

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

*** *** ***

IA No. 252 of 2021
in
C.P. (IB) No. 1055/MB/2017

(An Application under Section 60(5)(c) of the Insolvency and Bankruptcy Code,
2016)

Deepak Narrottam Sampat
B/502, Ajmera Pristine,
Yogi Nagar, Near Ajmera Global High School,
Borivali (West), Mumbai – 400 091

... *Applicant*

V/s

Jitender Kumar Jain
Arcindo Law Advocates,
Level 8, Vibgyor Tower, G Block,
C-62, Bandra Kurla Complex,
Mumbai – 400 098

... *Respondent*

In the matter of
Roofit Industries Limited
(Filed under Section 10 of the IBC, 2016)

... Corporate Debtor

Date of Order: 19.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr Pravin H. Padave, Advocate.
For the Respondent: Mr Amir Arsiwala with Ms Radhika Motiani, Advocates.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

This Application filed by one of the operational creditors of the Corporate Debtor seeking directions to the Liquidator of the latter to accept his claim.

2. The facts leading to the Application are as follows:

- i. The Corporate Debtor viz. Roofit Industries Limited, was ordered into Corporate Insolvency Resolution Process (CIRP) on 28.06.2017 in a Petition u/s 10 of the Insolvency and Bankruptcy Code, 2016 (the Code). Since the resolution could not succeed this Bench by order dated 22.01.2018 directed the Corporate Debtor to be liquidated in terms of Chapter III of the Code.
- ii. It is stated by the Applicant that one M/s Shastri Associates, one of the suppliers of the Corporate Debtor issued a Bill of Exchange dated 30.08.2001 in favor of the Applicant for ₹. 5,25,844/- (including discounting charges of ₹. 26,580/-) in connection with the sale of Raw Asbestos Fiber covered under invoice dated 27.08.2001.
- iii. The Corporate Debtor under a letter dated 30.08.2001 issued a postdated cheque (PDC) for ₹. 5,25,844/- drawn on Karnataka Branch Limited, Fort Branch Mumbai, bearing No. 720869 dated 26.02.2002 in favour of the Applicant towards discharge of liability.
- iv. However, on 04.03.2002 the Corporate Debtor enclosed a Promissory Note along with a fresh cheque bearing No. 028901 dated 27.05.2002 for said amount towards discharge of the Demand Promissory Note. It also enclosed another cheque for ₹. 27,229/- bearing No. 028600 towards discounting charges from 26.02.2002 to 26.05.2002 (90 days). The Corporate Debtor also undertook that the cheques could be deposited on their due dates without waiting for confirmation from

their end. It also requested the Applicant to return the earlier cheque dated 26.02.2002.

- v. The Corporate Debtor again on 27.05.2002 executed a fresh Promissory Note and issued PDC for ₹. 4,78,648/- bearing No. 997382 dated 25.11.2002. It also enclosed cheque for ₹. 47,196/- bearing no.997365 towards part payment of the liability up to 24.11.2002. It accordingly requested to return the earlier cheque dated 27.05.2002. The Promissory Note may profitably be extracted as under for easy reference:

“DEMAND PROMISSORY NOTE

Rs. 4,78,648/-

*In continuation of our earlier bill of exchange, at 182 days from the date, we **ROOFIT INDUSTRIES LIMITED** having registered office at 501, Sangli Bank building, 296, Perin Nariman Street, Fort Bombay 400 001 promise to pay at Mumbai to **DEEPAK SAMPAT** order a sum of Rs. 4,78,648/- (Rupees Four Lakhs Seventy Eight Thousand Six Hundred Forty Eight Only) for value renewed.*

Place: Mumbai

*Date: 27.05.2002 For **ROOFIT INDUSTRIES LIMITED**,*

Sd/-

Director”

- vi. The Corporate Debtor made a payment of ₹. 16,582/- towards discounting charges leaving the balance amount of ₹. 4,62,066/-. The Corporate Debtor issued a cheque for ₹. 4,62,066/- bearing no. 812242 dated 15.12.2002. The Applicant deposited the cheque with his bank viz., Bank of Baroda, Shimpoli Branch on 29.05.2003. The Bank by its advice dated 05.06.2003 dishonoured the cheque on the ground of ‘insufficient funds’.

- vii. After the dishonor of cheque the Applicant tried to reach the Corporate Debtor for recovery / payment of the default amount, to no avail. Efforts by the Applicant to recover the amount through the Reserve Bank of India, Office of the Commissioner of Police, Mumbai and the Investors' Grievances Forum under RoC-Mumbai bore no fruit. Then the Applicant came to know that the Corporate Debtor had gone into CIRP. He got in touch with the Respondent through an email dated 29.02.2020 raising a claim of ₹. 4,68,066/-. The Respondent by his email dated 02.03.2020 replied that the Corporate Debtor was under liquidation and that the due date of filing the claim has since expired. He accordingly declined to accept the claim. It is submitted that the Respondent told him over phone that the due date had expired in Feb 2018.
- viii. It is submitted that the Applicant is a septuagenarian and had invested all his terminal benefits with the Corporate Debtor but has not been able to realize a farthing against such investment. He accordingly filed this Application on 28.01.2021, with the following prayers.
- i) Condone the delay in filing the claim before the Respondent;*
 - ii) Direct the Respondent to consider the claim against the Corporate Debtor for default amount of Rs. 4,62,066/-;*
 - iii) Grant costs of this Interlocutory Application; and*
 - iv) Any other order that this Hon'ble Tribunal may deem fit in view of the facts and circumstances of this Case.*
3. The Respondent has not filed a written reply to the Application. During hearing however, he submitted that the claim of the Applicant has been rejected on account of inordinate delay. The present Application has also been filed after considerable delay. Taking the facts and circumstances of the matter into consideration the Adjudicating Authority may pass appropriate orders.

4. We have heard the learned counsel appearing for both the parties as well as the Liquidator himself.
5. The averments made in the Application indicate that the latest Promissory Note for ₹. 4,78,648/- was executed by the Corporate Debtor on 27.05.2002 in favor of the Applicant. The Promissory Note contained that the Corporate Debtor would pay the amount at 182 days from that date and issued a PDC for the said amount dated 25.11.2002. Thus, the debt was payable on 25.11.2002 for which date the cheque was issued.
6. Apparently, the cheque was either not encashed or was not honoured. There is however no averment with regard to the presentation of the cheque dated 25.11.2002. Subsequently, the Corporate Debtor made a payment of ₹.16,582/- leaving a balance of ₹. 4,62,066/-. The Corporate Debtor then issued a cheque for the remaining amount of ₹. 4,62,066/- bearing no. 812242 dated 15.12.2002. The Applicant deposited the cheque with his Bank on 29.05.2003 and by communication dated 05.06.2003 the bank refused to honour the cheque on account of insufficient funds.
7. Article 31 of the Limitation Act, 1963 *inter alia* deals with a Promissory Note payable at a fixed time after date. The period of limitation for suits for realization of the amount under that Promissory Note would run for a period of 3 (three) years from the date the Note fell due. In the instant case the Note fell due on 25.11.2002 in terms of the Promissory Note *supra*.
8. 'Debt' is defined u/s 3(11) of the Code as a liability or obligation in respect of a claim which is due from any person and *inter alia* includes an operational debt. 'Operational Debt' defined u/s 5(21) of the Code *inter alia* means a claim in respect of provision of goods or services. For the present purpose 'claim' would mean right to remedy for breach of contract under any law for

the time being in force if such breach gives right to payment. The breach on the part of the Corporate Debtor gave rise to a right to the Applicant to payment. Meanwhile however, the Corporate Debtor issued another cheque dated 15.12.2002 for the balance amount of ₹. 4,62,066/-. It was dishonoured by the bank on 05.06.2003. The said claim amount of ₹. 4,62,066/- thus became due and payable with effect from 05.06.2003. It could only be realized in terms of Article 31 of the Limitation Act, within three years thereof. The Applicant did not take any action/step for realization of the amount within that period nor did he issue any demand for the said amount. As per his averments, the due date of making a claim before the liquidator expired on February 2018. The fact of CIRP of a Company and it going under liquidation is publicized through public announcement made under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, respectively, for the creditors to submit their claims before the Resolution Professional or the Liquidator, as the case may be. The Applicant did not make any claim either before the Resolution Professional or the Liquidator within the prescribed time limit. His claim was rejected by the Liquidator under email dated 02.03.2020. Section 42 of the Code provides the procedure for appeal against the decision of the Liquidator. A creditor would appeal to the Adjudicating Authority against the decision of the Liquidator within 14 days of receipt of such decision. The email at pg. 16 of the Application (pdf pg. 21), indicates that the Applicant received the email on the same day i.e., 02.03.2020 and he apparently forwarded it to his counsel/advocates on the same afternoon (@ 12.56 pm).

9. The present Application essentially one u/s 42 of the Code was filed almost 10 months after the receipt of the rejection order. The Applicant though has sought condonation of delay in filing the Application in the same Application, he has not filed a separate Application for condonation of delay

as required. Be that as it may, with regard to the delay, the Applicant pleads the following:

“The Applicant states that, the Applicant was unaware of the proceedings being held against the Corporate Debtor before this Hon’ble Tribunal.

The Applicant states that the Applicant is 72 years old senior citizen. After the voluntary service retirement, the Applicant invested his hard earned money in the Corporate Debtor company and till date has not received the default amount. Being old age, without any source of income in addition to loss of money to the Corporate Debtor, the Applicant is facing difficulties in daily livelihood.”

10. The averments do not make out even ‘good’ much less ‘sufficient’ cause for not preferring the appeal within the prescribed time. Therefore, the present appeal would be grossly barred by limitation. Even otherwise the claim was also barred by limitation having been filed after 04.06.2006 (three years from 05.06.2003) and was thus not due and payable.

11. It would presently be profitable to take a leaf out of the observations of the Hon’ble Apex Court in *Robin Thapa v. Rohit Dora (Civil Appeal No. 4507 of 2019 decided on 8 July, 2019)* held,

“Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

Hon’ble Dipak Mishra J. (as his lordship then was) in *Nakula Swain and Ors. v. Jogendra Das: 1996 (I) OLR 534*, observed:

“The concept of "sufficient cause" is dependent on facts of each case. There cannot be a strait jacket formula to indicate what exactly construes sufficient cause. Peculiar circumstances of each case have also to be taken into consideration. The Courts have to adjudge on the touch-stone of pragmatic parameters.”

12. Considering the broad sentiments expressed by the Hon'ble Courts with respect to adjudication of claim on merits and the fact that the Applicant was a retired employee, it was possible that he could not pursue for recovery of his claim from the Corporate Debtor in right earnest. We feel it appropriate that the interest of justice would be best served by invoking the inherent powers of this Authority available under Rule 11 of the NCLT Rules, 2016.
13. We accordingly feel it appropriate to direct the Respondent-Liquidator to consider the claim of the Applicant under law uninfluenced by the observations made herein and notwithstanding the delay in making the claim. Hence ordered.

ORDER

The Application be and the same is allowed on contest. The delay in making the claim before the Liquidator and in making the present Application is condoned. The Respondent is directed to consider the claim of ₹.4,62,066/- of the Applicant and pass necessary orders as deemed necessary and proper under law. There would however be no order as to costs.

Sd/-

V. Nallasenapathy
Member Technical

Sd/-

Janab Mohammed Ajmal
Member Judicial