

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IA/1211/IB/2020**

**In**

**CP/129/IB/2018**

*(Filed under Section 42 of the of the Insolvency and Bankruptcy Code,  
2016)*

In the matter of **M/s. Nathella Sampath Jewellery Pvt. Ltd.**

**M/s. Neem Tree Enterprise**

No. 20/77, Jeevan Bhima Nagar,  
Anna Nagar (W) Extension,  
Chennai – 600 101

*...Appellant/Claimant*

**-Vs-**

**1. M/s. Nathella Sampath Jewelry Private Limited**

No. 7, Lynwood Avenue, Mahalingapuram,  
Chennai – 600 034

**2. Mr.S. Palaniappan,**

Liquidator,  
Nathella Sampath Jewellery Private Limited,  
B5, Patteswarar park North Block,  
Dr. Ramasamy Layout,  
Velandipalayam,  
Coimbatore – 641 025

*... Respondents*

*Order pronounced on 11<sup>th</sup> February, 2022*

CORAM

**Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

For Appellant : K. Gaurav Kumar, PCS

For Respondent : Ramaswamy Meyyeppan, Advocate

ORDER:

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

The above Application has been preferred by the one M/s.  
Neem Tree Enterprise having its registered office at No. 20/77,  
Jeevan Bhima Nagar, Anna Nagar (W) Extension, Chennai under  
Section 42 of the Insolvency and Bankruptcy Code, 2016

(hereinafter referred to as "IBC, 2016") seeking the following relief;

- a) *to direct the Liquidator to admit the entire claim amount of the applicant;*
- b) *To direct the Respondents to add the applicant in the list of the Creditors;*
- c) *To admit the applicant in the stakeholders committee;*
- d) *To direct the Respondents to pay back the debt in default of the Applicant during the Liquidation process as per the claim admitted by RP;*
- e) *To pass such other order/directions as this Hon'ble bench may deem fit proper in the facts and the circumstances of the case.*

2. The instant Application is filed by M/s. Neem Tree Enterprise aggrieved by rejection of its claim to the tune of Rs. 5,27,29,287/- by the Liquidator of M/s. Nathella Sampath Jewellery Private Limited. It is averred in the application that the applicant earlier during 2018 has preferred a Miscellaneous Application in MA/353/2018 in CA/129(IB)/2018 before this Tribunal, in which it is submitted by the applicant that an oral direction as to admission of the claim was given and subsequent to which the erstwhile Resolution Professional has sent an email dated 15.08.2018 admitting the claim quoted subject to change in the event of any new information made available, the extract of the same is made available at page no. 8 of the typed set filed along with the application. It is further averred that post admission of the claim the applicant was added to the list of Operational Creditors as on

17.10.2018. Accordingly, the applicant herein has withdrawn the application in MA/353/2018 in CA/129(IB)/2018.

3. It is averred in the application that consequent upon these steps having been taken by the Applicant to safeguard his claim, the Corporate Debtor has gone into Liquidation vide order dated 03.01.2020 of this Tribunal. Subsequent to this, the applicant herein has submitted the claim on 05.02.2020. It is further averred that the applicant later on 12.03.2020 has received a mail intimating the change of the Liquidator. The Liquidator, on 21.07.2020, rejected the claim of the applicant after expiry of the prescribed period as per the IBBI Regulation. It is averred that the liquidator has erred in rejecting the claim which has been settled earlier. Thus, the instant application has been filled praying to direct the liquidator to accept the claim and process accordingly.

4. The applicant has attached a few copies of certain relevant documents in order to prove the existence of the claim:

- a) List of Operational creditors of the Corporate Debtor as on 17.10.2018
- b) Email Conversation between the Applicant and the Erstwhile Resolution Professional
- c) Memorandum of Understanding dated 04.05.2011
- d) Lease Deed dated 21.05.2011
- e) Agreement of Project Finance dated 11.09.2011

5. The Learned Counsel for the respondent by way of counter has submitted that the Corporate Debtor vide order of this Tribunal

dated, 23.04.2018 CIRP was ordered and subsequently owing to absence of significant resolution plan, this Adjudicatory Authority passed an Order on 03.01.2020 directing the Liquidation of the Corporate Debtor; based on the recommendation of the Committee of Creditors. Later, this respondent was appointed as the Liquidator by the order of this Tribunal in MA 547/2018 dated 25.02.2020, upon which the respondent has verified the claims and accordingly have submitted the list of stakeholders before this tribunal on 28.09.2020.

6. The Learned Counsel for the respondent by way of counter has submitted that the appellant is claiming to the tune of Rs. 5,27,29,287/-; however on verification it is found that the applicant owes Rs. 23,22,533/- to the Insolvency Estate. The respondent has also submitted that no sufficient documents as to the claim have been submitted. It is further submitted that taking clause 9 of the PFA into consideration it is stipulated that the Lease Rentals will first be used to clear the Outstanding debt advanced by the Corporate Debtor, along with the interest thereupon. It is also submitted that the Applicant has unlawfully evicted the employees of the Corporate Debtor. Thus the respondent has requested for dismissal of the instant application.

7. Heard the submissions made by the Learned Counsel for the parties. Before venturing to the submission made by the Learned

Counsel for the claimant, it is pertinent to note that as per the provisions of the IBC, 2016, the Applicant is required to submit the claim to the Liquidator in such form and in such manner along with such supporting documents as specified by the Board. Thereafter, upon submission of the claim, the Liquidator is required to verify the claims within the time limits specified by the Board and in this connection referring to the relevant Regulations namely, IBBI (Liquidation Process) Regulations, 2016 and more specifically under Regulation 30, the Liquidator is required to verify the claim submitted within a period of 30 days from the last date of receipt of the claims and may either admit or reject in whole or part as the case may be of such claim. Section 40 of the I&B Code, 2016 mandates the Liquidator to record the reason in writing for rejection of the claim and the same is also required to be communicated to the Applicant. In relation to his decision of admission or rejection, the Liquidator is required to communicate to both the creditors and the Corporate Debtor within seven days of such admission or rejection of the claim.

8. It is pertinent to see that the Applicant has raised the claim before the Liquidator on time, however, the rejection by the Liquidator was communicated after the stipulated period of 30 days for which change in Liquidator of the Corporate Debtor and Covid19 Lockdown was given as reasons. The reason given by the



Liquidator is that no sufficient document as to prove the debt has been submitted and no proof as to handing over of the premises, absence of service tax and GST invoices, however, on hearing both sides, it is evident from the averments of the respondent counsel itself that the Corporate Debtor was in possession of the premises, the statement that the employees of the Corporate Debtor were sent out from the premises proves the same undoubtedly. Further, the Applicant, by way of a rejoinder has clarified that the outstanding debt shall be cleared by adjusting only a maximum of Rs. 5 Lakh that to only interest shall be adjusted first, post which the principal shall be adjusted, Clause 9-10 of the PFA as extracted below:

*9. The outstanding debt along with the interest due on the same will be cleared by adjusting a maximum of Rs. 5 Lakh per month from the lease amount payable every month by the Lender to the borrower for lease of the commercial portion of the building till the entire loan amount is cleared.*

*10. The Interest amount will be adjusted first and the balance amount will be taken as repayment of the principal amount.*

9. Be it as may be, the question here is that the subject matter premises is found to be subleased by the claimant herein to the corporate debtor, which was originally obtained by the claimant by way of a registered lease deed dated 20.05.2011 from Smt. Preeti Suresh with a clause granting unconditional permit and authorisation to the lessee (the Applicant herein) to offer the Lease-hold interests of the lessee and the ownership rights in the building constructed by the lessee as security to any bank or



financial institutions or private persons for the purpose of any loan or advances by the lessee for the purpose of construction of the building and is also entitled to enter into any such document as may be required for the purpose. Thus, the Applicant herein has entered into the project Finance Agreement with the Corporate Debtor subsequent to which the Corporate Debtor was carrying its business in the subject premises. This Adjudicating Authority without discussing on setoff claim mentioned by the respondent herein is convinced with the fact that the Corporate Debtor was in possession of the premises of the Applicant's leasehold property subject to the terms and conditions of the MoU and PFA entered between them and is accordingly entitled to receive the rent as agreed. Thus, the applicant herein is entitled to raise the claim before the Liquidator and the Liquidator is directed to admit this claim.

10. Accordingly the present Application stands **Allowed**.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Mohanapriya R*