

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA**

IA(I.B.C)/552(KB)2024

C.P. (IB)/1284(KB)2019

***An application under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016 and Read with Rule 11 of the
National Company Law Tribunal Rules, 2016.***

In the matter of:

(1) STATE BANK OF INDIA.

... Financial Creditor

-Versus-

(2) ESS DEE ALUMINIUM LTD.

... Corporate Debtor/Respondents

-And-

(3) Mr. Muni Raj Das and 12 Others

... Applicants/Operational Creditors

-Versus-

(4) The Liquidator Mrs. Deepika Bhugraprasad

... Respondent

Date of pronouncing of the order: 16/07/2024

Coram:

SMT. BIDISHA BANERJEE HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND HON'BLE MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Md. Nauroz Rahber, Adv.	:	For the Applicant in
Mr. Muhammad Jawwad, Adv.	:	IA(I.B.C)/552(KB)2024

Mr. Dhananjaya Sud, Adv. : **For the Liquidator**
Ms. Deepika Bhugra Prasad : **Liq.-in-Person**

ORDER

Per: D. Arvind, Member (Technical)

1. The Court is convened through hybrid mode.
2. Ld. Counsel/Authorised Representative appearing on behalf of the liquidator was heard in extenso.
3. This is an application filed by one Mr. Muni Raj Das an ex-employee of **Ess Dee Aluminium Ltd.** representing, 12 other employees of the same Company through a General Power of Attorney dated 04.01.2024, seeking for the following relief(s) inter alia: -

(a) An Order declaring that the applicants are entitled to the payment of the claims that has been raised in the paragraph No. 35 and 37 as has been mentioned herein along with interest;

(b) An Order directing the liquidator to release the payment of the dues to the applicant in terms of the table that has been mentioned in Paragraph No. 35 and 37 herein;

(c) Such further Order or Order(s) as the Hon'ble Tribunal deems fit and proper;

4. Factual matrix of the case is as under: -

- (a) Ess Dee Aluminium was Order dated for liquidation *vide* our Ordered on **08.10.2021** in **IA(I.B.C)/699(KB)2021**.

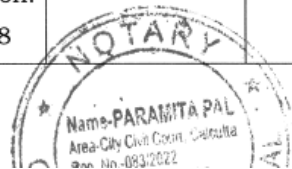
- (b) The liquidator invited claims as per the Code and the Regulations made thereunder from various creditors.
- (c) The applicants filed their claims in prescribed Form – E as on 01.11.2021 all of which have been annexed in Annexures – A to the application.
- (d) The applicant’s claim and amount paid by the liquidator against their claims have been tabled in Page No. 14, 15 & 16 of the application is extracted as under: -

32.The details of the form E submitted by the applicants are enumerates herein below:-

Sl No.	Applicants	Amount Claimed as per Form E in Rs	Amount Paid by the Liquidator in Rs.	Balance amount not paid in Rs.
1	MR. MUNI RAJ DAS Address: 14, Joy Krishna Ghosal Road, Ariadaha, Post Office: Ariadaha, Police Station: Belgharia, Kolkata, Pin-700057	1979277.55	43508	1935770
2	MR.MD ASLAM Address: 36/2, Sagar Dutta Ghat Road, Post Office: Kamarhati, Police Station:Belgharia, Kolkata, PIN-700058	2074127.17	54098	2020029
3	MR.SAMIRAN SARKAR Address: 11/1 Hari Charan Chatterjee	2016037.37	56352	1959685

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	Street,P.O-Ariadaha, P.S-Belgharia, Kolkata- 700057.			
4	MR.EHTESHAMUL HAQUE 18, GaliGhat, Post Office: Kamarhati, Police Station: Belgharia, PIN-700058.	2006351.05	49104	1957247
5	MR. DAYA SANKAR PASSI: 17, Sagar Dutta Ghat Road, Post Office: Kamarhati, Police Station: Belgharia, Kolkata, PIN-700058	2092518.95	54079	2038439
6	MR. MD.ARSHAD 8, ChingriTalab, Post Office: Kamarhati, Police Station: Belgharia, Pin-700058	1979277.55	47558	1935769
7	MR.MAQSOOD ALAM 21, Dhobi Bagan, Post Office: Kamarhati, Police Station: Belgharia, PIN- 700058	2084141.28	53885	2030256
8	MR.SALIM AKHTER Address: 982A, Mackenzie Road, Post Office:, Police Station: Belgharia PIN-700058	2054734.99	51742	2002993



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9	MR. SOUMITRA PANI Address: 25, Raj Kumar Chatterjee Road, Post Office: Ariadaha, Police Station: Belgharia, PIN- 700057	2045550.78	51176	1994374
10	RAMCHANDRA SAROJ. 6/11, Sanak Para Lane, Post Name: From Office: Ariadaha, Police Station: Belgharia. PIN- 700057	2083432.53	53868	2029565
11	MR.MANIRUDDIN ANSARI 10/6, SastiTala Road, Post Office: Ariadaha, Police Station: Belgharia, PIN- 700057	2073639.95	52912	2020728
12	ALAMGIR 12, Loot Bagan, Post Office: Kamarhati, Police Station: Belgharia, PIN- 700058	2006134.70	50954	1955180
13	MR. TARAKESWAR PASSI Address: 27/A, Sagar Dutta Ghat Road, Post Office: Kamarhati. Police Stat Belgharia, PIN-700058	2015744.97	49684	1966060
		2,65,10,968.84		25846095

(e) After getting the money allocated and distributed by the liquidator the employees, through the applicant corresponded with the liquidator first on 15.04.2023, and subsequently, on 25.04.2023, 25.05.2023, 03.07.2023 and 25.07.2023, seeking release of funds as claimed.

(f) The liquidator *vide* his e-mail dated 19th April, 2023, and subsequently, on 03rd July, 2023, 05th July, 2023 and 25th July, 2023 replied to the applicant employees by stating that the claims that has been distributed is in accordance with Section 53(1)(b)(i) of IBC.

(g) In response to the email from the liquidator, the applicant and other employees filed their modified claim as per the Section 53(1)(b)(i) of IBC on 11.09.2023, table are extracted as under: -

SL.N O	EMP. CODE	NAME	Claim for 1st July 2016 To 8th October 2021 Salary, Bonus, L.T.A & Gratuity	Claim for 1st July 2016 To 8th October 2021 Salary, Bonus, L.T.A & Gratuity +Interest	Claim for 8 th October 2019 To 8 th October 2021	Claim for 8 th October 2019 To 8 th October 2021+ Interest
1.	3	RAMCHANDRA SAROJ	17,12,140.06	20,83,432.53	4,83,528.00	5,32,114.54
2.	35	MANIRUDDIN ANSARI	17,00,570.10	20,73,639.95	4,85,928.00	5,34,755.70
3.	90	TARAKESWAR PASSI	16,44,452.50	20,15,744.97	4,83,528.00	5,32,114.54
4.	102	MD ASLAM	17,02,834.69	20,74,127.16	4,83,528.00	5,32,114.54
5.	145	SAMIRAN SARKAR	16,44,745.00	20,16,037.47	4,83,528.00	5,32,114.54
6.	187	EHTESHAMUL HAQUE	16,35,058.58	20,06,351.05	4,83,528.00	5,32,114.54
7.	295	DAYA SANKAR PASSI	17,19,449.10	20,92,518.95	4,85,928.00	5,34,755.70
8.	475	MD ARSHAD	16,07,985.08	19,79,277.55	4,83,528.00	5,32,114.54
9.	478	MUNI RAJ DAS	16,07,985.08	19,79,277.55	4,83,528.00	5,32,114.54
10.	706	MAQSOOD ALAM	17,12,848.81	20,84,141.28	4,83,528.00	5,32,114.54
11.	P-30	SALIM AKHTER	16,72,480.92	20,45,550.77	4,85,928.00	5,34,755.70
12.	P-87	ALAMGIR	16,33,064.85	20,06,134.70	4,85,928.00	5,34,755.70
13.	P-106	SOUMITRA PANI	16,72,480.92	20,45,550.77	4,85,928.00	5,34,755.70

(h) As there was no response to this claim, this application has been filed on 22.03.2023 seeking relief(s) mentioned in the application as above.

5. Analysis and Findings: -

(a) We find from the e-mails of liquidator that amount has been allocated as per Section 53(1)(b)(i) of IBC. As per this, workmen are supposed to get 24 months (2 years) dues preceding the liquidation commencement date.

- (b)** It is the claim of the applicant that even 24 months (2 years) dues have not been paid. The due for 24 months (2 years) for each of the employee (applicant & other employees to this application) is mentioned in the table appended in para no. **4(g)** of this Order, as against which they have received approximately 10 per cent of 24 months (2 years) due.
- (c)** We find from the records filed for liquidation and various progress reports filed from time to time, the amounts have been paid as per Section 53(1)(b)(i) of IBC. Since, the realised value/liquidation value is less than the amount applicants are entitled to, they have been paid the amounts mentioned in table appended in para no. **4(d)** of this Order.
- (d)** We find that the liquidator has distributed the amount as per the Code and Regulations made thereunder, and therefore, did not take cognizance of the modified claim filed on 11.09.2023. Apart from the above reason, even the last date for receiving claims got over, and therefore, in any event, he could not have entertained the modified claim, submitted after receiving the allocated amounts. Therefore, we find no infirmity in the decision of the liquidator.
- (e)** We find that the liquidator has communicated the basis of allocation/distribution first on 19th April, 2023, and subsequently, as a matter of clarification as on 03rd July, 2023, 05th July, 2023 and on 25th July, 2023. We find that this appeal against the decision of the liquidator has been filed on 31.01.2024.

(f) As per Section 42 of IBC, an appeal against such a decision of liquidator has to be filed within a period of 14 days from the receipt of such decision.

(g) In the case in hand, this application has been filed on 31.01.2024. Even taking the final e-mail of the liquidator as the relevant date for determining the period of limitation under Section 42 of IBC, appeal should have been filed by, on or before 14th August, 2023, whereas, we see inordinate delay of more than 165 days in filing the appeal.

(h) We are not empowered to condone such delay, more so, in the absence of any reason for seeking condonation. Accordingly, this application is not maintainable.

6. This application, i.e., **IA(I.B.C)/552(KB)2024** is hereby **dismissed** accordingly.
7. 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.
8. Urgent certified copy of this Order may be issued, if applied for, with the Registry, upon compliance of all requisite formalities.
9. File be consigned to records.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 16th of June, 2024.

Ar. [steno]