

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-III**

I.A. No. 3990 of 2023

IN

C.P. No. 64/2023

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Filed by

Masstrans Technolies Private Limited

.....Applicant

Vs.

Rajeev Mannadiar

...Respondent/RP

In the matter of

The Federal Bank Ltd.

....Financial Creditor

Vs.

M.P. Enterprises & Associates Ltd.

.....Corporate Debtor

Order reserved on: 05.10.2023

Order delivered on: 18.10.2023

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

Appearance:

For the Applicant: Adv. Abhimanyu Kaul a/w Adv. Harsh Behany

For the Respondent: Adv. Arjun Sathees

Per: CHARANJEET SINGH GULATI, MEMBER (T)

ORDER

1. In the application, the applicant seeks following reliefs:
 - a. *Consider and allow this present Interlocutory Application in terms of Section 60 (5) of the Code read with Rule 11 of the NCLT Rules, 2016 of the Code;*
 - b. *That this Hon'ble Tribunal be pleased to condone the delay of 92 days in submission of the Applicant's claim of Rs. 19,19,082/- (Rupees Nineteen Lakhs Nineteen Thousand and Eighty-Two Only) with the Respondent;*
 - c. *That this Hon'ble Tribunal be pleased to direct the Respondent to adjudicate upon and/or admit the claim of this Applicant amounting to Rs. 19,19,082/- (Rupees Nineteen Lakhs Nineteen Thousand and Eighty-Two Only) submitted to him in Form B along with supporting documents;*
 - d. *For ad-interim / interim reliefs in terms of prayer clause (a) to (c);*
 - e. *For costs; and*
 - f. *Pass any order that this Hon'ble Tribunal may deem fit in the matter.*

2. Submissions of the Applicant are briefly extracted herein under:
 - 2.1. The Corporate Debtor was involved in the business of manufacture of motor vehicles, trailers and semi-trailers. Somewhere in March of 2021, the Corporate Debtor had approached the Applicant for availing its goods and services pertaining to its product named Intelligent Transport Management System ("ITMS"). The Corporate Debtor had

placed three Purchase Orders with the Applicant namely, Purchase Order No. 354 dated 20th March 2021 (“Purchase Order – I”), Purchase Order No. MPEAL-BEST-001 dated 1st April 2021 (“Purchase Order – II”) and Purchase Order No. MPEAL BEST-108 dated 1st June 2021 (“Purchase Order –III”) for the purchase of their product, ITMS. The Purchase Orders – I, II, and III are collectively referred to as “**Purchase Orders**”. Accordingly, the Applicant dispatched the goods as required by the Corporate Debtor in accordance with the terms of the Purchase Orders.

- 2.2. As per the payment terms of Purchase Order-I, the Corporate Debtor was supposed to pay the amount mentioned in the Purchase Order I, to the Applicant in the following manner:
 - a. 50% along with the Purchase Order
 - b. 20% at the time of dispatch of the material
 - c. 30% after successful completion of ITMS work

- 2.3. It had duly delivered the goods to the Corporate Debtor and raised three invoices upon the Corporate Debtor against the Purchase Order I, namely Invoice No. 20210440 dated 23rd March 2021, for a sum of Rs. 3,20,081/- (Rupees Three Lakhs Twenty Thousand and Eighty-One Only), Invoice No. 20210450 dated 26th March 2021, for a sum of Rs. 4,25,873/- (Rupees

Four Lakhs Twenty-Five Thousand Eight Hundred and Seventy-Three Only) and Invoice No. 21220290 dated 14th September 2021, for a sum of Rs. 1,50,274/- (Rupees One Lakh Fifty Thousand Two Hundred and Seventy-Four Only). The Corporate Debtor had duly received and acknowledged the delivery of all the aforesaid Invoices. In furtherance of the same, the Corporate Debtor had paid the amount towards Invoice No. 20210440 dated 23rd March 2021 and Invoice No. 20210450 dated 26th March 2021. However, the Corporate Debtor has failed to pay the amount due towards the Invoice No. 21220290 dated 14th September 2021 i.e., a sum of Rs. 1,50,274/- (Rupees One Lakh Fifty Thousand Two Hundred and Seventy-Four Only).

- 2.4. The Corporate Debtor had duly paid the amount towards Purchase Order-II to the Applicant.
- 2.5. As per the payment terms of Purchase Order III, the Corporate Debtor was supposed to pay the amount mentioned in the said Purchase Order III, to the Applicant in the following manner:
 - a. 30% along with Purchase Order;
 - b. 70% within 45 days after successful delivery from the Applicant.

- 2.6. Accordingly, after delivering the goods to the Corporate Debtor, the Applicant raised an Invoice bearing No. 21220176 dated 17th July 2021, for a sum of Rs. 37,68,808/- (Rupees Thirty-Seven Lakhs Sixty-Eight Thousand Eight Hundred and Eight Only). Out of the said amount, the Corporate Debtor has made a part payment of Rs. 20,00,000/- (Rupees Twenty Lakhs Only). The balance amount of Rs. 17,68,808/- (Rupees Seventeen Lakhs Sixty-Eight Thousand Eight Hundred and Eight Only) is still pending and due from the Corporate Debtor.
- 2.7. Thus, a total sum of Rs. 19,19,082/- (Rupees Nineteen Lakhs Nineteen Thousand and Eighty-Two Only) [i.e., Rs. 1,50,274 towards Invoice No. 21220290 dated 14th September 2021 of Purchase Order I and Rs. 17,68,808 towards Invoice No. 21220176 dated 17th July 2021 of Purchase Order – III] is due and receivable from the Corporate Debtor. The Applicant is also entitled to receive interest @ 18% p.a., for the delayed payments from the date of the default till the date of actual payment and / or realization (“outstanding amount”).
- 2.8. The Applicant states that Invoice No. 21220290 dated 14th September 2021 of Purchase Order – I and Invoice No. 21220176 dated 17th July 2021 of Purchase Order – III was duly received and acknowledged by the Corporate Debtor on

15 September 2021 and 17 July 2021 respectively. However, despite being in receipt of the same, the Corporate Debtor failed to make the payment towards the Invoices. By making part payments towards the Purchase Orders, the Corporate Debtor has admitted its liability qua the Applicant. Admittedly, the Corporate Debtor had not raised any dispute and/or demur qua the goods and services provided by the Applicant. Time and again, the Applicant kept following up with the Corporate Debtor for payment of the outstanding amount. However, the Corporate Debtor failed to discharge its liability *vis a vis* the Applicant.

2.9. Thereafter, under the cover of email dated 5th April 2023, the Applicant had forwarded Ledger account for the year 2022-2023 to the Corporate Debtor thereby seeking confirmation of accounts for the year 2022-2023. The said e-mail was duly received by one Ganesh Sumbhe on behalf of the Corporate Debtor. However, the Corporate Debtor failed to respond to the said e-mail. A copy of the email dated 5th April 2023 is annexed as Exhibit "A" of the Application.

2.10. The Federal Bank Limited (being the Financial Creditor of the Corporate Debtor) had filed Company Petition No. 64(IBC)/(MB)/2023 under Section 7 of the Code before this

Tribunal, against the Corporate Debtor. By the Order dated 20th April 2023, this Tribunal has admitted the captioned Company Petition and CIRP was initiated against the Corporate Debtor. By the said Order, the Tribunal had appointed the Respondent as the Interim Resolution Professional (“IRP”) of the Corporate Debtor.

2.11. Pursuant to the Order dated 20th April 2023, passed by this Tribunal, the Respondent had made public announcement of the CIRP of the Corporate Debtor under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 3rd May 2023, thereby inviting claims from all the creditors to be submitted to the Respondent on or before **16th May 2023**. However, the Applicant could not submit its proof of claim as it was unaware of the same.

2.12. Through, the e-mail dated 30th May 2023 of Axis Bank Limited, the Applicant came to know that CIRP has been initiated against the Corporate Debtor and Interim Resolution Professional has been appointed.

2.13. Thereafter, the Applicant submitted its Proof of Claim under Form B (“Proof of Claim”) in accordance with Regulation 7 of

the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 with the Respondent. The same was duly received by the Respondent on 15th August 2023. However, by its email dated 18th August 2023, the Respondent refused to accept the same. By the said email, the Respondent informed the Applicant that the maximum timeline available for filing Proof of Claim under Regulation 12 (2) of the CIRP Regulations was 90 (ninety) days from the date of the commencement of the CIRP. In the present case, 90 (ninety) days were completed on 31st July 2023. Since the Proof of Claim submitted by the Applicant was beyond the completion of the 90 (ninety) days period, the Respondent refused to consider / accept the same.

2.14. The applicant submitted that delay was unintentional and that it took some time to take instructions internally, the Applicant in view of such facts and prevailing jurisprudence on the issue requested to condone the delay and admit its claim to be considered on merits.

FINDINGS AND OBSERVERATIONS

3. The Respondent/Resolution Professional ('RP') did not file any reply. During the course of the arguments, the Learned Counsel appearing for the Respondent/RP submits that he does not wish to file reply

but ready to proceed with the matter. He also makes statement that he has no power to condone the delay. However, if this Bench feels to pass any order, he will comply with the order.

4. It is observed that the CIRP was initiated on 20.04.2023 and Respondent made public announcement on 03.05.2023 and as per the announcement, last date of submission of claim on 16.05.2023.
5. It is further observed that the Applicant submitted its claim to the Resolution Professional on 15.08.2023. Thereafter, Resolution Professional vide its email dated 18.08.2023 rejected the claim of the Applicant stating that the maximum timeline available for filing proof of claim under Regulation 12(2) of the CIRP Regulation is 90 days from the commencement of CIRP and that the Code does not allow admission of claim beyond 90 days. In the present case the 90 days from the commencement of CIRP was completed on 31.07.2023.
6. After hearing the submissions of Learned Counsel appearing for the Applicant and learned Counsel appearing for the Respondent and upon perusing the records, this bench is of the considered opinion that under the circumstances when the delay is unintentional and their exists a reasonable cause, delay in filing the claim before the RP can be condoned. In this case, the applicant was following up with

the Corporate Debtor for its dues till 05.04.2023 which is just few days before the Corporate Debtor was admitted into the CIRP. Further the applicant was not aware of the Corporate Debtor being admitted into CIRP and came to know through the email dated 30.05.2023 of the Axis Bank and the applicant took some time internally to file their claim before the Resolution Professional. The delay is unintentional as also in this case so far CoC has not approved the Resolution Plan. Under these facts and circumstances, the above application is allowed in terms of prayer clause (b) by condoning the delay of 92 days in submission of the applicant's claim of Rs. 19,19,082/- and the Resolution Professional is directed to consider the claim of the Applicant on its merits and in accordance with law.

7. With the above directions, the above I.A. 3990/2023 is **allowed** and **disposed of**.

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)

//RKS//

Sd/-

LAKSHMI GURUNG

Member (Judicial)