IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

TMA/43/KOB/2019
In
C.P No.689 of 2017

(Under Section 60(5) of IBC, 2016**)**

Order delivered on 16th March 2020

Coram:

1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Narendra Chimanlal Shah,
Proprietor, M/s Hardik Dye Chem Industries
No.212, Bldg.No.9, Second Floor
Jogani Industrial Complex,Chunabhatti
(East) Sion,Mumbai-400 022,Maharashtra. …..…Applicant

Vs.

1. Mr.Ravindra Beleyur,
   48/3,.2ndCross,Ist Main,RoyanCircle,
   Chamarajpete,Bengaluru-560018
   Karnataka

2. M/s Merchem Limited, V/774,
   141, Development Area, Edayar
   Muppathadom PO, Paravur-683110
   Kerala …….Respondents

Parties/Counsel present:

For applicant	:	Shri Nikhil K Narayanan, Advocate
For respondents	:	Shri Ramalingam VA, Advocate for R2. None appeared for R1.

1. The Applicant viz. Mr. Narendra Chimanlal Shah (hereinafter called as '**Applicant')** filed an application under the provisions of Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as **Code**) against 1) Mr.Ravindra Belayur, Insolvency Professional, M/s Merchem Limited (hereinafter called as '**Respondent No.1**') 2) M/s Merchem Limited (hereinafter called as **'Respondent No. 2' / 'Corporate Debtor'**)

   <u>Submissions by the Applicant</u>

2. The counsel for the Applicant submitted that the Applicant is the Proprietor of M/s Hardic Dye Chem Industries, and he is engaged in the business of manufacturing and exporting of dyes, pigments, chemicals and chemical products.
3. The counsel for the Applicant further submitted that the 2nd Respondent has placed a purchase order with the Applicant for the purchase of 15,000 Kilo Grams of Hydrogen Peroxide with the condition that, payment shall be made within 45 days from date of delivery. The Applicant has supplied the requisite quantity of Hydrogen Peroxides ordered by the 2nd Respondent for an amount of ₹5,51,718/-(Rupees Five Lakhs Fifty One Thousand Seven Hundred and Eighteen Only). The Applicant made serious efforts to recover the invoice amount but the 2nd Respondent did not make the payment within 45 days. Subsequently the 2nd Respondent issued an account payee Cheque dated 20.01.2014 for an amount of ₹5,52,483(Rupees Five Lakh Fifty-Two Thousand Four Hundred and Eighty-Three Only) in favour of the Applicant for the due payment.
4. The counsel for the Applicant further submitted that the said Cheque was dishonoured and returned with a memo endorsement as "Insufficient Funds" in the 2nd Respondent's Bank account. After the dishonouring of the Cheque, the Applicant has

sent several letters and notices to the 2nd Respondent demanding to make payment. Unfortunately, no reply is received from the 2nd Respondent. Subsequently the Applicant has filed a Summary Suit before the Hon'ble Bombay City Civil Court vide **Summary Suit No. 624 of 2015**, for realization of sum of ₹5,51,718/-(Rupees Five Lakh Fifty-One Thousand Seven Hundred and Eighteen Only) along with an Interest of 24% per annum.

5. The counsel for the Applicant stated that the 2nd Respondent, not only failed to appear before the Court but also failed to challenge the oral and documentary evidences produced by the Applicant. Hence the Hon'ble Bombay City Civil Court has passed an ex-parte order dated 01.09.2016 favouring the Applicant and directed the 2nd Respondent to make a payment of ₹7,06,194/-. The copy of the Order passed by the Hon'ble Bombay City Civil Court is annexed with this Application. Thereafter, the applicant filed an **E. P. No. 16 of 2018** for execution of order passed by the Hon'ble Bombay City Civil Court on 11.01.2018. At that juncture the 2nd Respondent filed a preliminary objection dated 30.06.2018 and stated that the 2nd Respondent Company was in the process of Corporate Insolvency Resolution by the order of the NCLT, Chennai Bench dated 15.01.2018 in **CA/157/IB/2018** in **CP/689/IB/2018** and Mr. Ravindra Belayur is appointed as the Insolvency Professional in the said matter on 03.04.2018. Then the Applicant has sent the proof of his claim as an Operational Creditor under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 in Form-B claiming for a total amount of ₹8,82,052/- (Rupees Eight Lakh Eighty-Two Thousand and Fifty-Two Only) on 27.10.2018

6. The counsel for the Applicant stated that the applicant has not received any reply from the 1st Respondent. The Applicant has also sent several e-mails and also made

telephonic communications to the 1st Respondent for which no suitable reply was received.

7. Therefore, the present application has been filed by the Applicant against the Respondent under Section 60(5) of Insolvency and Bankruptcy Code, 2016 to direct the 1st Respondent to implead the Applicant as an Operational Creditor in the resolution process and make payment for the total amount of ₹8,94,828/-(Rupees Eight Lakh Ninety Four Thousand Eight Hundred and Twenty Eight Only)(i.e. Principal amount of ₹5,51718/- + interest @ 9% from 10.06.2015 to 10.02.2019 ₹1,78,291/- +cost ₹10,343/-) and further and future interest till the realization.

Submissions by the Respondent No.1

8. The counsel for the Respondent submitted that Corporate Insolvency Resolution Process was initiated against the 2nd Respondent on an application filed by an ex-employee as an Operational Creditor and the application was admitted by the NCLT Chennai Bench on 15.01.2018. It is submitted that the Resolution Plan was approved by the NCLT, Chennai Bench on 23.01.2019 and an appeal challenging the same is pending before the Hon'ble NCLAT. The Applicant herein has not filed its claim before the approval of the Resolution Plan and this application is filed belatedly.

9. The 1st Respondent submitted that the Corporate Debtor in his preliminary objection dated 30.06.2018 to the **E.P. No. 16 of 2018** in **Summary Suit No. 624 of 2018**, has brought to the notice of the Executing Court that CIRP proceedings have been initiated against the 2nd Respondent. The Applicant was put on notice about the CIRP as early as on 30.06.2018. The Applicant had filed Form B only on 27.10.2018 much after the approval of the Resolution Plan by the Committee of Creditors on 12.09.2018. The present application is filed belatedly only on 05.03.2019.

10. The 1st Respondent further submitted that the NCLT, Chennai Bench has directed to serve copy of application and documents within a week's time on the Respondent as early as on 25.04.2019 the same was served only on 11.07.2019 i.e. after a period of 75 days which would further prove the lethargic attitude of the Applicant. In the circumstances the 1st Respondent prayed to dismiss the Application with cost and thus render justice.

Submissions by the Respondent No.2

11. The counsel for the 2nd Respondent submitted that the 2nd Respondent herein is the Corporate Debtor Company which was under Corporate Insolvency Resolution Process from 15.01.2018 till 23.01.2019 under **CP/IB 689 of 2017** during which period the 1st Respondent herein functioned as the Resolution Professional of the Corporate Debtor. The Applicant who profess himself to be an Operational Creditor, ought to have diligently taken steps to file his claim on time, with the 1st Respondent herein, within the time stipulated under the Regulations. The Applicant admits that to their knowledge the Corporate Debtor was under the CIRP process and having knowledge of the same the Applicant had not filed his Claim in accordance with Regulation 8.

12. The counsel for the 2nd Respondent further submitted that the Applicant ought to have filed his claim within 30 days from the date of CIRP Commencement by virtue of the public notice issued in Form A, of which the Applicant is deemed to have had presumptive notice. The counsel stated that the Applicant ought to have first sought condonation of delay in filing his claim belatedly at the very outset of this application. It is submitted that the perusal of the documents furnished by the Applicant would show that he had authorized his representative to file the claim. The delay or latches on the part of the agent would also bind the principal and it is submitted that the

Applicant should not be allowed to plead the same as a reason or excuse or defence in these proceedings.

13. The counsel for the 2nd Respondent stated that the Corporate Insolvency Resolution Process is a strict time bound process and the filing and acceptance of the claims is mandated to be finished within 90 days from the date of CIRP Commencement, as made clear by a reading of Regulation 12 and Regulation 40A of the IBBI Regulations, 2016. Now with the Resolution Plan having been approved by the Adjudicating Authority under Section 31(1) of the Code, the plea of the Applicant, the relief sought for in the Application and the claim *per se* is barred by limitation in the Code and Regulations.

14. The counsel for the 2nd Respondent further submitted that the approval of the Resolution plan by the Adjudicating Authority operates to bar the Applicant, discharges the Corporate Debtor and estops the Applicant from pursuing the Claim under this Code or under any other provision of law. Accordingly, prayed for dismissal of TMA/43/KOB/2019 of the Applicant.

ORDER

15. We have heard learned counsel for both the parties and perused the whole case record.

16. On perusal of this application, this Bench has noticed that the Corporate Insolvency Resolution Process of Merchem Limited (the 'Corporate Debtor') began on 15.01.2018, pursuant to admission of Section 9 Application (CP (IB)689/2017[Chennai Bench]) filed by an Operational Creditor Mr. Pradeep M.R. The Committee of Creditors in this matter has unanimously resolved to accept the resolution plan of M/s. Acme Chem Limited referred to as "RPIF"). Accordingly, the Resolution Professional has filed an application MA No. 515 of 2018 under Section 30 (6) of the Insolvency & Bankruptcy

Code, 2016 for approval of Resolution Plan and the same was approved by the Chennai Bench on 23.01.2019.

17. In the instant application, we observe that the applicant has submitted his claim much later after the public notice issued in Form A. Whether this belated action on the part of the applicant give him any right to his present claim is the moot question.

18. To decide the above question, we have relied on the judgment delivered by the Hon'ble Principal Bench in the case *Esquire Electronics Inc. and Others V. Netherlands India Communications Enterprises Ltd and Others, [(2016) 135 CLA 267]* wherein it was held that *"it is a well settled principle of law that law comes to the rescue of those who are vigilant about their rights"*. In the instant case, the applicant herein has failed to perform reasonable diligence in protecting his rights.

Further, as per the settled law and as per the maxim ***equity aids the vigilant and not those who slumber on their rights**."* (Black's Law Dictionary), a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party.

19. In the light of the above, we are of the opinion that the applicant has forfeited his right to claim because of his belated action after the due date for lodging the claim.

20. Accordingly, **TMA/43/KOB/2019** is hereby dismissed. No order as to costs.

Dated this the 16th day of March, 2020.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)