

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

COMPANY APPEAL 19 OF 2023

Under Section 42 of Insolvency &
Bankruptcy Code, 2016

Department of State Tax
Through the State Tax Officer

...Applicant

V/s

M/s Bharati Defense and Infrastructure
Ltd.

...Respondent

In the matter of

C.P.(IB) No. 292/MB/2017

Edelweiss Asset and Reconstruction
Company Limited

.... Financial Creditor

Vs.

M/s Bharati Defense and Infrastructure
Ltd.

...Corporate Debtor

Order delivered on: 09/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Appellant	:	Ms. Sonal Darbar a/w Mr. Amar Mishra, Advocates
For the Respondent	:	None
For the Liquidator	:	Mr. Pulkit Sharma a/w Mr. Naman Kamdar

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Appeal 19 of 2023 filed by the Department of State Tax, MUM-BCP-C-037, Mumbai ("Applicant") in the matter of M/s Bharati Defence and Infrastructure Limited ("Corporate Debtor") under Section 42 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking an order of this Tribunal for the condonation of delay in filing the claim in the Liquidation of the Corporate Debtor and for direction to the Liquidator ("Respondent") to admit the claim.
2. The Corporate Insolvency Resolution Process ("CIRP") was initiated on an application by Edelweiss Assets Reconstruction Company Limited vide Order dated 06.06.2017 passed by this Tribunal in C. P. (IB) No. 292/NCLT/MB/2017 ("Petition") in terms of section 7 of the Code and Mr. Dhinlal Shah was appointed as the Interim Resolution Professional for Corporate Debtor. Later on, the Corporate Debtor was admitted to Liquidation Process on 14.01.2019. The Liquidator made public announcement published on 19.01.2019, inviting the claims under the CIRP and the last date of receipt of proof of claim was 23.02.2019. Thereafter, another

public announcement was made on 21.03.2022 and last date for submission of claims 20.05.2022.

2.1. The Appellant filed their claim through Form B dated 20/09/2022 amounting to Rs.87,11,648/- for the period of July 2017- March 2018 in Form B as well as Form C dated 20/09/2022 and further requested liquidator, by their letter dated 20.09.2022, to admit their claim. The Liquidator by their email dated 23/01/2023 replied to Appellant stating that dues under Maharashtra GST Act cannot be categorized as secured creditors as the provisions of Maharashtra GST Act are distinguishable from the provisions under Section 48 of GVAT Act. It was further stated by the liquidator that last date for filing claims was 13.02.2019 whereas the claim was filed on 22.12.2022 and the liquidator is not entitled to verify the belated claim in terms of Section 38(1) of the Code and Regulation 12(2)(b) of IBBI (Liquidation Process) Regulations, 2016.

2.2. The Appellant states that there is a delay of 123 days, from the last date under 2nd Public Announcement, in lodging the claim. The Appellant states that the said delay is not intentional and the same is due to the reason mentioned in the Affidavit provided by the previous officer in charge.

2.3. The Appellant further submitted that the said delay has arisen due to adjudication order having been passed on 19.05.2022 determining the amount payable by the Corporate Debtor giving three months time to the liquidator to file reply in terms of Section 78 and 79 of the Maharashtra GST Act. Since no

appeal was filed by the Liquidator against the said adjudication order, the Appellant proceeded to file the claim.

2.4. The Appellant is a statutory authority and Govt. Department which is responsible for collection of revenue and taxes applicable under GST Act and the Corporate Debtor was an assessee of the applicant/Department under the GST Act and was liable to deposit the tax as per law for the transactions done during the particular financial year.

2.5. The claims were duly filed along with all supporting documents and sent to the Liquidator for consideration. The Appellant has relied upon the decision in State Bank of India v. ARGL Ltd. rendered by 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/PR would be required to take cognizance of the dues as per the books of accounts. Therefore, the application was allowed. The relevant portion of the order is reproduced herein below:

"It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claims were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP

because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."

2.6. The Appellant had relied upon the decision of Hon'ble Supreme Court in the case of State Tax Officer (1) vs Rainbow Papers Limited | 2022 LiveLaw (SC) 743 | CA 1661 OF 2020 to contend that the statutory dues qualifies to be secured creditors in liquidation as well as decision of Hon'ble NCLAT, Chennai and also the decision in the matter of Bijoy Prabhakaran Pulipra (Resolution Professional) Vs. M/s. State Tax Officer (Works Contract) SGST Department in Company Appeal (AT) (CH)(Insolvency) No.42 of 2021.

3. We have heard the Learned Counsel and perused the material available on record.

3.1. The Liquidation process in the case of Corporate Debtor commenced on 14.01.2019 and last date for filing of the claim in terms of second public announcement was 20.05.2022. The appellant had filed claim in Form C, as applicable to the Liquidation process, on 20.09.2022. The amount of debt arose

from an adjudication order passed on 19.05.2022, whereby the Appellant had allowed the liquidator to pay the demand within three months, which expired on 17.08.2022. It is the case of the Appellant that the statutory period for filing appeal expired on 17.08.2022 and he could not notice any appeal from the Corporate Debtor. Accordingly, their office proceeded to file a claim before the liquidator in view of fact that the demand has attained finality.

3.2. There is merit in the argument of the appellant that the Appellant could not have filed the claim prior to 19.05.2022 in any case. Further, the appellant contends that their office was under bonafide belief that the claim can be filed only when the statutory period of three months for filing appeal against the adjudication has expired. Considering these fact, this Bench is of the opinion that the delay deserves to be condoned and liquidator be directed to adjudicate the claim of the Appellant on merits.

3.3. As regards contention of the Appellant that its claim ought to be admitted as in the category of Secured Operational Creditor in view of decision in the case of Rainbow Papers Pvt Ltd (Supra). However, this decision has been distinguished later on by the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Ltd (PVVNL) v. Raman Ispat Private Limited { CIVIL APPEAL NOS. 7976 OF 2019 }**.

4. In view of the foregoing, we direct the Liquidator to admit the claim of the Appellant as Unsecured Operational Creditor under Statutory Dues Category subject to verification thereof.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

COMPANY APPEAL 19 OF 2023
In
CP (IB)292/MB-1/2017

5. Accordingly, Appeal (IB) 19 of 2023 is partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)