

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/629/CHE/2021 in CP/699/IB/2017

filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016

*In the matter of **Gemini Communication Limited***

Employees State Insurance Corporation,
Represented by Social Security Officer,
No.143, Sterling Road,
Nungambakkam, Chennai – 600 034.

... Applicant/Operational Creditor

-VS-

M.S. Viswanathan,
Liquidator of Gemini Communication Limited,
15/35, Musafar Jung Bahadur Street,
Triplicane, Chennai – 600 005.

... Respondent/Liquidator

Order pronounced on 15th February, 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : S.P. Srinivasan, Advocate
For Respondent : V. Manivannan, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This IA(IBC)/629/CHE/2021 is an Application filed by an Applicant / Operational Creditor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;



- a. *To set aside the Order of rejection communicated letter dated 24.06.2021 passed by the Respondent/ Resolution Professional of M/s. Gemini Communications Limited, No.1, Dr. Ranga Road, Alwarpet, Chennai – 600 018*
- b. *To direct the Respondent /Resolution Professional to consider the claim of the Applicant submitted to him in by email dated 20.10.2021 in Form C for Rs.16,72,548/- along with supporting documents and further sent Addendum to claim form dated 01.06.2021 received on 11.06.2021 by RP and also by email dated 09.06.2021 for an amount of Rs.14,09,067/- totaling an amount of Rs.30,81,615/- and also by waiving/condoning the delay in filing the claim within the cut off date of 05.04.2019 being the last date of submission of claim as per paper publication made by him and treat the Applicant on par with other Operational Creditors as per section 53(1)(e) of the IBC Code, and pass such other Order or Orders as may be deemed fit and thus render justice.*

2. It was averred in the Application that the Corporate Insolvency Liquidation was ordered by this Tribunal vide Order dated 26.02.2019. Pursuant to that the Liquidator caused Paper Publication dated 09.03.2019 and the last date for submission of claim was fixed on 05.04.2019.

3. It was further averred in the application that the Applicant had submitted its claim in Form C on 23.10.2020 to the Respondent/Liquidator. Thereafter, upon receiving the claim, the



Liquidator rejected the claim on the ground of late filing and the extracts are hereunder:

(i) The last date for receipt of the Claim form is 05.04.2019 and the Claim form and addendum to claim received on 23.10.2020 and 11.06.2021 respectively, after the cut off date 05.04.2019.

(ii) As per Section 38, the Liquidator shall receive or collect the claim form and addendum to claim received on 23.10.2020 and 11.06.2021 respectively, after the cut off date 05.04.2019.

(iii) Claim made is inclusive of CIRP period from which there is no intimation to RP.

(iv) Maximum period of liquidation is completed and Corporate Debtor sold in e-auction.

4. It was further averred in the application that the reason for belated submission of claims is that, the legal department in ESIC did not have knowledge and also due to Covid pandemic and staggered working and lesser number of staff, it was not feasible to collect the details, entire records and files.

5. It was further averred in the application that the Applicant had preferred application to the Respondent/RP only on 15.06.2021 after retrieval of files pertaining to the defaulting company. There is delay as per the rejection mail of the Respondent/RP dated 24.06.2021, which is neither willful nor wanton but for the above said circumstances only. Hence, IA this was filed to condone the delay in



filing the claim Form C for an amount of Rs.30,81,615/- and direct the Respondent to consider the claim of the Applicant.

6. The Learned Counsel for the Applicant submitted that the Corporate Debtor was allotted ESI code No.51-103519 and had defaulted in payment of ESI contribution. The Applicant has made a claim to tune of Rs. 30,81,615/- towards contribution, interest and Damages which is due from the Corporate Debtor.

7. The Learned Counsel for the Applicant had placed plethora of Judgements in para IV. (f) to (p) of the application in order to buttress the submission of the claims.

8. The Learned Counsel for the Respondent filed the counter and it was submitted that the applicant had not filed the claim within the prescribed time limit as envisaged under section 42 of the IBC, 2016 and further it was submitted that there was a delay of 772 days in submitting the claim before the RP. The reason for such delay given by the Applicant is the lack of knowledge of authority and inability to trace the files, which cannot be treated as a valid reason.

9. The Learned Counsel for the Respondent further submitted that the Respondent had sold the assets of the Corporate Debtor as



a going concern. Hence the Respondent seeking dismissal of the present application.

10. Heard the submissions made by the parties. The delay of 772 days in preferring the claim before the Liquidator was due to the reasons that the Applicant submitted that the legal department in ESIC did not have knowledge and due to Covid Pandemic the Applicant were not in a position to collate the claims relating to the Corporate Debtor. However, we are unable to accept the reasons stated by the Applicant for the delay in filing the claim before the Liquidator. As per the provisions of the IBC, 2016, the Applicant is required to submit the claim to the Liquidator in such form and in such manner along with such supporting documents as specified by the Board. Thereafter, upon submission of the claim, the Liquidator is required to verify the claims within the time limits specified by the Board and in this connection referring to the relevant Regulations namely, IBBI (Liquidation Process) Regulations, 2016 and more specifically under Regulation 30, the Liquidator is required to verify the claim submitted within a period of 30 days from the last date of receipt of the claims and may either admit or reject in whole or part as the case may be of such claim. Section 40 of the I&B Code, 2016 mandates the Liquidator to record the reason in writing for rejection of the claim and the same is also required to be communicated to



the Applicant. In relation to his decision of admission or rejection, the Liquidator is required to communicate to both the creditors and the Corporate Debtor within seven days of such admission or rejection of the claim. As against the rejection of the claim, Section 42 of I&B Code, 2016 provides for a time window of 14 days upon receipt of such decision to the creditor to file an appeal to the Adjudicating Authority against the said decision of the Liquidator.

11. It may also be seen that the Applicant during the CIRP period also has not filed any claim before the IRP / RP and has preferred the claim only at the time of liquidation and that too at a belated stage, more particularly after expiry of a period of 772 days.

12. This Tribunal is also persuaded by the decision of the Hon'ble NCLAT in the matter of **The Deputy Commissioner Commercial Taxes (Audit), Raichur -Vs- Surana Industries Ltd. (In Liquidation) & Anr.** in *Company Appeal (AT) (Insolvency) No. 1525 of 2019* dated 07.02.2020, wherein the Hon'ble NCLAT has dismissed the application filed by the Applicant in relation to the Appeal against the order of the liquidator and also held that liquidation process is a time bound process and the Liquidator has to conclude his proceedings within one year.



13. Further, it may be noted that under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator is directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings and Regulation 44(2) stipulates that, after the expiry of one year, the liquidator shall file an application to the Authority to continue the liquidation period along with a report and explain why the liquidation has not been completed. Thus, it can be seen that the Liquidation is a time bound process and the Liquidator is being made accountable and required to explain, if there is any delay caused in the liquidation process. In the present the Corporate Debtor has already been sold as a going concern and nothing is left for distribution to the stakeholders.

14. Further, the Hon'ble Supreme Court in **Gaurav Hargovindbhai Dave –Vs- Asset Reconstruction Company (I) Ltd. & Another** in *Civil Appeal No. 4952 of 2019*, in relation to the aspect of limitation has restated the well-established and well settled principle that "*there is no equity about limitation*", we are unable to entertain this Application/Appeal.

15. Hence the extraordinary delay of 772 days in submission of claim by applicant, is devoid of merits. Further in interest of Justice



also we could not condone the delay as sought for. Further, if such extraordinary delay is condoned, it shall defeat the very purpose of the IBC, 2016.

16. For the aforestated reasons, IA/629/2021 stands **dismissed**, however without costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond