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

IA(IBC)/867(CHE)/2021
in
CP(IB)/511(CHE)/2017

(Filed under Section 42 r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016)

In the matter of **Cethar Limited**

Jindal Saw Limited (Operational Creditor),
A-1, UPSIDC, Indl. Area,
Nandagon Road, Kosi Kalan, Dist. Mathura,
Uttar Pradesh – 281 403.

... *Applicant*

Vs.

Official Liquidator,
Cethar Limited,
Mr.Venkataramanarao Nagarajan,
New No.29 Kavarai Street, West Mambalam,
Chennai – 600 033.

... *Respondent*

Order Pronounced on 14th July 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Mr. K.M.Anand, Advocate
For Liquidator : Mr.R.Subramanian, Advocate

ORDER

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

This Application IA(IBC)/867(CHE)/2021, is filed under Section 42 r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') and Rule 11 of NCLT Rules, 2016 by **Jindal Saw**

Limited, Operational Creditor of **Cethar Limited** (hereinafter referred to as Corporate Debtor) seeking the following reliefs

a) To condone the delay of 1162 days in submission of proof of claim of the applicant to the official liquidator which was rejected on 05.08.2021;

b) To direct the Official Liquidator to accept the proof of claim of the Applicant.

c) To pass any such other order as this Tribunal as may deem fit and proper under the facts and circumstances of the case, in the interest of justice, equity and fair trial.

2. It was submitted by the Learned Counsel for the Applicant that CIRP in respect of the Corporate Debtor was initiated on 16.06.2017. Thereafter, the order for Liquidation of Corporate Debtor was passed by this Tribunal on 25.04.2018 and the Respondent herein was appointed as the Liquidator.

3. Pursuant to that the Liquidator has made a public announcement on 29.04.2018, stating the claim towards the Corporate Debtor to be filed on or before 29.05.2018.

4. It was further submitted that the Applicant had filed its claims under Form-B in August 2017 i.e., during CIRP, which the also acknowledged.

5. It was further submitted that the Applicant was unaware of the liquidation of the Corporate Debtor and was under the impression that its claim was accepted until it came to know about

the publication about liquidation dated 29.04.2018 through the IBBI website in June 2021. Further, added that the liquidation order was published only in the Chennai newspaper circle but none of the establishments of the Applicant is in Chennai.

6. It was further submitted that the Ld. Counsel of the Applicant contacted the Liquidator on 09.06.2021 and was informed that the claims of the Applicant would be considered after the Financial Creditor's claims.

7. Thereafter, the Applicant submitted its claim under Form-C to the Liquidator on 04.08.2021, for which, the Liquidator sought an explanation with respect to limitation. Accordingly, the Applicant filed a detailed reply vide e-mail dated 05.08.2021, but the Liquidator has not accepted the explanation of the Applicant and rejected to take the claims on record.

8. The Ld. Counsel of the Applicant further argued that a creditor who fails to lodge proof prior to a dividend distribution cannot disturb that distribution, but upon lodging his proof and having it accepted is entitled to the payment of dividend he would have received ahead of other creditors before any subsequent distribution is made. In support of his argument he relied on a few decisions of Hon'ble High Courts and NCLTs.

9. In opposition to that the Ld. Counsel of the Liquidator submitted that the Applicant had made its claim with the delay of 1162 days, which is even more than the normal liquidation period. Further, contended that the submission of the Applicant that it is unaware of the Liquidation of the Corporate Debtor was not *bona fide*.

10. Further, submitted that in the present case even the Financial Creditors are not likely to receive 20% of their claims and there is no prospect of any payment to the unsecured creditors like Applicant. Even though the claim is admitted the Applicant will not get anything in the distribution. In view of the above submission, the Liquidator sought dismissal of this application.

11. We have heard learned counsel for both sides. On perusing the documents on record it is seen that the Applicant had filed its claim in Form-B dated 01.07.2017, during the CIRP of the Corporate Debtor and the Applicant admitted that it had not filed any claim before the Liquidator within the time specified in Section 38(1) of the Code and Regulation 12(2) of IBBI (Liquidation Process) Regulation, 2016 even after 1162 days.

12. The plea of the Applicant that it is unaware of the liquidation of the Corporate Debtor and the paper publication of Liquidation of the Corporate Debtor was effected only in Chennai is lacks *bona*

fide and unacceptable for this inordinate delay. It is the duty of the claimant to get updated of its claim, negligence on the part of the litigants cannot be protected by law. Since time is the essence of the Code, the time period to file a claim must be kept alive for a statutorily fixed period of time, extending the period on equitable grounds will ruin the object of this Code.

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

14. Hence the unconscionable delay of 1162 days in submission of claim by Applicant sans merit. Accordingly, this application IA(IBC)/867(CHE)/2021 stands **dismissed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE (RETD) S.RAMATHILAGAM
MEMBER (JUDICIAL)

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