SL. NO. 2

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)
PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07-08-2023 AT 10:30 A.M.

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB)/41/9/AMR/2019	Main Case	9 Of IBC	Priya Trading Company Vs Veda Biofuel Ltd
	IA(IBC)/140/2021	42	The Central Goods & Service Tax Department Vs. Dr.K.V. Srinivas, Liquidator (Veda Biofuel Limited)
	IA(IBC)/301/2023	U/Reg. 15 of IBBI(Liquidation Process) Reg's, 2016	Dr. Kondapalli Venkat Srinivas, Liquidator of Veda Biofuel Limited

ORDER

IA(IBC)/140/2021:

Ms.Chanthi Chandra, Ld. Counsel for the Applicant present. Mr.R.Ramakrishna, Ld. Proxy counsel for the Respondent present. Orders pronounced. IA(IBC)/140/2021 is dismissed, vide separate orders.

IA(IBC)/301/2023:

Dr.K.V.Srinivas, Liquidator present. This application is filed by the liquidator seeking to take on record the 8th Progress Report of the Liquidation process for the period ending by 30.06.2023. The report is taken on record. Accordingly, IA(IBC)/301/2023 is disposed of.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

RSN

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

IA(IBC)/140/2021
In
TCP (IB)/41/9/AMR/2019

Under Section 42 read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

AND

In the matter of
M/s. VEDA BIOFUEL LIMITED

Between:

The Central Goods & Service Tax Department
Rep by : The Deputy Commissioner of Central Tax,
Vizianagaram CGST Division
Visakhapatnam Commissionerate,
Near Dandumaramma Temple, Cantonment Area,
Vizianagaram – 535 003.
Phone- 08922-226643
Email : acvzm-gstvskp@gov.in

...Appellant/Applicant/Operational Creditor

Vs.

Dr. K.V. Srinivas,
The Liquidator of M/s. Veda Biofuel Ltd.,
IP Registration No. IBBI/IPA-001/IP-P00520/2017-18/10945
#402, 4th Floor, 6-3-249/6, Alcazar Plaza & Towers,
Road No.1, Banjara Hills, Hyderabad – 500 034
Phone: +91 8308310156, 9959223615,
Email : liquidator.vbfl@aaip.co.in

...Respondent/Corporate Debtor

Date of Pronouncement of Orders: 07.08.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant : Mr. Suresh Kumar Routhu & Ms.Santhi Chandhra, Advocates

For Respondent : Mr.Y.Suryanarayana, Advocate

ORDER
Per: Justice Telaprolu Rajani, Member Judicial

1. This is an appeal filed under Section 42 read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Applicant against the Respondent seeking the following reliefs as under:

   (a) To declare the action of the Respondent/Liquidator in not admitting the part claim amount of Rs.8,67,44,177/- against the total claim of Rs.8,71,06,543/- filed by the Applicant as illegal, arbitrary, unjust and improper.

   (b) To allow the present application and to set aside the impugned rejection order dated 14.12.2021 to the extent of denial of part claim to the tune of Rs.8,67,44,177/-.

   (c) To direct the respondent-Liquidator to admit and include the balance remaining claim amount of Rs.8,67,44,177/- (in addition to the already admitted claim amount of Rs. 3,62,366/-) out of the total claim amount of Rs.8,71,06,543/-

of the operational creditor-applicant, as detailed in the claim submitted with the respondent, in the total debt of the corporate debtor, with consequential relief.

(d) To grant interim relief in terms of prayer made above in clause (c);

(e) To award costs in favour of the applicant.

2. The facts briefly, as mentioned in the Application, are as follows:

a) M/s. Veda Biofuel Limited, Corporate Debtor was incorporated under the Companies Act, 1956, as a distillery and was also engaged in the manufacture of Special Denatured Spirit falling under Chapter sub-heading No:29051100 of the First Schedule to the Central Excise Tariff Act, 1985 and registered with Central Excise Department vide Registration No: AADCV7432PEM001 for Central Excise and vide Registration No.: AADCV7432PSD003 for the Service Tax. The Respondent is availing CENVAT Credit on inputs, input Services and Capital goods. With the advent of new indirect tax regime, the CD company is registered under GST vide GSTIN: 37AADCV74321ZO.

b) During the course of EA-2000 Audit for the period from October, 2014 to June, 2017, the Audit has issued Spot Memo to CD Company on 12-02-2019 containing the following three audit observations:

(i) First audit point was that the Respondent has carried forward excess amount of transitional credit of Rs.27,74,290/- in TRAN-1 and a Show Cause Notice vide No. 33/2019/CE/AC dated 10.05.2019, was issued by the Assistant Commissioner of Central Tax, Vizag Audit Circle, Guntur Audit Commissionerate, Visakhapatnam proposing for recovery of an excess amount of transactional credit of Rs. 27,74,290/- along with the applicable interest and penalty.

(ii) Second audit point was that the Respondent has irregularly availed Cenvat Credit of Rs. 62,69,618/- on ineligible Capital Goods i.e., Cement, Iron, Roofing Sheets during the FY 2015-16 and 2016-17 and also availed Cenvat Credit of Rs. 2,40,49,944/- on capital goods used in the manufacture of exempted final products for the period from March, 2016 to June, 2017 and a Show Cause Notice vide No. 11/2019/CE/ COMMISSIONER dated 10.05.2019 was issued by the Commissioner of Central Tax Guntur CGST Audit Commissionerate proposing for recovery of an amount of Rs. 3,03,19,562/- along with the applicable interest and penalty.

(iii) Third point was that the Respondent has not paid the Service Tax of Rs.25,520/- on certain services for the period from October, 2014 to June, 2017 and that a Show Cause Notice vide No. 32/2019/ST/AC dated

10.05.2019 was issued by the Assistant Commissioner, Visakhapatnam GST Audit Circle proposing for recovery of Rs. 25,520/- along with the applicable interest and penalty.

c) The Superintendent of Central Tax, Vizianagaram South CGST Range, Vizianagaram CGST Division, Vizianagaram noticed that the Respondent has filed GSTR-3B Returns for the period from July, 2017 to February, 2019 and also paid the GST for the respective months, belatedly and that the interest for the delayed payment of GST is calculated as Rs.3,61,986/- and the same was communicated to the Respondent vide letter OC No. 136/2019 dated 10.05.2019 by the Superintendent of Central Tax, Vizianagaram South CGST Range and requested to pay the interest amount. Further, the respondent has delayed in filing the GST Returns for the period from April, 2019 to May, 2020, for which the Superintendent of Central Tax issued letter OC No. 168/2020 dated 19-06-2020 to the Liquidator informing that the total interest payable was Rs.380/- and thus total interest payable by the Respondent is Rs.3,62,366/-.

d) M/s. Priya Trading Company, which is an Operational Creditor for the CD Company has filed a claim before the Tribunal, vide TCP(IB) No. 41/9/AMR/2019 and the same is admitted by the Tribunal vide Order dated 12.02.2019.

e) On 13.05.2019, the applicant submitted their claim by an Affidavit and Form-B (Claim Form) for an amount of Rs.7,01,35,814/- (inclusive of interest calculated up to 12.02.2019 to the IRP. In this connection, the IRP vide his email dated 18.06.2019 informed that out of the total claim amount of Rs. 7,01,35,814/- they admitted only Rs.3,61,986/-.

f) Hence, aggrieved by such part rejection of the claim, on 26.05.2019, the applicant had filed an IA No. 634/2019 before the Tribunal against the decision of IRP. On 27.09.2019, the IRP, Mr. Gonugunt Murali was replaced and Mr. Sisir Kumar Appikatla, was appointed as new IRP. Vide order dated 26.05.2020, the liquidation process of the CD Company was initiated and Mr Sisir Kumar Appikatla, was appointed as the liquidator.

g) The Assistant Commissioner of Central Tax, Visakhapatnam North Division, adjudicated the first show cause notice mentioned above vide OIO No. 03/2020-21/JSM/North dated 28.05.2020 confirming the demand of service tax of Rs. 25,520/- along with applicable interest and imposed a penalty of Rs.27,820/-. The Principal Commissioner of Central Tax, Visakhapatnam CGST Commissionerate has adjudicated the second show cause notice mentioned above vide OIO No. VSP-EXCUS-001-COM-02-02-21 dated 12.06.2020 and confirmed the demand of Central Excise duty of Rs.30,19,562/- along with applicable interest and imposed a penalty of Rs.30,19,562/-.

Further, the department adjudicated the third show cause notice mentioned above, vide OIO No.01/2020/21-GST-DC dated 16.06.2020 and confirmed the demand of GST of Rs.27,74,290/- along with applicable interest and imposed a penalty of Rs.27,74,290/-. On 22.06.2020, the applicant filed Liquidation claim in Form-C for Rs.8,71,06,543/- (inclusive of interest calculated up to 26-05-2020) along with Affidavit, before the liquidator, Mr. Sisir Kumar Appikatla, who accepted the claim of Rs.8,71,06,543/- *in toto*, which was intimated vide email dated 21.07.2020.

h) The Tribunal Vide order dated 07.08.2021, has removed Mr.Sisir Kumar Appikatla as Liquidator of CD, by declaring his appointment as liquidator as *void ab initio* and Dr. K V Srinivas was appointed as Liquidator on 03.09.2021.

i) In view of initiation of liquidation process afresh by the new liquidator, on 01.10.2021, the applicant had submitted the claim afresh in Form-C for Rs.8,71,06,543/- and Affidavit along with all annexures to the new liquidator and the Liquidator vide E-mail dated 01.11.2021 and 01.12.2021 sought for clarification to his queries in respect of the claim filed by the Applicant and the same has been complied with by the Applicant, vide letters CNo.IV/16/43/2019-Veda Biofuel dated 05.11.2021 and 03.12.2021. However, the liquidator, without properly considering the detailed submissions made by the applicant, vide email dated 14.12.2021 informed the applicant that an amount of

Rs.3,62,366/- is only admitted out of total claim of Rs.8,71,06,543/- on the ground that the explanation given to the clarification sought vide letter dated 01.12.2021 is not in accordance with the provisions of the Code and Rules & Regulation applicable thereunder and rejected the balance claim of Rs. 8,67,44,177/-. Hence, the Applicant filed this appeal against the Liquidator's Rejection order vide email dated 14.12.2021.

3. The Respondent filed counter, denying the averments made in the application and further contending as follows:

   a. The applicant submitted the claim in Form C for an amount of Rs.8,71,06,543/- dated 01.01.2021, which consists of two parts i.e., Rs.3,62,366/- being interest on late filing of returns and Rs.8,67,44,177/- being claim arising out of Order passed after the liquidation commencement dated i.e., after 26.05.2020. The affidavit filed in support of the claim states that the amount claimed is as on the Liquidation Commencement Date (LCD) i.e., 26.05.2020, whereas the Order by which the liability was arrived at are Orders dated 28.05.2020, 12.06.2020, 16.06.2020 and 19.06.2020 and that the operational debt arising out of the Orders is after the LCD i.e., 26.05.2020 and therefore, there are no dues that are payable by the Corporate Debtor (Under Liquidation) as on the Liquidation Commencement Date.

b. The Liquidator sought clarification from the applicant to substantiate its claim vide his letter dated 01.12.2021 and the applicant failed to give any plausible or legally valid reason or justification and failed to substantiate as to how the claim had become due and payable as on the Liquidation Commencement Date. The Claim has become due and payable by the Corporate Debtor vide Orders dated 28.05.2020, 12.06.2020, 16.06.2020 and 19.06.2020, which is after the Liquidation Commencement Date i.e., 26.05.2020, and therefore, the same were rightly rejected by the liquidator, as it is not in accordance with the provisions of IBC, 2016. Hence, in view of the above, the application is liable to be dismissed.

4. Heard both the counsel and perused the written submissions filed by either side.

5. It can be understood from the pleadings and the arguments that a claim was made by the Applicant for Rs.8,71,06,543/- and part of the claim was admitted by the erstwhile liquidator and the present application is filed for the admission of the rest of the claim which is Rs.8,67,44,177/-. The contention of the liquidator is that the claim pertains to the period after the liquidation commencement date and hence cannot be admitted. His contention is based on the fact that the orders confirming the tax are after the LCD. The argument of the Counsel for the Applicant is that the demand arises in respect of the amounts that are due by the CD prior to the CIRP period. Whether the

amount due by the CD has been determined prior to the CIRP is the question which now falls for consideration. The Applicant admittedly has issued orders on 16.06.2020, 12.06.2020 & 28.05.2020. A perusal of the said orders would show that a right of appeal is provided for to the CD against the said order and the time for appeal is 3 months. The Central Goods and Services Act, 2017, no doubt obligates, the CD to make a self- assessment of the tax and pay to the department. But where the Assessee fails to pay the tax by self-assessment, the department can conduct an audit and assess the tax and levy interest and penalty on the delayed payment of tax. Section 11 of the Act also gives power to the Government to gives some exemptions in respect of the tax. Under Section 73 of the Act determination of the tax shall be made by the Authority and under sub-section (2), notice shall be issued by the proper officer at least 3 months prior to the time limit prescribed under sub-section (10) for issuance of order. Sub-section (10) provides that the proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year in which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund. Under sub-section (9) the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10%. Hence, from the above provisions of the Act, it can be understood that the payment of the tax would become due only on such determination made by the proper officer.

6. From the pleadings and the arguments, it can be noticed that to the notice served on the CD, a reply was issued. As to what the said reply has stated is not known, since the said reply is not placed on record. Whether any grounds for exemption of tax are mentioned in the said reply and whether any explanation is given for the non-payment of the tax is not known. Hence, unless the total facts are put forth, it cannot be determined as to when the tax has become due to the department. The orders of the office of the Deputy Commissioner of Central Excise and Service Tax, pertain to the period after the commencement of the liquidation date admittedly, since they are on 16.06.2020, 12.06.2020 & 28.05.2020 while the liquidation commencement date is 26.05.2020. The reason for rejecting the claim is that it pertains to the period subsequent to the liquidation commencement date. The liability pertains to the years 2017 & 2018. Hence unless the applicant puts forth the reasons for not initiating the audit for non-payment of the amounts which are due as far back as in the year 2017 & 2018, no finding can be given with regard to the entitlement of the Applicant for the tax. The applicant seems to have preferred an appeal before the NCLAT on the rejection of the claim by the RP. The order of NCLAT is also not placed on record and nothing is mentioned in that regard.

7. A judgement of the NCLAT in ***Company Appeal (AT) (Ins) No.301/2021*** between ***Gurudeo Exports Corporation Pvt Ltd & Ors. vs. Mr.Akash Singhal Liquidator of Amira Pure Foods Pvt. Ltd. & Anr,*** held that in order to accept the claims of the Appellants therein, claims have to be real based on solid documentary evidence and in

accordance with law and they cannot be allowed on the basis of indirect or circumstantial or secondary evidence/ documents. It was also held that even the claims relating to the GST have to be substantiated by solid documentary evidence. Hence due to the scarcity of evidence and the details, no finding can be given, and hence, the appeal is dismissed.

Accordingly, IA(IBC)/140/2021 in TCP (IB)/41/9/AMR/2019 is dismissed and disposed of.

Sd/- Dated 07.08.2023

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu (PS)