



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

**IA (IB) No.601/KB/2023
in
CP (IB) No.1012/KB/2018**

In the matter of
R. C. Trading

...Operational Creditor

Versus

Apeejay Tea Limited

... Corporate Debtor

IA (IB) No.601/KB/2023

In the matter of
Apeejay Tea Limited

...Applicant

Versus

R. C. Trading

...Respondent

Coram:

Smt Bidisha Banerjee : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Applicant : Mr. Krishnaraj Thaker, Adv.
Ms. Urmila Chakraborty, Adv.
Mr.Raghunath Ghose, Adv.
Mr.Pritha Ghose, Adv.
Ms.Shusna Santra, Adv.

For the Respondent : Mr. Shaunak Mitra, Adv.
Mr. P.P.Bishwal, Adv.
Ms. Suranjana Chatterjee, Adv.

**Date of hearing: 11 July, 2023
Order pronounced on: 19 September, 2023**



ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This court convened *via* hybrid mode.
2. This is an Interlocutory Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***) read with Rule 34 of the National Company Law Tribunal, 2016 (***‘Rules’***) by Mr. Raunak Rathi, Chief Financial Officer, Apeejay Tea Limited (***‘Applicant’*** or ***‘Corporate Debtor’***) duly authorised *vide* Board Resolution dated 12 July, 2022 against R. C. Trading (***‘Respondent’*** or ***‘Operational Creditor’***), seeking the following reliefs:-
 - a. *C.P.(I.B.) No. 1012/KB of 2018 be dismissed;*
 - b. *Stay of all further proceedings in C.P.(I.B.) No. 1012/KB of 2018 till the disposal of this application;*
 - c. *Ad-interim orders in terms of prayer above;*
 - d. *Costs;*
 - e. *Such further and/or other orders be passed and/or direction/directions be given as this Hon’ble Tribunal may deem fit and proper;*
3. ***The Ld. Counsel appearing on behalf of the Applicant submits as follows:***
 - 3.1 The Corporate Debtor states that by a covering letter dated July 18, 2018, the Corporate Debtor was served with a copy of an application being C.P.(I.B.) No. 1012 of 2018 filed under Section 9 of the code, filed against the Corporate Debtor.
 - 3.2 The purported claim of the Operational Creditor (i.e., the respondent) is a sum of Rs.49,52,576/- towards coal carrying freight and handling charges. The statements and contents of the company petition are denied and disputed being untrue, incorrect and false.
 - 3.3 The company petition was filed in 2018, the Operational Creditor had taken no steps to proceed with the matter and due to its continuous non-appearance in the matter, the company petition was adjourned from time to time and



ultimately the said petition was dismissed for non-prosecution by an Order dated August 26, 2019.

- 3.4 Thereafter, on August 24, 2022, that is, after more than 3 (three) years from the date of dismissal of the petition, the Operational Creditor had filed an application for restoration of CP(IB) No. 1012/KB/2018 which was affirmed on 22 August 2022 and numbered as RST.A (IBC)/47 (KB) of 2022 .
- 3.5 The Operational Creditor has not filed RST.A (IB) /47 (KB) of 2022 within the timeframe as prescribed under the NCLT Rules, 2016. On this ground itself, the purported application ought to have been dismissed being barred by limitation with exemplary costs.
- 3.6 When RST.A (IB)/47 (KB) of 2022 was taken up for consideration on January 4, 2023, the alleged Operational Creditor handed up a list of dates to this Adjudicating Authority, wherein it was for the first time alleged that the Operational Creditor had filed a restoration application in 2019 and that such application was misplaced by the Registry prompting the Operational Creditor to mention the matter on February 4, 2021.
- 3.7 The Operational Creditor further contended before this Adjudicating Authority on January 4, 2023 that on mentioning the matter on February 4, 2021 this Adjudicating Authority directed the Operational Creditor to upload all the pleadings along with restoration application which were uploaded by the Operational Creditor.
- 3.8 The Operational Creditor contends that since the original of the application was misplaced by the registry the Operational Creditor was directed by the registry to file afresh with same diary number.
- 3.9 By an Order dated January 4, 2023, this Adjudicating Authority allowed the restoration application RST.A (IB) /47 (KB) of 2022 upon payment of cost of Rs. 10,000/- to the Prime Minister's National Relief Fund.



- 3.10 The Corporate Debtor states that the Order dated January 4, 2023 has been obtained fraudulently by gross suppression and misrepresentation of material facts and CP (IB) 1012 (KB) of 2018 is liable to be dismissed for the reasons stated hereinafter.
- 3.11 This Adjudicating Authority was pleased to allow RST.A (IB)/47 (KB) of 2022 although it had been filed more than 3 years after the dismissal of CP (IB) 1012 (KB) of 2018 relying upon and believing that the Operational Creditor had duly filed a restoration application in 2019 but the same had been misplaced or lost in the Registry.
- 3.12 In these circumstances, the Corporate Debtor made enquiries with its erstwhile advocate on record, M/s Fox and Mandal, who after searching from their old records informed the Corporate Debtor that under cover of a letter dated September 24, 2019 issued by Mr. Siddharth Shroff, Advocate acting on behalf of the Operational Creditor had been served an advance unaffirmed copy of an application
- 3.13 The restoration application served by the Operational Creditor in September 2019 was not in the form prescribed under the National Company Law Tribunal Rules, 2016 and the Forms framed there under.
- 3.14 If the 2019 application had been filed and lost in the Registry as alleged by the Operational Creditor, the Operational Creditor ought to have reconstructed the record by filing a copy of the same application and could not have filed a new and totally different application in 24 August 2022 which was numbered as RST.A (IB)/47 (KB) of 2022.

Analysis and Findings

4. We have heard the Ld. Counsels appearing in this matter and perused the records.
5. The only contention of the Corporate Debtor is that the Restoration Application (RST.A (IB) /47 (KB) of 2022) filed by the Operational Creditor should not have been allowed by this Adjudicating Authority because it was not filed



within the timeframe as prescribed under the NCLT Rules, 2016 i.e, within thirty days from the date of order.

6. This Adjudicating Authority had rejected the **CP (IB) No.1012/KB/2018** on 26 August, 2019. The Applicant itself has submitted in paragraph 11 of it's I.A. that upon enquiry made to it's erstwhile Advocate on record, the Applicant had received information that an unaffirmed restoration petition under cover of the letter dated 24 September 2019. This statement itself shows that the Respondent had done so within 30 days from the date of order dismissing the main C.P.. Further, we allowed the Restoration Application (RST.A (IB) /47 (KB) of 2022) vide order dated 04 January 2023 on the belief and clarity that the same had been filed within the period prescribed and had been misplaced, which can be corroborated with paragraph 11 of the present I.A..
7. In view of the above observations, we do not find any merit in the present I.A.. Accordingly, the **IA (IB) No.460/KB/2021** is rejected, **CP (IB) No.1012/KB/2018** to be listed on 06 November 2023.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The Order is pronounced on 19th September 2023