(8)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA(IBC)/253/CHE/2022 in CP/IB/567/2018

(Filed under Sec. 42 and 60(5) of the Insolvency & Bankruptcy Code, 2016

In the matter of ***SAS Autocom Engineers India Private Limited***

The Assistant Commissioner of CGST & Central Excise,
Poonamalle Division, Chennai Outer Commissionerate,
R-40, A-1, 100 Feet Road, 2nd Floor,
Mogappair,
Chennai – 6000347

... Applicant / Operational Creditor

-Vs-

Shri Nagalingam Muthiah
Liquidator of SAS Autocom Engineers India Private Limited,
Room No. 708, 7th Floor, Shivalaya,
Buildings, A Block, Ethiraj Road,
Egmore, Chennai-600008.

... Respondent / Liquidator

Present:

For Applicant	:	*M. Sheela, Advocate*
For Respondent	:	*A.G. Sathyanarayana, Advocate*

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on ***21st April, 2022***

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This IA(IBC)/253/CHE/2022 is an Application filed by an Applicant / Operational Creditor under Section 42 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

a. *Condone the delay of 881 days in filing the claim before the Respondent and consequently direct the Respondent to admit the claim form submitted by the Applicant in Form-G dated 16.02.2022 for Rs. 3,65,82,719/-.*

b. *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and render justice.*

2. It was averred in the Application that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor viz. SAS Autocom Engineers India Private Limited by this Tribunal on 05.10.2018 and subsequently Liquidation was ordered by this Tribunal vide Order dated 09.08.2019 in MA/696/IB/2019. Pursuant to that the Liquidator caused Paper Publication dated 23.08.2019 and the last date for submission of claim was fixed on 19.09.2019.

3. It was further averred in the application that the Applicant had submitted its claim in Form G on 16.02.2022 to the Respondent/Liquidator. The Liquidator vide email dated 17.02.2022 acknowledged the claim and in the same email intimated the Applicant that since the Claim Form was received after a period of delay of 881 days from the due date of filing the claim, the same was liable to be rejected.

4. It was further averred in the application that the reason for belated submission of claims is that, Applicant came to know about the liquidation of SAS Autocom Engineers India Private Limited very late and on coming to know about the same, they had immediately taken steps and had filed a claim before the Respondent.

5. It was further averred in the application that the Applicant are an arm of the Union of India, Ministry of Finance and are vested with responsibility of collection of duties/taxes and also is in charge of carrying out other administrative functions in the assigned jurisdiction. As such the Applicant is in charge of large number of assesses and also administrative work owing to which the Applicant could not complete the process of filing of the claim within the stipulated time and that the delay is neither willful nor wanton but

for the above said circumstances only. Hence, this IA was filed to condone the delay in filing the claim Form G for an amount of Rs. 3,65,82,719/- and direct the Respondent to consider the claim of the Applicant. As per the application, the period of claim in respect of which various demands and defaults were raised is for the period 12/2003 to 06/2017.

6. The Learned Counsel for the Applicant relies on the order by New Delhi Bench in CA 152/2918 in CP 2014 of 2017 in the matter of MM Cargo Container Line Pvt. Ltd. order dated 16.07.2018.

7. The Learned Counsel for the Respondent filed counter on 19.04.2022. The Respondent has averred that no claim was filed by the Applicant during the CIRP process. The present claim was filed belatedly and Applicant has failed to comply with Regulation 16 of IBBI (Liquidation Process) Regulation, 2016. The Respondent further averred that Applicant has not even given any proper reasoning and explanation for such inordinate delay and that the claim of the Applicant cannot be accommodated even if so admitted it will be prejudicial to the functioning of the liquidation process.

8. The Ld. Counsel for the Respondent relied on the judgment by Hon'ble Supreme Court in the matter of Union of India v.

Visveswarava Iron and Steel Ltd. and in the matter of Employees State Insurance Corporation Vs S. Muthuraju passed by this bench in MA 1148 of 2021 in CP/611/IB/2017 order dated 17.02.2022.

9. Heard the submissions made by the parties. The delay of 881 days in preferring the claim before the Liquidator was due to the reasons that the Applicant did not have knowledge and for administrative reasons. However, we are unable to accept the reasons stated by the Applicant for the delay in filing the claim before the Liquidator. 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. As against the rejection of the claim, Section 42 of I&B Code, 2016 provides for a time window of 14 days upon receipt of such decision to the creditorto file an appeal to the Adjudicating Authority against the said decision of the Liquidator.

10. It may also be seen that the Applicant during the CIRP period also has not filed any claim before the IRP / RP and has preferred the claim only at the time of liquidation and that too at a belated stage, more particularly after expiry of a period of 881 days.

11. This Tribunal is also persuaded by the decision of the Hon'ble NCLAT in the matter of **The Deputy Commissioner Commercial Taxes (Audit), Raichur –Vs-Surana Industries Ltd. (In Liquidation) & Anr.** in *Company Appeal (AT) (Insolvency) No. 1525 of 2019* dated 07.02.2020, wherein the Hon'ble NCLAT has dismissed the application filed by the Applicant in relation to the Appeal against the order of the Liquidator and also held that liquidation process is a time bound process and the Liquidator has to conclude his proceedings within one year.

12. Further, it may be noted that under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator is directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings and Regulation 44(2) stipulates that, after the expiry of one year, the liquidator shall file an application to the Authority to continue the liquidation period along with a report and explain why the liquidation has not been completed. Thus, it can be seen that the Liquidation is a time bound process and the Liquidator is being made accountable and required to explain, if there is any delay caused in the liquidation process.

13. Further, the Hon'ble Supreme Court in **Gaurav Hargovind bhai Dave –Vs- Asset Reconstruction Company (I) Ltd. & Another** *in Civil Appeal No. 4952 of 2019*, in relation to the aspect of limitation has restatedthe well-established and well settled principle that *"there is no equity about limitation"*, we are unable to entertain this Application/Appeal.

14. Hence extraordinary delay of 881 days in submission of claim by applicant, is devoid of merits. Further in interest of Justice also we could not condone the delay as sought for. If such

extraordinary delay is condoned, it shall defeat the very purpose of the IBC, 2016.

15. In view of the reasons mentioned *supra* and also keeping in mind that the IBC, 2016 is a time bound process as well as the Learned Liquidator being under a compulsion to complete the liquidation process within a period of two year from the date of commencement of liquidation, the IA/253/2022 stands **dismissed,** however without costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

MEMBER (TECHNICAL)
(MEMBER JUDICIAL)