

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17-07-2023 AT 10:30 AM**

**IA (IBC) 168/2022, IA No. 731/2020, IA (IBC) 909, 904 & 1128/2023 in
CP(IB) No.369/10/HDB/2019
u/s. 10 of IBC, 2016**

IN THE MATTER OF:

Priyadarsini Ltd

...Petitioner

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA(IBC) 1128/2023

Mr. Krishna Mohan Gollamudi, liquidator in person present. Application to receive 9th progress report. Report received. Subject to hearing this application is allowed and disposed of.

IA(IBC) 904/2023 in 909/2023

This is an application by the workmen challenging the communication dated 03.08.2022 issued by the liquidator rejecting the claim on the ground of delay, call on 27.07.2023.

IA(IBC) 909/2023

This is an application by the appellant seeking to condone the delay of 279 days in filing the appeal against rejection of claim. We have heard the learned counsel for petitioner workmen and learned counsel for the liquidator and also Mr. Krishna Mohan Gollamudi, liquidator in person present. **For orders** on 27.07.2023.

IA(IBC) 731/2020

Learned Counsel Mr. Aneesh, for the liquidator and Mr. Krishna Mohan Gollamudi, liquidator in person present. None appeared for the respondent. Filed a convenience chart. **For orders** on 27.07.2023.

IA(IBC) 168/2022

Orders pronounced. Recorded vide separate sheets. Accordingly, this application is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,
HYDERABAD**

IA (IBC)/168/2022

In CP (IB) No.369/10/HDB/2019

Application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016

Between

Southern Power Distribution Company of Telangana Limited
(TSSPDCL)

...Applicant/
Operational Creditor

VS

Priyadarsini Limited

Rep by Liquidator, Mr.Krishna Mohan Gollamudi.

....Respondent/
Corporate debtor

Date of order: 17.07.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Sh. Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Mr.Harish Kumar Villadath, Counsel.

For the Respondent : Mr.Shabber Ahmed, Counsel.

Liquidator : Mr.Krishna Mohan Gollamudi.

PER: BENCH

1. This is an Application filed by the Applicant under Section 42 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016 praying the Tribunal to set aside the rejection of part claim of the Applicant Company i.e Rs.28,28,14,013/- and to direct the Respondent to verify and admit the rejected portion of the claim of the Applicant Company amounting to Rs.28,28,14,013/-.
2. **Gist of the application:**
 - a. It is averred that corporate debtor has applied for HT Connection which was sanctioned by the then Central Power Distribution Company of Andhra Pradesh (APCPDCL), which is now Southern Power Distribution Company of Telangana Limited (TSSPDCL).
 - b. It is averred that as per the agreement between the parties vide HT Service No.SGR 270 dated 09.03.2006, and revised HT Agreement dated 09.03.2006 on enhancement of CMD from 1520 KVA in phased manner with APCPDC, the corporate debtor had drawn and consumed electricity supplied by APCPDCL under the said agreement vide H.T.S.C.No.MDAK-270. Thus monthly invoices used to be raised by the applicant company, subsequently corporate debtor cleared the dues.
 - c. Thereafter corporate debtor failed to make payments against the invoices for supply of electricity from July 2016 till September 2016 and bills raised in the months from July 2016 to October 2016. Since the corporate debtor failed to clear the dues the power supply has been disconnected on 31.07.2017.

- d. The applicant company was then constrained to issue notice for termination of Agreement vide Notice Lr.No.SE/OP/SRD/SAO/HT/D.No.214/2018, dated 27.06.2018 by giving 15 days' time for the payment of debt. Subsequently the HT Agreement for supply of electricity was terminated with effect from 30.11.2017. An amount of Rs. 2,29,47,247/- was due towards CC arrears as on the date of termination of the HT Agreement. The amount was arrived at after adjustment of security deposit of Rs.2,07,19,796/- and Spinning Mills Subsidy of Rs.2,68,60,801/-. Subsequently, surcharge was arrived at Rs.1,42,61,714/- from 30.11.2017 to 26.04.2021 which totals to Rs.3,72,08,961/-
- e. It is averred that Applicant Company issued notice of Demand in Form "A", "B" and "C" for the dues to be payable by the corporate debtor.
- f. In the meanwhile, the Transmission Corporation of Andhra Pradesh of the Joint State of Andhra Pradesh had filed Aggregate Revenue Requirement for the year 2001-2002, before Andhra Pradesh Electricity Regulatory Commission, set up under the Reforms, Act, 1998. In the month of December, 2020 the then Andhra Pradesh Distribution Companies(DISCOM's) had along with APTRANSCO filed their Joint ARR Applications. Further APTRANSCO in January 2001, filed Tariff proposal for the year 2001-2002 for its transmission and bulk supply business and jointly with each DISCOM proposal for distribution and rental supply business.
- g. It is averred that the Tariff proposal also contained a proposal for levying of wheeling charge of Rs.1/- per Kwh for energy it transmitted

through its network. In the year March 2001, the Commission directed the APTRANSCO to file necessary applications with regard to this and subsequently, the Commission vide order dated 24.03.2022 held that the wheeling charges would be 50 Paise per Kwh with effect from 01.04.2022 and besides the wheeling charges, 28.4 percent of energy input by the project developer into the licensee's grid being the system loss was also to be factored.

- h. It is averred that the Commission order was challenged before the Hon'ble High Court of Andhra Pradesh and the Hon'ble High Court vide its order dated 18.04.2003 and 02.05.2003 held that under Reform Act, the Commission has no jurisdiction to determine or impose wheeling charges in cash and energy losses.
- i. It is averred that the said orders of Hon'ble High Court was challenged by the DISCOMs before Hon'ble Supreme Court. Subsequently, Hon'ble Supreme Court vide its order dated 29.11.2019 stated that Wheeling charges as determined by the Hon'ble Commission for the financial years from the FY 2002-2003 onwards till the present financial year holds good. Consequently, the Corporate debtor is liable to pay the difference of wheeling charges as determined by the Hon'ble Commission against the HT SC.No.SGR 270 relating to Corporate debtor as per the Wheeling Agreement/MOU dated 02.03.1996 amounting to Rs.28,28,14,014/-.
- j. It is averred that when the Applicant Company came to know that that the corporate debtor is under liquidation vide order dated 26.04.2021

and Shri Krishna Mohan Gollamudi, was appointed as liquidator, Applicant Company filed Form C with the liquidator.

- k. It is averred that liquidator vide email dated 06.07.2021 informed that an amount of Rs.3,72,08,961/- is admitted on account of CC charges and the remaining amount of Rs.28,28,14,013/- is not admitted since an amount of Rs. 2,55,74,798/- claimed towards wheeling charges for the power supplied by Rail Calcining and the balance amount of Rs.24,72,39,515/- claimed towards wheeling charges for the power supplied by the third parties.
- l. It is averred by the Applicant Company that it had provided valid clarifications and explanations to the liquidator. Further submitted that on perusal of Rule 17 of IBBI Regulations, 2016 Rule 17(2)(b)(iii) clearly states that existence of debt due to an operational creditor under this Regulation may be proved on the basis of relevant documents. Rule 17 of IBBI Regulations, 2016 is produced below:
- Claims by Operational Creditor:
- (1) A person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II.
- (2) The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-
- (a) the records available with an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following –
- (i) a contract for the supply of goods and services with corporate person;
- (ii) an invoice demanding payment for the goods and services supplied to the corporate person;

- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and
- (iv) financial accounts.

- m. The Applicant Company informed the liquidator that Corporate Debtor has availed third Party Sales from a windmill as a captive usage under a Wheeling Agreement executed with the APSEB. Applicant Company further averred that the invoices raised against the Corporate debtor towards wheeling charges during FY between 2003 and 2007 are appended to the present Application and Open Access Agreement entered into by the Corporate Debtor states that the Corporate Debtor should pay the wheeling charges for availing power from captive and third party providers.
- n. It is averred that the Applicant Company has followed the due procedure as per the Electricity Act and the APSE Board, 1985.
- o. Hence the Applicant Company prayed this Adjudicating Authority to issue direction to the liquidator to process the balance amount of the Claim placed by the Applicant Company and proceed accordingly in the interest of Justice and equity.

3. Reply filed by the Respondent:

- a. It is averred that the averments made by the Applicant Company are false and baseless and is liable to be rejected.
- b. At the outset it is stated that the IA No.168/2022, has been filed after delay of 209 days from the date of part rejection of the claim by the liquidator. Further, the Applicant Company has not justified the delay

- and has placed reliance on the extension of limitation orders passed by Hon'ble Supreme Court of India.
- c. It is averred that protection under the interim orders passed by Hon'ble Supreme Court of India is extended only to the original proceedings filed before courts and Tribunal but not to the regular claims or representations to the authorities under statutes including liquidator under IBC.
 - d. It is averred that the APERC tariff order dated 24.03.2002 was upheld by the Hon'ble Supreme Court of India in November, 2019 envisaged that it was the project developers who were to execute wheeling agreement and pay wheeling charges. Further the order of the APERC did not envisage that the end consumers like Corporate Debtor are to be saddled with the wheeling charges.
 - e. It is averred that wheeling charges are purportedly owed to the Applicant Company on account of Corporate Debtor availing electricity from Rain Calcining Limited and other parties. Wheeling Agreement dated 02.03.1996 (filed at page 160 of the Application) has no applicability since it dealt with the evacuation of power pertaining to the Corporate Debtor's own Wind Power unit but not electricity availed from Rain Calcining Limited and other Third Parties.
 - f. It is further averred that no wheeling agreements with regard to Rain Calcining Limited and other Third Parties are placed on record to demonstrate existence of liability. Further stated that Corporate Debtor did not had any Wheeling Agreement with the Applicant.

- g. Thus the respondent prayed the Tribunal to dismiss the Application with exemplary costs and pass the order that deems fit by the Adjudicating Authority.
4. This is an application filed by Southern Power Distribution Company of Telangana Limited, seeking direction to the RP to verify and process balance portion of the claim of the Applicant Company amounting to Rs.5,42,58,876/-.
5. Before we go into the merits of the case, at the outset it may be stated that the Appeal against an order rejecting the claim by the liquidator needs to be filed within 14 days of the communication of the order in terms of Section 42 of IBC, which is below:
- Section 42 of IBC:
- A creditor may Appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.*
6. Admittedly, the impugned communication has been sent way of email dated 06.07.2021, to the Applicant. This Application however has been preferred on 22.02.2022. Thus there is a delay of 209 days in filing the present Appeal.
7. Therefore, it is incumbent on the part of the Applicant herein to first seek condonation of delay in filing this Appeal. The delay in filing the Appeal can be condoned under Section 5 of limitation Act as held by “ Hon'ble NCLAT in the ruling of Canara Bank Vs Commercial Tax Department Circle 09, Indore, vide Company Appeal(AT) (Insolvency) No.655/2023, wherein it was held that; the delay in filing the Appeal under Section 42

is clearly condonable while exercising the power under Section 5 of the Limitation Act.

8. Hon'ble Supreme Court of India, in Sesh Nath Singh & ANR Vs Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr. Vide Civil Appeal No.9198 of 2019 as held that Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or Appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the Appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application it is not always necessary to file an application for condonation of delay before the Court or Tribunal, and delay can be condoned even in the absence of the Application under Section 5 of Limitation Act.
9. Therefore, there shall at least be an oral prayer for condonation of delay, stating the reasons for not filing the Appeal within 14 days.
10. On a careful perusal of the petition, we are unable to find even a whisper as to why the Appeal was not preferred within 14 days from the date of receipt of the communication, leave alone the prayer for condonation of delay.

11.Therefore, when the Application itself is being bared by limitation and for condonation of delay not even a single ground is pleaded, the delay cannot be condoned 'Suo-Moto'. Hence the question of giving a direction to the liquidator to consider the claim of the Applicant does not arise. Therefore, the Application is dismissed as not maintainable.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani