

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)*

I.A No. 47 of 2022 & 48 OF 2022
U/s 42 and 60 (5) (c) of I& B Code,
r/w Rule 11 of the NCLT Rules, 2016
in

C.P (IB) No. 66/BB/2017
U/s 7 of the IBC Code
r/w Rule 4 of Insolvency and Bankruptcy
(AAA) Rules, 2016

In the matter of

CBRE SOUTH ASIA PVT.LTD

PTI Building,Ground Floor,
4,Parliament Street
New Delhi-110001
Represented by its authorized Signatory
Mr.Anand Dutta

--- Applicant/Claimant

And

1. M/s.Axis Bank Ltd.

Corporate Banking Branch
2nd Floor,Express Building,
No.1,Queens Road,
Bangalore 560001

2. Shri Sanjay Kumar Mishra (Liquidator)

M/s Lotus Shopping Centres Pvt Ltd,
Door No.15.8.441/5,Shop No.46,
1st Floor,Yenepoya Mall,
Kadri Road,Mangalore 575003 --- Respondent/Corporate Debtor

Order delivered on:25.05.2023

Coram: 1. Hon'ble Justice (Retd) T.Krishnavalli Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner/R-1 in
IA Nos.47 & 48 of 2022 : Ms.Ramya Katti
For the Liquidator : Shri Aakash Sherwal
For the Applicant in IA Nos
47 & 48 of 2022 : Ms.Samiksha.P

Per: T.Krishnavalli Member (Judicial)

ORDER

IA NO.47 OF 2022

1. The instant application has been filed on 24.12.21 and refilled on 19.01.2022 by CBRE SOUTH ASIA PVT LTD (herein after 'applicant') under Section 42 and 60 (5) (c) of the I & B Code, r/w Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to condone the delay of 758 days (from 18.07.2019 to 13.08.2021);to consider the claim of the Applicant in the liquidation proceedings.
2. Brief facts of the case, as mentioned in the application which are relevant to the issue in question, are as follows:
 - a) The applicant entered into an agreement for Retail Leasing Services dated 01.08.2016 with the 2nd respondent. As per the Agreement, the 2nd Respondent was obliged to pay a monthly amount to the applicant in return to the marketing services rendered by the Applicant. The total amount due as on the date of filing the claim was Rs.51,32,000/- (Rupees Fifty One Lakhs Thirty Two Thousand).As per Form B, the claim is for the period February 2017 to December 2017.
 - b) On 30.08.2018, this Adjudicating Authority initiated CIRP against the respondent no 2.After the resolution process failed, this Adjudicating Authority initiated liquidation on 18.06.2019.
 - c) The applicant submitted their claim in Form B on 6.07.2021, thus failed to submit the claim before 18.07.2019 being the last date. The respondent no 2 replied vide email dated 25.08.2021 to the applicant rejecting its claim on the mere ground that the same was filed belatedly. Hence, this application.

- 3.** The Respondent has filed the Statement of Objections vide diary no 3878 dated 12.09.2022 by inter alia contending as follows:
 - I.** It is stated that the applicant submitted its claim vide an email dated 13.08.2021. Form B of the proof of claim filed by the Applicant shows that the total claim amount due to the applicant amount to Rs.51,32,000 (Rupees Fifty –One Lakhs Thirty Two Thousand Only) along with interest at the rate of 18%. Such a claim was raised against invoices in relation to retail leasing services provided by the applicant for the period of February 2017 to December 2017.
 - II.** The liquidator rejected the claim on 25.08.2021 on account of the Applicant having submitted its claims after the deadline of 18.07.2019.
 - III.** It is submitted that the applicant has not demonstrated any sufficient cause to be seek the condonation of delay of 758 days in filing the claim.
 - IV.** It is submitted that the decision of the Hon'ble National Company Law Appellate Tribunal in Assistant Commissioner of Commercial Taxes v.Right Engineers & Equipment India Private Limited (in Liquidation), Company Appeal (AT)(CH)(Insolvency) No.255 of 2021, held that the Tribunal is required to consider the 'Sufficiency of cause' i.e., whether the cause ascribed is reasonable while considering the facts and circumstances of the matter. In the present case, it is submitted that the applicant has not fulfilled the sufficiency of cause criteria.
- 4.** Heard the Learned Counsels for the parties. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.
- 5.** It is seen that admittedly the applicant preferred its claim belatedly with the delay of 758 days to the Liquidator. The Liquidator/Respondent in view of the belated preferring of the claim of the applicant rightly rejected the same on the ground of delay.

6. However, in the circumstances, and since the liquidation process is still going on, the instant application is allowed as under:
- a) The delay in preferring the claim by the applicant is condoned.
 - b) The Liquidator is directed to consider the claim of the Applicant in accordance with Code and Regulations made there under and to pass an appropriate order within two weeks from the date of receipt of this Order and communicate the same to the Applicant forthwith thereafter;
 - c) Accordingly, IA No 47 of 2022 stands disposed of

IA NO 48 OF 2022

1. The instant application has been filed on 24.12.2021 and refilled on 19.01.2022 by CBRE SOUTH ASIA PVT LTD (herein after 'applicant') under Section 42 and 60 (5) (c) of the I & B Code, r/w Rule 11 of the NCLT Rules, 2016 *interalia* seeking to condone the delay of 85 days (from 25.08.2021 to 17.11.2021); admit the appeal filed by the applicant challenging the order of the 2nd respondent dated 25.08.2021 rejecting the claim of the applicant.
2. Brief facts of the case, as mentioned in the application which are relevant to the issue in question, are as follows:
 - a) The applicant entered into an agreement for Retail Leasing Services dated 01.08.2016 with the 2nd respondent. As per the Agreement, the 2nd Respondent was obliged to pay a monthly amount to the applicant in return to the marketing services rendered by the Applicant. The total amount due as on the date of filing the claim was Rs.51,32,000/- (Rupees Fifty One Lakhs Thirty Two Thousand).
 - b) On 30.08.2018, this Adjudicating Authority initiated CIRP against the respondent no 2. After the resolution process failed, this Adjudicating Authority initiated liquidation on 18.06.2019.
 - c) The applicant submitted their claim in Form B on 6.07.2021, thus failed to submit the claim before 18.07.2019 being the last date. The respondent no 2 replied vide email dated 25.08.2021 to the

applicant rejecting its claim on the mere ground that the same was filed belatedly. Hence, this application.

3. The Respondent has filed the Statement of Objections vide diary no 3879 dated 12.09.2022 by inter alia contending as follows:

- i.** The present application is an exact copy of IA 47 of 2021.
- ii.** It is stated that the applicant submitted its claim vide an email dated 13.08.2021. Form B of the proof of claim filed by the Applicant shows that the total claim amount due to the applicant amount to Rs.51, 32,000 (Rupees Fifty –One Lakhs Thirty Two Thousand Only) along with interest at the rate of 18%. Such a claim was raised against invoices in relation to retail leasing services provided by the applicant for the period of February 2017 to December 2017.
- iii.** The liquidator rejected the claim on 25.08.2021 on account of the Applicant having submitted its claims after the deadline of 18.07.2019.
- iv.** It is submitted that the applicant has not demonstrated any sufficient cause to be seek the condonation of delay of 115 days in filing the claim.
- v.** It is submitted that the decision of the Hon'ble National Company Law Appellate Tribunal in Assistant Commissioner of Commercial Taxes v.Right Engineers & Equipment India Private Limited (in Liquidation), Company Appeal (AT)(CH)(Insolvency) No.255 of 2021, held that the Tribunal is required to consider the 'Sufficiency of cause' i.e., whether the cause ascribed is reasonable while considering the facts and circumstances of the matter. In the present case, it is submitted that the applicant has not fulfilled the sufficiency of cause criteria.

4. Heard the Learned Counsels for the parties. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.

5. It is seen that admittedly the applicant preferred its claim belatedly with the delay of 85 days to the Liquidator. The Liquidator/Respondent in view of the belated preferring of the claim of the applicant rightly rejected the same on the ground of delay.
6. However, in the circumstances, and since the liquidation process is still going on, the instant application is allowed as under:
 - a) The delay in preferring the claim by the applicant is condoned.
 - b) The Liquidator is directed to consider the claim of the Applicant in accordance with Code and Regulations made there under and to pass an appropriate order within two weeks from the date of receipt of this Order and communicate the same to the Applicant forthwith thereafter;
 - c) Accordingly, IA No 48 of 2022 stands disposed of

-Sd-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-
(T.KRISHNAVALI)
MEMBER (JUDICIAL)