

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **03.05.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Vee Ess Forgings Pvt Ltd

MAIN PETITION NUMBER : CP/1039/IB/2018

(IA/MA) APPLICATION NUMBERS
IA/630/CHE/2021

ORDER

Present : None for the Applicant / Liquidator.

Ld. Counsel Ms. Poornima for Respondent.

Vide separate order announced in open court, IA/630/CHE/2021 is
dismissed.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/630(CHE)/2021 in CP/1039/IB/2018

(Filed under Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Vee Ess Forgings Private Limited

Mathur Sabhapathy Viswanathan

Liquidator for M/s. Vee Ess Forgings Private Limited
15/35, Musafar Jung Bahadur Street,
Triplican, Chennai – 600 005

... Applicant

-Versus-

M/s. Axles India Limited

21, Patullos Road,
Chennai – 600 002

... Respondents

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *M. S. Viswanathan, Liquidator*

For Respondent : *Poornima, Advocate*

Order Pronounced on 3rd May 2024

ORDER

(Heard through video conferencing)

The CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide., order dated 04.03.2019 in CP/1039/IB/2018. An

Application for Liquidation of the Corporate Debtor was allowed by this Tribunal vide order dated 26.09.2019 in MA/897/2019.

2. It is stated that on going through the books of accounts / balance sheet of the Corporate Debtor, the Liquidator has identified following receivables which are outstanding:-

S.No	NAME OF THE PARTY	AMOUNT IN Rs.
1.	Axles India Limited, Sriperumbudur HSG	19,57,021
2	J.K. Industries	5,62,949
3.	Swami Engineers	49,24,501
	Total	74,44,471

3. It is stated that the Liquidator has sent recovery notices to all the sundry debtors requesting them to pay their dues owed to the Corporate Debtor. It is stated that the Applicant has sent an email dated 22.08.2019 to the Respondent intimating the initiation of CIRP of M/s. Vee Ess Forgings Private Limited along with the admission order passed by this Tribunal. It is stated that the Applicant has also informed the Respondent to produce the details required on the outstanding payment due as per the books of accounts of Corporate Debtor and to furnish further details on the same.

4. It is stated that the Respondent submitted statement of accounts vide letter dated 10.08.2019 to the Applicant and the Respondent submitted that an amount of Rs.40,24,258.36/- is payable by the Corporate Debtor to the Respondent. It is stated that the letter from the Respondent stresses about payment of VAT for an amount of Rs.39,57,863.00/- collected but not remitted by the Corporate Debtor.

5. It is stated that in reply to the Respondent's letter dated 10.08.2019, the Applicant vide letter dated 07.10.2020 has asked the Respondent to disclose the receipt of payment -VAT/1819/00001 dated 31.03.2019 so that it can be deducted from the current due payable to the Corporate Debtor.

6. It is stated that the Respondent did not reply to the letter and the Applicant vide letter dated 17.03.2021 again asked the Respondent to submit the Receipt of payment of VAT which was supposed to be paid by the Corporate Debtor. The Applicant has also asked the Respondent to submit the receipt within one week.

7. It is stated that the Respondent submitted statement of Summary of GST and VAT taxes collected by Vee Ess Forgings Pvt Ltd vide letter dated 18.03.2021, however, the Respondent has not submitted receipt of payment of VAT or any other proof with regards to this payment even after frequent inquiry by the Applicant.

8. It is stated that as per the books of accounts of the Corporate Debtor, the Respondent is due to pay an amount of Rs.19,57,021/- to the Corporate Debtor. It is stated the Respondent till date has neither produced nor submitted any records to prove that there are no existing dues payable to the Corporate Debtor from their end nor have they paid the amount due as per the books of accounts of the Corporate Debtor. Under such circumstances, the Liquidator has prayed to allow the present Application.

9. The Respondent has filed its reply wherein it denied its liability towards the Corporate Debtor.

10. Heard the submissions made by the Learned Counsel for the parties and perused the records.

11. The present Application has been filed by the Liquidator seeking relief as follows;

a) To direct the Respondent to produce the alleged receipt of payment of VAT.

b) To direct the Respondent to pay the amount due to the Corporate Debtor in absence of or on the failure of the Respondent to produce, the alleged receipt.

c) Pass such other order / directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.

12. In this regard, we find it apt to refer to the Judgment of the Hon'ble NCLAT, New Delhi in the matter of **Shri Ramachandra D. Choudhary RP of M/s. Oasis Tradelink Ltd. Vs. Bansal Trading Company** in CA (AT) (Insolvency) Nos. 810-812 & 815 of 2020. Vide the Judgment dated 01.09.2022 it is held that recovery application against book debts or any other is out of purview of the Adjudicating Authority and for such recovery, the CoC and the RP / Liquidator needs to approach the appropriate Court. It is held as under;

10. The brief point which falls for consideration in these Appeals is whether the Adjudicating Authority has the powers to pass Orders under Section 60(5)(b) of the Code for recovery of amounts by the 'Corporate Debtor' against its Sundry Debtors. It is

the main case of the Learned Counsel appearing for the Liquidator that the Liquidator is duty bound to prefer Application for recovery of money due to the 'Corporate Debtor' under Regulation 39 of the IBBI (Regulation Process), Regulations, 2016. It was strenuously argued by the Learned Counsel that if Liquidators are directed to approach the Civil Court instead of preferring suitable Application under Section 60(5)(b) of the Code, it would frustrate the time bound manner in which the Liquidation is to be conducted.

14. The only point which is to be examined is whether the Adjudicating Authority was justified in dismissing the Applications preferred by the Liquidator as not maintainable. The Resolution Professional is required under Section 18 of the Code to take control and custody of the assets of the 'Corporate Debtor'. The amounts stated to be 'due and payable' to the 'Corporate Debtor' by other Sundry Debtors are required to be included in the Information Memorandum and when included, the person/entity purchasing the assets of the 'Corporate Debtor' would have knowledge of the value of the assets/Liquidation Value as stated in the Information Memorandum. The Hon'ble Supreme Court in 'Gujarat Urja Vikas Nigam Limited' Vs. 'Mr. Amit Gupta & Ors.', Civil Appeal No. 9241 of 2019, in paras 67 & 68 noted as follows:

"67. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. in the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful, reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in

a timely, effective and efficient manner. Pursuing this theme in Innoventive (supra) this court observed that "one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of "speeding up of the insolvency process". The principle was reiterated in Arcelor Mittal (supra) where this court held that "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings". Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.

68. It is appropriate to refer to the observations in the Report of the BLRC, wherein it noted the role of the NCLT, as the Adjudicating Authority for the CIRP, in the following terms:

"An adjudicating authority ensures adherence to the process. At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management the entity, recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalize frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on.

The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behavior of the insolvency professional are directed to the Regulator/Adjudicator."

As such, it is important to remember that the NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under the IBC, which sought to make the process driven by trained resolution professionals."

15. Keeping in view the aforementioned ratio in 'Gujarat Urja Vikas Nigam Limited' (Supra), **we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the amount is due and payable by the 'sundry debtors' who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'** **(emphasis supplied)**

13. The ratio as laid by the Hon'ble NCLAT in the case referred supra squarely applies to the facts of the present case. The Liquidator has filed the present Application seeking recovery of Rs.19,57,021/- which is found due and payable in the books of the Corporate Debtor. The

Respondent has denied its liability towards the Corporate Debtor and stated that it has a claim to the tune of Rs.40.24 Lakhs towards the Corporate Debtor. To adjudicate whether the amount is due and payable by the Respondent who has raised disputes, would require calling for evidence and cannot be proceeded under the provisions of IBC, 2016. The Liquidator is well within his powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'. Under these circumstances, the present Application filed by the Liquidator is liable to be dismissed.

14. Accordingly IA(IBC)/630(CHE)/2021 stands **dismissed**. No costs.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond