

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

IA. No.194/2022

In

C.P.(IB)/190/MB/C-II/2018

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Canara Bank

11th Floor, Sandton City, Johannesburg,
South Africa, now being represented by its
Branch Office at,
Stressed Asset Management Branch
Maker Tower “F”, 2nd Floor,
Cuffe Parade, Mumbai - 400005

... Applicant

V/s

CA Brijendra kumar Mishra,

Liquidator of Shrenuj & Company Ltd.
IBBI Reg. No. IBBI/IPA-002/IP-N00109/2017-
2018/10257,
Flat No.202, 2nd Floor, Bhoj Bhavan,
Plot No.18-D, Shivpuri, Sion-Trombay Road,
Chembur Board 9 (East), Mumbai City,
Maharashtra – 400071.

... Respondent

In the matter of

Bank of India

... Financial Creditor

Versus

Shrenuj & Company Limited

... Corporate Debtor

Order Delivered on :- 25.01.2024

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Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Adv. Ashish Mehta
For the Liquidator/Respondent : Adv. Yahya Batatawala

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The instant application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') to condone the delay of 125 days in filing the modified and revised claim by the Applicant and direct the Respondent to accept and admit the revised claim of the Applicant.
2. **Brief facts leading to the filing of the present application are as under: -**
 - (a) Shrenuj and Company Limited ('the Corporate Debtor') was admitted to Corporate Insolvency Resolution Process ('CIRP') which culminated in the passing of liquidation order dated 12.07.2021 and the Respondent was appointed as the Liquidator. In the liquidation process, the Respondent invited claims from the creditors and the same was published in newspapers on 24.07.2021 and specified 19.08.2021 as the last date for submission of the claims.

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- (b) The Applicant had submitted the initial proof of claim to the Liquidator on 18.08.2021 for Rs. 212,89,25,260.77/- and the claim was duly accepted and admitted by the Liquidator/Respondent.
- (c) The Applicant, subsequently, filed a revised claim of Rs. 291,08,65,820.83/- on 20.12.2021 for the reason that the claim of one of its Branch Office situate at Johannesburg, South Africa was not included in the initial claim as relevant documents could not be obtained within the time specified by the Liquidator. However, the Liquidator referred to Section 38(5) of the Code and rejected the modified claim. Hence this Application.

3. **Submissions of the Applicant.**

- (a) The Applicant has submitted that the revision /modification of the claim admitted by the Liquidator was necessitated on account of the closure of its Branch Office situate in South Africa and its inability to collate all the documents and information, which were available in South Africa within the time specified by the Liquidator.
- (b) The delay in lodging the revised claim is neither intentional nor deliberate as such delay is sought to be condoned. The Applicant has filed this Application within the limitation period as prescribed under Section 42 of the Code.
- (c) The Applicant further submitted that the delay in filing the revised claim has occurred for sufficient reasons and non-condonation of the delay would prejudice the interests of the Applicant.

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4. **Submissions of the Respondent.**

- (a) The Respondent /Liquidator has not filed any written reply, but submitted that Section 38(5) of the Code provides that the creditor may withdraw or modify his claim within 14 days of its first claim, and, therefore, the revised claim was rejected in accordance with law.
- (b) The Liquidator has not raised any other contention for not processing the revised claim of the Applicant.

Analysis and Decision

- 5. We have heard the counsels for the parties and perused the documents on record.
- 6. While the initial claim of Applicant for Rs. 212,89,25,260.77/- submitted on 18.08.2021 was admitted, the revised claim of Rs. 291,08,65,820.83/- submitted on 20.12.2021 was not processed on the sole ground of delay in filing the revised claim. In support of the rejection, the Respondent relied upon Section 38(5) of the Code which states that a creditor may withdraw or vary his claim within 14 days of its submission and not thereafter.
- 7. It is pertinent to observe that Section 42 of the Code permits a creditor to appeal to the Adjudicating Authority against the decision of the Liquidator accepting or rejecting the claims within 14 days of the receipt of such decision. The Applicant appears to have preferred this Application before this Tribunal within the stipulated time. Thus, there is no delay in preferring the appeal, but there is a delay of 125 days in submitting the revised claim.

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8. Section 38(5) of the Code is an enabling provision in the Code to withdraw or vary the claim already submitted by a creditor and is not intended to restrict creditors from submitting a fresh claim or revised claim. This claim could also have been filed as a separate claim and the Applicant could have sought condonation of delay for such additional claim. Just because the additional claim has been filed as a revision of the initial claim, it cannot be rejected. What is relevant for considering a delayed claim is whether there are sufficient reasons to condone delay. Once it is established that there are sufficient reasons for condonation of delay, this Adjudicating Authority has necessary powers under the Code and the Regulations to conde the delay. In the present case, we are of the view that the Applicant has pleaded sufficient reasons which justify the revision of claim even after 14 days from the date of admission of the initial claim.
9. Having regard to the above, we are of the considered view that the application for condonation of delay deserves to be allowed in the interest of justice.
10. We, therefore, **allow IA.No.194/2022** and direct the Respondent to process the revised claim made by the Applicant in accordance with the Code.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**