

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

Appeal(IBC)/38/2022 IN IB-81/PB/2019

*Under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE

...FINANCIAL CREDITOR

VERSUS

DEV DENSO POWER LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF:

Bharat Heavy Electricals Limited

At: BHEL House, Siri Fort, New Delhi-110049

VERSUS

POOJA BAHRY (LIQUIDATOR OF DEV DENSO POWER LTD.)

OFFICE AT: 59/27 PRABHAT ROAD,

NEW ROHTAK ROAD, NEW DELHI – 110005

...RESPONDENT

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Ms. Mani Gupta

For the Liquidator: Ms. Pooja Bahry

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 07.12.2023

1. This Company Appeal has been filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by M/s. Bharat Heavy Electricals Limited against the decision of the Liquidator rejecting the claim of the Applicant. The Applicant has prayed for the following relief(s):

- a. *Allow the present appeal and pass an order setting aside the decision of the Respondent rejecting the claims of the Appellant;*
- b. *Direct the Respondent to accept the Form C along with requisite documents filed by the Appellant on 11.08.2022;*

c. Any other order or relief as this Bench may deem fit in the circumstances of the case.

2. The brief facts of the case as mentioned in the instant application, which are relevant for adjudication, are as follows:

- i. That the Appellant had submitted its claim to the Respondent on 11.07.2022 arising out of two independent contracts for erection, testing and commissioning services with Corporate Debtor i.e. Badnawar Contract and Kirnapur Contract. The Appellant filed total claim of Rs. 33,76,654 which included claim of Rs. 30,23,463/- for Badnawar Contract and claim of Rs. 3,53,191/- for Kimapur Contract in Form C under Regulation 17 of the Liquidation Regulations.
- ii. That the Respondent on 16.08.2022, rejected the claims of the Appellant primarily on the ground that the claims were received after the last date of receipt of the claims.
- iii. That there was some delay in filing the claims by the Appellant as the calculation of the claim required a lot of coordination amongst employees working at different places in various departments of the Appellant, which is a public sector undertaking. Further, various approvals were also needed before finalization of the

claims. The finalization was delayed by the refusal of Corporate Debtor to appear for joint measurements etc.

- iv. That the Respondent did not take into account the documents submitted by the Appellant along with Form C to substantiate its claim and has not provided any substantial reasoning for the rejection of the Appellant's claim. Further, no clarification was sought by the Respondent before rejecting the claim.

3. The Liquidator has made the following submission with respect to the application: -

- i. That there is no provision in the IB Code, 2016 enabling the Liquidator to condone the delay and receive a belated claim. Hence, the Liquidator being bound by the authority of law, rejected the alleged claim of the Appellant, filed on 11.07.2022, almost after a year from the Liquidation commencement.
- ii. That the Respondent duly apprised the Appellant regarding the initiation of CIRP of the Corporate Debtor vide notice dated 27.06.2019 and also apprised the Appellant regarding the Liquidation Proceedings vide notice dated 16.09.2021, however, the Appellant despite being aware of the CIRP & Liquidation

Proceedings of the Corporate Debtor, failed to file its alleged claim as per the timelines contained under the Code.

- iii. That the above mentioned notices were issued by the Respondent to the Appellant for "Recovery of dues" as part of her duties, being the appointed IRP / RP/ Liquidator of the Corporate Debtor under the provisions of the Code and the regulations made thereunder, as the Appellant being the "Debtor" of the Corporate Debtor was legally bound to pay the amount of outstanding dues, as reflected in the books of accounts of the Corporate Debtor.
- iv. That the Appellant in its appeal under section 42 has failed to show a "Sufficient cause" for the unreasonable and inordinate belated filing of its claim.

4. We have gone through the documents on record filed by both the parties and have heard the parties on merits. The Appellant has filed this Appeal against the order of the Liquidator rejecting the claim of the Appellant on the ground that it was filed belatedly. The Liquidator has rightly stated that there is no provision in the IB Code, 2016 enabling the Liquidator to condone the delay and receive a belated claim. Further, the Liquidator has also stated that the

Appellant has illegally adjusted its outstanding dues towards the Corporate Debtor and arrived at the claim amount. However, we would like to refer to Regulation 29 of Liquidation Regulations, 2016 which provides as follows:

29. Mutual credits and set-off. Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

Therefore, there is no illegality in setting off dues to arrive at net payable amount. Further, the Liquidator has not provided reasons for rejection of each and every claim of the Appellant. The Liquidator has not specifically dealt with the claim nor verified the claim as required under Section 39 of the Code and regulation 30 of Liquidation Regulations and merely rejected the claim as it was time barred.

5. The Liquidator has further contended that the delay can be condoned only if there is a bona fide reason for delay. In this regard, the Appellant has stated that the delay was bona fide as the Appellant is a Public Sector Undertaking and multiple approvals and

coordination were required for ascertaining the claim. The delay was further aggravated by the fact that claims were with respect to two projects which are based in two different places i.e. Badnawar and Kimapur in Madhya Pradesh. Further, the delay was also due to Covid-19.

6. The Hon'ble Appellate Tribunal in *Virender Singh vs. Theme Export Private Limited Company Appeal (AT) (Insolvency) No. 34 of 2022* allowed the condonation of delay in filing the claim by stating that "... this Tribunal is of the earnest view that the delay in filing the Claim before the Liquidator be condoned as this Tribunal is satisfied that the cause ascribed is reasonable and construes 'sufficient cause'." Further, the National Company Law Tribunal, Mumbai Bench in *Asmi Enterprises vs. Yog Industries Limited MA 1098/2018*, condoned the delay in submission of claim while observing as follows:

"Therefore, in my opinion, because the liquidation proceedings are yet to be finalized in the present case, no prejudice will be caused if the claim of the applicant is adjudicated and admitted. The delay in submission of the claim by the Applicant deserves condonation. Hence, we hereby condone the delay in the submission of the claim in accordance with the provisions of code. The Ld. Liquidator is directed

to consider the claim o/the Applicant and admit the same after determining its veracity.”

7. In light of the above-mentioned judgements, we are of the view that the delay in filing the claim deserves condonation considering the fact that the Appellant is a Public Sector Undertaking with various departments and units and the Appellant and the Corporate Debtor had mutual debts which were also required to be set off before filing the claim thereby causing delay in filing the claim. Therefore, we direct the Liquidator to decide the admission/rejection of the claim of the Appellant on merits in accordance with Law.

8. The present Application stands allowed and disposed off accordingly.

SD/-

**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**