

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

INTERLOCUTORY APPLICATION. No. 1773/2022

In

CP(IBC)No. 3540/MB/C-II/2018

Application filed under Section 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

Dr. Vijay Badhwar,

residing at: 10, Bugey Lane, Ajax, Ontario,
L1Z 1X4, Canada.

...Applicant

v/s

M/s. GRL Tires Pvt Ltd

Through its Resolution Professional

Mr. Pankaj Sham Joshi

Having its Registered Office at:

418, Creative Industrial Estate, 72,

N.M. Joshi Marg, Lower Parel, Mumbai-400011.

...Corporate Debtor

In the matter of:

M/s. Park Chambers LimitedPetitioner

v/s

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

I. A. No. 1773/2022

In
CP No. 3540/MB/C-II/2018

M/s. GRL Tires Private Limited

...Corporate Debtor

Order Pronounced on: - 29.11.2023

Coram:

Shri. Anil Raj Chellan : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances (in Physical Mode) :

For the Applicant : Adv. Tarun Kumar Tiwari.

For the Respondent : RP present in person.

ORDER

Per: Coram.

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 against the Respondent seeking to quash and set-aside the rejection of his claim by the Resolution Professional ('RP') of the Corporate Debtor, and seeking necessary directions from this Hon'ble Adjudicating Authority to the Respondent to add the name of Applicant in the list of creditor and consequently, directions to the

Committee of Creditors ('CoC') for considering the claim of the Applicant at the time of finalising the resolution plan.

Case of the Applicant in brief:

2. The Applicant had instituted a Civil Suit bearing C.S. (OS) No. 341 of 2017 against the Corporate Debtor and its promoter before the Original Side of the Hon'ble Delhi High Court under Order 37 of the Code of Civil Procedure, 1908 for recovery of amount in respect of three dishonoured cheques. The Hon'ble High Court decreed the suit against the Corporate Debtor in favour of the Applicant. As the decree was not satisfied, the Applicant filed an execution petition for enforcement of decree vide Ex. Petition No. 02/2022. The Promoter of the Corporate Debtor appeared in the execution proceedings and intimated about the initiation of the corporate insolvency resolution process ('CIRP') in respect of the Corporate Debtor. According to the Applicant, upon intimation of CIRP, the Hon'ble High Court had directed the Corporate Debtor to furnish the details of CIRP, RP, etc. However, the same were not provided by the Corporate Debtor to the Applicant. The Applicant has somehow himself found the name of the Resolution Professional of the Corporate Debtor.
3. On 10th June, 2022 the Applicant filed his claim in Form 'F' with proof of claim before the Resolution Professional. However, the Resolution Professional of the Corporate Debtor rejected the claim of the Applicant on

23rd June, 2022 on the ground that the claim was belated and filed beyond the prescribed period i.e. after 90 days from the insolvency commencement date. Being aggrieved by the rejection of his claim by the RP, the Applicant has approached this Hon'ble Tribunal seeking condonation of the delay and consequent directions to the RP and CoC to consider the claim of the Applicant on merits.

4. Being aggrieved by this illegal rejection of the Applicant's claim by the RP, the Applicant is filing the present application u/s 60(5) of the Code impugning the rejection of his claim.

Reply of the Corporate Debtor:

5. The Resolution Professional ('RP') has filed his Affidavit in Reply on behalf of the Corporate Debtor seeking rejection of this application on merits as the claim is belated. The RP submits that the Corporate Debtor was admitted into CIRP vide Order of the Adjudicating Authority dated 20th December, 2019. Pursuant to the said Admission Order, the then IRP (now RP) issued a public announcement in Form 'A' on 22nd December, 2019 calling upon the creditors to file their respective claims on or before 03rd January, 2020 in terms of Regulation 6(2)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (abbreviated

as 'CIRP Regulations' for the sake of brevity). However, the Applicant failed to file any claim within such time.

6. The RP further contends that as per Regulation 12(2) of CIRP Regulations, creditors are provided a total period of 90 days from the insolvency commencement date to submit their proof of claims for verification. However, here too, the Applicant did not file any claim within the prescribed timeline of 90 days. The insolvency commencement date is 20th December, 2019 and the maximum period of 90 days from the insolvency commencement date has lapsed long back on 20th March, 2020 and the claim was filed on 10th June, 2022. Thus, the claim of the Applicant is hopelessly time barred under Regulation 12(1) r.w Regulation 12(2) of the CIRP Regulations, 2016.

7. Due to the lack of assets of the Corporate Debtor, there are no chances of a successful resolution. Hence, the CoC of the Corporate Debtor decided to liquidate the Corporate Debtor by passing a resolution at the 7th CoC meeting held on 23.09.2021. Pursuant to the said resolution, an application for liquidation of the Corporate Debtor has been filed u/s 33 of IBC by the Resolution Professional in IA No. 2767 of 2021 seeking orders for liquidation of the Corporate Debtor. The fact of liquidation was brought to the notice of the Applicant by the RP while rejecting the claim vide E-mail dated 21st June, 2022. Therefore, the claim of the Applicant at such a

belated stage cannot be allowed. In any event, in view of the fact that no resolution plan has been approved by the CoC with respect to the Corporate Debtor, there is no point in entertaining the application of the Applicant. Further, once the application for liquidation of Corporate Debtor is approved by the Hon'ble Adjudicating Authority and the liquidation process against the Corporate Debtor is initiated, the Applicant shall have an opportunity to file its claim before the Liquidator. Hence, there is no point in accepting or verifying the claim of the Applicant at this stage and therefore, the instant I.A. No. 1773/2022 deserves to be dismissed.

ANALYSIS AND FINDINGS

8. We have heard the learned counsels for both the parties at some length.

9. The Ld. Counsel for the Applicant submitted that the Applicant, who is an adult Canadian citizen of Indian origin residing in Canada, had instituted a Summary Civil Suit bearing C.S. (OS) No. 341 of 2017 against the Corporate Debtor and its promoter before the Original Side of the Hon'ble Delhi High Court under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of amount in respect of three dishonoured cheques. is an application filed by the Applicant seeking condonation of delay in filing the claim. The aforementioned Suit was decreed in favour of the Applicant. However, as the decree was not satisfied, the Applicant had filed an

execution petition for enforcement of decree vide Ex. Petition No. 02/2022. The Promoter of the Corporate Debtor appeared in the execution proceedings and intimated about the initiation of the corporate insolvency resolution process ('CIRP') in respect of the Corporate Debtor. The Learned Counsel further submitted that the Hon'ble High Court had directed the Corporate Debtor to furnish the details of CIRP, RP, etc. However, the same were not provided by the Corporate Debtor to the Applicant. Thereafter, the Applicant himself found the name and other relevant details of the Resolution Professional ('RP') of the Corporate Debtor and lodged his claim before the RP on 10th June, 2022 along with the proof via e-mail.

10. The Counsel for the Applicant submits that the delay on the part of the Applicant is not intentional and can be satisfactorily explained. Counsel for the Applicant further submits that the time limits stipulated under the IBC including under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are directory and not mandatory in nature. The Learned Counsel for the Applicant has drawn our attention to the fact that CIRP of the Corporate Debtor is still in progress and that no resolution plan has been received or approved by the CoC till the date of filing this application. Therefore, the Application deserves to be allowed as no prejudice would be caused to the CIRP if the Applicant and its claim are included in the list of creditors.

11. Per Contra, the learned Counsel for the Respondent has submitted that as the claim was time barred under Regulation 12(2) of CIRP Regulations, 2016, the RP was justified in rejecting it. The Ld. Counsel for the Respondent has admitted that no resolution plan has been received and approved by the Committee of Creditors as yet and further, he drew our attention to the fact that due to the lack of assets of the Corporate Debtor, there are no chances of a successful resolution. Hence, the CoC of the Corporate Debtor decided to liquidate the Corporate Debtor by passing a resolution at the 7th CoC meeting held on 23.09.2021. Pursuant to the said resolution, an application for liquidation of the Corporate Debtor has been filed u/s 33 of IBC by the Resolution Professional in IA No. 2767 of 2021 seeking orders for liquidation of the Corporate Debtor. The fact of liquidation was brought to the notice of the Applicant by the RP while rejecting the claim vide E-mail dated 23rd June, 2022. Therefore, the claim of the Applicant at such a belated stage cannot be allowed. In any event, in view of the fact that no resolution plan has been approved by the CoC with respect to the Corporate Debtor, there is no point in entertaining the application of the Applicant.

12. We have weighed and carefully considered the rival submissions by the learned counsels for the Applicant as well as the Respondent and also gone through the pleadings and documents placed on record.

13. The Hon'ble Principal Bench of the National Company Law Tribunal ('NCLT') in the case of **Twenty First Century Wire Rods Ltd** [reported in (2019) **ibclaw.in 71 NCLT**] has very clearly held as follows, *"The Resolution Professional shall not reject the claim on the ground of delay as the CIR process is still under progress and no resolution plan has been approved by the CoC so far."* The Respondent/Resolution Professional has admitted in its Affidavit in Reply at Para 5 therein that no resolution plan has been approved by the CoC with respect to the Corporate Debtor. Therefore, in view of the law settled by the Principal Bench of the Hon'ble NCLT, the Application cannot be rejected solely on the ground of delay when the CIRP is still under progress and no resolution plan has been approved by the CoC. However, the above ratio will not apply to the facts of the present case where the CIRP is not in progress and the CoC has with 100% vote decided to initiate liquidation process against the Corporate Debtor.

14. Once the period of CIRP has expired, the resolution professional has no mandate to invite or to receive the claims from the creditors of the Corporate Debtor. Also, once the statutory period of CIRP has expired, there is no question of receiving or considering any resolution plan without seeking extension of the CIRP period from this Hon'ble Tribunal. The statutory period of 270 days u/s 12 of the Code within which the CIRP is required to be mandatorily completed, including the extensions granted by this Tribunal in I.A. Nos. 860 & 873 of 2021 vide Order dated 13th July

2021, has already expired on 23rd September, 2021 and the CoC in its 07th Meeting dated 23rd September, 2021 has resolved with 100% vote in favour to initiate the liquidation process against the Corporate Debtor and directed the Resolution Professional to move an application to that effect as there is no chance of revival of the Corporate Debtor. The Corporate Debtor is not a going concern and has ceased its operations since Financial Year 2016-17, neither does it have any inventory or tangible assets, employees, workers or staff. As the CIRP period has already expired on 23rd September, 2021 and the Resolution Professional, on instructions of 07th CoC meeting dated 23rd September 2021, has moved an application for liquidation of the Corporate Debtor before the Adjudicating Authority in I.A. No. 2767 of 2021, reviving the CIRP process of the Corporate Debtor would be unnecessary as also wholly meaningless exercise serving no practical purpose. Also, reviving the CIRP at this stage would only have the effect of increasing the cost, revising the list of creditors when no resolution plan is under consideration and prolong the liquidation process of the Corporate Debtor. Thus, we are of the considered view that the present application of the Applicant has become infructuous. Hence, we pass the following orders:

ORDER

15. I.A. No. 1773/2022 is dismissed as having become infructuous.

However, in case the CIRP of the Corporate Debtor is revived at any stage,

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the Applicant shall be at liberty to lodge his claim before the Resolution Professional and the Resolution Professional of the Corporate Debtor shall consider the claim of the Applicant on merits after having due regard to the Decree dated 01.02.2019 passed by the Hon'ble Delhi High Court in CS(OS) No. 341/2017 and the Resolution Professional of the Corporate Debtor shall not reject the claim of the Applicant solely on the ground of delay.

16. In the event of liquidation of the Corporate Debtor, the Applicant shall be at liberty to file his claim before the Liquidator of the Corporate Debtor.

17. There shall be no order as to costs.

18. Accordingly, this I.A. stands disposed off.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)