

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IA(IBC)/1233(CHE)/2023

**In
CP/511/IB/2017**

(filed under Section 60(5) of IBC, 2016 Rule 11 of NCLT Rules 2016)

In the matter of M/S. CETHAR LIMITED

Government of Tamilnadu,
Commercial Taxes and Registration Department,
Represented by jurisdictional Assistant Commissioner,
Palakkarai Assessment Circle,
No.21/11, China Kamatchi Illam,
State Bank Officers Colony,
Lawsons Road Cantonment,
Trichy – 620 001.

... Applicant

1. Mr. V.Nagarajan,
Official Liquidator of the
Corporate Debtor M/s. Cethar Limited,
No.29, Ground Floor, Kavarai Street, West Mambalam,
Chennai – 600 33.

*... 1st Respondent /
Liquidator*

2. M/s.Cethar Limited,
Thuraiyur Main Road,
Peramangalam Village,
Pulivalam, Trichirapalli – 621 006.

*... 2nd Respondent /
Corporate Debtor*

Order Pronounced on 2nd February 2024

CORAM

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:

For Applicant

*:Mr.B.Vijay, Advocate
Mr.G.Dinesh Kumar, Advocate
Ms.Bhargavi, Advocate*

For Respondents

:Mr.R.Subramanian, Advocate

ORDER

This application has been filed under Rule 11 of National Company Law Tribunal Rules, 2016 by Government of Tamilnadu, Commercial Taxes and Registration Department seeking to condone the delay of 38 days in filing the Interlocutory Application filed in Diary No.834 dated 21.09.2020 challenging rejection of claim pas sed by the Liquidator of the Corporate Debtor viz. Cethar Limited.

2. It is stated that the 2nd Respondent / Corporate Debtor is in the business of manufacturing boilers at the aforesaid address. The Corporate Debtor is registered taxpayer in the books of the Applicant under Tamil Nadu Value Added Tax Act with TIN 33623520802 and CST No.206602.

3. It is stated that the respondents were assessed for the years 2013-2014 to 2017-2018 under CST Act and also under TRAN-1 and found that the Corporate Debtor was liable to a sum of Rs.1,83,81,45,516/-.

4. It is stated that CIRP in respect of the Corporate Debtor was initiated by this Tribunal. Subsequently, this Tribunal vide order dated 25.04.2018 ordered liquidation of the Corporate Debtor and the 1st Respondent herein has been appointed as the Liquidator.

5. It is stated that the Applicant had filed its claim before the 1st Respondent on 12.02.2020 and the same was rejected by the 1st Respondent vide order dated 31.07.2020 on the ground that the claim was not filed within 14 days from the date of Liquidation of the Corporate Debtor.

6. Against which the Applicant had preferred an application before this Tribunal on 21.09.2020 under Diary No.834 and the same was returned by the Registry on 16.11.2020 to rectify the defects in the application.

7. It is stated that the due to COVID-19 situation and the administrative delay in collecting the relevant documents the applicant was unable to present the application after rectifying the defects within the limitation period.

8. Hon'ble Supreme Court in Suo-Motu Writ Petition (C).No.3 of 2020 has declared in cases where limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining all persons shall have the limitation period of 90 days from 01.03.2022. If the actual period of limitation is greater than 90 days that longer period shall apply.

9. Relying on the above order of Hon'ble Supreme Court the Applicant prays to condone the delay of 38 days in filing the Interlocutory Application filed in Diary No.834 dated 21.09.2020.

10. In the common reply filed by the Respondents stated that the Applicant filed claim before the Liquidator along with all documents. The documents filed in claim and appeal against the rejection order cannot be different. Therefore, the reason stated by the applicant is no sufficient and the condone delay application must be dismissed in limine.

11. Heard Ld. Counsels of both the parties and perused the documents on record.

12. It is seen that the Liquidation of the Corporate Debtor was ordered on 25.04.2018. The Applicant had submitted its claim in Form-C on 12.02.2020 and on 20.07.2020. The Liquidator rejected the claim on 31.07.2020, which was received by the Applicant on 05.08.2020. Appeal against the aforesaid order filed on 21.09.2020.

13. Section 42 of Insolvency and Bankruptcy Code, 2016 provides as follows,

Section 42. Appeal against the decision of liquidator: *A creditor may appeal to the Adjudicating Authority against the decision of the liquidator [accepting or] rejecting the claims **within fourteen days of the receipt of such decision.***

14. In the instant case the Applicant filed Application against the rejection order of Liquidator on 21.09.2020 with delay of 38 days it should have been filed on or before 14.08.2020.

15. Hon'ble Supreme Court in Suo-Motu Writ Petition (C).No.3 of 2020 has ordered as under:

"...

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

*2. **In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021,** notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply*

..."

Thereafter in MA No.21 of 2022 in the above Writ Petition the Hon'ble Supreme Court further directed as under:

"...

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period **from 15.03.2020 till***

28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.

..."

In the instant case the limitation to file application against rejection order of the Liquidator fell under the timeline between 15.03.2020 and 28.02.2022, which was relaxed by the Hon'ble Supreme Court in the case *supra*.

16. Since we are guided by the orders of Hon'ble Supreme Court we order to condone the delay of 38 days in filing the application filed under Diary No.834 dated 21.09.2020. The Applicant is directed to approach registry to take necessary steps to list the application.

17. Accordingly, this application IA(IBC)/1233(CHE)/2023 stands **allowed** and **disposed of**.

Sd/-

RAVICHANDRAN RAMASAMY

MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI

MEMBER (JUDICIAL)