

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA.No.25/2023

In

CP (IB) No.1409/MB-IV/2020

Under Section 42 of the I&B Code, 2016

In the matter of:

Jayantilal Ranshi Sangoi

...Applicant

Vs

Mr. Anuj Bajpai

...Respondent

In the matter of

Pegasus Assets Reconstruction Private Limited

...Financial Creditor

V/s

Radiance Properties (India) Private Limited

...Corporate Debtor

Order pronounced on: 28.06.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants(s) :

Mr. Punit Jain, Mr. Shikar
Khandelwal i/b Mr. Nipeksh Jain,

For the Liquidator :

Ms. Nikita Abhyankar i/b
Gravitas Legal.

ORDER

Per: Prabhat Kumar, Member (Techincal)

1. This Company Appeal 25/2023 in CP(IB)1409/MB/2020 is filed by Mr. Jayantilal Ranshi Sangoi seeking condonation of delay in filing of claim in the liquidation of the Corporate Debtor i.e. Radiance Properties (India) Private Limited.
2. The Appellant submits that the Directors of the Corporate Debtor namely Mr. Ramesh Devji Patel, Mr. Vijay Premji Patel and Mrs. Pratibha R Patel approached the Applicant through brokers Mr. Hitesh and Mr. Paresh who were introduced by Mr. Praful Chheda and Mr. Dinesh Dhedia for hand loan for construction of the building.
 - 2.1. The Directors of Corporate Debtor represented that the commencement certificate of building was obtained and if loan was granted then the same would be paid within 6 months for 33% p.a. and hence, the Applicant granted loan amounting to Rs. 35,00,000 and the said loan was secured by (i) Promissory note, (ii) MOU dated 22.02.2013, (iii) Allotment letter, (iv) Agreement for Sale, (v) Possession letter, (vi) Power of Attorney dated 22.02.2013 all the documents were in respect of Flat No. A-602, admeasuring 1110 sq.ft.. 6 floor in Radiance Splendour, lot No. 64/64A, Sector- 5, Ulwe, Navi Mumbai. and (vii) cheques.
 - 2.2. Section 9 and subsequently Section 11 application under the Arbitration and Conciliation Act, 1996 filed by the Applicant and in furtherance whereof an Arbitral Tribunal was constituted and Arbitration Dispute No. 8 of 2014 was lodged and after hearing

award dated 10.05.2019 was passed by Arbitral Tribunal holding that Corporate Debtor had taken secured loan from the Applicant and directed the Corporate Debtor to pay an amount of Rs. 40,25,000 alongwith interest@12% p.a. from 01.08.2013 till date of payment i.e. date of initiation of liquidation (27.01.2023) amounts to Rs. 75,91,068/-

- 2.3. This Hon'ble Tribunal vide order dated 26.11.2021 admitted the Company Petition filed by the Financial Creditor, viz Pegasus Assets Reconstruction Private Limited ("Financial Creditor"), thereby initiating Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor and appointed Mr. Anuj Bajpai (Liquidator/Respondent herein) as the Interim Resolution Professional of the Corporate Debtor. Subsequently, vide order dated 10.06.2022, this Hon'ble Tribunal granted an extension of 90 days upto 13.08.2022 for completion of the CIRP of the Corporate Debtor.
- 2.4. This Hon'ble Tribunal vide order dated 27.01.2023 allowed Interim Application No. 1812 of 2022 and ordered Liquidation of the Corporate Debtor. Subsequently, public notice dated 06.02.2023 was issued by the Liquidator (Respondent) inviting claims against the Corporate Debtor upto 06.03.2023.
- 2.5. On 09.05.2023 when the Applicant was going through the master data of Corporate Debtor for taking further steps for recovery of amount under Arbitration Award when the Applicant was shocked and surprised to know that the Corporate debtor is under liquidation.

- 2.6. Vide email dated 11.05.2023 the Applicant immediately submitted the claim as a secured Financial Creditor and requested the Liquidator to add the Applicant in the committee of Creditors.
- 2.7. The Respondent liquidator rejected the claim of the Appellant vide email dated 15.05.2023 stating that “*No claim was received from you by the last date of submission of claims in the Liquidation Process nor during the Corporate Insolvency Resolution Process which preceded the Liquidation Process. In such a case, it is not possible to accept your claim filed after considerably delay*”.
3. The Appellant has also submitted that a written submission dated 19.06.2023 further stating that Liquidator has not submitted the assets memorandum to the Adjudicating Authority has required in Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 as found from the orders passed so far in the liquidation proceeding. He further submits that the Liquidator cannot commence the distribution before the list of stakeholders and the memorandum has been filed before the Adjudicating Authority as provided in Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016. Accordingly, the Appellant argues that no prejudice will be caused to any of the parties, if the delay is condoned. The Appellant has relied upon various decisions of this Tribunal whereby the delay has been condoned. He is also relied upon the decision of Hon’ble NCLAT in the case of *Virender Singh and Theme Export Pvt. Ltd. {CA(AT) No.34 of 2022}* and *Pepper Craft and Theme Exports Pvt. Ltd. {CA(AT) No.46 of 2022}*; and the decision of Hon’ble Supreme Court in the matter of *Manoharan Vs. Shivrajan & Ors. (Civil Appeal No.10581/2013)*.

4. The Respondent Liquidator was represented by the Counsel and submitted that he has no objection if the present appeal is allowed.
5. This Bench heard the Counsels and perused the material as well as decisions cited by the Appellant as available on record.
 - 5.1. This Bench finds that the Liquidator has not denied the existence of arbitral decree, forming basis of present claim, against the Corporate Debtor. This Bench also noticed that the said decree came to be passed on 10.05.2019 and the Corporate Debtor was admitted into CIRP on 26.11.2021. Accordingly, this Bench feels that this facts would have been available in the audited financial statement of the Corporate Debtor for the year ended 31.03.2020, which the then IRP/RP ought to have taken cognizance of and included the said liability in the information memorandum. We find support from the decision of Hon'ble NCLAT in the matter of *Puneet Kaur*. This Bench further notices that the delay has been condoned by the Mumbai bench of this Tribunal in the case of *Deepak Narottam Sampat and Jitender Kumar Jain (IA No.252/2021 and C.P. (IB) No.1055/MB/2017)* and *Natwarlal Shamaldas & Co. and Yogi Industries Ltd. (MA No.1098/2018 in CP No.82/IBC/NCLT/MB) MAH/2017)*.
 - 5.2. This Bench further finds that the Liquidator has filed Asset Memorandum on 6.3.2023, but the distribution of assets is yet to take place. This Bench finds that the Madras High Court in case of *T. R. Rajakumari v. Motion Picture Producers Combine Ltd., AIR 1942 Mad. 349*, held that a creditor may come in and prove his debt at any time before the final distribution of the assets, but he cannot disturb any dividend which has already been paid. This

Bench also notes that Liquidation Process Regulations does not contain any provision dealing with belated submission of claims. It is trite law that a claim should generally be adjudicating on merits and technicalities should not allow to prevail upon the merits of a claim. The existence of Arbitral decree is not denied by the Liquidator and he has also not commented on the merit of the claim. The mail of the Liquidator intimating rejection of claim is cryptic, and merely communicates the delay in filing of the claim as the reason for rejection. It is also not disputed that the distribution of assets has not yet taken place. Accordingly, this Bench is of considered view that the delay in submission of the claim deserve to be condoned, and the Liquidator is directed to adjudicate the claim of the appellant upon the merits for its admission.

6. In view of the foregoing directions, this CA.No.25/2023 is **allowed and disposed** of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

28.06.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA.No.24/2023

IN

CP (IB) No.1409/MB-IV/2020

Under Section 42 of the I&B Code, 2016

In the matter of:

Pramita Praful Chheda

...Applicant

Vs

Mr. Anuj Bajpai

...Respondent

In the matter of

Pegasus Assets Reconstruction Private Limited

...Financial Creditor

V/s

Radiance Properties (India) Private Limited

...Corporate Debtor

Order pronounced on: 28.06.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants(s) :

Mr. Punit Jain, Mr. Shikar
Khandelwal i/b Mr. Nipeksh Jain,

For the Liquidator :

Ms. Nikita Abhyankar i/b
Gravitas Legal.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Appeal 24/2023 in CP(IB)1409/MB/2020 is filed by Mrs. Pratima Praful Chheda seeking condonation of delay in filing of claim in the liquidation of the Corporate Debtor i.e. Radiance Properties (India) Private Limited.
2. The Appellant submits that the Directors of the Corporate Debtor namely Mr. Ramesh Devji Patel, Mr. Vijay Premji Patel and Mrs. Pratibha R Patel approached the Applicant through brokers Mr. Hitesh and Mr. Paresh who were introduced by Mr. Praful Chheda and Mr. Dinesh Dhedia for hand loan for construction of the building.
 - 2.1. The Directors of Corporate Debtor represented that the commencement certificate of building was obtained and if loan was granted then the same would be paid within 6 months for 33% p.a. and hence, the Applicant granted loan amounting to Rs. 25,00,000 and the said loan was secured by (i) 3 Promissory notes, (ii) 3 MOUS dated 22.02.2013, (iii) 3 Allotment letter, (iv) 3 Agreement for Sale, (v) 3 Possession letter, (vi) 3 Power of Attorney dated 22.02.2013 all the documents were in respect of Flat Nos. A-102, A-103 and A-202 all admeasuring 1110 sq.ft.. in Radiance Splendour, lot No. 64/64A, Sector-5, Ulwe, Navi Mumbai. and (vii) cheques.
 - 2.2. Section 9 and subsequently Section 11 application under the Arbitration and Conciliation Act, 1996 filed by the Applicant and in furtherance thereof an Arbitral Tribunal was constituted and Arbitration Dispute No. 7 of 2014 was lodged and after hearing

award dated 10.05.2019 was passed by Arbitral Tribunal holding that Corporate had taken secured loan from the Applicant and directed the Corporate Debtor to pay an amount of Rs. 87,37,500 along with interest @12% p.a. from 01.08.2013 till date of payment which as on date of initiation of liquidation (27.01.2023) amounts to Rs. 1,63,79,075/-.

- 2.3. This Hon'ble Tribunal vide order dated 26.11.2021 admitted the Company Petition filed by the Financial Creditor, viz Pegasus Assets Reconstruction Private Limited ("Financial Creditor"). thereby initiating Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor and appointed Mr. Anuj Bajpai (Liquidator/Respondent herein) as the Interim Resolution Professional of the Corporate Debtor.
- 2.4. This Hon'ble Tribunal vide order dated 27.01.2023 allowed Interim Application No. 1812 of 2022 and ordered Liquidation of the Corporate Debtor. Subsequently, public notice dated 06.02.2023 was issued by the Liquidator (Respondent) inviting claims against the Corporate Debtor upto 06.03.2023.
- 2.5. On 09.05.2023 when the Applicant was going through the master data of Corporate Debtor for taking further steps for recovery of amount under Arbitration Award when the Applicant was shocked and surprised to know that the Corporate debtor is under liquidation. Vide email dated 11.05.2023, the Applicant immediately submitted the claim as a secured Financial Creditor and requested the Liquidator to add the Applicant in the committee of Creditors.

- 2.6. The Respondent liquidator rejected the claim of the Appellant vide email dated 15.05.2023 stating that "*No claim was received from you by the last date of submission of claims in the Liquidation Process nor during the Corporate Insolvency Resolution Process which preceded the Liquidation Process. In such a case, it is not possible to accept your claim filed after considerably delay*".
3. The Appellant has also submitted that a written submission dated 19.06.2023 further stating that Liquidator has not submitted the assets memorandum to the Adjudicating Authority has required in Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 as found from the orders passed so far in the liquidation proceeding. He further submits that the Liquidator cannot commence the distribution before the list of stakeholders and the memorandum has been filed before the Adjudicating Authority as provided in Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016. Accordingly, the Appellant argues that no prejudice will be caused to any of the parties, if the delay is condoned. The Appellant has relied upon various decisions of this Tribunal whereby the delay has been condoned. He is also relied upon the decision of Hon'ble NCLAT in the case of Virender Singh and Theme Export Pvt. Ltd. {CA(AT) No.34 of 2022) and Pepper Craft and Theme Exports Pvt. Ltd. {CA(AT) No.46 of 2022); and the decision of Hon'ble Supreme Court in the matter of Manoharan Vs. Shivrajan & Ors. (Civil Appeal No.10581/2013).
- 3.1. The Appellant has also submitted that a written submission dated 19.06.2023 further stating that Liquidator has not submitted the assets memorandum to the Adjudicating Authority has required in Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016

as found from the orders passed so far in the liquidation proceeding. He further submits that the Liquidator cannot commence the distribution before the list of stakeholders and the memorandum has been filed before the Adjudicating Authority as provided in Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016. Accordingly, the Appellant argues that no prejudice will be caused to any of the parties, if the delay is condoned. The Appellant has relied upon various decisions of this Tribunal whereby the delay has been condoned. He is also relied upon the decision of Hon'ble NCLAT in the case of Virender Singh and Theme Export Pvt. Ltd. (CA(AT) No.34 of 2022) and Pepper Craft and Theme Exports Pvt. Ltd. (CA(AT) No.46 of 2022); and the decision of Hon'ble Supreme Court in the matter of Manoharan Vs. Shivrajan & Ors. (Civil Appeal No.10581/2013).

4. The Respondent Liquidator was represented by the Counsel and submitted that he has no objection if the present appeal is allowed.
5. This Bench heard the Counsels and perused the material as well as decisions cited by the Appellant as available on record.

5.1. This Bench finds that the Liquidator has not denied the existence of arbitral decree, forming basis of present claim, against the Corporate Debtor. This Bench also noticed that the said decree came to be passed on 10.05.2019 and the Corporate Debtor was admitted into CIRP on 26.11.2021. Accordingly, this Bench feels that this facts would have been available in the audited financial statement of the Corporate Debtor for the year ended 31.03.2020, which the then IRP/RP ought to have taken cognizance of and included the said

liability in the information memorandum. We find support from the decision of Hon'ble NCLAT in the matter of Puneet Kaur. This Bench further notices that the delay has been condoned by the Mumbai bench of this Tribunal in the case of Deepak Narottam Sampat and Jitender Kumar Jain (IA No.252/2021 and C.P. (IB) No.1055/MB/2017) and Natwarlal Shamaldas & Co. and Yogi Industries Ltd. (MA No.1098/2018 in CP No.82/IBC/NCLT/MB)MAH/2017).

- 5.2. This Bench further finds that the Liquidator has filed Asset Memorandum on 6.3.2023, but the distribution of assets is yet to take place. This Bench finds that the Madras High Court in case of T. R. Rajakumari v. Motion Picture Producers Combine Ltd., AIR 1942 Mad. 349, held that a creditor may come in and prove his debt at any time before the final distribution of the assets, but he cannot disturb any dividend which has already been paid. This Bench also notes that Liquidation Process Regulations does not contain any provision dealing with belated submission of claims. It is trite law that a claim should generally be adjudicating on merits and technicalities should not allow to prevail upon the merits of a claim. The existence of Arbitral decree is not denied by the Liquidator and he has also not commented on the merit of the claim. The mail of the Liquidator intimating rejection of claim is cryptic, and merely communicates the delay in filing of the claim as the reason for rejection. It is also not disputed that the distribution of assets has not yet taken place. Accordingly, this Bench is of considered view that the delay in submission of the claim deserve to be condoned, and the Liquidator

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CA.No.24/2023
IN
CP (IB) No.1409/MB-IV/2020

is directed to adjudicate the claim of the appellant upon the merits for its admission.

6. In view of the foregoing directions, this CA.No.24/2023 is **allowed and disposed** of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

28.06.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)