

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

I.A. No. 178/KB/2023
in
C.P. (I.B) 1331/KB/2018

*An application under sections 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Union Bank of India.

..... *Financial Creditor*

-versus-

M/s. Enfield Gems and Jewellery Limited

..... *Corporate Debtor*

And

West Bengal Industrial Development Corporation Limited

..... *Applicants*

-versus-

Sonu Jain, Liquidator, M/s Enfield Gems and Jewellery Limited

..... *Respondent*

Date of Pronouncement of the order: 31 January 2024

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

Mr. Vipul Kundalia, Adv.] *For the Customs Authority*

Mr. Tapan Bhanja, Adv.]

Mr. A. Rao, Adv.] *For Union Bank of India*

Mr. A. Basu, Adv.]

Mr. Jishnu Choudhury, Adv.] *For Applicant in I.A.178/KB/2023*
Ms. Meenakshi Manot, Adv.]
Mr. Saubhik Choudhury, Adv.]
Mr. Tirthankar Das, Adv.]

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.
2. This is an application under sections 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **West Bengal Industrial Development Corporation Limited** *i.e* a creditor of the Corporate Debtor, seeking the following reliefs:
 - a. *Condone the delay of 24 days in preferring the instant appeal from the decision of the respondent;*
 - b. *Condone the delay of 1119 days caused on the part of the applicant in submission of its claims before the respondent;*
 - c. *Direct the respondent to consider the claim of the applicant;*
 - d. *Such and/or further orders as this Hon'ble Tribunal deems fit and proper.*

3. Submissions on behalf of the Applicant:

The submissions of the Applicants are summarized hereinafter:

- 3.1 The Applicant herein allotted to the corporate debtor a space in Module No. 5-SE in the 5th Floor of the SDF Building (Phase-I) of the Manikanchan SEZ pursuant to allotment letter¹ dated 18.07.2002.
- 3.2 On September 21, 2007 a possession certificate² was also issued by the applicant in favour of the predecessor-in-interest of the Corporate Debtor in respect of the said space whereupon an area admeasuring 325 Sq.Mtr. was sub-leased to the predecessor-in- interest of the Corporate Debtor.
- 3.3 Pursuant thereto, on October 24, 2007 the lease-hold interest of the predecessor in interest of the Corporate Debtor in respect of the said space was transferred³ to the

¹Annexure A

²Annexure B

³Annexure C

Corporate Debtor in terms of Rule 19(2) of the Special Economic Zone Rules, 2006. As such, upon taking possession of the said space, it was incumbent on the Corporate Debtor to pay sums to the applicant towards lease rent for the user of the said space. The terms and conditions with regard to payment of lease-rent are more fully mentioned in Letter of Permission No. MSEZ/LIC/E-01/04/3506 dated August 9, 2004.

- 3.4 However, the Corporate Debtor stopped paying operation and maintenance charges from September 2013 onwards. Ld counsel appearing for the applicant submitted that the applicant had continuously and duly followed up on several occasions with the Corporate Debtor whereupon the Corporate Debtor admitted its debt to the applicant and promised to pay the lease rent due and payable by it.
- 3.5 The Corporate Debtor repeatedly requested the applicant to refrain from initiating legal proceedings for the recovery of dues. The former management of the Corporate Debtor conveyed that legal action would result in the corporate death of the company since the allotted space in the SEZ (Special Economic Zone) was crucial for its business operations. Based on these representations and assurances of payment by the Corporate Debtor, the applicant chose not to pursue legal action in order to promote trade and enterprise in the State of West Bengal.
- 3.6 The applicant, before the initiation of the corporate insolvency resolution process under the Insolvency and Bankruptcy Code (IBC) for the Corporate Debtor, was consistently in communication with the former management. The applicant believed that the accumulated lease-rent would be settled by the Corporate Debtor. However, on January 11, 2021, the applicant was unexpectedly informed through a letter⁴ dated December 22, 2020, issued by the Deputy Development Commissioner, Manikanchan SEZ, that liquidation proceedings had been initiated against the Corporate Debtor under the Insolvency and Bankruptcy Code, a revelation that surprised and shocked the applicant.
- 3.7 The applicant thereafter conducted searches and enquiries and discovered that the respondent had published a Public Announcement⁵ inviting claims from stakeholders of the Corporate Debtor on or about October 26, 2019 and the last date for submission of claims was November 16, 2019. Pursuant thereto, the applicant took necessary steps

⁴Annexure E

⁵ Annexure F

for collation of documents and/or records for the purpose of submission of claims to the respondent.

- 3.8 Unfortunately, as a result of outbreak of the Covid-19 Virus from March, 2022 and as a result of imposition of nation-wide lockdowns and/or governmental restrictions the officers of the applicant were unable to collate documents in a timely manner in respect of the applicant's claim in the Corporate Debtor. The second wave of the pandemic led to causation of further delay on the part of the applicant in collecting and collating documents in support of its legitimate claim. Ultimately, in or around March, 2022 the applicant was able to collate necessary documents and provide the same to its Advocate.
- 3.9 Unfortunately, the associate of the Learned Advocate of the applicant who was in charge of the instant matter was prevented from taking necessary steps and successfully overseeing the submission of Proof of Claim on account of health issues arising out of prenatal complications. Thereafter the said associate of the Learned Advocate of the applicant was on maternity leave from January, 2022 to October, 2022 and thereafter delivered a child on November, 2022. During this period, the applicant was also attempting to collate documents in order to further substantiate its claim.
- 3.10 In view of the aforesaid medical exigencies related to child birth and pregnancy, the Learned Advocate of the applicant deputed another associate to assume responsibilities of the previous associate. The said associate of the Learned Advocate of the applicant took all necessary steps for submission of the Proof Of Claim before the respondent. Ultimately, on December 02, 2022 the claim of the applicant aggregating to a sum of Rs.91,76,407/- was submitted to the respondent. Thereafter on December 9, 2022 the respondent by an email⁶ intimated to the applicant herein that the claim of the applicant was being rejected on the ground of delay in submission of claims.
- 3.11 Upon receipt of the said email, the Learned Advocate for the applicant immediately advised the applicant that the applicant may prefer an appeal to this Tribunal against the decision of the Respondent rejecting the claim of the applicant. As a result of the existence of several compliances and/or safeguards present in its internal management

⁶ Annexure I

structure, the applicant was able to arrive at a decision with regard to preferring an appeal from the respondent's decision of the applicant on 28th December, 2022.

- 3.12 The applicant states that admittedly a delay of 1119 days has occurred on the part of the applicant in submitting its claims before the respondent.

4. Analysis and Findings:

- 4.1 Heard the Id. Counsels on behalf of the parties and perused the records.
- 4.2 It is noted that vide order dated February 09, 2023, this Adjudicating Authority had allowed the Union Bank of India *i.e* the Financial creditor, two weeks' time to file an affidavit, showing the step taken to complete the process of Sale. The Adjudicating Authority further ordered the Managing Director of the Applicant herein to file a personal affidavit explaining each day's delay in filing this Application. Due to failure on part of the Managing Director of the Applicant in filing the same, a final opportunity was given by this Adjudicating Authority on March 29, 2023 to make compliance of the said directions. The Applicant, in compliance of the said order, has filed an Affidavit notarised on 24 February 2023, whereby the Applicant has reiterated the reasons mentioned in the Application, for the delayed filing of its claims with the respondent.
- 4.3 Further, Union bank of India has also filed an affidavit notarised on 17 February 2023, wherein Union bank of India has affirmed that the assets of the Corporate Debtor were yet to be sold.
- 4.4 Coming to the merits of the instant application, it is seen that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) on April 23, 2019 and subsequently, liquidation of the Corporate Debtor was approved by this Adjudicating Authority on October 16, 2019. The Managing Director of the Applicant has admitted in the aforementioned affidavit dated 24 February 2023 that the Applicant had failed to notice the Public Announcement issued on October 26, 2019 wherein the last date for submission of claims was mentioned to be November 16, 2019. As mentioned in the application, the Applicant came to know about the liquidation proceedings on January 11, 2021 and filed the claim with the respondent on December 02, 2022 which was rejected by the Resolution Professional *vide* email dated December 09, 2022.

- 4.5 The Applicant has also relied on the orders of the Supreme Court of India in *Suo Moto Writ Petition (Civil) No. 3 of 2020* whereby the entire period from March 15, 2020 to February 28, 2022 was excluded for the purpose of computation of limitation period. However, it is abundantly clear that, even with the exclusion of the said period, the Applicant had slept over his rights for more than three months after the last date of submission of claims had lapsed. The Applicant has also made no attempt to explain the said delay in filing its claim with the Resolution Professional. As such, it is clear that the applicant herein has never been diligent in pursuing its rights under the law.
- 4.6 According to the principle encapsulated in the latin maxim “*vigilantibus non dormientibus jura subveniunt*”, the law comes to the aid of the vigilant, not the sleepy. Since the Applicant herein has not been diligent in pursuing its rights under IBC, the same cannot be granted at such a belated stage.
- 4.7 In this regard, we would like to rely on the decision of the Hon’ble National Company Law Appellate Tribunal (NCLAT) in the matter of *V,K. Abdul rahim vs. Jasin Jose, RP/Liquidator*⁷ wherein it has been held that:
“20. This Tribunal, is of the considered view that IBC is a time bound process and the Liquidator cannot accept a belated Claim, which would go against with the provisions of the IBC, 2016 as well as the scope and objective of the `Code`. It is also seen from the record that the Appellant had made every effort to derail the process and this Tribunal, does not find any substantial grounds to interfere with the well-reasoned order of the Adjudicating Authority.”
- 4.8 Further, it is seen that the claim made by the Applicant was in form B and was addressed to the resolution Professional and not the Liquidator. Since in the instant Application, the order of liquidation had already been passed on 16 October 2019 i.e before the filing of the claims, the office of the Resolution professional had already become *fuctus officio* at that point and the claim ought to have been made to the Liquidator instead.
- 4.9 In light of the aforesaid facts and circumstances, as well as the aforementioned case-law, we hold that the prayers sought by the Applicant in the instant Application cannot be granted at this stage since the same will hinder the time-bound process under IBC. Accordingly, I.A. 178/KB/2023 is **rejected**.

⁷ Company Appeal (AT) (CH) (INS.) No. 299 of 2023

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- 4.10 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 4.11 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi
Member (Technical)**

**Rohit Kapoor
Member (Judicial)**

Order signed on the 31st January 2024

SM_LRA