

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-II

COMPANY APPEAL NO. 54 OF 2023

In

CP(IB) No. 2043/MB/C-II/2018

**Appeal u/s 42 of the Insolvency and
Bankruptcy Code, 2016.**

IN THE MATTER OF

Pioneer India Electronics Private Limited

Having its Registered Office at: Unit No.03,
10th Floor, Ambience Corporate Tower-II,
Plot No.03, Ambience Island, NH-8,
Gurugram-122002, Haryana, India.

... Applicant

V/s.

Mr. Amit Chandrashekhar Poddar,

Liquidator of Autocop (India) Pvt Ltd.

... Respondent

IN THE MATTER OF

Goldsun Auto Private Limited

... Operational Creditor

V/s.

Autocop (India) Private Limited

Having its registered office at: Plot No. F-14,
Additional Industrial, MIDC Ambad,
Nashik-422010, India.

... Corporate Debtor

Order delivered on :- 18.12.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances (in physical mode):

For the Applicant : Counsel Mr. Shyam Kapadia a/w
Yahya Batatawala, Debarshi Dutta and
Anano Raja.
For the Respondent : Mr. Arjun Sathees, Counsel for the
Liquidator

ORDER

Per: - Coram.

1. The Appellant has filed the present Appeal u/s 42 of the Insolvency and Bankruptcy Code, 2016 ('the Code') challenging the notional admission/rejection of its claim of INR 143,15,09,570/- (Rupees One Hundred and Fourty-Three Crores, Fifteen Lakhs, Nine Thousand, Five Hundred and Seventy Only) by the Liquidator of the Corporate Debtor.

Facts of the Case as per the version of the Appellant are briefly stated hereinbelow:

2. Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor commenced on 16th March, 2022. The Appellant duly filed its claim of Rs. 143,15,09,570/- (Rupees One Hundred and Fourty-Three Crores, Fifteen Lakhs, Nine Thousand, Five Hundred and Seventy

Only) on 28th April, 2022. However, the IRP rejected the Appellant's claim by assigning a notional value of Re.1/- to the claim.

3. Liquidation process against the Corporate Debtor commenced on May 19, 2023 and the RP was appointed as the Liquidator. The Liquidator invited claims from creditors on 22nd May, 2023. The Appellant submitted its claim in Form C on June 18, 2023. The Liquidator sent a communication via e-mail to the Appellant only on September 30, 2023 notionally admitting its claim to the extent of Re.1/- which is nothing but again a rejection of the claim of the Appellant. The Appellant was shocked to learn that while rejecting the Appellant's claim, the Liquidator had relied exclusively on the stand taken by the IRP during CIRP. The Liquidator rejected the claim on the ground that not only was the claim of the Appellant was disputed by the Corporate Debtor, but also on the ground that the Corporate Debtor had filed a counter-claim of INR 150,15,16,715/- (Rupees One Hundred and Fifty Crores, Fifteen Lakhs, Sixteen Thousand, Seven Hundred and Fifteen) in its written statement in Commercial Suit instituted by the Appellant which is pending before the Hon'ble Bombay High Court.
4. Being aggrieved by such rejection, the Appellant has preferred an appeal u/s 42 of the Code before the Adjudicating Authority *inter-alia* praying for the alternate reliefs as follows:
 - a. An order directing the Liquidator, Mr. Amit Chandrashekhar Poddar, to quash and/or set aside .the Impugned Email dated 30 September 2023 (Annexure A) and admit the Appellant's Claim amounting to Rs.1,43,15,09,570/- (Rupees One Forty-Three Crores Fifteen Lakhs Nine Thousand Five Hundred Seventy only) in its entirety;

- b. In the alternative to prayer (a) above, an order directing the Liquidator, Mr. Amit Chandrashekhar Poddar, to admit the Appellant's Claim amounting to Rs.1,43,15,09,570/- (Rupees One Forty-Three Crores Fifteen Lakhs Nine Thousand Five Hundred Seventy only) in its entirety as a 'contingent claim' along with a statement that the same would be subject to the outcome of the proceedings pending before the Hon'ble Bombay High Court in Commercial Suit No. 485 of 2016;

FINDINGS

5. We have heard Counsel for the parties and have gone through the records. However, the Respondent has not filed his reply on record.
6. It has been contended by the Counsel for the Appellant that the Liquidator has wrongly treated its claim on notional basis for a sum of Re. 1/- on the ground that the claim is sub-judice based on some legal opinion from a firm called M/s AJA Legal. According to the Counsel for the Appellant, as a matter of fact during the CIRP when the claim of Rs. 143,15,09,570/- was lodged with the IRP, the latter admitted it for a notional amount Re. 1/- on the ground that Commercial Suit No. 485 of 2016 filed by the Appellant was pending adjudication with the Hon'ble High Court of Bombay. The Counsel for the Appellant has further argued that the Liquidator has followed suit and has treated the claim on notional basis, which is not correct, as the Liquidator has adjudicatory powers and the Liquidator should have applied its mind and passed a reasoned order.
7. The Counsel for the Appellant has further argued that the Liquidator has wrongly treated the claim as disputed merely on the ground that in

this commercial suit, the Corporate Debtor has made some false allegation of existence of a set off. The Counsel for the Appellant has further relied upon *Swiss Ribbons Private Limited and another vs. Union of India and others 2019 (4) SCC 17* whereby it was held by the Hon'ble Supreme Court that the RP is given only administrative powers whereas the Liquidator, in Liquidation Proceedings under the Code, has to consolidate and verify the claim and either admit or reject such claims u/s 38 to 40 of the Code, 2016. Therefore, according to the Counsel for the Appellant, the Liquidator should have discarded the views of the RP and should have admitted the claim after taking into consideration all the facts, documents and circumstances placed before him.

8. We have weighed the contentions raised by the Counsel for the parties and have carefully gone through the records.
9. Perusal of the record reveals that the Appellant submitted the claim with the Liquidator in Form C on 16.06.2023 annexing all the relevant documents. The said claim has been admitted by the Liquidator to the tune of Re. 1/- as against the submitted claim of Rs. 157,11,62,626/- as informed by the Liquidator to the Appellant vide email dated 30.09.2023, whereas it is mentioned that in the written statement filed in the Commercial Suit, the Corporate Debtor raised a set-off of Rs. 150.15 crores and has further issued a legal notice dated 01.12.2020 to the Corporate Debtor claiming defamation and damages.
10. Now the question arises whether the Liquidator was justified in treating the claim of the Appellant notionally for a sum of Re. 1/-. In this regard, reference can be made to Regulation 23 of IBBI (Liquidation Process) Regulation, 2016 which provides that the Liquidator may call for such

other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim. Regulation 25 further provides that if the amount claimed by a claimant is not precise due to any contingency or any other reason, the Liquidator shall make the best estimate of the amount of claim based on the information available with him. As stated above, the Liquidator enjoys adjudicatory powers. In the given circumstances, in our considered view, the Liquidator should have acted in accordance with the Regulations more particularly Regulation 23 and 25 of the IBBI (Liquidation Process) Regulation, 2016.

11. The claim of the Appellant is based on supply of goods to the Corporate Debtor. Since the outstanding dues were not being paid by the Corporate Debtor, the Appellant filed a Commercial Suit for recovery of the outstanding dues. Merely on the ground that a suit for recovery has been filed by an Operational Creditor, it cannot be said that the claim itself is tentative, uncertain or that since it is sub-judice, it should be treated notionally. That would amount to putting the operational creditor to an acute disadvantage merely on account of the fact that he has taken recourse to law as his legitimate dues were not being paid by the Corporate Debtor. Here, one cannot be oblivious of the fact that the Civil Suit might take its own time to culminate into some final decree and by that time the Liquidation Process, which as per the spirit of the IB Code, 2016 is a time bound process, might be over resulting in loss to such Operational Creditor. Therefore, in our considered view, despite pendency of the Civil Suit, the Liquidator should have applied his mind and taken a call on the admissibility of the claim as he definitely has quasi-judicial powers in the context of the claims.

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12. So far as the questions that some dues have also been claimed by the Corporate Debtor on account of some set-off filed along with the written statement in the Commercial Suit as well as some other damages and defamation claimed by the Corporate Debtor against the Appellant on account of loss of reputation are concerned, in our considered view, the claim of the Appellant could not have been jettisoned on this ground. If the Corporate Debtor has any such claims, which appear to be in the shape of unliquidated damages, the Corporate Debtor will have to get its claims crystallised by filing a civil suit and the Corporate Debtor can also file a separate claim in this regard on the basis of any liquidated or unliquidated damages claimed by it.
13. In the given circumstances, we are of the considered view that the act of the Liquidator in treating the claim of the Appellant on notional basis for a sum of Re. 1/- cannot be justified. In our considered view, it would be just and proper if the Liquidator is directed to ascertain the claim on the basis of the documents furnished by the Appellant in terms of Regulation 23 and 25 of the IBBI (Liquidation Process) Regulation, 2016 and treat such ascertained amount as a contingent claim subject to the outcome of the Commercial Suit pending before the Hon'ble High Court of Bombay and also make provision for payment/disbursement of the same as per the provisions of Section 53 of the Code, 2016 as and when some final judgment/decreed is passed in the Civil Suit. Accordingly, the **Company Appeal No.54 of 2023 is allowed** and disposed of to the extent indicated above.

Sd/-

**ANIL RAJ CHELLAN
Member (Technical)**

Sd/-

**KULDIP KUMAR KAREER
Member (Judicial)**