 and distribution for unsecured creditor has also been completed on pro rata basis except for any claims admitted by this Tribunal as amounts in liquidation estate is not sufficient to satisfy all claims. The liquidation process is near completion and claim if opened again shall disturb the process of IBC. It is further contended that as averred by appellant the liquidator has not only rejected the claim for delay but for proper reason.
9. The respondent further state that the Rainbow Judgement of Hon'ble Supreme Court was based on different facts wherein the assessment order was passed prior to moratorium under CIRP and that unlike the present case, the distribution under liquidation had not commenced. It is further stated that the appellant has made claim in Form C as an operational creditor and not as secured creditor.
10. The appellant on his rejoinder stated that the order dated 26.09.2022 for tax payment was not barred under section 25 of KVAT Act, 2003 for reason that the Kerala Government had vide notification No.5516/Leg.A2/2017/Law dated 16.06.2017 extended the time period for assessment to 6 years from last date of year. It is further stated that there is a stay in respect of admission of claim by the High Court of Kerala in another case and

hence liquidation cannot be completed. It is also stated that the appellant was unaware of the liquidation process of the CD for reason that the appellant being a quasi-judicial authority the claim in different period is handled by different officers and burdensome work.

11. Heard submissions and perused documents on record. The claim raised by the appellant is based on an assessment order for Tax dated which pertains to period 2016-17 for an amount of Rs. 5,96,23,334/-. Admittedly the claim was filed with an inordinate delay of 266 days from last date of receipt of claims by liquidator. Moreover, this claim arises out of what can be clearly termed as 'proceedings' which is prohibited under section 33(5) of the IBC, 2016. By virtue of Section 238, IBC clearly has overriding powers over KVAT Act and its proceedings which is upheld by the Supreme Court on various occasions. Hence this order dated 26.09.2022 of the appellant is void and non est in law as per the IBC. This position was also affirmed vide order dated 26.10.2022 by this Tribunal in IA(IBC)/331/KOB/2022. The appellant has misplaced reliance on Rainbow Judgement of SC which has different set of facts as well. Moreover in **Paschimanchal Vidhyut Vitaran Nigam Limited V. Raman Ispat Private Limited and others (2023 INSC 625)**, SC has clarified that the government dues shall have priority as under section 53(1)(f) of IBC, 2016. It is also pertinent to note that the present claim if admitted will only hinder the time bound process of IBC and the liquidation process of the CD. Therefore, this company appeal is misconceived and devoid of merit.

12. In result, Company Appeal (IBC)/01/KOB/2023 is, therefore, dismissed and disposed of, accordingly.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
14. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
15. File be consigned to records.

Sd/-
SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-
T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 11th day of September, 2023.

Rohit/LRA