

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

**Company Appeal No.1/MB/2022
In
C.P.(IB)/190/MB/C-II/2018**

Under Section 42 of the Insolvency and
Bankruptcy Code, 2016

**Dy. Commissioner of Income Tax (OSD)
(TDS)-2(2), Mumbai**

Room No. 311, 3rd Floor, MTNL Telephone
Exchange Building, Pedder Road, Dr. Gopalrao
Deshmukh Marg, Cumballa Hill,
Mumbai - 400026

... Applicant

V/s

Brijendra kumar Mishra,

Liquidator of Shrenuj & Company Ltd.
(in liquidation)

C/o M/s. Waterfall Insolvency Professional
Private Limited.

1221, Maker Chambers. V, Nariman Point,
Mumbai - 400021

... Respondent

In the matter of

Bank of India

... Financial Creditor

Versus

**Shrenuj & Company Limited
(PAN: AAACS0690P)**

... Corporate Debtor

Order Delivered on :- 25.01.2024

Coram:

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

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

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Appearances:

For the Liquidator : Adv. Yahya Batatawala

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The present appeal has been filed u/s 42 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for directing the Liquidator of Shrenuj and Company Limited ('the Corporate Debtor') to admit the claim of the Applicant and condone the delay in filing the Appeal.
2. **Brief facts of the case:** -
 - (a) The Corporate Debtor was admitted to Corporate Insolvency Resolution Process ('CIRP') which culminated in 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 creditors and workmen as per the advertisement dated 24.07.2021 and last date for submission of claim was 19.08.2021.
 - (b) The Applicant submitted its claim on 08.11.2021 i.e. after the last date notified by the Liquidator, and claim was, therefore, rejected by the Respondent. Hence, the present Appeal.
3. **Submissions of the Applicant.**
 - (a) The applicant has submitted that he had not received any communication from the Liquidator either by email or by post calling for claims. The Applicant, however, received the first communication through a forwarded mail on 12.11.2021, and immediately thereafter

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filed a claim on 17.11.2021. The Applicant contended that the claim could not be filed within time because of the lapses and errors on the part of the Liquidator in not sending the communication to the office of the Applicant.

- (b) The Applicant further submitted that as per Section 201 of the Income Tax Act, 1960, the tax dues shall be a charge upon all the assets of the Corporate Debtor. The Applicant also relied upon the case of N. Balakrishnan V. M. Krishnamurthy (1988) 7 SCC 123 wherein it was held that rules of limitation are not meant to destroy the substantive rights of parties, rather they exist to ensure that parties do not resort to dilatory tactics but seek their remedy promptly.
- (c) The Applicant further contended that Section 5 of the Limitation Act allows condonation of delay on sufficient grounds and the expression 'sufficient cause' is flexible enough to enable courts to apply the law in a meaningful manner which meets the ends of justice.

4. **Submissions of the Respondent.**

- (a) The Respondent/Liquidator submitted that the Applicant filed the claim in Form-B only on 17.11.2021 and the said claim was rejected on 23.11.2021 on the ground that the claim was received after the due date specified in the advertisement. Further, the Applicant has not preferred the instant Appeal under Section 42 of the Code within 14 days of the rejection order as specified.

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- (b) The Respondent also submitted that he had sent emails in addition to the public announcements made in Navrashtra and Financial Express newspapers. It appears that the email was forwarded by persons working in the office of the Applicant and finally reached the Applicant late for which the Respondent should not be blamed.
- (c) The Respondent submitted for rejecting the claim as the same was received after the date specified.

Analysis and Decision

- 5. We have heard the counsels for the parties and perused the documents on record.
- 6. It is observed that the Respondent invited claims from creditors and specified 19.08.2021 as the last date for submission of the claims. Admittedly, the Applicant submitted the claim after the due date specified in the advertisement. The Applicant contended that the Respondent is solely responsible for the lapses, and the delay in intimating the initiation of liquidation process and invitation of claims resulted in delayed submission of claim. On the other hand, the Respondent contended that email intimation was also issued by the Respondent to the office of the Applicant and hence the delay cannot be attributed to the Respondent and even otherwise the Applicant should have taken prompt action for filing the claims as per the advertisement. The Respondent further submitted that the Applicant has not preferred this application within 14 days of rejection of claim as specified in section 42 of the Code.

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7. It is observed that the liquidation process is still underway and admission of claim at this belated stage is not likely to further delay the liquidation process. It is also pertinent to observe that the stipulation of time for the purpose of submission of claim and preferring of appeal against rejection of claim by liquidator are intended to complete the liquidation process within the time frame and not meant to destroy the rights of parties or to deny the ends of justice.
8. In view of the above, we consider it appropriate to condone the delay in filing the claim by the Applicant.
9. We, therefore, allow Company Appeal No.1/2022 and direct the Respondent to process the claim made by the Applicant in accordance with the Code.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**