

**NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH**

(Application under provision of section 42 and 60(5) of the IBC, 2016 R/w Rule 11 and 32 of the National Company Law Tribunal Rules, 2016)

I.A. 1202 OF 2022

In

C.P. (IB) 3749 OF 2018

Total Tools & Equipments (P) Ltd.

A-57, Giriraj Industrial Estate, 1st
Floor, Mahakali Caves Road,
Andheri (East), Mumbai – 400093

..... Applicant

Versus

Mr. CA Sandeep D. Maheshwari

Shree Ram Laxmi Niwas CHS, Near
Anthony Bakery, Kolbad, Thane,
Maharashtra – 400601

.....Respondent

In the matter between

C.P. (IB) 3749 OF 2018

Khanna Delta Steel Pvt Ltd

..... Operational Creditor

Versus

Shiv Mfg. Pipes Pvt Ltd. Ltd.

..... Corporate Debtor

Order Pronounced On: 19.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances

For the Applicant: Mr. Nilesh S Das

PER: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application has been filed by **M/S. Total Tools & Equipments (P) Ltd** (hereinafter referred to as "**Applicant**") against **Mr. CA Sandeep D. Maheshwari** (hereinafter referred to as "**Respondent**") under Section 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") read with Rule 11 and 32 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - a. Set aside the impugned order of rejection, by an email of Liquidator/Respondent, rejecting the claim of the Applicant dated 17.03.2022;
 - b. Condone the delay of 3 days in filing this Application, by the Applicant, before this Hon'ble Tribunal;
 - c. Direct the Liquidator/Respondent to consider/admit the Applicant's claim as Operational Creditor of the Corporate Debtor in terms of Form- B.

FACTS OF THE CASE

2. Shiv Mfg. Pipes Pvt Ltd. ("**the Corporate Debtor**") is a Company Incorporated and registered under the provisions of the Companies Act, 1956. The Respondent is the Liquidator of the Corporate Debtor.
3. The Applicant has submitted that the Corporate Debtor company placed orders for purchase of goods and the Applicant sold and delivered the same. The Corporate Debtor never raised any dispute with respect to the price,

quality or quantity of the goods sold, supplied and delivered by the Applicant. As on date, principal amount of Rs.3,99,854/- has been due and payable by the Corporate Debtor to the Applicant with interest.

4. The Applicant Company issued legal notice, dated 19.07.2019, to the Corporate Debtor company. However, the Corporate Debtor failed to pay the outstanding dues and only gave false assurances.
5. Subsequently, this Tribunal, vide order dated 25.10.2019, admitted the Application and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Rajendra Ramnarain Agrawal as Interim Resolution Professional. A public announcement was issued on 22.10.2019 to receive claims from creditors and the last date for submission of claim was 03.12.2019.
6. The Applicant was unaware of the aforesaid order and learnt of the advertisement regarding admission of subject Company Petition, sometime in the second week of March 2020, through another vendor. There was lockdown imposed due to Covid 19 pandemic, with effect from second week of March 2020. The office of the Applicant was closed and staff were unable to travel and attend office due to lockdown restrictions. Immediately when the Applicant could reopen their office partially and gather the documents, the Applicant sent their claim to the IRP, vide letter dated 16.10.2020. The claim was received by the IRP on 22.10.2020.
7. The Applicant did not receive any confirmation from the IRP. Therefore, as a reminder, sent soft copy of the claim by email dated 25.01.2021 as there was no response from the IRP. In addition, the Applicant also sent a hard copy by courier to the IRP.
8. During the entire process, the Applicant believed that the claim of the Applicant stands admitted by the Corporate Debtor and the Applicant was

under bona fide belief that the amounts will be disbursed in due course of time when the Resolution Plan is approved and that information regarding the same will be duly conveyed to the Applicant Company from the office of Resolution Professional. Applicant was under bona fide belief that there would be response from the Resolution Professional and waited for the same from the Resolution Professional of the Corporate Debtor.

9. Since no response was received from the IRP, the applicant has sent a mail dated 04.03.2022 inquiring the status of their claim. On 17.03.2022 applicant received an email from the Liquidator, CA Sandeep D. Maheshwari intimating the Applicant that its claim has been rejected due to delay in filing the claim.
10. The Applicant came to know that the Liquidator had published the public announcements dated 26.01.2022 in two newspapers, English and Marathi language for inviting claims from creditors and the last date for submission of claim as noted therein was 20.02.2022. From the Public Announcement, the Applicant learnt about the Liquidation order dated 24.11.2021 passed by this Tribunal appointing the Respondent as Liquidator of the Corporate Debtor.
11. The Applicant has submitted that the Managing Director of Applicant, on account of lack of knowledge about the Insolvency and Bankruptcy related laws and the Liquidation process of the Corporate Debtor, was not aware about the procedure of Application for filing its claims. The Applicant says that the Applicant's authorized representative and its directors were travelling from Mumbai to Pune for some urgent business commitments and could not instruct and communicate within the prescribed time and hence, there is a delay of 3 days in filing the present application which is inadvertent, unintentional.

12. That in the light of the above facts and circumstances, the Applicant has submitted that it has a bona fide claim which has been moved before this Tribunal and grave prejudice will be caused to the Applicant if the same was not allowed

FINDINGS

13. We have heard the Ld. Counsels appearing for the parties and perused the records.

14. It is an undisputed fact that this Tribunal vide order dated 24.11.2021 allowed a liquidation against the Corporate Debtor and appointed CA Sandeep D. Maheshwari as the liquidator of the Corporate Debtor. Pursuant to this, the Public Announcement dated 26.01.2022 was published by the Liquidator inviting claims from creditors and the last date for submission of claims was noted as 21.02.2022. Vide email dated 04.03.2022, the Applicant inquired about the status of admission of its claim which he had already filed with the Resolution Professional on 16.10.2020. The Respondent vide email dated 17.03.2022 informed the Applicant that its claim had been rejected as it was not received before the due date. Therefore, the Applicant has filed the present Application to allow the admission its claim before the liquidator.

15. It has been argued by the Applicant that he was not aware of the commencement of the Liquidation process vide order dated 24.11.2021 and the Public Announcement dated 26.01.2022 inviting the claims of the creditors which came to his knowledge only through Respondent's email dated 17.03.2022. It has further been argued that the Applicant has submitted its claim before the Resolution Professional during CIRP process. However, the Applicant did not receive any intimation about the fate of its claim despite sending multiple reminders on various occasions

and the Liquidator informed about the liquidation process only after the Applicant asked for the status of its claim.

16. This Appeal is filed under Section 42 of the Code which gives power to this Adjudicating Authority to allow the submission of claim to Liquidator and condone the delay if there is a sufficient cause in filing the delayed claim before the Liquidator. Further, the Applicant placed its reliance upon Rule 177 of Companies (Court) Rules, 1959 which provides that, if any creditor fails to file proof of his debt with the liquidator within the time specified in the advertisement referred to in Rule 148, such creditor may apply to the court for relief and the court may adjudicate upon the debt and direct the liquidator to do so.
17. In the case of **UCO Bank v. Nicco Corporation Limited (In Liquidation)**, Hon'ble NCLT Kolkata Bench *vide* its order dated 14.02.2018 dealt with a similar situation whereby delay was condoned and the opportunity was granted to the creditor to re-submit the claim. Further, in **M/s Globe Express Services v. M/s MM Cargo**, the Hon'ble NCLT, New Delhi Bench *vide* order dated 21.05.2018 has observed that "*it is only after distribution of Assets that no further claim can be entertained*". Therefore, it is evident that this Tribunal has the power to condone the delay in submitting the claim to Liquidator before the distribution of Assets.
18. In the light of the above discussion, we are of the considered view that the delay in filing the claim before the Liquidator on the part of the Applicant does not appear to be willful or intentional and, therefore, this Tribunal is of the considered view that delay in lodging for claim before the Liquidator deserves to be allowed. Accordingly, the appeal/IA under Section 42 is allowed with an order that the Liquidator shall verify and pass an appropriate speaking order on the claim lodged by the Applicant in terms of Section 40 of the Code. The IA is disposed of in aforesaid terms.

19. Accordingly, the present Application is **Allowed**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)