

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

Company Appeal (IBC)/13/KOB/2022

IN

IBA/38/KOB/2019

(Under Section 42 of IBC, 2016)

In the matter of:

Albanna Engineering (India) Private Limited;

MEMO OF PARTIES:

STATE TAX OFFICER, Works Contract Kerala State Goods and Services Tax Department, Ernakulam;

... Appellant

-Versus-

VINOD BALACHANDRA, FCA (Liquidator), 70/1909, Asoka Road, Kaloor, Kochi – 682 017.

... Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Appellant : Mr. Arun Chandy,
Government Pleader

For Respondent : Mr. K.B Arun Kumar,
Liquidator

Order reserved on: 23.11.2022

Order pronounced on: 16.12.2022

ORDER

1. This application is filed by State Tax Officer, Works Contract, Kerala State Tax Officer, under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC'), against the order of Liquidator dated 27.07.2022 with the prayer to direct the respondent/ Liquidator to accept the claim submitted by the appellant.

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2. The main submissions of the Applicant for consideration herein are to the effect that Sanghvi Movers Ltd. had filed IBA No. 38/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) against Albanna Engineering (India) Pvt.Ltd. (hereinafter referred to as “Corporate Debtor”). Albanna Engineering India Private Limited (‘Tax payer’ for short) is a private limited company registered under the roll of the applicant having GSTN:32AALCA7735J3ZF which is a wholly owned subsidiary of Albanna Engineering LLC, UAE (‘Parent Company’ for short). This Tribunal Vide order dated 25.10.2019 admitted the application and appointed the Respondent herein as the Interim Resolution Professional. The first COC meeting was convened on 25.11.2019 and the COC resolved to appoint the IRP as the Resolution Professional of the Corporate Debtor.
3. It is averred in the application that during the scrutiny of GSTR 1 with GSTR 3B under section 61 of CGST and SGST Act, 2017 for the Financial Year 2017-18, the following discrepancy has been found out-

Particulars	Turnover declared	Central Tax	State Tax
Declared in GSTR 1	5,10,10,000.00	45,90,900.00	45,90,900.00
Paid through GSTR 3B	32,81,800.00	295,362.00	2,95,362.00
Tax Short Paid	4,77,28,200.00	42,95,538.00	42,95,538.00

4. It is stated that the above discrepancy has been intimated to the tax payer *Vide* ASMT No.32AALCA7735J2ZG/ 17—18/01 dated 13.10.2020 and also uploaded to the common portal. The taxpayer has not replied to the notices. Hence, intimation under Section 73(5) has been issued *Vide* DRC

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01A No.32AALCA7735J2ZG/17-18/DRC01A/1 dated 20.11.2020 and the same was communicated to the registered email id of the taxpayer. But taxpayer has neither replied nor paid any amount. Thereafter, it is found that the tax payer is under Corporate Insolvency Resolution Process ('CIRP' for short). Since, the moratorium was in existence from 25.10.2019, appellant have filed GST claim before the Resolution Professional based on Scrutiny Notice and DRC 01A referred above on 30.12.2020 in accordance with Circular No. 134/04/2020—GST dated 23.03.2020 issued by Central Board of Indirect taxes.

5. Since, nobody has submitted any resolution plan, this Tribunal has ordered liquidation of the corporate debtor *Vide* order in IA(IBC)/147/(KOB)/2021 in IBA/38/KOB/2019 dated 02.12.2021. Based on this order, liquidator has issued public announcement on 09.12.2021 for submitting claim with proof on or before 06.01.2022. Applicant claims that since, the liquidator has not intimated about the liquidation, as per Section 88 of CGST and SGST Act, 2017 read with Rule 160 of CGST/SGST Rules, 2017, in order to protect the interest of revenue the appellant have filed the claim in Form C before the liquidator *vide* TIN No. 320120220006851 dated 05.01.2022. The Liquidator *vide* email dated 15.02.2022 has informed the following "*The claim is admitted. However, there is no liquidation assets with the company. Hence, amount of recovery will be NIL.*" Thereafter, the appellant had initiated provisions of Section 88(3) of the CGST/SGST Act 2017 for determination of tax.
6. It is further stated that pursuant to admission of their claim, liquidator had made another reply on 27.07.2022 rejecting the claim, wherein it is stated that, based on a detailed enquiry into the old invoices of Albanna Engineering Pvt. Ltd which we have managed to trace out with a lot of difficulty the following are the conclusions:

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- i. The difference in turnover is due to credit notes is not updated in GSTR1 on account of bankruptcy of the company and closure of its admin offices.*
 - ii. The taxes were paid correctly in GSTRBB as per actual invoice value.*
 - iii. GSTR 1 invoice was wrongly mentioned without reducing credit notes issued. This is for your information. Hence, this claim is not part of AEIPL.*
7. After receipt of the above-mentioned notice, Respondent had issued another mail reply dated 09.08.2022 stating that opportunity is to be given to the ex-management of the company and now liquidator to verify and submit documents before issuing notices. Respondent had issued another mail reply dated 10.08.2022 stated that similar matter regarding taxable value of invoices issued of AEIPL is already under adjudication by the Central GST (Commissionerate office) for which detailed explanation and documents has been submitted. Subsequently, appellant had issued another mail requesting to *“forward the copy of letter/ adjudication notices issued by Central GST (Commissionerate office) for adjudication of matters which you have claimed to be the same as that mentioned in SCN ZD320822009496G dated 08.08.2022 so that appropriate decision may be taken from our side”*. Then the respondent replied by mail dated 17.08.2022 states that *‘the SCN issued by CGST is under adjudication and we are in the process of completion the submissions. I shall definitely forward to you the details on completion of the adjudication since one of the points of the same is directly related to the turnover reconciliation which is pointed out by your good self’*.
8. As per CGST and SGST Act, if a supplier issues a credit note under Section 34, the input tax credit availed by the corresponding recipient (i.e., the parent company) has to be reversed. As per the GST returns filed by the parent company, they have availed input tax credit based on GSTR 2A and has not made any reversal against credit notes, which itself is a proof that no credit note under Section 34 has been issued by the Corporate Debtor.

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Hence, the assessee is in arrears and a total amount of Rs. 1,62,37,370/- (CGST Rs. 42,95,538 & SGST Rs. 4295538 + interest Rs. 67,87,186 + penalty under Section 73 of the Act Rs. 8,59,108/—). As there is no delay or latches on the part of the Appellant in filing the claim before the Liquidator, the appellant has prayed to issue necessary directions to the respondent to accept the claim submitted by them.

9. The learned counsel for the Respondent submitted that subsequent to the filing of Annexure 1 claim petition, the appellant has filed show cause notices. On a careful analysis of all the documents and show cause notices issued by the appellant, it is revealed that the Corporate Debtor did not have any billing in the GST period from July 2017. The GST returns filed by Corporate Debtor during the GST period was not complete since the turnover difference arose due to a credit note which was not updated in the GST. Hence, there is no GST amount short paid by Corporate Debtor.
10. The learned counsel for the Respondent/ Liquidator further claimed that Albanna Engineering LLC, UAE had entered into a work contact with BPCL Kochi Refinery. For executing the said work, Abanna Engineering LLC, UAE had formed the Corporate Debtor. Albanna Engineering LLC. UAE singed back-to-back basis contract @7% of the amount received from BPCL Kochi Refinery with Corporate Debtor for sub-contractor services for above mentioned project Albanna Engineering LLC, UAE was liable for GST during that period. In addition, due to paucity of funds and other technical reasons, revised Purchase Orders were issued by BPCL Kochi refinery and some of the contractors entered into direct contracts with Albanna Engineering LLC, UAE for which there was no back-to-back contract with Corporate Debtor. This explains the contractual value difference which is the bone of contention of the show cause notice. So, the claim made by the appellant is under adjudication of the CGST Authorities that is File No. C No V/GST 15/39/2020 GST ADJ before the Commissioner of Central Tax and Central Excise Cochin. Since, the claim

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is being adjudicated by the CGST Authorities and only after the completion of the said adjudication, the Liquidator can decide regarding the duplicate claim filed by the Appellant. It was at this background; the respondent Liquidator had issued Annexure A-5 communication explaining all these aspects.

11. We have heard the Learned Government Pleader and learned counsel for the Respondent/ Liquidator. It is found that the Liquidator has already communicated the same issues through email on 10.08.2022, thereafter, this application was filed on 10.10.2022 before this Tribunal. We are therefore, of the view that as the similar matter regarding taxable value of invoices issued of AEIPL is already under adjudication by the Central GST (Commissionerate Office) for which explanations and documents have been submitted, this claim, if considered now by the Liquidator will become duplicate adjudication for the same matter and therefore, the Liquidator is directed to consider this claim as 'De Novo', if the claim before CGST is dismissed.
12. In view of the forgoing, with the above directions this application is disposed of.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.12.16 16:30:51 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN
RAJ
Date: 2022.12.16 15:48:58 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 16th day of December, 2022.

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