IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – II

Company Appeal No. 6/2021
in
Company Petition (IB) No. 575/ND/2017

In the matter of:
The Insolvency and Bankruptcy Code, 2016

AND
In the matter of:
Application/Appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

AND
In the matter of :

Ethenic Agencies Pvt. Ltd. ...*Applicant*

VERSUS

K.G. Somani,
Liquidator of Delicious Coco Water Pvt. Ltd. ...*Respondent*

IN

Small Industries Development Bank of India ...*Financial Creditor*

VERSUS

Delicious Coco Water Pvt. Ltd.

... *Corporate Debtor*

Memo of Parties

Ethenic Agencies Private Limited
Having its office at Yc Co Working Space
3rd Floor, Plot No. 94, Dwarka
Sec. 13, Opp. Metro Station, Near Radisson,
New Delhi -110078
Email Id: ethenicazenciespvtltd@gmail.com ...*Applicant*

Versus

K.G. Somani,
Liquidator of Delicious Coco Water Pvt. Ltd
At 4th Floor, 3/15 Asaf Ali Road,
New Delhi — 110002
Email Id: kgs.deliciouscocowater@gmail.com
Mobile: 9899909287

...Respondent

ORDER DELIVERED ON : 12/11/2021

CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. L. N. Gupta, Hon'ble Member (Technical)

PRESENT: -
Adv. Deepak Vohra for the Respondent No.-2, Adv. Mohit Chaudhary, Adv. Garima Sharma, Adv. Abhinash Pandey and Adv. Rahul Kumar for Liquidator.

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present Appeal is filed against the rejection of the Applicant's claim by the Liquidator communicated vide email dated 09.08.2019.

2. Brief facts of the case are as follows:

i. It is submitted that the order of liquidation of Delicious Coco Water Private Limited under Section 33 of Insolvency and Bankruptcy Code, 2016 was passed on 31.05.19 and Mr. Kishan Gopal Somani (Respondent) was confirmed as the Liquidator for Corporate Debtor.

ii. Thereafter, the Liquidator made a Public announcement of commencement of Liquidation of Corporate Debtor and informed public at large the last date for submission of claims i.e. 10.07.2019.

iii. Accordingly, the Applicant being a Financial Creditor submitted its claim of Rs. 3,04,10,000/- in Form D along with supporting documents to the Liquidator on 09.07.2019.

iv. Further, the Liquidator by its email dated 15.07.2019 requested the Applicant to provide certain additional documents and raised queries in respect of the claim of the Applicant. The Applicant vide email dt. 17.07.2019 provided the information as desired by the Liquidator.

v. Further, the Applicant on 09.08.2019 received an email dated from the Liquidator that "**the relevant documents to substantiate claim have not been submitted and in the absence of the same, the claim cannot be accepted at this stage.**"

vi. Further, in August, 2019, the Applicant had filed an Application under Section 60(5) IBC, bearing No. 1153/2019, seeking directions upon Liquidator to admit the claim of the Applicant. But due to technical error, as the application was filed under section 60(5) and not under Section 42 of IBC, this Tribunal vide order dated 04.03.2020 permitted the Applicant to withdraw the said application with a liberty to filed afresh in accordance with law.

vii. But due to the National Lockdown and the Covid outbreak, the Applicant could not file the application within time.

viii. Further, there was change in the Board of Directors and one of the Directors of the Applicant Company tested Covid

positive and was unable to effectively manage the affairs of the company due to illness.

ix. The delay in filing of the present application was neither intentional nor wilful but for the reasons mentioned herein above.

x. Further, the Applicant continues to be aggrieved as the claim of the Applicant is rejected by the Liquidator for no rational reason. The Banking transactions are duly submitted/ filed in support of the Loan granted to the Corporate Debtor. The amount has been defaulted by the Corporate Debtor since the last payment was received on 22.03.2017. The Applicant is entitled to receive the due amount of Rs.3,04,10,000/- from the Corporate Debtor, who failed to repay the loan extended by the Applicant. Being a Financial Creditor, the Applicant is also entitled to be a member of the COC and/or Stakeholders Consultation Committee.

xi. It is submitted that all the documents in respect of the claim against the Corporate Debtor have already been filed. The Claim of the Applicant is also duly reflected and admitted in the books of the Corporate Debtor, which is sufficient for the Liquidator to accept and admit the claim of the Applicant. It is further submitted that the financial statement showing that debt is also filed on record, which clearly shows that the debt has not been repaid by the Corporate Debtor.

3. We have heard the learned Counsel appearing for the Applicant and perused the averments made in the memo of appeal as well as the documents enclosed along with the memo of appeal.

4. Learned Counsel appearing for the appellant submitted that the liquidator has rejected his claim and for which earlier the appellant had filed the application under Section 60 (5) of the IBC, 2016 being IA Number – 1153/2019, in which this Tribunal took a view with respect to the conduct of the liquidator, and observed that the Liquidator failed to provide any cogent reason for rejection of the claim but subsequently, on technical ground, the application was permitted to be withdrawn because the same was filed under Section 60(5) and not under Section 42 of the IBC, 2016. He further submitted that the appellant had already submitted the banking transactions and other documents so the liquidator may be directed to consider his claim. He further submitted that due to Covid, the application could not be filed within time.

5. Before considering the prayer of the appellant, we would like to refer to Section 42 of the IBC, 2016 and the same is quoted below: -

> **Section 42 : Appeal against the decision of liquidator**– "A creditor may appeal to the Adjudicating Authority against the decision of the liquidator 1 [accepting or] rejecting the claims within fourteen days of the receipt of such decision."

6. A bare perusal of the provision shows that if a person is aggrieved by the order of the liquidator, then the aggrieved person / Creditor may file an appeal within 14 days of the receipt of the such decision. Admittedly, as per the averments made in the memo of appeal, the liquidator has communicated the rejection of the claim to the appellant vide email dated 09.08.2019, whereas this appeal is filed on 18th February, 2021, much after the order of rejection that was communicated to the appellant by the liquidator.

7. At this juncture, we would like to refer to the contention of the appellant, who in the course of his arguments submitted that earlier he filed an application under Section 60 (5) of the IBC, 2016 being IA No. – 1153/2019 which was dismissed as withdrawn on 04th March, 2020, on the ground that remedy is to file an appeal under Section 42 of the IBC, 2016 and the application is not maintainable under Section 60(5) of the IBC, 2016. We further notice that the appellant has taken the ground of Covid for not filing the appeal within time.

8. At this juncture, we have gone through the application filed by the applicant as IA No. 1153/2019 and we notice that this application was filed on 28/08/2019, whereas the order of the Liquidator was communicated to him on 09/08/2019. Admittedly, the first application was also filed beyond 14 days, as required under Section 42 of the IBC, 2016. We further notice that the applicant has withdrawn the application filed under Section 60 (5) on 04th March, 2020. Lockdown was imposed on 25th March, 2020, whereas the present application is filed on 18th February, 2021. This shows that the plea taken by the applicant that due to lockdown, he could not file the memo of appeal within time, is not liable to be accepted, as the limitation period had expired, much before the imposition of the lockdown. Therefore, we are unable to accept the contention of the applicant that due to lockdown, the applicant could not file the appeal within time.

9. Rather, we are of the considered view that even the first application filed under Section 60 (5) of the IBC, 2016 was filed after the 14 days of the prescribed period of the limitation and this application has also been filed much after the withdrawal of that application.

10. Hence, in our considered view, the appeal is barred by limitation and on this ground alone, it is liable to be dismissed.

11. Accordingly, the appeal is hereby dismissed, being barred by limitation.

-Sd-

(L. N. Gupta)
(Member Technical)

-Sd-

(Abni Ranjan Kumar Sinha)
(Member Judicial)