

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
SPECIAL BENCH
KOLKATA**

C.P. (IB) No. 1694/KB/2018

IA (IBC) No. 1644/KB/2022

***An application under Section 42 of the Insolvency and Bankruptcy Code,
2016.***

In the matter of:

(1) Sendoz Commercials Private Limited

... Operational Creditor

-Versus-

(2) Kohinoor Paper and Newsprint Private Limited

... Corporate Debtor

-And-

In the matter of:

**(3) Assistant Commissioner, Budge Budge Division Kolkata South CGST & CX,
Kolkata, Room No.- 180, Shantipally, Rajdanga Main Road, Kolkata – 700107,
E-mail: stkol.legal@gmail.com, Mob. No. – 9871587977.**

... Appellant

-Versus-

**(4) Uday Narayan Mitra, Liquidator, having office at 72/1 Dewanagazi Road, Bali,
Howrah – 711201, E-mail: udaynarayanmitra@yahoo.co.uk, Mob No.
8240850244 / 9423532994.**

... Respondent

Date of hearing: 10/04/2023

Date of pronouncing the order: 10/11/2023

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/physically):

Mr. Swatarup Banerjee, Adv.] For Liquidator in IA/762/2022
Mr. S.K. Tiwari, Adv.]
Mr. Joyesh Kr. Choradia, Adv.]
Mr. Uday Narayan Mitra] Liq. in person
Mr. S.K. Tiwari, Adv.] For Liquidator in IA 1644/2022
Mr. Joyesh Kr. Choradia, Adv.] & IA/654/2023
Mr. Shaunak Mitra, Adv.] For Liquidator in IA/201/2020,
Ms. Shreya Choudhary, Adv.] IA/946/2020 & IA/695/2022
Mr. Rishav Banerjee, Adv.] For applicant in IA/762/2022
Mr. Rajarshi Banerjee, Adv.]
Mr. Kaushik Dey, Adv.] For Kolkata South GST Authorities
Mr. Abhradip Maity, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. counsels for the parties.
2. This application has been preferred to seek the following reliefs, inter alia: -
 - (a) An order and/or orders directing Respondent/liquidator and its representatives to accept the proof of claim filed by the appellant and consider and evaluate the admissible claim of the government while condoning delay for filing proof of claim by the appellant and further delay of 390 days to file Claim challenge/ Appeal against the decision/order of the Liquidator *vide* Email dated 18.11.2021 and before this Tribunal for consideration of filed claim.
3. **Submissions of the Applicant: -**
 - (i) The applicant is the Assistant Commissioner of Kolkata, Budge Budge Division, South GST Commissionerate authorised to file this application for

recovery of government dues to the tune of Rs. 36,68,57740.00 including duty, interest and penalty from the Corporate Debtor.

- (ii) The said claims have originated due to the following: -
- (a) Order-in-Original No. 2/COMMISSIONER/CE/KOL-VII/ADJ/2014-15 dated 24.07.2014,
 - (b) 04/COMMISSIONER/CE/KOL-VII/ADJN/2013-14 dated 27.12.2013 **and**
 - (c) Order-in-Original No. 01/ACV/ADJN. /KOHINOOR/BBD/KOL-S/2020-21/62 dated 21.01.2021.
- (iii) On 15/10/2021, the Respondent/Liquidator asked for lodging of claim.
- (iv) On 03/11/2011 the Assistant Commissioner of CGST & CX Budge Budge Division, Kolkata South Commissionerate asked the Assistant Commissioner Legal HQ for filing a claim on the basis of confirmed Order-in-Original No. 01/AC/Adjn. /Kohinoor/BBD/Kol-S/2020-21 dated 20/02/2021 of Rs. 3,81,629/-.
- (v) However, on 15/11/2021 one letter was issued by the Respondent/Liquidator to Assistant Commissioner of CGST & CX Budge Budge Division, Kolkata South Commissionerate enclosing Order of Liquidation dated 12/07/2021 and stating last date of filing claim was 01/09/2021, beyond which claim of the Department cannot be accepted. Since paper publication for filing of claim within timeline is mandatory.
- (vi) On 11/10/2021 the Assistant Commissioner of CGST & CX Budge Budge Division, Kolkata South Commissionerate filed the claim on behalf of the department with annexures, to the liquidator giving details therein.
- (vii) On the next date, i.e., on 12/11/2021 Counsels were appointed by the office of Principal Commissioner Kolkata South CGST but during COVID 19

pandemic the documents required could not be requisitioned from the Division office by the Legal Department. Such condition prevailed until the 3rd wave of COVID 19 restrictions were lifted.

- (viii) On or about 1st week of March, 2022 the documents were located lent such documents being not legible and could not be briefed. Again, documents were called for with legible photocopy as far as possible, otherwise there may be possibility of defective filling of Application before the Tribunal.
- (ix) Finally, the draft of the petition for consideration of the claim of the department, and appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 was made on 4th April, 2022, which got settled. On 4th July, 2022, ultimately the final drafts were sent for vetting. Thereafter clerk to advocate of record was going to hand over the draft to be sent to department and but due to rain, unfortunately the said documents were wet and documents were damaged. And it was handed over to Official of the Department on 15.09.2022 and to the Ld. Counsel on 21.09.2022.
- (x) Meanwhile, on 15/11/2021 the Liquidator acknowledged his inability to accept the claim of the office of the petitioner that claim has to be properly filed as per the law.
- (xi) The last date of submission of claim being 01/09/2021 and the liquidator/respondent having expressed his inability for accepting claim of the Department, for which condonation of delay of 390 days is sought for the delay in filling of claim before the Respondent/Liquidator of 390 days is unintentional and bonafide due to nation-wide lock down and difficulties is faced COVID – 19 pandemic the period 15.03.2020 to 23.03.2022 be excluded from computation in terms of the order in reference with Miscellaneous Application No. 665 of 20221 In SMW(C) No. 3 of 2020 for extending the period of limitation invoking Section 238A of the Code.

- (xii) That the delay if not condoned the substantial amount of revenue would be lost and the appellant will be highly prejudiced.
- (xiii) Thus, interest of the Government as a Creditors to receive the amount upon distribution of liquidation value as per the Regulation process be protected.

4. We have considered the rival contentions: -

- (a) It is submitted that the claim of Assistant Commissioner, Budge Budge Division, Kolkata South CGST & CX Kolkata, of more than 33 crores stands crystalised vide orders referred to above hereinabove. However, the liquidator has refused to consider the claim of the department due to delay in submission of claim and the same is communicated vide email dated 18.11.2021.
- (b) No email dated 18.11.2021 has, however, been brought on record.
- (c) Section 42 of IBC provides for appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims, within 14 days of receipt of such decision. Since no such decision has been communicated to the applicants. We dispose of this IA with the direction upon the liquidator to convey its decision to the applicant within a period of 4 weeks.

5. Accordingly, this IA 1644 of 2022 stands disposed of.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 10th day of November, 2023.

AR.