

IA(IBC)32/KOB/2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

I.A.(IBC) No. 32/KOB/2021

In

MA/09/KOB/2019 in CP (IB)/689/2017 (Chennai Bench)

(Under Rule 154 read with Rule 11 of NCLT Rules)

Date of decision: 2nd August, 2021

CORAM:

Mr. Rajesh Sharma,
Hon'ble Member (Technical)

Mr. Ashok Kumar Borah
Hon'ble Member (Judicial)

In the matter of:

Merchem Limited
Having office at V0774, 141 Development Area,
Edayar, Muppathadom, Paravur, Cochin-110
Represented by its Authorized Signatory
B.Unnikrishnan Nair

... Applicant

Versus

1.The Department of Factory & Boiler
Represented by its Director,
Suraksha Bhavan, Kumarapuram,
Thiruvananthapuram-.11

2. Office of the Inspector of Factories and
Boilders Gr.I, represented by its Inspector
Ernakulam, Civil Station, Kakkanad.

3. The Kerala State Pollution Control Board
Represented by its Member Secretary
Pattom, Thiruvannthapuram-4.

4. The Environment Engineer,
The Kerala State Pollution Control Board
Fact Qr.No.S-5, Udyogmandal PO, Ernakulam-683501.

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5. The Department of Power represented by its secretary
Office of the Chief Electrical Inspector,
Housing Board Building, Shantinagar,
Thiruvananthapuram-1
6. The electrical Inspector,
Office of the Deputy Chief Electrical Inspector,
Electrical Inspectorate, Thoppil Estate,
Vytilla PO, Kochi-19.
7. The Kerala Water Authority, represented by its
Director, Jalabhavan, Vellayambalam,
Thiruvananthapuram-10.
8. The Executive Engineer, the Kerala Water
Authority, Kochi Region, Near Kerala High Court,
Kochi-31.
9. Office of the Executive Engineer, the Kerala Water Authority
Water Supply Division, Kalamassery, Kcchi-31.
10. The Kerala State Electricity Board,
Represented by its Chairman & Managing Director,
Vyduathi Bhavanam, Pattom, Thiruvananthapuram.4.
11. The Asst.Executive Engineer, Kerala State Electricity Board,
Represented by its Assistant Executive Engineer,
HMT Kalamassery, Kochi, Kerala-683104.
12. The Tahzildar (Land)
Paravur Taluk, Ernakulam-683513.
13. The District Collector,
Collectorate, Kakkanad, Ernakulam-682030
14. The Assitant Commissioner I, Office of the
Assistant Commissioner, Department of Commercial Taxes,
Special Circle, Commercial Taxes, Aluva.
15. The Regional Provident Fund Commissioner II
Regional Provident Fund Organization,
Regional Office, 346/685A, Bhavishyanidhi Bhavan,
Kaloor, Kochi-682017.

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16. The Enforcement Officer,
Employees Provident Fund Organization,
Regional Office, Bhavishyanidhi Bhavan,
PB No.1895, Kaloor, Kochi.17.

17. The Joint Director General of Foreign Trades,
A Block, V Floor, Kendriya Bhavan, Kakkanad, Cochin.37.

18. The Deputy Director General of Foreign Trades,
Office of the Additional Director General of Foreign Trade,
Kendriya Sadan, 6th flkooor, C&E Wing, 17th Main Road,
Koramangala, 2nd block, Bangalore.34.

19. The Secretary of Eloor Municipality,
Eloor Municipal Office, Eloor, Kochi-683501. Kerala.

20. The Gujarat Industrial Development Corporation,
Represented by its Vice Chairman and Managing Director,
Block 3/4/5 Udhyog Bhavan, Sector 11
Gandhinagar, Gujarat.

21 The Regional Manager, Gujarat Industrial Development
Corporation, Com/Plot No.320/2, Asian Trade Centre,
3rd floor, Near Asian Paints Chowkdi, GIDC,
Ankleshwar, Dist. Bharuch, Gujarat.

22. The Deputy Executive Engineer,
Gujarat Industrial Development Corporation,
Panoli Notified Area Authority, Water Supply Division,
Plot No.409/C, Near Fire Station Building
Panoli, Dist. Bharuch, Gujarat.

23. Narmada Clean Tech, represented by its Managing Director,
Surati Nagar, Near Gujarat Gas Office, Umarvade Road,
Ankaleshwar, Dist. Bharuch, Gujarat.

24. The Assistant Commissioner of Sales Tax,
Sales Tax Department, Govt. of Gujarat, Ghatak 56, Ankleshwar
Taluka Seva Sadan, Dist. Bharuch, Gujarat.

25. The Assistant Commissioner of Professional Tax,
Office of the Commissioner of Professional Tax,
Govt. of Gujarat, 2nd floor, Taluka Seva Sadan, Ankleshwar
Dist. Bharuch, Gujarat.

..Respondents

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Parties/Counsel appeared (through Video Conferencing)

For Applicant : Shri. Ravi Rajagopalan, Advocate

For Respondents : None

ORDER

This application has been filed under Rule 154 read with Rule 11 of NCLT Rules, 2016 by the authorised signatory B. Unnikrishnan Nair in the matter of Merchem Limited seeking rectification of error occurred in the final order dated 06.11.2020 in MA/09/KOB/2019.

2. It is stated in the order that the claims were filed by Respondents No.24 and 25 (The Assistant Commissioner of State Tax, Government of Gujarat and The Assistant Commissioner of Professional Tax, Government of Gujarat). However, as per the application filed by the applicant herein, the claims were filed by Respondents No.17 and 18 (The Joint Director General of Foreign Trade and The Deputy Director General of Foreign Trade). It is further stated that the said fact has been stated in Page No.20 of the Application and in addition to the above page Nos.92 to 99 of the Application also evidence the fact that Respondents Nos.17 and 18 had filed their claims and as per the approved Resolution Plan a sum of Rupees 10,00,000/- (Rupees Ten Lakh Only) was paid to them in discharge of the entire claim made by that Respondents. Hence the applicant prayed to rectify the order to the extent of stating that ***“the sole statutory creditor (R17***

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and 18 in MA/2019 i.e., The Joint Director General of Foreign Trade and The Deputy Director General of Foreign Trade)” in the final order dated 06.11.2020.

3. We have heard the learned counsel for the applicant through video conferencing and have gone through the records. It is noted that in page 11 para 32 of the common written submission filed by the learned counsel on behalf of the Corporate Debtor it was stated that “the sole statutory creditor (R24 and R25 in MA/09/2019) who submitted the claim has been paid under the Resolution Plan”. Since an error was committed in the common written submissions submitted by the Applicant in MA/09/KOB/2019 the applicant filed an IA(IBC)/103/KOB/2021 to rectify the mistake occurred in the written submission stating that an inadvertent error crept in because of the typographical error committed in the written submission. It is also stated that it is a matter of fact and record that only R17 and R18 had submitted claims and not R24 and R25. This Tribunal allowed the said IA(IBC)/103/KOB/2021 vide order dated 12.07.2021 directing the registry to carry out the correction in the common written submission. Accordingly, the Registry corrected the written submission of the Applicant/Petitioner.

4. As per Rule 154 of the NCLT Rules (1) “any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification. (2) An application under Sub-Rule (1) may be made in **Form No. NCLT 9** within two years from the date of the final order for rectification of the final order not being an interlocutory order.

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5. The typographical error committed in the common written submission is a matter of fact and since the error committed by the applicant has been rectified, this Tribunal by invoking Rule 154 of the NCLT Rules, 2016, allow IA(IBC)/32/KOB/2021 with a direction that the words occurring in Para 76 of the order dated 06.11.2020, "*the sole statutory creditor (R24 & R25 in MA 9/2019 i.e., The Assistant Commissioner of State Tax, Government of Gujarat and The Assistant Commissioner of Professional Tax, Government of Gujarat)*" be deleted from the order and the following words be substituted "*the sole statutory creditor Respondents No.17 and 18 i.e., (The Joint Director General of Foreign Trade and The Deputy Director General of Foreign Trade)*".

6. The Registry is directed to carry out necessary corrections in the order dated 06.11.2020 in MA/09/KOB/2019 and send a corrected copy to the applicant through e-mail.

Dated the 2nd day of August, 2021

Sd/-
(Rajesh Sharma)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)