

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT III

IA. No. 1656/2023

In
CP(IB)No.2660/MB/C-III/2018

*Application filed under section 60(5) of Insolvency and
Bankruptcy Code, 2016 r/w Regulation 45(3)(a) of the
IBBI (Liquidation Process) Regulations, 2016.*

Mr. Shailesh Bhalchandra Desai, Liquidator
(Liquidator of EMI Transmission Limited)

...Applicant

In the matter of

Dena Bank

...Financial Creditor

Vs

EMI Transmission Limited

...Corporate Debtor

Order Pronounced on: 15.05.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Mitali Bhatt a/w. Adv. Ayush Rajani i/b. AKR Legal

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. It is an application filed under section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 (“IBC”) r/w Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016, by Mr. Shailesh Bhalchandra Desai, Liquidator of EMI Transmission Limited (“Corporate Debtor”) seeking following reliefs:
 - a. *Consider and allow this IA /1656/2023 in terms of Section 60(5) r/w Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 directing the closure of the liquidation process of the Corporate Debtor, EMI Transmission Limited;*
 - b. *Discharge Mr. Shailesh Bhalchandra Desai as the Liquidator of the Corporate Debtor in terms of the provisions of the Code;*
 - c. *Direct the Registry to send the order that may be issued by this Hon’ble Adjudicating Authority in the present application to the Registrar of Companies, Mumbai with which the Corporate Debtor, EMI Transmission Limited, is registered;*
 - d. *Complete any pending activity of handover if any, or any unexpected legal formalities if any within 15 days of this order.*
 - e. *Allow and authorise the Liquidator to operate only the Liquidation bank account so as to make distribution of in case of any funds received from any of Avoidance Applications filed before Hon’ble Adjudicating Authority and from Recovery from the fraudulent transaction effected in Bank of Baroda.*
 - f. *Allow an extension of the liquidation period of the Corporate Debtor until the final order in the present application is published.*
 - g. *Authorise SCC members with Bank of Baroda being a lead bank to represent on behalf of stakeholders in all the applications filed by the Liquidator under Section 43-66 of the Code;*

- h. *Allow the liquidator to destroy all physical copies of the documents and records pertaining to the Corporate Debtor after eight years or on completion of the cases pending whichever is later, and in case storage of the documents and records is required beyond the period of eight years, direct payment of the same by Bank of Baroda;*
- i. *Pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.*

2. The Petition (CP(IB)2660(MB)/2018) was admitted by this Tribunal on 11.04.2019 and CIRP of Corporate Debtor was initiated. Mr. Shailesh Bhalchandra Desai/Applicant was appointed as an Interim Resolution Professional and subsequently, in the first CoC meeting was confirmed as a Resolution Professional.
3. The CoC in their 10th meeting held on 02.01.2020 and consequent e-voting concluded on 06.01.2020 rejected the Resolution Plan by 100% votes. Since the Resolution Plan failed to receive a vote of 66%, Resolution Professional has filed Liquidation Application MA No. 307/2020 u/s 33 of the Code, same was heard on various dates and on 14.08.2020, the Liquidation Order was passed by this Tribunal and the Applicant was appointed as Liquidator.
4. The Applicant has made a public announcement on 19.08.2020 in Form B of Schedule II as per Regulation 12 of Liquidation Regulations, 2016, towards calling for submission of claims from all the stakeholders.
5. The Applicant has received claims from the creditors. The Applicant has verified the claims based on the supporting documents/information provided by the stakeholder and thus has filed a list of stakeholders before this Tribunal on 09.10.2020, in line with Regulation 31 of IBBI (Liquidation Process) Regulations, 2016. List of Stakeholders is as follows:

Sr. no.	Creditors	Category	%
1	Bank of Baroda	Secured FC	68.42%

2	Union Bank of India	Secured FC	16.61%
3	Standard Chartered Bank	Secured FC	2.78%
4	HDFC Bank	Secured FC	1.62%
5	Mr. Sanjiv Sheth	Unsecured FC	0%
6	Ms. Nalini Menon	Rep. of Workmen & Employee	0.06%
7	GST Department		7.73%
8	Godavari Alloys	Rep. of OC	2.79%

6. The Applicant constituted the stakeholder’s consultation committee (“SCC”) in terms of Regulation 31A of the Liquidation Process Regulation.
7. The Applicant conducted Thirty-Four e-auction process from 19.10.2020 to 19.10.2022 with “**AS IS WHERE IS BASIS**”, “**AS IS WHAT IS**” AND “**WHATEVER THERE IS BASIS**” AND “**NO RECOURSE BASIS**”. The mode of sale of assets was in accordance with Schedule - I, under Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016.
8. During the SCC meeting, the Applicant informed the SCC members that as per Regulation 32 of Liquidation Regulations, 2016, sale of the Corporate Debtor as a going concern. A public announcement was given in the newspaper namely Business Standard (Mumbai edition - English) and Navshakti (Mumbai edition - Marathi) for sale of Corporate Debtor as going concern along with remaining assets. The 34th E-auction Process was scheduled for 14.11.2022, however due to certain technical difficulty it was extended till 15.11.2022.
9. The Applicant submits that below mentioned assets were put under Sale:

Lot	Description	Reserve Price (Rs.)	EMD Amount (Rs.)
Lot 1	All the present assets of the Company, on a Going Concern Basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016	5.00 Crores	0.50 Crores

10. The Applicant submits that he has received the highest bids from L7 Hitech Private Limited and was considered as Successful Bidder to buy the Corporate Debtor as a going concern along with the remaining assets of Corporate Debtor. The Applicant has received the entire amount of sale consideration of Rs. 6.60 Crores, a sale certificate dated 18.11.2022 was also issued to the successful bidder. The E-auction result is as follows:

Lot	No of EMD's received	Reserve Price	Final Sale Price (Excl of taxes)	Successful Bidder	Total Recovery (Excl of taxes)
Lot 1	3	5.00 Crores	6.60 Crores	L7 Hitech Private Limited	6.60 Crores

11. On 13.04.2023, the Applicant issued a letter to L7 Hitech Private Limited / Successful Bidder confirming the full and final handover of the Corporate Debtor and its charge, properties, receipt of all papers, proceedings etc.

12. On 17.01.2023, L7 Hitech Private Limited/ Successful bidder filed an Interlocutory Application 315 of 2023 before this Tribunal, seeking certain directions, reliefs, concessions and necessary approvals for effectuating the transfer of the Auction Assets in favour of L7 Hitech Private Limited as the Successful Bidder. The said IA No. 315 of 2023 was disposed of by this Tribunal vide order dated 08.12.2023.

13. The Applicant submits that during 6th SCC meeting held on 10.03.2023, the SCC members have finalized that the applications filed by the Applicant for avoidance transaction will be pursued by the SCC members with Bank of Baroda being a lead bank. The list of pending avoidance applications as under:

- i. IA/1315/2020
- ii. IA/1310/2020
- iii. IA/1548/2020
- iv. IA/1757/2020

- v. IA/352/2021
- vi. IA/355/2021
- vii. IA/380/2021
- viii. IA/1359/2021
- ix. IA/1629/2021
- x. IA/177/2022

14. The Applicant submits that the liquidation costs has exceeded the estimated liquidation cost provided for in the preliminary report on account of running of liquidation process by more than 30 months instead of 1 year against which the liquidation cost estimated.

15. Further, in compliance of the Regulation 45(3)(a) of the Liquidation Process Regulations, the Applicant has filed the present Application for closure of the liquidation process of the Corporate Debtor under Regulation 45 (3)(a) of the Liquidation Process Regulations. The Applicant has also filed the final report and the compliance certificate in Form H before this Tribunal.

16. The details of the assets as per Asset Memorandum and Final Sale Report are as under:

Sr. No.	Assets	Mode of Sale	Estimated Liquidation Value (INR)	Realisation Amount (INR)	Date of Transfer to Liquidation Account
1	Recovery from Account of BoB		0	4,02,228	02.09.2020
2	Recovery pursuant to the filing of application u/s. 43 of the Code against Mr. Nitin Dholakia		2,65,00,000	2,65,00,000	21.09.2020
3	Recovery from Current Account of HDFC		11,57,900	11,57,900	20.10.2020
4	Recovery from Current Account of UBI		2,02,000	2,02,000	29.10.2020
5	GST Credit available forming		28,60,776	28,60,776	

	part of liquidator estate				
6	GST Refund		31,13,773	31,13,773	12.11.2020
7	Hyundai Xcent 1.2 VTVTS- Regn- MH-15-ES-9966	E-Auction	2,44,826	4,33,044	From 17.11.2020 to 27.11.2020
8	Maruti Vitara Brezza ZDI Plus MH-15-FN-566	E Auction	3,76,210	7,77,017	From 17.11.2020 to 27.11.2020
9	6 Residential Plots each 1,200 Sq Ft. Project "Humdevanagiri" – Site No. 110, 111, 112, 131, 132 & 133 at Gowdasandra Village, Kasara Hobili, Gauribidanur Taluk, Karnataka	E Auction	19,93,748	28,50,000	From 17.11.2020 to 27.11.2020
10	Recovery from Debtors (Power Grid Corporation)	E Auction	15,70,615	15,70,615	08.12.2020 & 16.12.2020
11	Recovery from Debtors (Adani Transmission India Limited)		19,92,797	19,92,797	09.02.2021
12	Agricultural Land at Survey No. 160; Area 18000 sqmt	Private Sale	1,76,40,000	1,51,00,000	From 22.03.2021 to 18.06.2021
13	Recovery from Kalpataru Power Transmission towards wrongful invocation of BG in liquidation period			53,83,244	16.06.2021
14	Sale of Shares of Bank of Baroda & Indian Bank	Stock Exchange	5,28,241	10,33,331	19.06.2021
15	Non Agricultural land at Survey No. 157/2/2; Area 9275 sqmt	E Auction	2,83,74,500	2,00,00,000	19.07.2021, 23.07.2021 & 26.07.2021
16	Recovery from KEC International Limited towards wrongful			1,83,90,060	22.11.2021

	invocation of BG in CIRP				
17	Maruti Ertiga VXI BSIV- MH-15-EX-3729	E Auction	2,79,595	5,93,186	04.10.2021 & 08.10.2021
18	Non-Agricultural land; Building thereupon and Machinery installed therein on survey No. 157/1+2/1; 157/2/2; 158/2 in Village Bramhanwade, Shinde- Naigaon Road, Taluka- Sinnar, District- Nashik, Maharashtra	E-Auction	11,01,68,065	27,73,07,483	From 02.02.2022 to 29.03.2022
19	Office premises with furniture and equipment's along with 10 car parking slots situated at Centre Point, CTS no. 107, Unit No.101, 1 st Floor, Dr. B. A. Road, Parel, Mumbai-400012	E Auction	21,76,66,230	16,50,00,000	From 02.02.2022 to 29.03.2022
20	Nashik Factory Electricity Security Deposit		15,73,600	15,73,600	04.05.2022
21	Misc. Scrap Sale at Nashik & Parel Premises			84,998	17.05.2022
22	Machines of the CD	E auction	10,62,04,327	2,19,82,174	From 21.12.2020 to 22.01.2021
23	Machines of the CD			1,93,07,470	From 13.01.2021 to 19.01.2021
24	Machines of the CD			74,57,289	From 10.02.2021 to 17.02.2021

25	Machines of the CD			49,30,195	From 15.03.2021 to 30.03.2021
26	Machines of the CD	Private Sale		23,73,579	22.03.2021 & 25.03.2021
27	Machinery at Survey No. 157/1; 157/2/1; 157/2/2	E-Auction		66,14,608	21.06.2021 & 25.06.2021
28	Consumables	Private Sale		8,14,811	12.02.2021
29	Sale of the Scrap	E- Auction	1,51,20,896	7,46,31,808	17.11.2020 to 30.12.2020
30	Sale of the Scrap	E- Auction		85,76,245	22.01.2021 to 28.01.2021
31	Sale of the Scrap	E-Auction		1,22,11,392	28.01.2021 to 09.02.2021
32	Sale of Scrap and forklift trucks	E-Auction		48,78,647	05.02.2021 to 13.02.2021
33	Sale of the Scrap	E-Auction		1,54,32,080	17.02.2021 to 28.03.2021
34	Scrap & Machines	E-Auction		1,19,38,358	22.03.2021 to 18.06.2021
35	Private Sale of Scrap	Private Sale		9,53,440	07.09.2021 to 09.09.2021
36	All the remaining assets of the Company, on a going concern basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016	E-Auction	0	6,60,00,000	03.10.2022 to 16.11.2022
		Total		80,44,28,148	

17. Certain discrepancies in amounts were noted in Form H, and clarification were sought for the same vide order dated 15.04.2024. In compliance with the said order, the Applicant filed an additional affidavit dated 30.04.2024 and has presented clarification chart, which is reproduced below:

Sr. No	Date	Bank of Baroda (Rs.)	Union Bank of India (Rs.)	Standard Chartered Bank (Rs.)	HDFC Bank (Rs.)	Total Distribution (Rs.)
1.	09.10.20	2,06,39,674	50,22,261	8,38,065		2,65,00,000
2.	13.11.20	22,66,446	5,51,495	92,028		29,09,969
3.	30.12.20	6,29,92,282	1,52,93,512	25,57,774		8,08,43,568
4.	30.12.20	11,57,042	-	-		11,57,042
5.	01.02.21	1,80,06,283	43,71,636	7,31,137		2,31,09,056
6.	24.02.21	2,31,19,096	56,12,944	9,38,741		2,96,70,781
7.	31.03.21	89,60,654	21,75,503	3,63,843		1,15,00,000
8.	30.04.21	1,48,94,927	36,16,249	6,04,802		1,91,15,978
9.	29.06.21	71,24,859	15,44,563	3,16,386		89,85,808
10.	27.07.21	1,33,18,945	32,33,625	5,40,810		1,70,93,380
11.	24.09.21	1,16,87,810	28,37,612	4,74,578		1,50,00,000
12.	28.03.22	20,68,40,780	5,03,65,801	84,23,463		26,56,30,044
13.	26.12.22	4,53,24,240	1,10,36,468	18,45,802		5,82,06,510
14.	28.03.23	31,05,531	7,56,198	1,26,471		39,88,200
15.	09.03.22				1,15,00,000	1,15,00,000
16.					14,85,00,000	14,85,00,000
	Total	43,94,38,569	10,64,17,867	1,78,53,900	16,00,00,000	72,37,10,336

18. We observe that the Corporate Debtor has been sold to L7 Hitech Private Limited as a going concern, the entire sale consideration has been received. The same has been distributed among the stakeholders in accordance with the provisions of Section 53 of the Code, read with Regulation 42 of the Liquidation Process Regulations. The Chart in paragraph 16 of this order does not reflect the opening balance. Further, the aforementioned chart at para 17, clarifies the distribution to the secured creditors, with an amount of Rs. 72,37,10,336 being distributed to them.

19. Provident Fund dues amounting to Rs. 6,67,484 have been paid in full, as evident from the Statement of Receipt and Payments, 2021. Furthermore, workmen dues (Rs. 5,67,630) have been paid, as per the Statement of Receipt and Payments of 2022 attached to the present application. Moreover, the closing balance remaining in the bank account is Rs. 14,01,548 as seen from the Statement of Receipt and Payments, 2023. From the statement of Receipts and Payment for the years ended on 31.03.2021, 31.03.2022 and 31.03.2023 it is seen the liquidation costs have been incurred as under:

Sr. No.	Year	Liquidation Cost (in Rs.)
1.	2021	4,39,13,540
2.	2022	3,20,68,152
3.	2023	47,25,188
	Total	8,07,06,880

20. Furthermore, regarding the operation of Bank Account, the Applicant has submitted in their additional affidavit that after settling the current liquidation expenses (till the date of issuance of closure order) and transferring the balance amount to the secured creditors, the specified/Liquidation account will be closed. Following this, the lender will proceed with the avoidance application, and any recovered amount will be deposited according to the lender's designated account.

21. In view of the aforesaid facts, we are of the considered opinion that this is a fit case for the closure of the liquidation process of the Corporate Debtor. Accordingly, we hereby order the closure of the liquidation process of the Corporate Debtor i.e. **EMI Transmission Limited**. Mr. Shailesh Bhalchandra Desai Applicant/Liquidator has been discharged from the date of this order.

22. Further, Bank of Baroda has been authorised to represent on behalf of stakeholders in all the application filed by the Liquidator under Section 43 and 66 of the Code.
23. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
24. The **IA-1656/2023** filed by the RP for the closure of the liquidation process of the Corporate Debtor stands **allowed**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-III**

COMPANY APPEAL NO.8 OF 2023

IN

C.P. NO. 2660/IB//C-III/2018

Filed by

Department of State Tax through the Deputy Commissioner of
State Tax Room No. 303, GST Bhavan, Prashant Nagar, Pathardi
Phata, Nashik-422010

..... Appellant

Vs.

M/s EMI Transmission Ltd.

101, 1st Floor, Centre Point,
Dr. Babasaheb Ambedkar Road,
Parel, Mumbai 400012

.... Respondent

In the matter of

Dena Bank

.... Financial Creditor

Vs.

M/s EMI Transmission Ltd.

...Corporate Debtor

Order Pronounced on: 15-05-2024

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

Appearance:

For the Appellant : Advocate Amar Mishra

**For the Liquidator : Advocate Ayush J Rajani a/w Advocate
Khushboo Shah i/b AKR Legal.**

Per: Charanjeet Singh Gulati, Member (T)

ORDER

1. This Company Appeal has been filed by Department of State Tax through the Deputy Commissioner of State Tax (hereinafter as “Appellant”) under Section 42 of IBC, 2016 seeking following reliefs:
 - a. *That this Hon’ble Tribunal be pleased to condone the delay of 721 days in filing the claim with the liquidator;*
 - b. *That this Hon’ble Tribunal be pleased to allow the present appeal and direct the Liquidator to register the claim of the Appellant and deal the same in accordance with provisions of the Code.*

2. The brief submissions of the Applicant are extracted as follows:
 - 2.1. The Appellant has office (NAS-VAT-E-009), Room No.303, GST Bhavan, Prashant Nagar, Pathardi Phata, Nashik-422010 and is governed by State of Maharashtra.

 - 2.2. Dena Bank had initiated insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) against the Corporate Debtor for default of Rs.11,74,53,512/- including amount of interest in C. P. No. CP 2660/IB/2018 (“Petition”) before this Tribunal.

 - 2.3. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (‘CIRP’) by an order passed on 11.04.2019 (“Admission Order”). By the said Admission Order, Mr. Shailesh Balchandra Desai was appointed as

Interim Resolution Professional ('IRP') for M/s. EMI Transmission Ltd.

- 2.4. Subsequently, M.A. No. 307/2020 was filed by the Resolution Professional ('RP') seeking liquidation of the Corporate Debtor, which was allowed vide order dated 14.08.2020 (Liquidation Order) and Mr. Shailesh Balchandra Desai was appointed as the Liquidator.
- 2.5. The Appellant has registered their claim Rs.2,95,67,933/- in Form C by their mail dated 08/09/2022 and requested to consider the claim. However, the said claim was rejected by the Liquidator with the reason that the last date of submission of the claim as mentioned in the public announcement was over i.e. on 17/09/2020.
- 2.6. That the said rejection of the claim of the Appellant is illegal, unsustainable and perverse as the claims were duly filed along with all supporting documents and sent to the Liquidator for consideration.
- 2.7. In State Bank of India v. ARGL Ltd. the Principal Bench of the Hon'ble NCLT, New Delhi, while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the corporate debtor and the RP/IRP would be required to take cognizance of the dues as per the books of accounts. Therefore, the application was allowed.

- 2.8. It is also submitted that in the matter of Bijoy Prabhakaran Pulipra (Resolution Professional) Vs. State Tax Officer (Works Contract) SGST Department Hon'ble NCLAT, Chennai Bench have observed that revising the admitted claim of GST assessment order was beyond the jurisdiction of IRP/RP.
- 2.9. Appellant has also placed reliance on the decision of Hon'ble Supreme Court in the case of State Tax Officer (1) vs Rainbow Papers Limited | 2022 Live Law (SC) 743 | CA 1661 OF 2020 | 6 September 2022 | wherein Hon'ble Court have decided the issue regarding Govt dues.
- 2.10. That there is a delay of 721 days in submission of the claim by the Appellant to the liquidator. The delay in submission of the claim is not intentional, the Appellant prays to condone the delay of 721 days.
3. The Respondent/Liquidator did not file any reply. However, he has filed written submissions. The submissions of the Respondent, in brief, are as follows:
- 3.1. The present Company Appeal has been filed under the provisions of Section 42 of the Code by the Appellant on 08.02.2023 seeking condonation of 721 days in filing the claim.
- 3.2. Claim in Form C has been filed by the Appellant for a sum of Rs.2,95,67,933/- on 07.09.2022 i.e. beyond 2 years from the last date for submission of claim. The Liquidator of Corporate

Debtor vide email dated 17.09.2022 rejected the belated claim filed by the Appellant citing reasons for the same.

- 3.3. It is also pertinent to mention that 34th E-Auction for sale of assets of Corporate Debtor was held on 14.11.2022 when all the assets were sold on a Going Concern Basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 to the Successful Bidder i.e. L7 Hitech Private Limited. The entire amount of sale consideration was also paid by the Successful Bidder and the same was distributed amongst the stakeholders under the waterfall mechanism under Section 53 of the Code on 28.03.2023. The sale certificate was also issued to the Successful Bidder dated 18.11.2022.
- 3.4. The legal maxim “Vigilantibus non dormientibus jura subveniunt” exactly fits the present matter. The maxim means that “the law aids the vigilant, not those who sleep over their rights”. The Appellant was dormant for 2 whole years and suddenly one day woke up and filed a belated claim.
- 3.5. It is crucial to note that the Appellant is an operational creditor and under waterfall mechanism of Section 53 of the Code, it has a position which is below the secured lenders, to whom distributions have already done against their claims.
- 3.6. The Liquidator of Corporate Debtor placed reliance on following judgments in support of its contention as well as distinguishing the judgements referred by Appellant:

- i. Order dated 07/02/2023, in Company Appeal (AT) (Insolvency) No. 246 of 2022 in case of Department of Tax, through Dy. Commissioner of State Tax versus Zicom Saas Pvt Ltd & Anr of Hon'ble NCLAT, Delhi.
 - ii. Order dated 28/03/2023, in case of Comp App (AT) (CH) (Ins) No.80/2023 in LA no. 290 of 2023 (for Exemption) in I.A.No.291 of 2023 (For Condone Delay) in Cotton Corporation of India Ltd versus G. Gunasekaran of Hon'ble NCLAT, Chennai.
 - iii. Order dated 21/05/2018 in case of M/s Globe Express Services versus M/s MM Cargo, of the Coordinate Bench of NCLT Delhi wherein it has been observed that "it is only after distribution of Assets that no further claim can be entertained".
 - iv. In case of T. R. Rajakumari versus Motion Picture Producers Combine Ltd., AIR 1942 Mad. 349, Hon'ble Madras High Court wherein it has been held that "a creditor may come in and prove his debt at any time before the final distribution of the asset..."
 - v. In case of COMPANY APPEAL NO. 12/2023 IN C.P. No.(IB) NO. 402 OF 2018 in Securities and Exchange Board of India versus. Mr. Vishal Ghisulal Jain, Liquidator of Sterling International Enterprises Limited of NCLT.
- 3.7. It is also submitted that any creditor who files belated claim has to suffer the consequences that it is entitled to receive the amount only from the left over assets of CD and has no right to disturb the distribution already made as held in Ganeshilal Gupta v. Bharatpur Oil Mills through Official Liquidator (1972), the Rajasthan High Court observed that:

“There has been a long delay in filing the proof, but the claim is within the period of limitation prescribed by the Limitation Act, the only consequence of the delay will be that prescribed by Section 474 of the Companies Act according to IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH Company Appeal No. 12/2023 IN C. P. No. 402/I&B/MB/2018 Page 11 of 11 which a creditor, who does not prove his debt or claim within the time fixed by the court, has to be excluded from the benefit of any distribution made before his debt or claim is proved.”

- 3.8. In view of the aforesaid reasons, the Respondent submits that the Appellant was dormant for two years and preferred to file their claim only after the long sleep of two years. Thus, the condonation of delay of 721 days shall not be allowed. Hence, the present application is not just infructuous but deserves to be dismissed.

OBSERVATIONS & FINDINGS

4. Heard the counsel for the parties and perused the material available on record.
5. In this case, the Corporate Debtor was admitted into CIRP on 11.04.2019 and subsequently an order dated 14.08.2020 was passed allowing the liquidation of the Corporate Debtor. Subsequent to such liquidation order and after 34th e-auction for sale of assets of the Corporate Debtor held on 14.11.2022, all the assets of the Corporate Debtor were sold on a going concern basis as per Regulation 32A of IBBI (Liquidation) Regulations, 2016. The sale certificate was issued on 18.11.2022 to the successful bidder i.e. L7 Hitech Private Limited.

6. The entire amount of sale consideration was also received from the successful bidder and the same has been distributed among the stakeholders under the waterfall mechanism under Section 53 of the IBC.
7. Subsequent thereto and completion of all the formalities an Application bearing IA No. 1656/2023 has been filed by the Liquidator for closure of the Liquidation Process and such application has been heard by this Tribunal and reserved for order.
8. The instant Company Appeal has been filed on 08.02.2023 wherein a prayer has been made to condone the delay in filing the claim before the Liquidator of 721 days. The Liquidation order in this case as mentioned above was passed by this Tribunal on 14.08.2020 and accordingly, the claims were called by the Liquidator for submissions of claims wherein as per public announcement, the last date was 17.09.2020. The appellant filed its claim on 08.09.2022. Such claim was rejected by the Liquidator vide his email dated 17.09.2022 considering the claim to be belated. This appeal has been filed against the such rejection on 08.02.2023.
9. From the facts of the case, it is seen that this appeal has been filed with a delay of 132 days and admittedly there is a delay of 721 days in submission of the claims to the liquidator and the only reason given is that the delay in submission of the claim is not intentional and accordingly the condonation has been prayed in this appeal.
10. In the facts of the Corporate Debtor the CIRP has been directed on 11.04.2019 and Liquidation order was passed on 14.08.2022 by this Tribunal. E-auction was also completed on 14.11.2022 and the entire

proceeds received have been distributed under waterfall mechanism as per Section 53 of the IBC on 28.03.2023. Under these facts the claim of the appellant not only suffers from delay and laches and therefore cannot be allowed but also if delay is condoned, it would amount to setting the clock back and that too without any gain to the Appellant.

11. The Adjudicating Authority, the Hon'ble NCLAT and the Hon'ble Supreme Court have condoned the delay in filing of claims only on those occasions where the delay has been explained with sufficient causes and where substantial grounds are made out. In this case, no reason for delay has been explained and only reason mentioned is that it was not intentional. Such a mention can hardly be understood as explanation of delay with sufficient causes and where substantial grounds are made out.
12. In case of Comp App (AT) (CH) (Ins) No.80/2023 in LA no. 290 of 2023 (for Exemption) in I.A.No.291 of 2023 (For Condone Delay) in Cotton Corporation of India Ltd versus G. Gunasekaran of Hon'ble NCLAT, Chennai in their Order dated 28/03/2023 dismissing the appeal have held as under:

“It is not in dispute that the IA/IBC/1393/CHE/2022 in CP/1087/IB/2018 was preferred by the ‘Appellant’ as Petitioner before the ‘Adjudicating Authority’ admittedly that the delay of 914 days and the ‘Liquidator’ had rightly rejected the said ‘Application’. Also that it transpires that the ‘Liquidation’ process was completed and the entire assets also got disposed of and the fact of the matter is that the same was received and distributed among the ‘Financial Creditors’ and nothing was available to the ‘Operational Creditor’ ”

13. Condonation of delay is not right of the Appellant but has to be considered in each case based on the facts and circumstances of each case and only if delay is explained by sufficient cause/ substantial ground then the delay can be condoned. In other words, if sufficient cause / substantial ground to condone the delay is not made out, the same cannot be condoned as IBC is a time bound process. In the instant case, the Appellant has given no explanation for delay of 132 days in filing the appeal and for delay of 721 days for making claim before Liquidator has been explained as being unintentional which is neither substantial ground nor can constitute a sufficient cause.
14. Useful reference is drawn from decision of Hon'ble NCLAT, Chennai Bench in the case of **Mr. Toral Rathod Vs. Mr. Gopalsamy Ganesh Babu in Comp. Appeal (AT)(CH)(Ins). No. 143 of 2023** wherein it has been held as under:

"8. The main issue which arises in this Appeal is whether the Adjudicating Authority' was justified in rejecting the Condonation of Delay of 49 days in filing the 'Claim' together with the delay in filing the Application before the Adjudicating Authority".

9. A brief perusal of the material on record shows that the CIRP commenced on 21.03.2022, a public announcement was made on 25.03.2022, the last date for filing of the 'Claims' was 04.04.2022, the expiry of 90 days is 19.06.2022, whereas the Appellant' had filed the 'Claim' before the RP on 07.08.2022, which is indeed the 139th day of the commencement of the CIRP. The ground taken by the Counsel for the "Appellant that it was initially filed under 'Form- B' as an 'Operational Creditor which was rejected vide email communication dated 03.08.2022, and thereafter the Appellant' had resubmitted her 'Claim under Form-C on 07.08 2022, does not strengthen or substantiate her case as

the timelines given under IBC are to be strictly adhered to and any laches on behalf of the “Appellant in filing, the ‘Claim under a wrong category cannot be a substantial ground for condoning the delay. Moreover, keeping in view the aforementioned dates, it is clear that the actual time period of delay in submitting the Claim Form is 125 days. It is also significant to mention that the Appellant approached the “Adjudicating Authority”, vide I.A.1522/22 with a further delay of 100 days, and the only reason that was given is that they were seeking ‘legal advise, which the Adjudicating Authority has rightly held is only a bald explanation and does not construe a sufficient cause for the delay”.

*10. Counsel for the Appellant placed reliance on ‘Puneet Kaur (Supra), in support of his case that the NCLAT Principal Bench condoned the delay of the Homebuyers in filing their ‘Claims’. The facts in that matter are distinguishable as the case relates to Homebuyers where there were Builder Buyer Agreements (‘BBA’) and it was held that rightfully some provisions in the Plan/submission of Claims are to be made for the genuine Homebuyers. This decision is not applicable to the facts of this case. Had there been a substantial ground, the case of ‘**N. Balakrishnan Vs. M. Krishnamurthy**’, could have been applied to the matter on hand. But the fact of the matter is that the Appellant has given no substantial grounds to condone the delay. IBC is a time bound process. Which has been repeatedly held by the Hon’ble Supreme Court in a catena of Judgements and at the cost of repetition, the explanation given by the “Appellant’ herein is neither substantial nor can be construed as a ‘sufficient cause’.”*

15. The Applicant has relied upon the judgment of Hon’ble Supreme Court in the case **State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No. 1661 of 2020**. This decision of Hon’ble Supreme Court does not come to the rescue of the Applicant especially in the facts when the Corporate Debtor has been liquidated and sale proceeds have

been distributed and closure application is heard and reserved for orders. Further in the subsequent decisions including in the decision of ***M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr (supra)***, the Hon'ble Supreme Court have held that the IBC is a time bound process and unleashing of hydra-headed monster of undecided claims is avoidable. Further the reliance of the appellant on the decision in case of State Bank of India v. ARGL Ltd. by the Principal Bench of the Hon'ble NCLT, New Delhi also is not found to be helpful for the reasons as aforesaid.

16. There is another reason for rejection of the present application. The claim of the Applicant also suffers from the doctrine of laches. The traditional meaning of the word laches is the negligence to follow one's legal duty. It is derived from the Latin word '**laxare**' which means to lose. In legal sense, laches means failure to assert or observe one's legal right or privilege. The doctrine is based on the Latin Maxim ***Vigilantibus Non Dormientibus Aequitas Subvenit*** which means that "*Equity aids the vigilant, not the ones who sleep over their rights*". Accordingly, the Courts will not help people who sleep over their rights and help only those who are aware and vigilant about their rights.
17. In the case of **Tilokchand Motichand Vs H.B. Munshi**, judgment was delivered by Hon'ble **M. Hidayatullah**, C.J. wherein it was held that:

"the aggrieved party should move the court at the earliest and explain satisfactorily the reason for delay and that courts need to take discretion from case to case".

18. Also, in the case of **Gian Singh v. High Court of Punjab and Haryana**, the Court rejected their contentions stating that there were no valid reasons for justifying the delay of eleven years and therefore their petitions were dismissed.
19. In the instant case an order dated 14.08.2020 was passed allowing the liquidation of the Corporate Debtor and thereafter and consequent to 34th e-auction for sale of assets of the Corporate Debtor held on 14.11.2022, all the assets of the Corporate Debtor have been sold on a going concern basis as per Regulation 32A of IBBI (Liquidation) Regulations, 2016. Entire proceeds received have been distributed under waterfall mechanism as per Section 53 of the IBC on 28.03.2023. In the background of these facts a claim filed by the Appellant which is delayed by 721 days and an appeal which is filed with a delay of 132 days cannot be entertained.
20. Accordingly, the above Appeal is **Dismissed** and **stands disposed of**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)