

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

IA 1747/2023

IN

Company Petition No. (IB) – 274/(PB)/2019

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

Central Bank of India

.... Financial Creditor

Versus

M/s RS Ingot and Billet Private Limited.

.... Respondent/ Corporate Debtor

AND IN THE MATTER OF-

Purvanchal Vidyut Vitran Nigam Ltd
Through its Executive Engineer,
Vidyut Vitran Khand,
Machchlishahr, Jaunpur, U.P

.... Applicant

Versus

Mr. Debashish Nanda,
Liquidator of the Corporate Debtor

...Respondent

CORAM:

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Adv. Pradeep, Adv, Daleep Dhyani, Adv.

For the Liquidator: Adv. Adya Singh

ORDER

PER- MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Pronounced on: 15.12.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by Purvanchal Vidyut Vitran Nigam Ltd. through its Executive Engineer for condonation of delay in submitting the claim.

2. The applicant in the present application has prayed for the following relief(s)

a. condone the delay 201 days in filing the Claim by the applicant;

b. pass such other order or orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice.

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3. The brief facts of the case as mentioned in the instant application, which are relevant for adjudication, are as follows:

- i. That the Corporate Insolvency Resolution Process of Corporate Debtor was initiated vide order dated 31.07.2019.
- ii. That subsequently, this Adjudicating Authority vide order dated 05.05.2022 passed an order of liquidation of Corporate Debtor.
- iii. That the Applicant has supplied electricity to the Corporate Debtor and an amount of Rs. 2,65,94,294/- was outstanding against the Corporate Debtor against which a recovery certificate was issued on 01.04.2021. However, the amount could not be recovered.
- iv. That the Applicant was not aware about the proceedings and came to know the same when in another matter being I.A. No. 1123 of 2021 in Company Petition No. IB 275(ND)/2019 when the representative of the liquidator has visited the office of Executive Engineer and informed that the Corporate Debtor has been directed to be liquidated.
- v. That upon receiving the information the Applicant has filed its claim in Form-C on 09.01.2023.

- vi. That from the date of knowledge the Claim was immediately filed, however, there is a delay of 218 days which has been caused as the Applicant was not aware about the proceedings pending before this Adjudicating Authority.
- vii. That the delay so caused is bonafide, unintentional and thus liable to be condoned in the interest of justice.

4. The Liquidator has made the following submission with respect to the application: -

- I. That due to non-availability of any feasible Resolution Plan, the CoC decided to go for liquidation of the Corporate Debtor and accordingly passed a resolution in its 9th Meeting of CoC held on 27.07.2020. The Adjudicating Authority vide order dated 05.05.2022, allowed the application and initiated the Liquidation Process of CD.
- II. That the Liquidator had made public announcement on 07.05.2022 wherein the last date of submission of claim was 04.06.2022 and the applicant had filed its claim on 09.01.2023 (after a delay of 218 days).
- III. That the applicant even failed to file its claim during the CIRP of CD.

IV. That the the Hon'ble NCLAT in catena of judgements have stated that the claims filed at a belated stage i.e beyond the last date of submission of claims cannot be considered. The Hon'ble NCLAT in The Regional Provident Fund Commissioner Employees Provident Fund Organisation vs Mr. Vasudevan Resolution Professional & Liquidator of M/s. Titanium Tantalum Products Limited in Company Appeal (AT) (CH) (INS) No. 182 of 2022 dated 11.07.2022, had stated that claim filed even by the EPFO department, at a belated stage cannot be entertained.

V. That the Applicant had stated that the reason of delay in submission of claim was that the Applicant was unaware of the Liquidation proceedings of the Corporate Debtor, whereas, the counsel for the Applicant used to appear before the Adjudicating Authority in of the group concern company matters titled as Central Bank of India vs M/s Abhinav Steels and Power Limited. It is pertinent to state that ignorance of law cannot be an excuse.

VI. . It is pertinent to mention here that almost all the realization proceeds have already been distributed among

the stakeholders in accordance with the provisions of section 53 of the IBC, 2016. Further, the total amount realized from the sale of the assets is not even sufficient to meet the claim of the secured financial creditors whose dues are paid in priority to operational creditors as per waterfall mechanism given under section 53 of the IBC, 2016. Hence it is prayed to dismiss the present application.

5. We have gone through the documents on record filed by both the parties and have heard the parties on merits.

6. As per Regulation 44 of IBBI Liquidation Process Regulations, 2016, the time period to complete the Liquidation Process is one year from the Liquidation Commencement Date. The Liquidator had made public announcement on 07.05.2022 wherein the last date of submission of claim was 04.06.2022 and the applicant filed its claim on 09.01.2023. It is observed that there is a delay of 218 days in filing its claim before the Liquidator. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the Liquidation of the Corporate Debtor so as to

enable the liquidator to complete the Liquidation Process in a time bound manner.

7. The Hon'ble NCLAT in the matter of *The Regional Provident Fund Commissioner Employees Provident Fund Organisation vs Mr. Vasudevan Resolution Professional & Liquidator of M/s. Titanium Tantalum Products Limited in Company Appeal (AT) (CH) (INS) No. 182 of 2022* the Hon'ble NCLAT while dismissing the claim filed by EPFO dues held, inter alia, as under: -

“41. It is to be remembered that the length of the delay is immaterial. However, the acceptability of an explanation furnished by the ‘Party’ is the ‘prime criterion’. A ‘Tribunal’ or a ‘Court of Law’ will be very reluctant / slow to excuse the delay to lend a helping hand / assistance to a ‘Litigant / Stakeholder’ who is guilty of ‘inaction’ or ‘bad faith’ or ‘latches’ or ‘negligence’.

....

44. Just because the Appellant is a Statutory Organisation, no ‘indulgence’ or ‘latitude’ can be shown, since the ‘Law’ applies to one and all in a level playing field. In reality, the Officials must act with as much as diligent as is expected from a ‘Litigant’, as per decision in District Board, Sargodha V Shemas Din123 I C 83.

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46. ‘Speed’ is the essence of I & B Code, 2016. ‘Time Wasted’/‘Lost’ cannot be revisited/regained. The process of Liquidation is time bound, to be completed within one year in the teeth of the I &

B Code, 2016. Undoubtedly, the Code is an inbuilt and self-contained one and the object of the I & B Code, 2016, is that, a time barred 'Debt' cannot be resurrected or given a fresh tenure of life, as opined by this 'Tribunal'."

8. Further, it is pertinent to refer to the judgement of Hon'ble High Court of Madras in the matter of S.R. VEDIAPPAN vs S.P. RAMALINGAM C.M.P. No. 7730 of 2017 in A.S.SR.No.34779 of 2017 the Court held as under: -

"While condoning the delay, the Courts must be cautious and only on genuine reasons, the Courts are empowered to condone the delay. The power of discretion to condone the delay is to be exercised judiciously and by recording reasons. The reasons furnished for condonation of delay must be candid and convincing. Therefore, the condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses. Therefore, reasons which are all acceptable alone must be a ground for condonation of delay, and filmy, false and casual reasons cannot be taken for the purpose of condoning the huge delay."

9. The Hon'ble Supreme Court in the matter of *RPS Infrastructure Ltd. vs. Mukul Kumar and Ors.* (11.09.2023 - SC) : *MANU/SC/1001/2023* held as under: -

19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry.

10. In the present case, the reason which was given by the applicant was that they were not aware about the Liquidation Process of the Corporate Debtor. The applicant even failed file its claim during the CIRP. The essence of the Code is to complete the CIRP/ Liquidation process in a time bound manner. The applicant failed to provide sufficient cause for delay in filing claim before the Liquidator. Hence, we see no

reason to interfere with the decision taken by the liquidator to reject the claim filed by the applicant.

11. Taking into consideration the facts and circumstances of the present case and the law laid down by the Hon'ble Supreme Court and Hon'ble NCLAT, we are not inclined to condone the delay. Hence, this Adjudicating Authority **dismisses** the application filed by the applicant.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)