

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

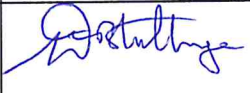
SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**


ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 02.03.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 88/2021 in CP (IB) No. 329/7/HDB/2018
NAME OF THE COMPANY	Viswa Infrastructures Finance and Services Pvt Ltd
NAME OF THE PETITIONER(S)	SREI Equipment Finance Ltd
NAME OF THE RESPONDENT(S)	Viswa Infrastructures Finance and Services Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Dishit Bhattacharya I.A. 78 Adv	Adv	9949936611	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Maresh Kumar Sengam For Liquidator	Adv	9000 666072	

ORDER

IA No.88 of 2021 is dismissed vide separate order.


MEMBER (TECHNICAL)


MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

IA No. 88 of 2021

In

C.P (IB) No.329/7/ HDB/ 2017
Application under Section 42 of IBC, 2016

Between

M/s. I.A.DHAS,
Registered Office at Near I.T.I., G.E.Road,
Bhilai , Rep by its partner,
Shri Yadvinder Singh.

...Applicant/Claimant

AND

Hemant Sharma
Liquidator in the matter of Vishwa Infrastructures and Services
Private Limited.,
House No.263, Block No.2, Subhash Nagar,
New Delhi-110 027.

...Corporate Debtor

IN THE MATTER OF:

M/s. SREI EQUIPMENT FINANCE LIMITED
"Vishwakarma", 86C, Topsia Road(South)
Kolkata-700 046

....Financial Creditor

VERSUS

VISHWA INFRASTRUCTURES & SERVICES PVT. LTD.
House No.263, Block NO.2,
Subhash Nagar,
New Delhi -110 027.

....Corporate Debtor

Date of order: 02.03.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

Counsel for Applicant: Shri Dishit Bhattacharjee.

Liquidator/Respondent: Shri Hemant Sharma.

Counsel for Liquidator: Shri Naresh Kumar Sangam.

Heard on: 24.02.2021

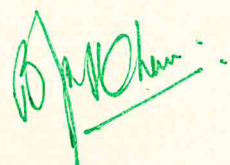
**PER: HON'BLE SHRI BHASKARA PANTULA MOHAN,
MEMBER (JUDICIAL)**

ORDER

1. This Application is filed by Applicant herein under Section 42 of Insolvency and Bankruptcy Code, 2016, seeking to set aside the impugned order dated 13.12.2020 and to condone the delay in filing the claim, and further to direct the liquidator to accept and verify the claim of Applicant.
2. Brief facts apropos to the Application
 - a. The Applicant is a leading service provider of Crane Rental Service, and approved contractor of Bhilai Steel Plant for undertaking all type of Civil work, Steel Structural Work, erection and commissioning work at Bhilai Steel Plant Bhilai.
 - b. It is averred that the Applicant is a stakeholder to the corporate debtor who is undergoing liquidation. The Applicant came to know about the status of liquidation on 16.11.2020 and thus immediately on 05.12.2020 the Applicant filed its Form C to the tune of Rs.1,69,77,139/- with the Resolution Professional. However, no receipt of the same was provided. Thereafter, the same was sent to the Resolution Professional vide mail but then also there was no response from the Resolution Professional. Copy of email dated 05.12.2020 is annexed to the Application as Annexure-2.

- c. Since the Applicant did not receive any communication from the resolution professional further on 11.12.2020 sent another mail to the Resolution Professional requesting to consider their Application dated 05.12.2020.
- d. It is averred that on 13.12.2020, the liquidator vide email rejected the claims of the Applicant stating the claims filed by the Applicant are time barred as Regulation 16 and 30 of IBC, 2016 provides that the person claiming to be stakeholder has to file its claim on or before the last date mentioned in the public announcement or within 30 days from the date of commencement of the liquidation process. Copy of the impugned order dated 13.12.2020 is annexed here with as Annexure A-5.
- e. It is averred by the Applicant that the liquidator failed to consider that Section 38(1) provides for receiving or collecting the claims of the creditors within a period of thirty days from the date of commencement of liquidation however there is no express bar that the claims can't be received after the said stipulated date. Section 39 that the liquidator shall verify the claims submitted under Section 38 and as per Section 40, the liquidator shall admit or reject the claims.
- f. It is averred by the Applicant that IBC,2016 nowhere provides that the claims submitted later than 30 days have to be mandatorily rejected for being time barred. It is further stated that under Section 420(3) of the Companies Act, 2013 it has been clearly stated that it is mandatory for the Hon'ble Tribunal to provide with a free copy of the order to the Companies involved in the matter.
- g. It is averred that delay in filing the form was neither intentional nor deliberate. The liquidation process is in early stage and no prejudice will be caused if the claims of the Applicant is considered on merits by the liquidator. If





the claim is not admitted immense loss would be caused to the Applicant.

- h. Applicant has also filed the case laws pertaining to the condonation of delay.

“The similar circumstances and in the same CIRP the Tribunal in CP(IB)No.329/7/HDB/2018 held that the delay in filing the claim before the liquidator can be condoned in the interest of Justice. Further in T.R. Rajakumari vs Motion Picture Producers Combine Ltd.AIR 1942 Mad.349, the Madras High Court held that the creditor may come in and prove his debt at any time before the final distribution of the assets without disturbing any dividend which has already been paid. NCLT, Mumbai in Natwarlal Shamaldas & Co vs Yog Industries Limited MA 1098/2018 in CP no.82/IBC/NCLT/MB/MAH/2017, where in Tribunal held the delay in submission of claims deserves condonation and that no prejudice will be caused if the claim of the Applicant is adjudicated and admitted as the liquidation proceedings are yet to be finalized”.

- i. Hence, the Applicant urged this Tribunal to favorably consider the plea of the Applicant to condone the delay of 540 days in filing the claim and sought directions to Liquidator to accept its claim and consider it on merits in the interest of justice.

3. Reply on behalf of the liquidator:

- a. It is averred that the appeal filed by the Applicant under Section 42 of the I&B Code, 2016 is legally untenable and is liable to be dismissed. The Applicant has not placed the material facts of the case i.e The Tribunal vide order dated 31.08.2018 has admitted the Company Petition filed by the financial creditor and appointed the Interim Resolution Professional (IRP) and further confirmed him as Resolution professional to carry out the functions as per the provisions of IBC. Subsequently the Tribunal vide order dated

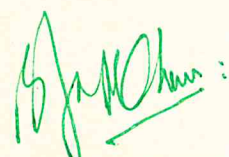




14.06.2019 allowed the application filed by the Resolution Professional for initiation of liquidation in the case of corporate debtor and appointed the RP as liquidator.

- b. Pursuant to that Respondent being appointed as the Liquidator he commenced the proceedings by making a public announcement on 17.06.2019 in Form-B under Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') in order to call upon stakeholders of the Corporate Debtor to submit their claims, on or before 14.07.2019. A copy of the public announcement dated 17.06.2019 is hereby annexed and marked as Annexure R-1.
- c. It is averred that the Applicant vide its emails dated 05.12.2020 and 11.12.2020 approached the Liquidator and submitted the claim. Thereafter, vide email dated 13.12.2020 the Liquidator clarified the Applicant that as per Regulation 16 of Liquidation Regulations, a person claiming to be a stakeholder shall submit its claim on or before the last date i.e 14.07.2019 and since the Applicant has filed the claim beyond 30 days from the date of commencement of the Liquidation Process, thus the Liquidator rejected the claim.
- d. It is submitted that on perusal of Section 38(1) of IBC, it is comprehensible that the Liquidator has to mandatory receive or collect the claims of Creditor with a period of 30 days from the date of the commencement of the liquidation process. Further, it is submitted that on going through Regulation 12(2) of CIRP Regulations, a claim can be considered by the Resolution Professional even after expiry of last date fixed in public announcement i.e. till approval of the Resolution Plan. However, in the present case wherein the Liquidation proceedings have been initiated, there is no similar provision under IBC or in regulation





enabling the Liquidator in receiving a claim after the last date fixed in the public announcement.

Section 474 of the Companies Act, 1956 reads as follows:

“The tribunal may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved”

On perusal of Section 474 of the Companies Act, 1956 and IBC it is understandable that the Legislature clearly have an intention to exclude the creditors which fail to provide the claim in time. Therefore the Liquidator has rightly rejected the claim of the Applicant.

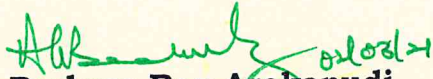
e. In the light of above submissions, the claim of the Applicant has been appropriately rejected by the liquidator and thus prayed the Tribunal to dismiss the application or may pass such other orders in the matter as deemed fit in the interest of the justice.

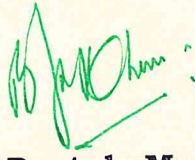
4. We heard the Learned Counsel for Applicant and the Counsel for liquidator through video conference. This Application is filed by the Applicant claiming to be stakeholder of Corporate Debtor, under Section 42 of IBC questioning the rejection of claim filed by Applicant before the liquidator appointed for the Corporate Debtor Company, which is undergoing CIRP.
5. The liquidator defended his action for not entertaining the claim on the ground that Applicant submitted its claim beyond the period prescribed Under Section 38(1) of IBC and under Regulation 12 (2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
6. The case of Applicant that corporate debtor is indebted to pay an amount of Rs.1,69,77,139/-. The case of Applicant that the delay in filing the Form C is neither intentional nor deliberate.
7. The contention of the Counsel for liquidator is that the Applicant filed the claim beyond the time prescribed for

receiving the claims. It is true that the Applicant filed the claim after a delay of 540 days. The claim was not filed within 30 days from the commencement of liquidation process.

8. The undisputed fact is that there was an abnormal delay in filing the claim before the liquidator. The applicant has not furnished any justifiable reasons for the delay. The amount claimed by the Applicant is substantial. It is not convincing to believe that a person who is to get substantial amounts is not keeping a track of the happenings in the corporate debtor. In the light of the above findings we are not inclined to interfere with the liquidation proceedings at this last hour and accordingly IA is dismissed.

9. In the result, IA No. 88/2021 is dismissed.


Veera Brahma Rao Arekapudi
Member Technical


Bhaskara Pantula Mohan
Member Judicial

PAVANI