

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 2592 OF 2021**

**I.A. 2594 OF 2021**

Under Section 5 of Limitation Act, 1963  
r/w Section 42 of Insolvency &  
Bankruptcy Code, 2016

Union of India  
Through Deputy Commissioner of  
CGST, Division-III, Mumbai West

**..Applicant**

V/s

Leo Duct Engineering & Consultants  
Limited  
Through its Liquidator  
Mr. Pramod Dattaram Rasam

**...Respondent**

In the matter of  
C.P.(IB) No. 1103/MB/2017  
Leo Duct Engineering and Consultant  
Limited

...Corporate Applicant

***Order delivered on: 11/10/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant : Mr. M.S. Bhardwaj, Advocate  
For the Liquidator : Ms. Dhvani Bagdai, Advocate

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. The Applicant, Deputy Commissioner of CGST, Division III, Mumbai West, has filed the application I.A. 2592/2021 & IA 2594/2021 in the matter of M/s Leo Duct Engineering and Consultants Ltd, the Corporate Debtor, seeking condonation of delay of 364 days in filing appeal against rejection memo dated 02.01.2020, stated to have been received on 24.02.2020 by the Applicant, rejecting the claim filed by the Applicant on account of dues under the GST Law. The Applicant has also prayed for admission of the Appeal to decide on its merits. The Applicant has also filed an 2594/2021, which is an Appeal seeking admission of claim, which was rejected by the Liquidator on account of delay of 56 days in filing the claim.

1.1. The Applicant submits that the Deputy Commissioner, Audit-III had informed vide letter dated 01-05-2019 that the Corporate Debtor had defaulted in service tax payment of Rs. 19,26,961/- to the Applicant from April 2014 to June 2017.

1.2. The Liquidator informed the Applicant vide his letter dated 18-10-2019 that he has been appointed as the Liquidator of the Corporate Debtor vide Order dated 09-07-2019. The Applicant prepared its claim dated 05-11-2019 in Form 8 under Regulation 17 of the

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and lodged the same to the Respondent.

1.3. However, the Respondent Liquidator intimated vide Letter dated 02-01-2020 to the Applicant that its claim cannot be admitted because they have failed to file the claim in time i.e. by 12.09.2019 and also the claim has been filed in wrong form.

2. We heard Learned Counsel and perused the materials available on records.

2.1. We find that the letter of the Respondent/Liquidator dated 02.01.2020 was received by the Applicant on 24.02.2020. Section 42 of the Insolvency and Bankruptcy Code (“Code”) requires a creditor to file an appeal within 14 days of the receipt of decision of liquidator accepting or rejecting their claim. The said period of 14 days expired on 10.03.2020.

2.2. The Applicant has submitted that due to outbreak of nationwide Pandemic from 25.03.2020, the lockdown was declared and the Hon’ble Supreme Court in Suo Motu Writ Petition (C) NO. 3 OF 2020

RE: COGNIZANCE FOR EXTENSION OF LIMITATION had allowed exclusion of the period starting from 15.03.2020 till 28.02.2022 for the purpose of determination of limitation. However, we find that the appellant case does not fall within the four corners of the cited decision. However, we find that the Covid-19 started to affect the citizens from 1<sup>st</sup> week of March and there was fear in the mindset, even though it had not struck with its full intensity by that time. Considering that eventually the exclusions were allowed from 15.03.2020 and this Appeal was

finally filed on 09.03.2021, i.e. within the Covid-19 exclusion period, we feel that their existed sufficient cause warranting condonation of delay in filing present appeal in terms of Section 5 of the Limitation Act, as sequence of the events and facts of the case itself indicate that the filing of the claim can not be said to have any laches or any inordinate delay and ought to have been rejected.

- 2.3. Accordingly, we take on record the Appeal filed in I.A. 2594/2021 and proceed to decide the same.
- 2.4. We find that the Applicant received a letter by the liquidator on 24-02-2020 rejecting the claim and inter alia informing the Applicant that Public Notice for liquidation of the Corporate Debtor was published on 15-08-2019 and the last date of filing claim against the Corporate Debtor was 12-09-2019. Further, the claim was filed under the wrong Form.
- 2.5. The Deputy Commissioner, Audit-III had informed vide letter dated 01-05-2019 that the Corporate Debtor had defaulted in service tax payment of Rs. 19,26,961/- to the Applicant from April 2014 to June 2017. This communication was prior to the expiry of last date for filing of the claim i.e. 12.09.2019. Besides this, the Corporate Debtor had failed to pay an amount of service tax of Rs. 19,26,961/- (stated as Rs.20,34,186/- at Para V(a) of page 4 of Application) for the period April 2014 to June 2017 and an amount of GST of Rs.15,19,648/- for the period May 2019 to January 2020 as per its own admission in the periodical service tax/GST return filed with the department by the Corporate Debtor/Liquidator. In view of this, we feel that though liability acknowledged but not paid should have been reflected in the records of the Corporate

Debtor and the Resolution Professional as well as Liquidator ought to have taken note of the same.

2.6. We feel that filing of claim in the wrong form is merely a technical error which can be allowed to be cured, and liquidator ought not to have made it as one of ground for rejection without allowing the applicant to cure the defect. Further, it has been clarified in Question 5 of FAQs issued by Indian Institute of Insolvency Professional of ICAI, *the professional body regulating the conduct of the Insolvency Professional that Claim will not be disqualified just because it has been filed in an incorrect form.*

2.7. In view of the forgoing, we direct the liquidator to admit the claim of the Applicant. We also take note of the submissions of the Liquidator in I.A. 2594/2021 that most of the assets of the Corporate Debtor were realised and distributed during the period from February 2020 to September 2020, and only NRRA (Not Readily Realisable Assets) are available for distribution. It is further notice that the claim of secured creditor i.e. Canara Bank has also not been fully discharged. In view of these facts, though we direct the liquidator to admit the claim, the said admission of the claim shall be dealt alongwith the pending undischarged claims from the prospective realisation, if any, in accordance with the code.

3. In view of above forgoing, the I.A. 2592/2021 & 2594/2021 is allowed and disposed of.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)