

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

IA(IBC)/665(CHE)/2022 in CP/1246/IB/2018

*(filed under Section 42 and 60(5) of the Insolvency and Bankruptcy Code 2016 read
with Rule 11 of NCLT Rules, 2016)*

Along with

IA(IBC)/666(CHE)/2022 in CP/1246/IB/2018

*(filed under Section 42 and 60(5) of the Insolvency and Bankruptcy Code 2016 read
with Rule 11 of NCLT Rules, 2016)*

In the matter of SLO Industries Limited

GROUP 1 SECURITY SERVICES

No. 7B Bharathi Road (Opp Bus Terminus)
Perambur, Chennai – 600 011

... Applicant

– Vs –

1. CA S. PALANIAPPAN
Liquidator of M/s. SLO Industries Limited
B-5 Patteswarar Park, North Block,
Dr. Ramasamy Layout, Velandipalayam,
Coimbatore – 641 025

2. C. RAMASUBRAMANIAM
No.1 G4 RNC Flat, Vadapalani
Karpagam Venkatespuram Colony
(Near Mouriya International hotel)
Chennai – 600 026

... Respondents

Order pronounced on 13th June 2023

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**



For Applicant : *Jayanthi K. Shah, Advocate*

For Respondent : *Varun Srinivasan, Advocate for R1*
S. Palaniappan, Liquidator

ORDER

(Hearing conducted through physical mode)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/665(CHE)/2022 is an Application filed by the Applicant under Section 42 and 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking relief as follows;

"It is therefore most humbly prayed that this Hon'ble Court may be pleased to condone the delay of 13 days in filing application under Section 42 of IBC, 2016 and pass such further or other order(s) as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case and thus render justice."

2. The reason for delay in filing the Appeal under Section 42 of IBC, 2016 is stated in para 3 and 4 of the Affidavit, which is extracted hereunder;

"3. It is submitted that the Liquidator passed the order on 18.03.2022, the application under Section 42 ought to have been filed on or before 31.03.2022 but it is represented on 13.04.2022 with the delay of 13 days. The delay is neither willful nor wanton but due to the below mentioned reasons.



4. It is further stated that the Authorized Signatory of the Applicant herein was travelling and only when he came back to Chennai came to know about the order and the said application under Section 42 could be filed only now hence there is a delay of 13 days."

3. The aforesaid reason stated by the Counsel for the Applicant appears to be plausible and hence the delay of 13 days in preferring the Appeal under Section 42 of IBC, 2016 is hereby condoned. Accordingly, IA(IBC)/665(CHE)/2022 stands **allowed**.

4. IA(IBC)/666(CHE)/2022 is the Appeal filed by the Applicant under Section 42 of IBC, 2016 as against the rejection of claim order passed by the Liquidator on 19.03.2022. The relief sought is as follows;

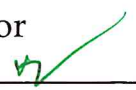
- (i) *Stay the distribution of sale proceeds of Liquidation assets, under the provisions of Section 53 of the Code, during the pendency of aforesaid Application.*
- (ii) *Direct the Liquidator to admit the claim of the Applicant of Rs.3,07,233/- which was partially rejected by the Liquidator vide order dated 19.03.2022.*
- (iii) *Direct the Liquidator to treat & categorize the claim of Rs.3,68,973/- the Applicant as CIRP Cost.*
- (iv) *Grant further relief which the Hon'ble Tribunal may deem fit and proper in the circumstances of this case and in the interest of justice and thus render justice.*

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5. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 04.11.2019 and the 2nd Respondent herein was appointed as IRP. Subsequently this Tribunal vide its order dated 21.01.2022 ordered for Liquidation of the Corporate Debtor and appointed Mr. S. Palaniappan, the 1st Respondent herein as the Liquidator of the Corporate Debtor.

6. It was submitted that the Applicant herein was doing regular business with the Corporate Debtor before the commencement of the CIRP and that the RP of the Corporate Debtor has approach the Applicant and insisted on keeping business relations intact and to supply the goods for manufacturing process to be continued with the Corporate Debtor manufacturing plant. Accordingly, it was submitted that the Applicant herein, has on various dates, supplied goods to the Corporate Debtor and accordingly raised invoices for the period from 02.08.2021 till 02.02.2022.

7. It was submitted that after the order of the liquidation has passed by this Tribunal on 21.01.2022, the Applicant herein has filed his claim before the Liquidator on 05.02.2022. It was submitted that the Liquidator



has partially accepted the claim of the Applicant to the tune of Rs.61,740/- and rejected the claim to the tune of Rs.3,07,233/- for the reason that the RP has not approved such invoices. However, it was submitted that the RP on one hand has not approved the said invoices but on the other hand has claimed GST input Tax Credit towards the said invoices which tantamount to *de facto* approval of such invoices. Hence aggrieved by the partial rejection order of the liquidator dated 19.03.2022, the present appeal has been filed by the Applicant herein under Section 42 of the IBC, 2016.

8. The 1st Respondent has filed Reply and it is stated that as per the books of accounts of the Corporate Debtor, the amount which was reflecting as due and payable by the Corporate Debtor to the Applicant is only to the tune of Rs.61,740/- and hence the Liquidator has admitted the claim of the Applicant only to the tune of Rs.61,740/- and rejected the balance amount of Rs.3,07,233/-.

9. It was submitted that, the erstwhile RP has sent an email to the Liquidator that he has not visited the premises of the Corporate Debtor after 13.07.2021 and hence it was submitted by the Liquidator that the

invoices which were approved by the RP alone can be considered by him. It was further submitted by the Liquidator that, no items of inventory, finishing good and raw materials was handed over to the Liquidator by the erstwhile RP and also it was submitted there was no agreement between the erstwhile RP and the Applicant herein to supply goods during the CIRP period. Hence it was submitted that the Liquidator has partially rejected the claim of the Applicant.

10. The Applicant has filed rejoinder and has rebutted all the averments made by the Liquidator in its reply. It is also stated in the rejoinder that the RP has received the goods from the Applicant during the CIRP period and the RP has neither objected nor returned the materials to the Applicant herein. Hence it was submitted that the supply made during the CIRP period is eligible to be treated as CIRP cost.

11. Heard the submissions made by Ld. Counsels for both the parties. The Liquidator in his reply has not denied that the materials was not received by him, nor the RP has denied that he has not received the materials. However, it is the stand of the Liquidator that the erstwhile



RP has not handed over the items of the inventory, finished goods and raw-materials to the Liquidator.

12. Further the stand taken by the Liquidator that no agreement was entered between the parties for the supply of the materials does not hold any water since the Liquidator himself has admitted the claim of the Applicant tune of Rs.61,740/-. Further the erstwhile RP has also claimed GST input Tax Credit towards the said invoices, which shows that the materials was supplied by the Applicant during the CIRP period. Hence the Liquidator was not right in partially rejecting claim of the Applicant to the tune of Rs.3,07,233/-.

13. Further, in the said partial rejection order dated 19.03.2022 the Liquidator has also not treated the claim of the Applicant as CIRP cost. In this regard, it is pertinent to refer to Section 5 (13) of IBC 2016 which defines the term "*Insolvency Resolution Process Cost*".

"Section 5 (13) "insolvency resolution process costs" means-

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;

14. As to the present case, it is seen that the supply has been made by the Applicant during the CIRP period in order to keep the Company as a going concern and as such the supply made by the Applicant would fall under Section 5(13)(c) of IBC, 2016.

15. Further, the Hon'ble NCLAT in the matter of **MV Projects Vs Divya Jyoti Sponge Iron Pvt Ltd. Ltd.& Ors.** [Company Appeal (AT) (Insolvency) No. 481 of 2018] has held that:

"In view of the aforesaid provision, if the Appellant has supplied the goods during the period of the 'Corporate Insolvency Resolution Process' to keep the company as a going concern, it was the duty of the 'Resolution Professional' to include such cost towards 'Resolution Process Cost' for payment in favour of Appellant, for non-inclusion of the same, it can be held that the 'Resolution Plan' in question is in violation of Section 30(2) (a) of the I&B Code'."

16. Thus, the supply made by the Applicant during the CIRP period is to be treated as CIRP cost. Accordingly, we issue direction as follows;



- i. The Liquidator is directed to admit the balance claim of the Applicant to the tune of Rs. Rs.3,07,233/-.
- ii. The entire claim of the Applicant to the tune of Rs.3,68,973/- is to be treated as CIRP cost.

17. With the above said directions IA(IBC)/666(CHE)/2022 stands allowed.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT