

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/446(KB)2017
IA(I.B.C)/58(KB)2024,
IA(I.B.C)/1861(KB)2023,

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 23RD APRIL 2024

IN THE MATTER OF	SHREESHYAM METALIKS PRIVATE LIMITED VS CONCAST STEEL & POWER LIMITED
UNDER SECTION	IBC UNDER SEC 9

Appearance (via video conferencing/physically)

C O R R I G E N D U M O R D E R

1. This matter was not on Board today. Upon mentioning by the Ld. Counsel, this matter is taken up on Board today.
2. **IA(I.B.C)/58(KB)2024 and IA(I.B.C)/1861(KB)2023:**
 - a. Ld. Counsel Ms. Kiran Sharma appearing on behalf of the liquidator in IA(I.B.C)/58(KB)2024 and IA(I.B.C)/1861(KB)2023 brings to our notice a Circular issued by the IBBI dated 18.04.2024 in partial modification of the *Circular No. IBBI/LIQ/61/2023* dated September 28, 2023 titled clarification with reference to liquidator fees.
 - b. Ld. Counsel points out to the deletion of para 2.5 of the Circular.
 - c. In view of such, both the IAs, i.e., **IA(I.B.C)/58(KB)2024** and **IA(I.B.C)/1861(KB)2023** are **disposed of** to the extent mentioned above.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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

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IA(I.B.C)/560(KB)2023
IA(I.B.C)/1138(KB)2023
IA(I.B.C)/58(KB)2024
In
C.P. (IB)/446(KB)2017**

IA(I.B.C)/924(KB)2022

*An application under Section 60 (5) of the Insolvency and Bankruptcy
Code, 2016*

In the matter of:

Assistant Commissioner, Central Excise, CGST & CX, Dankuni Division,
Howrah Commissionerate, having office at Bank of Baroda Building (1st
Floor), Fatakgora Station Road, Chandannagore, Hooghly – 712136.

... .. Applicant

Versus

Shri Kshitiz Chhawchharia, Liquidator of M/s. Concast Steel & Power
Limited (in Liquidation) IP Registration No. IBBI/IPA-001/IP-
P00358/2017-18/10616, C/o. B. Chhawchharia & Co., 8A & B, Satyam
Tower, 3, Alipore Road, Kolkata- 700027

IA(I.B.C)/560(KB)2023

*An application under Section 42 of the Insolvency and Bankruptcy Code,
2016*

In the matter of:

Shreeshyam Metaliks Private Limited.

... .. Operational Creditor

Versus

M/s. Concast Steel & Power Limited.

... .. Corporate Debtor

And

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In
C.P. (IB)/446(KB)2017*

In the matter of :

The Assistant Commissioner of Customs, Office of the Principal Commissioner of Customs, Visakhapatnam Customs Commissionerate, Custom House, Port Area, Cisakhapatnam- 530035.

... .. Applicant

Versus

Shri Kshitiz Chhawchharia, Registration No. IBBI/IPA-001/IP-P00358/2017-18/10616, the Liquidator for M/s. Concast Steel & Power Limited, C/o. B. Chhawchharia & Co., 8A & B, Satyam Tower, 3, Alipore Road, Kolkata- 700027

... .. Respondent/Official Liquidator

IA(I.B.C)/1138(KB)2023

An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Shreeshyam Metaliks Private Limited.

... .. Operational Creditor

Versus

M/s. Concast Steel & Power Limited.

... .. Corporate Debtor

And

In the matter of :

The Deputy Commissioner of Commercial Tazed & GST, C.T. & GST Circle, Jharsuguda, Odisha.

... .. Applicant

Versus

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Shri Kshitiz Chhawchharia, Registration No. IBBI/IPA-001/IP-P00358/2017-18/10616, the Liquidator for M/s. Concast Steel & Power Limited, C/o. B. Chhawchharia & Co., 8A & B, Satyam Tower, 3, Alipore Road, Kolkata- 700027

... .. Respondent/Liquidator

IA(I.B.C)/58(KB)2024

An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

In the matter of:

Shreeshyam Metaliks Private Limited

... .. Operational Creditor

Versus

M/s. Concast Steel & Power Limited (in Liquidation) represented by Mr. Kshitiz Chhawchharia, Liquidator, having his office at 8A & B, Satyam Towers, 3, Alipore Road, Kolkata- 700027.

... .. Company in Liquidation

And

In the matter of:

The Liquidator, Concast Steel & Power Limited (in Liquidation)

... .. Applicant

Date of pronouncement: 1st May, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Jishnu Chowdhury, Adv.] For the applicant in

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Ms. S. Ganguli, Adv.] IA(I.B.C)/58(KB)2024
Ms. Pooja Chakraborti, Adv.]
Ms. Kiran Sharma, Adv.]
Mr. Anand Das, Adv.	] For the Applicant in
Mr. Seshadeba Das, Adv.	] IA(I.B.C)1138/KB/2023
Mr. Dipto Sen, Adv.	] For the Applicant in
	] IA(I.B.C) 238/KB/2024
Mr. Shaunak Mitra, Adv.	] For the Applicant in
Mr. Prithwish Roy Chowdhury, Adv.	] IA(I.B.C)/1448/(KB)/2023
Mr. Dinabandhu Choudhury, Adv.	] For the Petitioner in
Mr. Amal Kumar Saha, Adv.	] IA(I.B.C)/418(KB)2022 and
Mr. Iresh Paul, Adv.	] IA(I.B.C)/414(KB)2022
Mr. Soumyadip Panda, Adv.]
Mr. Shaunak Mitra, Adv.	] For the Respondent No.1 in
Mr. Prithwish Roy Chowdhury, Adv.	] IA(I.B.C)/1681/(KB)/2023
Mr, Nilesh Mishra, Adv.	] For the Respondent in
Mr. Rahul Parasrampur, PCS	] IA(I.B.C)/1542(KB)2023,
Mr. Rohit Parasrampur, PCA	] IA(I.B.C)/154(KB)2022,
	] IA(I.B.C)/180(KB)2022 and
	] IA(I.B.C)/864(KB)2022
Mr. Sooriya Ganguli, Adv.	] For Liquidator
Ms. Pooja Chakraborty, Adv.]
Ms. Kiran Sharma, Adv.]
Ms. A. Badra, Adv.]
Mr. Abhradip Maity, Adv.	] For G.S.T. Authority in
Ms. Shatabdi Sen, Adv.	] IA(I.B.C)/924(KB)2022
Mr. Tapan Bhanja, Adv.] For G.S.T. Authority in
] IA(I.B.C)/560(KB)2023
Mr. Swatarup Banerjee, Adv.] For M.S.T.C
Mr. Rahul Auddy, Adv.]

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Mr. Joy Saha, Sr. Adv.] For W.B.H.I.D.C.O
Mr. Rahul Auddy, Adv.]

Mr. Nimish Mishra, Adv.] For Successful Bidder
Mr. Abir Mondal, Adv.]
Mr. Rahul Parasrampurua, PCS]
Mr. Rohit Parasrampurua, PCA]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened in a hybrid mode.
2. Heard both the learned Senior Counsel/Counsel for the parties.

IA(I.B.C)/924(KB)2022

3. The Assistant Commissioner, Central Excise, CGST & CX, Dankuni Division, Howrah Commissionerate has preferred this application against Shri Kshitiz Chhawchharia, the Liquidator of M/s. Concast Steel & Power Limited (in liquidation) to seek the following reliefs:

- (a) *Condone the delay of 1366 days to file the claim before the Liquidator and be pleased to direct the Official Liquidator to accept and consider the claim of the applicant on urgent basis;*
- (b) *Such order and further order or orders as Your Honour may deem fit and proper for the ends of justice;*

4. To seek condonation of delay as they were unable to lodge their claim within the stipulated period. It is submitted that as per Section 5 (20) of the Insolvency and bankruptcy Code, 2016, the

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Applicant is an Operational Creditor, the Corporate Debtor, M/s. SBS Metal Steels was a registered assessee under the erstwhile Central Excise Act, under the control of the then Central Excise, Kolkata-IV Commissionerate, the said assessee failed to pay Central Excise duty for which various show-cause notices were issued, an adjudication order in original was passed in 08/ADC/CE/KOL-IV/ADJN/2016 of Rs.10,18,992/- dated 31st March, 2016 and 10/ADC/CE/KOL-IV/ADJN/2016 of Rs.46,46,858/- dated 31st March, 2016 totaling to Rs.56,65,850/- along with penalty and applicable interest.

5. That after introduction of GST Act with effect from 1st July, 2017, the jurisdiction fell with Range-II, BBD Bag-II, Division of North Kolkata Commissionerate, in GST Regime.
6. That the Assistant Commissioner of CGST & CX, Dankuni Division vide letters dated 28th March, 2022, 12th May, 2022 and 15th June, 2022 informed the Assistant Commissioner, BBD Bag-II, Division of North Kolkata Commissionerate to provide the bank account of along with IFSC Code to initiate steps to recover Government dues against the said assessee.
7. The Superintendent Range-II having come to learn that M/s. Concast Steel & Power Limited was put under the CIRP and subsequently under liquidation by this Tribunal in a petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 informed the Assistant Commissioner, CGST & CX, Khardah Division, Kolkata North Commissionerate to file departmental claims of erstwhile Kolkata-IV Commissionerate of Rs.56,65,850/-.

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8. The Assistant Commissioner of Khardah Division whereafter intimated that the principal place of business falls under the jurisdiction of Range-I, Dankuni Division vide its letter dated 12th July, 2022 whereafter claim was along with Form C was submitted to the Official Liquidator vide letter dated 13th July, 2022.
9. The Official Liquidator vide its e-mail dated 19th July, 2022 informed the department that the claim was time barred un the Insolvency and Bankruptcy read with IBBI (Liquidation Process) Regulations, 2016 and that this Adjudicating Authority has to be approached under Section 42 of the Insolvency and Bankruptcy Code, 2016 to seek condonation of delay in filing of the claim.
10. It is urged that the Applicant being neither a party in the liquidation proceeding nor aware of the publication by the Official Liquidator for submission of claim, lodged its claim on 8th July, 2022 nor Form C submitted on 13th July, 2022 after delay about 1366 days.
11. That the Applicant being an Operational Creditor and the duty amount of Rs.56,65,850/- including penalty and interest being the operational debt of the Corporate Debtor payable to Central Government. The claim be accepted condoning the delay in preferring the claim.
12. The Applicant has relied upon the decision in ***State Tax Officer vs. Rainbow Papers Limited [Civil Appeal No.1661 and 2568 of 2020]*** to contend that it should be placed in the list of secured creditors under Regulation 31 (5) (d) of (Liquidation Process) Regulations, 2016.

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- 13.** Per contra, the Liquidator submits that the judgment in Rainbow Papers has been distinguished subsequently by the Hon'ble Supreme Court of India ***Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors. [Civil Appeal Nos.7976 of 2019]***. In the said decision, the Hon'ble Supreme Court of India held that –

“49. Rainbow Papers (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

50. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific

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enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority. As noticed earlier,

- 14.** We have noted the rival contentions and perused records.
- 15.** We have noted that admittedly there is a delay of 1366 days in making a claim.
- 16.** We have failed to find out any application preferred by the Applicant seeking condonation of delay in preferring the claim belatedly.
- 17.** In absence of any application seeking condonation of delay, the prayer of acceptance of claim would not be maintainable. In view of the fact that the statutory period to raise a claim is long over.
- 18.** Further, while deciding on the claim of **Paschimanchal Vidyut Vitran Nigam Ltd. (supra)** the Hon'ble Supreme Court of India has noted as under:

"52. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs³⁸. In that case, Section 142A of the Customs Act 1962 was in issue – authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired

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primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

“55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

(c) Answered in negative.

56. On the basis of the above discussions, following are our conclusions:

(i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and

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other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

- 19.** In view of the failure on the part of the Applicant to lodge its claim in strict compliance of the time period prescribed under the Insolvency and Bankruptcy Code, we feel it appropriate to reject the claim as time barred. Hence, IA(.B.C)/924(KB)2022 fails.

IA(I.B.C)/560(KB)2023

- 20.** In this present application, the Deputy Commissioner of Customs, Visakhapatnam Custom Commissionerate being the Applicant has sought for condonation of delay in preferring its claim before the Liquidator of a duty amount of Rs.6,83,28,102/-.
- 21.** Admitted delay of 715 days excluding the period from 15th March, 2022 to 28th February, 2023 i.e., 716 days in terms of the Hon'ble Supreme Court of India's order passed in *suo motu* writ petition.
- 22.** The reason seeking condonation is that during the second wave of COVID-19 pandemic, most of the offices in the country were running with skeletal staff and it had practically become impossible to deal the issues expeditiously and though the Customs was declared as one of the departments carrying out

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essential services, its office was open only for clearance of import and export cargo.

- 23.** Identical prayer as in IA(I.B.C)/1138(KB)2023 has been sought for against the rejection of its claim vide letter dated 24th August, 2022 by the Liquidator, as time barred in terms of Section 38 (1) of the Code.
- 24.** Since the last date of submission of claim was 26th October, 2018 and the claim was lodged on 16th August, 2022 along with Form C due to the reasons mentioned above and having noted the enormous delay in preferring the claim without any proper justification and separate application seeking condonation of delay, we deem it appropriate to reject the application.
- 25.** Accordingly, IA(I.B.C)/560(KB)2023 and IA(I.B.C)/1138(KB)2023 stands dismissed.

IA(I.B.C)/58(KB)2024

- 26.** This application has been preferred by the Liquidator, Shri Kshitiz Chhawchharia of M/s. Concast Steel & Power Limited (in liquidation).
- 27.** The Applicant/Liquidator has sought for recalling of an order dated 1st January, 2024 in IA(I.B.C)/1861(KB)2023 and its modification.
- 28.** The order dated 1st January, 2024 has contended Annexure B to the application. The order records the:

“8. The Liquidator further contends that since Applicant has failed to adhere to the stipulated timeline under the Code and Liquidation Regulations, the application seeking condonation of delay in filing the claim ought to be dismissed. That the

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Liquidator has already filed updated list of Stakeholders, as required under Regulation 31(4) of the Liquidation Process Regulations, along with the 18th Progress Report for the quarter ending on December 31, 2022 before this Tribunal on January 16, 2023.

Therefore, in the event the instant application is allowed and this Tribunal directs the Liquidator to consider the claim of the Applicant, the same would derail the entire liquidation process.

9. That under Section 42 of the Code, this Tribunal has the power to condone delay if sufficient cause is shown by the defaulting party. In the present case, the Applicant has failed to establish sufficient cause which would warrant condonation of delay by this Hon'ble Tribunal. Therefore, the applications ought to be dismissed.

10. We have considered the rival contentions and perused the contents of the communication as enumerated above.

11. In view of the gross delay and the assurance given in the communication by the Liquidator, we find no infirmity in the same.

12. The Interlocutory Application I.A. 874 of 2023, seeking condonation of delay stands dismissed.

13. Consequently, the prayer in I.A. 874 of 2023 and I.A. 1861 of 2023 also stands dismissed. No Costs.

29. Recalling sought for on the ground that the order also dismisses IA(I.B.C)/1861(KB)2023 along with IA(I.B.C)/874(KB)2023

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whether IA(I.B.C)/1861(KB)2023 was prayed seeking exclusion of 131 days, 57 days, 207 days and 1412 days due to various reasons including pendency of litigation in fora.

- 30.** In view of such, the order dated 1st January, 2024 is recalled and IA(I.B.C)/1861(KB)2023 is put back on board and allowed for a proper culmination liquidation process. However, IA(I.B.C)/874(KB)2023 stands disposed in terms of order dated 1st January, 2024.
- 31.** Accordingly, IA(I.B.C)/58(KB)2024 stands disposed of.
- 32.** Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this, the 1st day of May, 2024.

Sayon (Steno)