

THE NATIONAL COMPANY LAW TRIBUNAL COURT-V N DELHI
Company Appeal IBC - 01/ND /2021
Connected with Company Petition (IB) - 323/ND/2019

Under Section 42 of the Insolvency and Bankruptcy Code, 2016

4
Item 510 of 09.08.21

In the matter of **Appeal-01/ND/2021**

Mr. Virender Singh
F-105, Som Vihar, R K Puram, New Delhi

..... Appellant

Vs

Theme Export Private Ltd
Through Liquidator
Mr. Vikram Bajaj,
308, Pearls Business Park
Netaji Subhah Palace, Pitampura
New Delhi -110034

.....Respondent

Order delivered on 12.10.2021

CORAM:

SHRI ABNI RANJAN SINHA, HON'BLE MEMBER (J)
SHRI K.K. VOHRA, HON'BLE MEMBER (T)

Present:

For Appellant : Advs. Mr. Yash Srivastava
For Respondent: Advs. Abhishek Anand, Mr. Kunal Godhwani,
Madhav Nanda, Mr. Rahul Adhlakha, Mr. Mohak Sharma,
Viren Sharma, Mr. Pathik Choudhary

ORDER

Per: K.K. Vohra, Member (T)

1. This is an appeal filed by the Creditor under Section 42 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the decision of Liquidator for rejecting the claim due to delay in filing.
2. We have heard the Ld. Counsel for the Appellant and the Respondent and perused the averments made in the memo of appeal and reply.



3. The Appellant based on the representations of the directors of the Corporate Debtor (CD) granted unsecured loan in January 2016 to the tune of Rs 6,92,89,068 including interest [Principal Rs 4,84,00,000 (pg 26 Form D) plus interest Rs 2,08,89,068].

4. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD on 29.08.19 and the Liquidation application was admitted on 29.07.2020. The Liquidator in terms of Regulation 12(1) of Insolvency and bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) made public announcement in Business Standard (English & Hindi) Delhi Edition on 01.08.20 and the last date for submission of claims was 28.08.20.

5. The Appellant has filed its claim in Form D dated 29.10.20 (pg 25) wherein the principal amount Rs 4,84,00,000 plus interest Rs 2,08,89,068 totaling to Rs 6,92,89,068 is reflected. It is stated that the claim was received by the Liquidator on 31.10.20. The Liquidator vide email dated **09.12.20** rejected the claim stating that the claim was received on 31.10.20 and he was not authorized to collect claims of the creditors after the last date i.e., 28.08.20. As per Regulation 31 (2) of the Liquidation Regulations, the Liquidator is required to file the list of stakeholders with the Adjudicating Authority within 45 days from the last date for receipt of claims, upon verification and admission/ rejection of all the claims and list of stakeholders is to be announced to the public by way of Public Announcement.

6. The Appellant submits that he was not aware about the liquidation of the CD and the public announcement dated 01.08.20 for inviting the claims from creditors, therefore the delay has occurred in filing the claim. Further, it is stated in the affidavit dated 16.03.21 filed by the Appellant that on account of the threat of Covid-19 pandemic and being a senior citizen, he could not immediately meet or contact a Counsel or even collate the documents for preparing and filing the claims as the documents were lying in the office which was physically shut on account of ongoing pandemic and also on account of grave health risk.

7. The Liquidator has filed reply dated 17.03.21 and has submitted that the decision of the Liquidator in rejecting is well reasoned and there is no provision in the IBC enabling the Liquidator to condone the delay and receive a claim in filing a belated claim. Further, it is stated that the Appellant failed to demonstrate sufficient cause in filing the claim after the stipulated timeline in the terms of Regulation 12 (2) of Liquidation Regulations and the Appellant has filed



the present appeal with ulterior motives as being the husband of Ms Nandini Singh, Suspended Director of CD who had knowledge of the commencement of the CIRP proceedings (pg 6 para 11 of reply). Further, it is stated that the Appellant is a related party with reference to the CD as provided under Section 5(24) of IBC and has prayed to dismiss the appeal.

8. The Liquidator has placed reliance on the observations of the NCLT Kolkata in UCO bank Vs Nicco Corp Ltd (in Liquidation) CA 31/KB/2018 in CP (IB) 03 /KB/2017 order of 14.02.18 as under:

“.... On going through the Regulation 12(2) of the Insolvency & Bankruptcy Code of India, 2016 (Insolvency Resolution Process for Corporate Persons) Regulations 2016, a claim can be considered by the resolution professional even after the expiry of last date fixed in the announcement i.e., till approval of the Resolution Plan. But there is no similar provision in the Code or in the public announcement. Therefore there is no infirmity or illegality in the order if rejection of the claim of the appellant therein”

9. The Liquidator has also relied on the observations of the Hon’ble Supreme Court in the matter of *Ramlal Vs Rewa Coalfields Ltd* reported in AIR 1962 SC 361 as under:

“.... That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed.”

10. The Liquidator in the present case rejected a time barred application for filing claim as he does not have any authority to entertain the same. However, Section 42 comes to the rescue of a claimant when his claim is rejected by the Liquidator. The claimant can file an appeal before the Adjudicating Authority against such decision of the Liquidator within fourteen days of the receipt of such decision. It is relevant to refer the Section 42 of IBC which is reproduced below:

“42. Appeal against the decision of liquidator: A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting/ rejecting the claims within fourteen days of the receipt of such decision.”



11. While applying aforementioned provisions over the facts of the present case, it is noted that the present appeal can be filed within fourteen days from the date of receipt of decision of Rejection from the Liquidator; however, the appeal has been filed after 22 days (appeal filed on 31.12.20 while rejection was on 09.12.20) which is beyond the time provided in Section 42 IBC. Further, there is no rebuttal on the point that the Appellant being husband of the Suspended Director of CD had knowledge of the ongoing CIRP proceedings.

12. We do not find any merit in the pleas taken by the Appellant. Therefore, in the light of the well settled law, the Appellant is unable to show the sufficient cause for condoning the delay in submitting the claim by the Appellant; therefore, the prayer is rejected.

13. Accordingly, Appeal is **dismissed**.

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as
Hon'ble Member (J), Shri Abni Ranjan Kumar Sinha is not
holding court today i.e. 12.10.2021.


For (Court Officer)