

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A./5002/ND/2021

IN

Company Petition No. (IB)-1293/2018

(Under Section 60(5) read with Section 42 of the Insolvency and Bankruptcy Code, 2016.)

IN THE MATTER OF:

Mr. Raj Vij
Sole Proprietor of Unity International

.... Operational Creditor

Versus

M/s. Marketing Times Automobiles Private Limited

.... Corporate Debtor

AND IN THE MATTER OF:

Mr. Tarun Garg

.... Applicant

Versus

Mr. Subramaniam Natrajan
Liquidator of
M/s. Marketing Times Automobiles Private Limited

.... Respondent

CORAM:

SHRI P. MOHAN RAJ, HON'BLE MEMBER (JUDICIAL)

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

Order Delivered on: 29.03.2023

ORDER

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

The instant application i.e., I.A./5002/ND/2021 is filed by Mr. Tarun Garg ('Applicant') under Section 42 of the Insolvency and Bankruptcy Code, 2016 being a stakeholder of the Corporate Debtor praying for the following relief(s):-

- a) "Condone the delay in filing of the claim in Form G of the IBBI (Liquidation Process) Regulations, 2016;
- b) Direct the Liquidator to consider and admit the claim of the Applicant; or alternatively,
- c) Direct the Respondent No.2 herein to pay to the applicant a sum of Rs.1,00,00,000/- along with an interest @ 18% till the date of realization of the amount; and/or
- d) Pass any such other order as this Hon'ble Tribunal may deem fit and proper in the interest of justice, equity and good conscience."

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:

- i) The applicant submits that the Corporate Debtor being an authorized dealer of M/s. Maruti Suzuki India Limited ('Respondent No.2') had entered into an Agreement dated 31.08.2017 with the Applicant for the purchase of 10 Vitara Breeza Zdi Dual Tone Cars from the Corporate Debtor and in pursuance of the agreement, the Applicant had paid Rs.1,00,00,000/- (One Crore Only) through cheques and RTGS to the Corporate Debtor.
- ii) The applicant further submits that inspite of making the entire payment in advance for the delivery of the cars and several reminders, the Corporate Debtor failed to deliver the cars. The applicant adds that through a public notice dated 31.05.2018 in the Times of India Newspaper, it came to the knowledge of the applicant that Corporate Debtor would cease to operate as the authorized dealer of the Respondent No.2 from 26.08.2018.
- iii) The applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s. Marketing Times Automobiles Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 14.11.2018 in C.P.(IB)/1293/ND/2018 on an application under Section

9 of the Code, 2016 filed by Mr. Raj Vij ('Operational Creditor') and one Mr. Ashwani Kumar was appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional of the Corporate Debtor.

- iv) The applicant submits that after the initiation of the CIRP of the Corporate Debtor, duly appointed Resolution Professional being aware of the dealership agreement between the Corporate Debtor and Respondent No.2 and its termination in May, 2018 had vide e-mail dated 08.01.2019 and 16.01.2019 had requested the Respondent No.2 to release an amount of Rs.5,16,39,992.25/- which was showing as receivables in the books of the accounts of the Corporate Debtor.
- v) The applicant submits that upon failure of the Respondent No.2 in either paying receivable amount or providing supporting documents for the deduction claimed by Respondent No.2, Respondent No.1 had filed an application C.A. No. 185/2019 before this Adjudicating Authority which was later on withdrawn in view of settlement arrived between the Liquidator ('Respondent No.1') and the Respondent No.2.
- vi) The applicant submits that in view of the settlement arrived between the Respondent No.1 and Respondent No.2, the applicant had approached the Respondent No.2 vide email dated 24.08.2021 seeking refund of the amount, but the same was turned down by the Respondent No.2 on 10.09.2021.
- vii) The applicant further submits that the applicant submitted its claim in Form-G with the relevant documents as per IBBI (Liquidation) Process Regulations, 2016 for an amount of Rs.1,00,00,000/- along with interest @ 18% p.a.. The Applicant adds that the Respondent No.1 vide its e-mail dated 29.09.2021 rejected the claim of the applicant as being barred by limitation.
- viii) The applicant further submits that in the e-mail dated 29.09.2021, the Respondent No.1 had also clarified that the amount claimed by the applicant had been blocked by Respondent No.2 and the Settlement arrived between the Respondent No.1 and Respondent No.2 was with

the condition that the blocked proceeds shall be released to the rightful claimants by the Respondent No.2.

3. The Respondent No.1, Liquidator of the Corporate Debtor had filed its detailed reply and submitted that the Liquidation of the Corporate Debtor was initiated vide this Adjudicating Authority's order dated 25.11.2019 consequent to which the Respondent No.1 had issued publication in Form-B for invitation of claim in Liquidation on 07.12.2019 wherein it was mentioned that the last date of submission of claim before the Liquidator was fixed for 04.01.2020. It is submitted that the Applicant had filed the claim in Form-G before the Respondent No.1 on 15.09.2021 with a delay of 21 months i.e., approximately 630 days. Further, it is submitted that the contention of the Applicant for claiming an amount of Rs.1,00,00,000/- (Rupees One Crore) along with interest calculated at the rate of 18% may be dealt by the Respondent No.2 in its independent Reply.
4. The Respondent No.2 ('Maruti Suzuki India limited') has submitted its detailed reply wherein it was submitted that all the disputes between the Respondent No.2 and the Respondent No.1 were culminated into a settlement agreement dated 29.06.2021, pursuant to which no claim whatsoever is maintainable against the Respondent No.2 in respect of Corporate Debtor.
5. We have considered the submission made by the Learned Counsels on behalf of the applicant as well as the Liquidator and upon perusing the material available on record, it is observed that the Liquidation of the Corporate Debtor was initiated on 05.12.2019 and Mr. Subramanian Natarajan, having IP Registration No. IBBI/IPA-002/IP-N00698/2018-2019/12317 is appointed as the Liquidator of the Corporate Debtor. The Publication of Form-B inviting claims from stakeholders was published on 07.12.2019 with 04.01.2020 being last date for submission of claims with the Liquidator. The applicant had submitted its claim in Form-G for the first time on 15.09.2021 i.e., after a delay of 620 days from the last date of filing the claim before the Liquidator. The Liquidator/Respondent No.1 in its e-mail dated 29.09.2021 had rejected the

claim submitted by the applicant. The e-mail dated 29.09.2021 is reproduced herein below in verbatim for ready reference:-

“Dear Sir,

We are in receipt of your mail and we have to inform you that statute of limitation has expired but you can approach NCLT for relevant directions. Furthermore, we checked our records and found out that your amount has been blocked by Maruti Suzuki India Limited. We have settled with Maruti with condition that blocked proceeds be released to rightful claimants. Please contact Maruti for further information.

Thanks and Regards

Subramanian Natarajan CPA IP”

6. From the reply of the Respondent No.1, it is clear that the Liquidator of the Corporate Debtor (‘Respondent No.1’) has given the following two reasons for rejecting the Applicant’s claim :-

- i) The claim by the Applicant has been filed belatedly, and;
- ii) The claim of Applicant has been transferred to M/s. Maruti Suzuki India Limited (‘Respondent No.2’) in terms of the Settlement arrived at between the Liquidator (Respondent No.1’) and Ms. Maruti Suzuki India Limited (‘Respondent No.2’) and therefore, the applicant should approach Respondent No.2 for its claim instead of the Liquidator.

7. As far as relief sought in prayer (a) for condonation of delay in filling the claim in Form G is concerned, this Adjudicating Authority is of the considered view that the Scheme of the Code, 2016 does not abridge the rights of a creditor to claim its dues out of the liquidation process till the complete distribution of the assets. Therefore, there is no legal impediment in considering the claim of a creditor in the liquidation of the Corporate Debtor as long as there are undistributed assets available in the Corporate Debtor.

8. This Adjudicating Authority is persuaded by the **Hon’ble Delhi High Court judgement in Re.: Kamla Syntex Ltd. [2018 SCC Online Del 9396]** wherein the Hon’ble High Court after discussing various judgments observed that as

long as undistributed assets are still available, the creditor may come in and join the liquidation process.

9. Further, considering the fact that the applicant being an individual is not well versed with the procedures and timelines of the Insolvency and Bankruptcy Code, 2016 and the hardships faced on the outbreak of the Covid-19 pandemic, the applicant had delayed in filing the claim before the Liquidator in Form-G. Also, from the pleadings, it seems that since 2018, the applicant was running from pillar to post from Respondent No.1 to Respondent No.2 regarding his claim of Rs.1,00,00,000/- and was actively pursuing his claim. The delay in formal filling of claim in the manner prescribed in the Code, 2016 has to be considered in the light of the fact that a large part of the delay can be explained by the unprecedented effects of the Covid-19 Pandemic during the year 2020 and 2021. As long as justice can be done to a creditor without disturbing the liquidation process, there is no reason why the creditor be prevented from getting his claim considered by the Liquidator of the Corporate Debtor. Therefore, this Adjudicating Authority is satisfied that the cause ascribed by the applicant for delay in filing the claim seems reasonable and construes 'sufficient cause' for condoning the delay in filing of the claim in Form G of the IBBI (Liquidation Process) Regulations, 2016. Therefore, the **prayer (a) of the present application stands allowed.**
10. As far as relief sought in prayer (b) for directing the Liquidator to consider and admit the claim of the Applicant is concerned, the applicant had placed on record the payment details of Rs.1,00,00,000/- (Rs. One Crore) supported by bank vouchers which was made to the Corporate Debtor for the purchase of 10 Vitara Breeza Zdi Dual Tones Cars. The applicant had placed contemporaneous e-mail correspondences with the Respondent No.1 and Respondent No.2 which evidently shows that since the year 2018 the applicant is following up with the Respondent No.1 as well as with the Respondent No.2 for his claim of Rs. 1,00,00,000/-. On the one hand the Respondent No.1 rejected the applicant's claim on the ground that pursuant to the settlement

agreement, it is the Respondent No.2's obligation to release the locked proceeds to rightful claimants whereas the Respondent No.2 claims that all the disputes between the Respondent No.2 and the Respondent No.1 were culminated into a settlement agreement dated 29.06.2021 and that no claim thereafter whatsoever is maintainable.

11. This Adjudicating Authority find it quite surprising how the Liquidator can enter into a settlement agreement with one of the debtors of the Corporate Debtor (Respondent No.2) and shift the liability of the Corporate Debtor towards its creditor (applicant) to the Respondent No.2, that too without the consent of the applicant. As the applicant had privity of contract with the Corporate Debtor, the right of the applicant with regard to his status as the creditor vis-a-vis the corporate debtor could not in any circumstances be altered by a settlement agreement entered into between the Respondent No.1 and Respondent No.2, with whom the applicant had no privity of contract.
12. Accordingly, we direct the Liquidator to admit the claim of Rs.1,00,00,000/- of the Applicant as per the provisions of the Code, 2016. However, with regard to the component of 18% interest as claimed by the applicant in Form-G, the Liquidator is directed to consider and verify the applicant's claim with respect to the interest component on basis of the documents submitted with the claim Form G. Therefore, the **prayer (b) of the present application stands allowed to the above extent.**
13. **With the above directions, I.A./5002/ND/2021 in Company Petition No. (IB)-1293/ND/2018 stands allowed. No order to cost.**

Sd/-

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

Sd/-

**(P. MOHAN RAJ)
MEMBER (JUDICIAL)**