



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No. 503

IA/2836/ND/2022 in IB/1342/ND/2018

IN THE MATTER OF:

M/s. State Bank of India

.... Financial Creditor

Versus

M/s. Shri Ambica International Food Company
Private Limited

.... Corporate Debtor

Order under Section 60(5) of IBC, 2016.

Order pronounced on 04.07.2023

Coram:

Mr. MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide, separate sheets.

IA/2836/ND/2022 in IB/1342/ND/2018 **Stands dismissed.**

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

I.A. No. 2836/2022

IN

Company Petition No. (IB)-1342(ND)/2018

**[Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016]**

In the matter of:

M/s. Flexituff Ventures International Limited

.... Applicant

Versus

M/s. Mahesh Bansal

Resolution Professional of

Shri Ambica International Food Company Private Limited

.... Respondent

AND IN THE MATTER OF:

M/s. State Bank of India

.... Financial Creditor

Versus

M/s. Shri Ambica International Food Company

Private Limited

.... Corporate Debtor

CORAM:

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 04.07.2023



ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

The instant application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 on behalf of M/s. Flexituff Ventures International Limited ('applicants'), being the Operational Creditor of M/s. Shri Ambica International Food Company Private Limited ('Corporate Debtor') seeking following prayer(s):-

- (i) "that this Hon'ble Tribunal be pleased to allow the present application.
- (ii) that this Hon'ble Tribunal be pleased to condone the delay in filing of claim by Applicant.
- (iii) that this Hon'ble Tribunal be please to direct the Respondent to accept the claim of the applicant.
- (iv) that this Hon'ble be pleased to grant any other relief as may deem fit and proper in the interest of justice."

2. Briefly stated the facts of the present case as averred by the applicant in the present applicant are that the applicant had supplied BOPP Laminated Bags from time to time to the Corporate Debtor on 09.02.2017, 13.02.2017, 04.03.2017 and 09.03.2017 against which the payment has not been made by the Corporate Debtor and an amount of Rs.29,54,116/- is outstanding. The Applicant had issued legal notice to the Corporate Debtor on 15.10.2018 as well as had instituted two criminal complaints under Section 138 of Negotiable Instruments Act, 1881.

3. Further, it was stated that during the pendency of criminal complaints and civil suits, the Corporate Insolvency Resolution Process against M/s. Shri Ambica International Food Company Private Limited ('Corporate Debtor') was initiated by this Adjudicating Authority vide order dated 16.10.2019 and Public Announcement was made on 21.10.2019 for inviting claims from the Creditors with proof on or before 04.11.2019. It was stated that the Applicant



was not aware of the commencement of Corporate Insolvency Proceeding under Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and as soon as the Applicant became aware of the commencement of Corporate Insolvency Proceeding under Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor, the Applicant had submitted its Claim in Claim Form B for recovery of the amount outstanding along with necessary proofs on 21.04.2022 to the Respondent ('Resolution Professional') via E-mail.

4. The Applicant stated that the Respondent had acknowledged the receipt of Form B on 22.04.2022, however, the Respondent had repudiated claim of the Applicant on the ground that the last date for submission of claim as mentioned in the Public Announcement was 04.11.2019 and as per Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, last date for submission of claim was 14.01.2021 i.e. , on or before the 90th day of CIRP Commencement date which is 16.10.2019. However, the Applicant had relied on the Hon'ble Supreme Court judgment in **State Tax Officer v. Rainbow Papers Limited [(2022) SCC OnLine SC 1162]; Judgement dated 06.09.2022]** wherein it was held that the time period for submission of Claims along with proof is not mandatory but **directory**. Accordingly, the applicant prayed for condonation of delay in filing the claim in the Corporate Insolvency Resolution Process of the Corporate Debtor.

5. Per contra, the Resolution Professional of the Corporate Debtor ('Respondent') had filed the reply, wherein it was stated that the Respondent in compliance of Regulation 6(2)(c) of the CIRP Regulations, 2016 had made Public Announcement in Form-A on 22.10.2019, pursuant to which the Committee of Creditors was formed after collating and verifying the claims received from creditors.



6. Furthermore, the Respondent stated that the Committee of Creditors in its 16th CoC Meeting held on 19.03.2021 had approved the Resolution Plan submitted by Ms. Meenaksh & Mr. Kushal Goyal ('Successful Resolution Applicant'). It was stated the Respondent had filed an application i.e., I.A./1699/2021 under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 before this Adjudicating Authority seeking approval of the Resolution Plan as approved by the CoC in its 16th CoC Meeting whereas the Applicant had filed its Claim in Claim Form-B on 21.04.2022 i.e., after a delay of two years and five months without providing sufficient cause for delay.
7. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been examined in detail.
8. Adverting to the factual matrix of the present case, the respondent/IRP had made public announcement in the newspapers having wide circulation on 22.10.2019 as per which last date for submission of claim was 04.11.2019 and the timeline of 90 days as stipulated in Regulation 12(2) of CIRP Regulations was 14.01.2020. The CoC in its 16th CoC Meeting held on 19.03.2021 had unanimously approved the resolution Plan submitted by M/s. Meenakshi & Mr., Kushal Goyal, consequent to which I.A. No. 1699/2021 filed before this Adjudicating Authority seeking approval of Resolution Plan is pending before this Adjudicating Authority for approval. The Applicant had filed its claim in Claim Form B on 21.04.2022, the receipt of which was acknowledged by the Respondent vide email dated 22.04.2022 and also the Applicant was apprised that the Resolution Professional cannot consider or verify the claim as the claim is filed at a belated stage and application for approval of Resolution Plan is already pending before this Adjudicating Authority.



9. It is pertinent to mention that the purpose of making Public Announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

10. In the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, timeline has been clearly prescribed under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

“12. Submission of proof of claims. –

(1) xxxxxx

(2) *A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) Xxxxx ”

11. Further, in this context, we are conscious of the decision on similar facts of the **Hon’ble NCLAT in Axis Bank Ltd. Vs. Shubhkamna Buildtech Pvt. Ltd. & Anr. – NCLAT New Delhi (2022) ibclaw.in 640 NCLAT.** The Respondent has also placed reliance on the decision of the Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors : 2019 SCC Online SC 1478,** in which it is held that:



“107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution Applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count”.

(Emphasis Supplied)

12. In view of the aforesaid discussion and judicial pronouncements, we are of the considered view that the applicant has failed to show due diligence in submitting their claim before the Resolution Professional. We, therefore, cannot accede to the applicant’s request for issuing direction for the acceptance of the claim of the applicant as the same has been filed by the applicant after a delay of more than two years and five months and much after the approval of the Resolution Plan by the CoC in its 16th CoC Meeting.
13. Accordingly, the present application i.e., **I.A. No. 2836/2022 in C.P. (IB)-1342(ND)/2018 stands dismissed. No orders to cost.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. MAHENDRA KHANDELWAL)
MEMBER (J)**