NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH CHENNAI
(APPELATE JURISDICTION)

Company Appeal (AT)(CH((Insolvency) No. 255 of 2021

[Arising out of Impugned Order dated 5th April, 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench, in I.A. No. 106 of 2021 in C.P. (IB) No. 320/BB/2019]

IN THE MATTER OF:

The Assistant Commissioner of Commercial Taxes
(Audit) – 4.6, DGSTO-4, Bangalore
Room No. 402, 4th Floor, Block – A
VTK – 2, Rajendranagara, Near NGV
Koramangala, Bangalore – 560047
Karnataka **... Appellant**

V

1. Right Engineers & Equipment India Pvt. Ltd (in liquidation)
Represented herein by its Liquidator,
Mr. Addanki haresh
No.25, D Cross, Bilekahalli industrial Area,
Bannerghatta road, Bangalore – 560076,
Karnataka **...Respondent No.1**

2. Mr. Addanki Haresh
Liquidator of right Engineers & Equipment India
Pvt. Ltd. (in liquidation)
No. 36/1, 2nd Floor, Munivenkatappa Complex,
Bellary Main Road, Ganganagar,
Bangalore – 560032,
Karnataka **...Respondent No.2**

Present:

For Appellant : Mr. Sandeep Huilgol, Advocate

J U D G E M E N T
(Virtual Mode)

M. Venugopal, J:

According to the Learned Counsel for the Appellant/Applicant, instant Company Appeal(AT)(CH) (Insolvency) No. 255 of 2021 is filed by the Appellant/Applicant, being dissatisfied with the 'Impugned Order' dated 5th April, 2021 passed in I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019 (filed under Section 42 & 60 of the Insolvency & Bankruptcy Code, 2016 [in short **'IBC'**] read with Rule 11 of NCLT Rules, 2016) passed by the Adjudicating Authority (National Company Law Tribunal, Bengaluru, dismissing the said application.

2. The Learned Counsel for the Appellant/Applicant submits that I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019 was filed by the Appellant/Applicant before the Adjudicating Authority (National Company Law Tribunal, Bengaluru, seeking to set aside the order dated 17.03.2021 passed by the Respondent No. 2 in rejecting the Appellant's Statement of Claim based on the reason that it was submitted belatedly delay of 52 days. Also that, the Appellant/Applicant had prayed for the condonation of the said delay of 52 days for submission of its Claim before the 2nd Respondent and prayed for consequential directions to the 2nd Respondent to verify, admit and process the claim of the Appellant in liquidation proceeding of the 1st Respondent.

3. It is represented by the Appellant that the Adjudicating Authority had passed an order directing initiation of 'Liquidation Proceeding' against the Respondent No. 1- Company on 02.12.2020 and further that the Public Announcement was issued by the Respondent No. 2 on 11.12.2020 in

announcing liquidation of Respondent No. 1 as per which the last date of submission of claim was on 11.01.2021.

4. The Learned Counsel for the Appellant points out that on 03.03.2021, the Appellant/Applicant passed 'Reassessment Order' in terms of Karnataka Value Added Tax by which the Respondent No. 1/Company is liable to pay tax interest and penalty amounting to Rs. 36,46,908/-. As a matter of fact, on 04.03.2021, the Statement of Claim was filed by the Appellant/Applicant before the Respondent No. 2 covering the dues payable by the Respondent No. 1 to the Appellant/Applicant.

5. It transpires that on 17.03.2021, the Respondent No. 2 passed an order rejecting the claim passed on the reason that it was filed belatedly. Moreover, on 23.03.2021, I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019 was filed by the Appellant/Applicant (under Section 42 & 60 of the IBC) before the Adjudicating Authority seeking amongst other things, condonation of delay of 52 days for submission of claim before the Second Respondent.

6. The Learned Counsel for the Appellant takes a crystalline stand in the instant Appeal that on 05.04.2021, the Adjudicating Authority had passed the Impugned Order in dismissing I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019 based on the ground that the reasons mentioned for condonation of delay were untenable.

7. Advancing his argument, the Learned Counsel for the Appellant contends that a lenient view is to be taken in the matter of condonation of delay so as to advance substantive justice and therefore prays for allowing the appeal in the Interest of Justice.

8. To lend support to the contention that it is the duty of a 'Tribunal' to exercise its discretion in condoning the delay in a judicious manner and furthermore that the 'Rule of Limitation' are not meant to destroy the rights of the Parties, he refers to the decision of the Judgment of Hon'ble Supreme Court of India between "***N. Balakrishnan Vs. M. Krishnamurthy***" in Indian Kanoon.

9. The Learned Counsel for the Appellant refers to Section 42 of IBC which reads as under:

..

> *"42. **Appeal against the decision of liquidator** – 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."*

..

10. At this stage, this Tribunal points out the relevant following observations made by the Adjudicating Authority at Paragraph-4 of the Impugned Order dated 05.04.2021 in I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019 which runs as under:

"4. ……. The reasons cited by the Applicant that it was unaware of the CIRP/Liquidation of Corporate Debtor, the State would lose its legitimate dues viz., the tax collected from public, it is duty of Liquidator alone to verify its records etc., are not at all tenable. While alleging that the Liquidator has failed to discharge his duties, the Applicant has failed to take any action at appropriate time to recover tax and they cannot wait for proceeding to be initiated by others under provisions of the Code. The Applicant has absolute independent right to initiate appropriate action to recover the tax in question but they have failed to discharge their duties. The reasons cited for delay in approaching the Liquidator are not at all tenable. And CIRP/Liquidation is time bound manner and it cannot be put on hold on continuous basis on receiving belated claims and considering them. We are convinced that the Respondent has followed extant provisions of law in continuing proceedings under the provisions of the Code, and the impugned order cannot be interfered with. Therefore, the Application is liable to be dismissed."

And ultimately, the said Application was dismissed without costs.

11. Be it noted, that Regulation 16(1) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides as under:

..

16. ***Submission of claim****- (1) A person, who claims to be a stakeholder shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.*

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date."

...

12. In fact, in I.A. No. 106 of 2021 in CP(IB) No. 320/BB/2019, the Applicant/Operational Creditor at paragraphs 5 & 6 had averred the following:

"5. Thus, the total amount of tax, interest and penalty payable by the 1st Respondent to the Applicant under the KVAT Act and the CST Act for the AY 2016-17 pursuant to the above orders is as follows:

Act	*Total Amount payable*
CST	*INR 39,35,709/-*
KVAT	*INR 36,46,908/-*
Total	*INR 75,82,617/-*

6. Thereafter, however, no payment came to be made by the 1st Respondent. While the position stood thus, the Applicant contacted one of the Directors of the 1st respondent company on 02.03.2021 to enquire about why the arrears due from the 1st Respondent were not being paid by it. It was then that the Applicant was informed for the first time that the 1st Respondent is undergoing liquidation process under the provisions of the IBC. Later that day, the Applicant visited the website of Insolvency and Bankruptcy Board of India of thereby became aware, for the first time, that this Hon'ble Tribunal had passed an order dated 02.12.2020 ordering initiation of liquidation proceedings as against the 1st Respondent as per the provisions of the IBC and also appointing the 2nd Respondent as the liquidator of the 1st Respondent. Further, the Applicant thereby became aware for the first time, that the 2nd Respondent had issued on 11.12.2020 a Public Announcement under Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("the Regulations" in short), announcing the liquidation of the 1st Respondent. True copies of this Hon'ble Tribunal's order, dated 02.12.2020, and the Public Announcement, dated 11.12.2020 are produced herewith and marked as Annexures C and D respectively.

Significantly, the Applicant became aware for the first time on 02.03.2021 that, much to its utter shock and dismay, as per the said Public Announcement, the last date of submission of claims in the liquidation proceedings of the 1st Respondent was 11.01.2021."

13. Indisputably, in the present case on hand, 'Corporate Insolvency Resolution Process' (In short '**CIRP**') in respect of the Corporate Debtor was initiated by the Adjudicating Authority as per the order dated 29.10.2019. At the behest of M/s Sri Visveswaraya Co-operative Bank Ltd. the Public Announcement was made on 20.11.2019 by inviting claims of the Creditors of the Corporate Debtor in requisite form and the last date being 04.12.2019. In reality, the estimated date of closure of CIRP was mentioned as 26.04.2020.

14. Besides the above, an extension of time was also granted by the Adjudicating Authority and inasmuch as, the suitable Resolution Plan was not received, the Corporate Debtor was placed under liquidation process on 12.12.2020.

15. When that be the ground realities/fact situation(s), the Appellant/Applicant submitted the claim only on 04.03.2021 by responding to the 'Public Announcement' given under 'Liquidation Process'.

16. It is an axiomatic principle in law that the 'Tribunal' is required to consider the 'sufficiency of cause', whether the cause ascribed is reasonable looking to

all the facts of the matter. However, the aspect of an existence of 'sufficient cause' is to be determined based on the facts and circumstances hovering around particular case. Indeed, there ought not to be an 'inaction' or 'want of bonafide' or no negligence attributable to a litigant/party, as the case may be.

17. It cannot be forgotten that the Liquidator by adverting to the Regulation 16(A) Regulations 2016 (Liquidation Process) had rejected the claim through his letter on 17.03.2021 mentioning that the claims required to be furnished on or before 11.01.2021. Unfortunately, the Appellant/Applicant had submitted its claim only on 04.03.2021 and to come out with the reason that the Appellant/Applicant was not aware of the CIRP and Liquidation Process of the Corporate Debtor are unworthy of acceptance and in the considered opinion of this Tribunal, the said reason was rightly rejected by the 'Adjudicating Authority', which requires no interference in the hands of this 'Appellate Tribunal'. Viewed in that perspective, the instant 'Appeal' is devoid of merits and it fails.

18. In fine, Company Appeal (AT)(CH) (Insolvency) No. 255 of 2021 is dismissed. No costs.

[Justice M. Venugopal]
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

15th November, 2021

Akc