

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON AT 10.30 AM 11.12.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER : MA/181/IB/2018 IN CA/61/IB/2018
IN
PETITION NUMBER : CP/510/ (IB)/CB/2017
NAME OF THE PETITIONER(S) : Great Indian linen textiles infrastructure company pvt ltd
NAME OF THE RESPONDENT : Veasons energy systems pvt ltd
UNDER SECTION : 42

S.No. NAME (IN CAPITAL) DESIGNATION SIGNATURE
REPRESENTATION BY WHOM

1. R - RAGHAVENDRAN

Liquidator



2. B. Dhanaraj
Asst. By Mohammed Umar. K

Counsel for liquidator



A.M. Iengo

Counsel for Applicant



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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

MA/181/2018 in CA/61/2018 in CP/510/IB/2017
filed under Section 42 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of **M/s. Veasons Energy Systems Pvt. Ltd. (in
liquidation)**

**M/s. The Great Indian Linen And Textile Infrastructure
Company Pvt. Ltd.**

... Applicant/Operational Creditor

-vs-

Mr. Raghavendran, Liquidator,

... Respondent

Order delivered on 11th December, 2018

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Applicant
For Liquidator*

*: Mr. A.M.Ilango, Counsel
: Mr. B.Dhanaraj, Counsel*

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is MA/181/2018 in CA/61/2018
filed in CP/510/IB/2017 by the Applicant/Operational
Creditor against the Liquidator. The prayer made by the

Applicant/Operational Creditor in the Application is as follows:

a. Hon'ble Tribunal NCLT, Chennai Bench may be pleased to overturn the order dated 17th May 2018 passed by the Liquidator.

b. Hon'ble Tribunal NCLT, Chennai Bench may direct the Liquidator to admit the claim filed by The Great Indian Linen And Textile Infrastructure Company Pvt. Ltd., Operational Creditor under Form-C dated 06.04.2018.

c. Such other order(s) or further order be made affording complete relief to the Operational Creditor as the authority may deem fit and proper in the circumstances given herein and in the interest of justice.

2. The Counsel for the Applicant/Operational Creditor has submitted that the Applicant has filed the claim for an amount of Rs.1,44,60,000/- with interest @ 18% p.a. totaling Rs.2,73,78,977/- before the Resolution Professional which was rejected, and thereafter, again the claim was filed before the Liquidator on 06.04.2018. The claim has

been filed in Form 'C', copy of which is placed at page 126 of the typed set filed with the Application wherein the principal amount i.e. Rs.1,44,60,000/- with interest @ 18% p.a., totaling Rs.3,47,57,642/- as claimed is reflected. The claim has been supported with documents as mentioned in Column 4 of the said Form. However, it has been noted that an interim reply dated 08.01.2011 was filed by the Corporate Debtor disputing the claim.

3. The Counsel for the Applicant/Financial Creditor has submitted that the amount has become due and payable on 28.05.2010 on the expiry of the Bank Guarantee given.

4. The brief facts stated by the Counsel for the Applicant/Financial Creditor are that an amount of Rs.1,44,60,000/- was given as mobilization advance to the Corporate Debtor on 10.06.2009 for manufacturing of equipments which the Corporate Debtor failed to do and the advance given was not returned, copy of the contract is placed at pages 25 to 75 of the typed set filed with the

Application, in which the details of terms and conditions are mentioned.

5. It has further been submitted by the Counsel for the Applicant/Financial Creditor that a Petition was filed before Hon'ble High Court of Madras under Section 433(e) of the Companies Act, 1956 for winding up of the Corporate Debtor which was subsequently transferred to this Adjudicating Authority after enforcement of I&B Code, 2016, and this Authority on 19.06.2017 ordered for initiation of Corporate Insolvency Resolution Process (CIRP) and ultimately passed an Order for liquidation of the Corporate Debtor on 19.03.2018.

6. It has been submitted by the Applicant/Financial Creditor that in the chain of the circumstances, the claim is not time barred. It is further submitted that the Liquidator vide a communication dated 17.05.2018 has rejected the claim of the Applicant/Financial Creditor as time barred against which this Appeal has been filed on 05.06.2018.



7. The Liquidator has filed a Reply wherein at page 5 and under Para 6(iii), he has stated as follows:

“in para 17(2)(b)(iii) & (iv), Chapter V of IBBI (Liquidation Process) Regulations, 2016, the Operational Creditors are expected to prove the existence of Debt on the basis of a Contract with the Corporate Debtor and/or an Invoice demanding Payment and/or an order of Court/Tribunal that has adjudicated upon the payment of Debt if any and/or Financial Accounts. The Appellant relies on an Auditor’s Certificate which states that a sum of Rs.1,44,60,000/- is part of the Capital Advance Amounts Due and Receivable by the Claimant from the Corporate Debtor. In the present case, the Certificate has been procured post submission of the Claim Form before the Liquidator and cannot be treated as conclusive evidence for Non-payment of Dues by the Corporate Debtor”.



8. It has further been averred in the reply that as per the Audited Accounts of the Corporate Debtor for the last 3 Financial Years, the Financial Statement reflect 'Nil' dues to the Applicant herein. The Liquidator has also placed on record that the Corporate Debtor had filed the Counter Claim in winding up Petition wherein it has been stated that different phases in the Work Contract have been completed and that the Applicant owed a sum of Rs.2,59,764/- (differential amounts) to the Corporate Debtor which is neither disputed by the Claimant nor demanded refund/payment of the monies due to them and the same has been concealed for filing claim before Liquidator, and therefore, the Applicant is guilty for suppressing the material facts in respect of the dispute between the parties.

9. The Counsel for the Liquidator has referred to the communication dated 17.03.2017 wherein at page 3 under Para 2, it has clearly been brought out that the works in question were executed.



10. The Counsel for the Liquidator has also referred to the Counter Affidavit filed by the Corporate Debtor before Hon'ble High Court of Madras wherein the liability has been denied, copy of which is placed at 23 of the typed set filed with the Rejoinder. Besides this, the Counsel for the Liquidator has submitted that the present Application has been filed after the expiry of 14 days as provided under Section 42 of the I&B Code, 2016 and the debt claimed is also time barred.

11. The Counsel for the Applicant/Financial Creditor has controverted the submissions made by the Counsel for the Liquidator stating that the NCLT vide its Common Order dated 19.06.2017, under Para 3 has clearly brought out that there is sufficient material to show that the Corporate Debtor has defaulted in making payment of the outstanding debt due to the Operational Creditor. However, he could not explain/rebut other contentions made by the Counsel for the Liquidator, particularly that the present Application is time barred and the debt claimed is also time barred.

12. Heard the Counsel for the Applicant/Financial Creditor, Counsel for the Liquidator and perused the Application along with record placed on file and particularly the decision that has been taken by the Liquidator on 17.05.2018 wherein it has clearly been stated that the operational debt dated 10.06.2009 is **time barred**. It has further been submitted by the Liquidator that there is no proof for non-payment attached to the claim and there is no specific clause for payment of interest on the amount due and a dispute has already been raised by the Corporate Debtor before Hon'ble High Court of Madras.

13. Keeping in view the facts and circumstances stated above, a reference can be made to the recent ruling of the Hon'ble Apex Court given in **M/s. B.K. Educational Services Pvt. Ltd. Vs. M/s. Parag Gupta & Associates** in *Civil Appeal No.23988/2017*, wherein the Hon'ble Apex Court has held that *the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from*

the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

14. The *ratio* laid down by the Hon'ble Apex Court in the above cited case is equally applicable to the claims filed before the IRP/Liquidator. If a claim has been filed before IRP/Liquidator after the expiry of a period of three years, the same is time barred. The IRP and the Liquidator cannot entertain time barred claims.

15. In view of the facts and circumstances and the legal position stated, the claim of the Applicant is held to be time barred. Thus, the Liquidator has rightly rejected the claim

of the Applicant vide his communication dated 17.05.2018
Accordingly, MA/181/2018 stands dismissed.

16. The Order is dictated in open court in the presence of
Counsels for both the parties.

P.ATHISTAMANI


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)