

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

I.A. No.63 of 2023 in
C.P. (IB)No.131/BB/2017
U/s 42 & 60(5)(c) of the IBC, 2016
R/w Section 5 of the Limitation Act, 1963
& Rule 11 of the NCLT Rules, 2016

In the matter of:

**Deputy Commissioner of
Commercial Taxes, (Audit)**

1.4, DGSTO – 1, 3rd Floor TTMC,
BMTc Building, Yeshwanthpur,
Bangalore – 560 022.

- Applicant

Vs.

Mr. Shivadutt Bannanje

*Liquidator of M/s. Fortuna
Projects (India) Pvt. Ltd.*
S-709, South Block,
47, Dickenson Road,
Bangalore – 560 042.

- Respondent

Order delivered on: 25.05.2023

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant	:	Shri Tanishq Kashyap
For the Respondent/Liquidator	:	Shri Raghuram Cadambi with Ms. Gowri Srikanth

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. The instant Application has been filed by Deputy Commissioner of Commercial Taxes ('Applicant') under Section 42 & 60(5)(c) of the IBC, 2016 R/w Section 5 of the Limitation Act, 1963 and Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to condone the delay of 1130 days (04.12.2019 to 07.01.2023) in submission of the claim dated 07.01.2023 by the Applicant before the Respondent in the liquidation process of the Company etc.

2. Brief facts of the case, as mentioned in the Application which are relevant to the issue in question, are as follows:
- i. It is stated that the Company/Fortuna Projects (India) Pvt. Ltd. is a private limited company and registered as a dealer under the KVAT Act, 2003 and is liable to tax under the said enactment. The Applicant was assigned with the responsibility of assessing the Company under the KVAT Act for the assessment year ('AYs' in short) 2010-11 and 2011-12. Accordingly, the Company's case was taken up for audit and assessment by the Applicant by calling upon the Company to produce its books of accounts required under the KVAT Act for the AYs 2010-11 and 2011-12. Upon completion of the procedure for reassessment, the Applicant passed reassessment orders dated 29.02.2016. Against the said orders, the Company preferred appeals before the Joint Commissioner of Commercial Taxes. The Joint Commissioner partly allowed the appeals for AYs 2010-11 and 2011-12 vide orders dated 30.03.2019 and modified the orders dated 29.02.2016 and accordingly instructed the Applicant to pass appropriated orders giving effect to the same for the aforementioned AYs. The Applicant subsequently passed the reassessment orders dated 05.12.2019 and accordingly issued the demand notices. The total amount payable under the KVAT Act for the AYs 2010-11 and 2011-12 is Rs.8,00,510/-. Thereafter, no payment came to be made by the Company although various steps were taken by the Applicant for recovery of the aforesaid statutory dues payable to it.
 - ii. It is also stated that the Applicant was informed that this Adjudicating Authority had passed an order dated 25.10.2019 ordering initiation of liquidation proceedings against the Company as per the provisions of the IBC and also appointing the Respondent as the Liquidator of the Company. The Liquidator/Respondent had issued a public announcement on 05.11.2019 under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 announcing the liquidation of the Company as per which the last date for submission of claims in the liquidation proceedings of the Company was 04.12.2019. Due to a wholly inadvertent, unintentional and bona fide error, the Applicant submitted a claim in Form B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before the Respondent on 17.03.2022, with a minor delay. Thereafter for more than two years there was no response

or information whatsoever from the Respondent regarding the aforesaid error in the Form in which the claim had been submitted.

iii. Further, the Applicant sent a letter dated 01.12.2022 to the Respondent, inquiring about the status of the claim submitted on 17.03.2020. The Respondent informed the Applicant that the earlier claim dated 17.03.2020 had not been accepted due to the wholly technical and venial ground of submission in an incorrect form. Thereafter, the Applicant submitted the statement of claim dated 07.01.2023 in the correct form i.e. Form C of the Liquidation regulations. The Respondent sent an e-mail dated 09.01.2023 to the Applicant rejecting its claim on the mere ground that the same was filed belatedly. Hence, this Application.

3. The Respondent has filed the Statement of Objections by *inter alia* contending as follows:

- i. It is submitted that the Respondent discharged various duties and performed various function in accordance with the provisions laid down in Chapter III of Part II of the IBC, 2016 read with the IBBI (Liquidation Process) Regulations, 2016. In accordance with his obligations a public announcement in Form B of Schedule II was published in the newspapers 'Financial Express' and 'Vishvavani' on 07.11.2019, calling upon the various Stakeholders of the Corporate Debtor to submit their claims or updated their claims submitted during the CIRP in respect of the Corporate Debtor on or before 04.11.2019. Subsequently, claims received by the Respondent within such period of thirty days in accordance with Regulation 16 of the Regulations were verified by the Respondent and if found due and payable, were admitted.
- ii. The Applicant submitted their claim in Form B as opposed to Form C on 17.03.2020, thus failed to submit the claim before 04.12.2019 being the last date. Upon realizing the incorrect manner of claim submitted by it, the Applicant submitted a fresh claims with the Respondent on 07.01.2023 in Form C, with a delay of 1130 days, for which no plausible explanation is given.
- iii. The Liquidator submitted that the liquidation process is at advance in the stage as all the assets of the Corporate Debtor have been sold and portions of the proceeds have been disbursed to stakeholders. In this

regard, the Liquidator relied upon the decision of NCLT, Chennai Bench in the case of *Recovery Officer, Employees' Provident Fund Organization vs. M/s. Sri Nagananthana Mills Ltd. and others dated 23.09.2022 in Comp/App/1/2021 in CP/611/IB/2017* wherein the Bench rejected the Application on account of enormous delay in lodging the claim. In view of the above, the Liquidator seeks rejection of the instant Application.

4. Heard the learned Counsels for the parties. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made thereunder.
5. It is seen that admittedly the Applicant preferred its claim belatedly with the delay of 1130 days to the Liquidator. The Liquidator/Respondent in view of the belated preferring of the claim of the Applicant, rightly rejected the same on the ground of delay.
6. However, in the circumstances of the case, since it was an inadvertent mistake by submitting the claim in a wrong Form which caused the delay and since the liquidation process is still going on, the instant Application is allowed as under:
 - a. The delay in preferring the claim by the Applicant is condoned;
 - b. The Liquidator is directed to consider the claim of the Applicant in accordance with Code and Regulations made thereunder and to pass an appropriate order within two weeks' from the date of receipt of this Order and communicate the same to the Applicant forthwith thereafter;
 - c. Accordingly, **IA No.63 of 2023 stands disposed of.**

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

Sd/-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**