

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 306 of 2020 in CP (I.B) No. 120/NCLT/AHM/2017

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.09.2020**

Name of the Company: Sushil Kumar Chaturvedi
V/s
Kiran Shah Liquidator of ORG
Informatics Ltd
Section : Application For Condonation of Delay

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

Advocate, Ms. Krina Parikh appeared on behalf of Advocate, Mr. Arjun Sheth for the Applicant. FCA, Mr. Kiran Shah appeared on behalf of the Liquidator.

The order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 17th day of September, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

IA No. 505 of 2020
and
IA No. 306 of 2020
In
C.P. No.(IB) 120 of 2017

In the matter of:

Vinod Singh Negi

...Applicant

Versus

Mr.Kiran Shah Liquidator
of ORG Informatics Ltd.

...Respondent

In the matter of:

Sushil Kumar Chaturvedi

...Applicant

Versus

Mr.Kiran Shah Liquidator
of ORG Informatics Ltd.

...Respondent

Order delivered on 17.09.2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance: Advocate, Mr. Anang Shandiliya is present for Applicant.
Advocate, Mr. Arjun Sheth is present for Applicant.
FCA, Mr. Kiran Shah appeared for the Liquidator.

Common Order

[Per: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed under section 42 of the IBC, with the following prayer, viz:

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- a. Seeking direction upon the liquidator of ORG Informatics Ltd. (Under Liquidation) to accept and admit the claim of the applicant.
 - b. Condone the delay in filing Petition and claim before the Liquidator due to aforesaid practical difficulty which was unintentional.
2. It is submitted by the Applicant that he was initially appointed as employee (Company Secretary, of ORG Telecom Ltd.), a wholly subsidiary of corporate debtor, ORG Informatics Ltd. and on 16.04.2007, upon his resignation, his employment has been moved to Corporate Debtor as Company Secretary and necessary information (in Form 32 for resignation as CS of ORG Telecom Ltd and appointment as Company secretary of Corporate Debtor) were filed with the concerned Registrar of companies (ROC). Accordingly, Applicant's employment is continued with ORG Group from 16.04.2007 till 31.07.2012 (sic) and completed more than 5 years of service with the Corporate Debtor and it is fully owned subsidiary company.
3. It is further submitted that during the employment tenure with the Corporate Debtor the Applicant was posted in Delhi NCR and have resigned from the service on 31.07.2012 from the Corporate Debtor's Delhi office, since then he was residing in Delhi NCR.
4. Applicant further submitted that it is having claim amount of Rs. 18,87,322/- as dues towards salary and other entitlement to the Applicant as per terms of his employment from the corporate debtor, but the Corporate Debtor had shown his inability to pay the due amount at the time of relieving. The Corporate Debtor had assured to pay the same after some time. However, in spite of several reminders and assurance, the amount remained unpaid to the Applicant till now.

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5. Meanwhile, CIRP proceedings against the Corporate Debtor were initiated. Since a suitable resolution plan was not received even after initiating EOI, the Adjudicating Authority passed an order for liquidation on 20.11.2019 appointing a liquidator for further course of action. On the appointment of the liquidator, the liquidator made an announcement on 09.12.2019 in the widely circulated newspaper, as prescribed in Form-B in Economic Times (English Edition) and Economic Times (Gujarati Edition), whereby, invited the claim by 19.12.2019 i.e. within ten days from the date of paper publication or announcement.
6. It is further submitted that since the public announcement published on 09.12.2019 for submitting the claim by 19.12.2019, in Economic Times, Ahmedabad Edition, as such, the Applicant cannot see the said paper publication being the resident of Delhi NCR. The fact came to the knowledge of the Applicant on 06 January 2020 from one of his ex-colleague residing in Baroda, hence, the Applicant immediately collected documents/information to submit his claim. The Applicant submitted the claim for Rs. 39,69,287/-and also included the interest on the due amount as on 07.01.2020 i.e within 30 days of publication of the public announcement.
7. It is further submitted that the liquidator declined to admit the claim on 09.01.2020 on the ground that he received the claim after the expiry of a prescribed time limit for receiving the claim with some documentary deficiencies, however, the Applicant has resolved and responded on 10.01.2020. Thereafter on 15.01.2020 liquidator has responded that:
“Your claim as Ex-Employee of ORG Informatics Ltd (In Liquidation) cannot be accepted as the same was received on 07.01.2020, whereas the last

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date of submission of the claim was 19.12.2019. Please note that the power to condone delay submission of the claim lies with the Honourable NCLT Ahmedabad.” (sic)

8. It is further submitted by the applicant that he was not aware about the liquidation of the Corporate Debtor and the public announcement dated 09.12.2019 for inviting the claims from the creditors as he was residing in Delhi, consequent upon which there was a delay in filing the claim before the liquidator. The said delay was not intentional it was purely due to unawareness of the Public notice /announcement.
9. It is further submitted that since the applicant is staying at Delhi NCR he could not able to file the application within the period of 14 days as prescribed under Section 42 of the IB Code and in respect of his contention, the applicant has sited case law of the NCLT Kolkata, wherein similar question had arisen in which the Honourable NCLT, Kolkata Bench has allowed the condonation of delay in filing of claim by the creditor and had directed the liquidator to accept the claim.
10. The applicant has also sited the case of T.R. Rajakumari v/s Motion Picture Producers Combine Ltd. AIR 1942 MAD. 349, wherein it was held that, the proposition of the law, that a creditor may come in and prove his/her debt at any time before the final distribution of the asset, but he cannot disturb any dividend which has already been paid.
11. In view of the above case laws, the applicant submitted that the liquidation proceedings is not completed/finalized as yet and if his claim is accepted, it is not going to cause any prejudice to anyone.

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12. It is also seen that the Petitioner has also filed another IA i.e. IA No. 306 of 2020 under section 60(5) and 42 of the IB Code with a prayer for condoning the delay in filing the claim form being Form-C, Form-E (Annexure-A and B respectively), and directed the Respondent to verify the said form.
13. On going through the said application it is found that the pleadings in the said application is one and the same. However, the claim is different, as compared to the instant application. In IA 306/20 the applicant claim has been shown as Rs. 42,94,995/- towards the non-payment of the salary including the amount of gratuity and Rs. 31,50,000/- towards operational debt for the services rendered to the Corporate Debtor, where as in para 6 of the IA 505/20 claim shown as Rs. 18,87,332/- as dues towards salary and other entitlements to the applicant as per terms of his employment from the Corporate Debtor.
14. The RP present in person submitted that the applicant has not filed the claim within the stipulated time and has also filed this application beyond 14 days as prescribed in Section 42 of the IB Code on the rejection of the claim by the RP.
15. Learned FCA Mr. Kiran Shah submitted that the claim of the applicant was rejected vide e-mail dated 09.01.2020 due to statutory restriction relating to the time limit in terms of the Insolvency and Bankruptcy Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016. While rejecting the claim the RP has also informed the grounds of rejection as under:

- a. The claim was received after the last date of submission which was 19.12.2019.

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- b. Appointment letter required to verify the salary claimed;
 - c. Copy of bank statement in which the salary was credited to verify the salary and working of gratuity and leave encashment and interest required which is also suppressed on the time of filing of the present application.
16. It is further submitted that, instead of filing an appeal as prescribed in Section 42 within a period of 14 days on receipt of rejection by the liquidator the applicant has filed an IA application, hence the same is required to be rejected.
17. It is further submitted by the RP that the list of the stakeholders has already been finalized and if the same is modified it will cause prejudice to the stakeholders.
- Heard both sides at length and perused the record annexed with the application, also seen the objection and rejoinder of the parties.
18. Admittedly, the letter of the appointment was issued on 30.05.2007 by the ORG Telecom Limited by one Mr. Rajni Bedi, Manager, Human Resource, (Page 12 of the application), which is a wholly-owned subsidiary of the Corporate Debtor ORG Informatics Limited. Thereafter, on resignation, the applicant was moved as Company Secretary and appointed as CS in the Corporate Debtor's company, and accordingly, Form-32 has been filed showing his resignation as CS of ORG Telecom Limited on 01.05.2008 and on the same date an appointment letter dated 01.05.2008 issued by H.R Head of ORG Informatics Ltd namely Mr. Sharad Kumar.
19. It is pertinent to mention herein that the applicant categorically mention in the application in paragraph no. 4 that, "the applicant's employment was

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23. With regard to the prayer for condonation of delay by the applicant and filing this application for his claim before the liquidator, which was rejected on the ground that the application was filed beyond the stipulated period, would have been condoned as the Honourable Supreme Court in its catena of the case have taken very liberal approach, but in the instant application the applicant cannot able to produce any documentary proof in support of his claim, therefore the claim is bad in absence of evidentry proof as also observed hereinabove.
24. Moreover, this claim is of 2012, since then the applicant was sitting idle without making any correspondence for claim and / or filed any proceeding to show his bonafide against employer. Hence, the applicant is not entitled to the claim as made in the application. Under such circumstances when there is a shadow of doubt upon the claim of the applicant, itself the liquidator cannot accept the claim of the applicant even if delay is condoned.
25. In view of the above observations, the instant application is rejected.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Manorama Kumari
Adjudicating Authority
Member (Judicial)