

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1070 of 2020

[Arising out of orders dated 17.07.2020 in I.A. No. 2387 of 2020 in Company Petition No. (IB) 64/PB/2017 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench.]

IN THE MATTER OF:

ADS Resources Limited

Unit 1403, 14th Floor Katherine House

53-55 Chatham Road South

TST, Kowloon, Hong Kong

Through its Authorised Representative

Mr. Animesh Kumar,

Authorised Vide Resolution of Board of

Directors dated 10.06.2020.

..... Appellant.

Versus

Shilpi Cables Technologies Ltd.

Through Liquidator

Mr. Huzefa Fakhri Sitabkhan

Think Capital Insolvency Professionals LLP

1007-1012, Dalamal Tower, Free Press Journal Road,

211, Nariman Point, Mumbai-400021

Huzefa.sitabkhan@gmail.com

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..... Respondent.

For Appellant: None

For Respondents: Mr. Puneet Singh Bindra, Ms. Simran Jeet, Ms. Sonali Mehta, Ms. Smiti T. and Ms. Sanampreet Singh, Advocates.

J U D G M E N T***(04th April, 2022)*****Justice Anant Bijay Singh;**

The Appellant has preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (***for short IBC***) being aggrieved and dissatisfied by the order dated 17.07.2020 in I.A. No. 2387 of 2020 in Company Petition No. (IB) 64/PB/2017 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench whereby and where under the I.A. No. 2387 of 2020 has been dismissed by the Ld. Adjudicating Authority holding that the claim is not maintainable against the Corporate Debtor.

2. The facts giving rise to this Appeal are as follows:

i) Vide Order dated 01.05.2019, the Hon'ble National Company Law Tribunal directed that the Corporate Debtor, "M/s Shilpi Cables Technologies Limited" to be liquidated and appointed Mr. Huzefa Fakri Sitab Khan, Resolution Professional as Liquidator for the process of liquidation. In terms of the said order, the Liquidator published a Public Announcement on 03.05.2019 in accordance with Rule 12 of IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule 2 of the said Regulation and invited claims from the Shareholders.

ii) The Appellant – M/s ADS Resources Ltd. for its supplies of various products like Planetary Stranding Line, Trolley wire drawing line etc., placed orders to the supplier at Hong Kong. The Appellant entered into Two Purchase Contracts being Contract No. ADSRL/ FOHKL/ 20160810 dated 19.08.2016

for supply of “Trolley Wire Drawing Line” and ADSRL/ FOHKL/ 20160909 dated 09.09.2016 for supply of “Planetary Stranding Line” with the supplier/seller namely Fourgood Overseas (HK) Co. Ltd. based at Hong Kong. Under the said contracts, the goods/machines were destined to ICD Rewari, India and the shipment was to be completed within 3 months of receiving the advance (Annexure -2 Colly, at page 39 to 50 of the Appeal).

iii) Therefore, in order to make payments to the supplier, the Appellant raised Proforma Invoices against the Order placed by the Corporate Debtor. The details of the invoices are as under:

	Invoice No.	Dated	Amount (USD)
1	ADSRL/16-17/3003 (for supply of Trolley Wire Drawing Line)	19.08.2016	710,000.00
2	ADSRL/16-17/4004 (for supply of Planetary Stranding Line)	09.09.2016	635,000.00
		TOTAL	13,45,000.00

iv) Further case is that the Appellant, for and on behalf of the Corporate Debtor, made advance payments of USD 5,88,750 through Citibank NA Hong Kong on 14.09.2016 and USD 4,35,000 & USD 1,80,000 on 19.09.2016 & 19.10.2016 respectively through DBS Bank (Hong Kong) Ltd. to the supplier’s designated account at Hong Kong. Therefore, the Appellant made the total payment of USD 12,03,750 on behalf of the Corporate Debtor (Annexure- 3 at page 51 to 57 of the Appeal).

v) The supplier has further raised a claim of USD 1,41,250 upon the Appellant under the said contract by way of debit note and the Appellant is under contractual obligation under the laws of Hong Kong to make the payment of said debit note to avoid any possible litigation, whose cost is much higher (Annexure -4 at page 58 of the Appeal). Therefore, the Corporate Debtor is liable to pay USD 13,45,000 to the Appellant, for which above said invoices have been raised against the Corporate Debtor.

vi) Further case of the Appellant is that the Corporate Debtor against the said Proforma Invoices have paid the part payment of USD 1,99,941.13, 1,80,936.13 & 4,25,914.13 on 09.09.2016, 23.09.2016 & 04.10.2016 respectively, leaving a balance of USD 5,38,208.61.

vii) The Appellant maintains a running account of the Corporate Debtor. As per the statement of account, principle amount of USD 5,38,208.61 (equivalent to INR 3,82,45,103.8 @ the conversion rate of 71.06 as on 17.01.2020) is outstanding and the Corporate Debtor is liable to pay the same with an interest of 8% per annum which comes to USD 1,07,641.72 as on 01.06.2019. The total outstanding amount as on 01.06.2019 is USD 6,45,850.33 (equivalent to INR 4,58,94,124.4 @ the conversion rate of 71.06 as on 17.01.2020).

viii) Further case of the Appellant is that the Appellant in response to the said advertisement issued by the Liquidator in respect to the Corporate Debtor, submitted his claim in the prescribed manner vide E-mail dated 15.11.2019 whereby the claimant enclosed all the relevant documents

including Certificate of Incorporation, Ledger account from 01.04.2016 to 01.06.2019 and Invoices.

ix) The Liquidator did not reply to the aforesaid claim. Thereafter, the Appellant via E-mail dated 27.11.2019 (Annexure-60 of the Appeal) sent a reminder for the settlement of claim. However, no reply has been received from the liquidator.

x) The Liquidator, vide E-mail dated 31.01.2020, required the Appellant to submit documents which are detailed as under:

“ 1. The claim documents (i.e. Form C, Affidavit and Board resolution) should bear company’s seal. Request you to affix the seal and re-share the documents.

2. Please share a government-issued photo ID of Mr. Rohtash Kumar (authorized signatory).

3. The supporting documents against the claim amount provided alongwith the claim form are Proforma Invoices.”

Thereafter, the Liquidator via E-mail dated 28.02.2020 (Annexure -7 Colly, at page 61 to 62 of the Appeal Paper Book) again required the Appellant for providing the said documents for verification of the claim.

xi) The Appellant, vide E-mail dated 29.02.2020, sent the requisite documents and information to the Liquidator. Thereafter, the Liquidator, vide E-mail dated 04.03.2020, rejected the claim of the Appellant stating as under;

“Pursuant to the Public Announcement, we are in receipt of your claim against the Corporate Debtor. Basis the information, documents and clarifications received from you

and further to verification of the same, the undersigned would like to update you that your claim of USD 645,850.33 stands rejected based on the books of accounts of the Corporate Debtor and the supporting documents provided alongwith your claim.”

Thereafter, the Appellant preferred the I.A. No. 2387 of 2020 in Company Petition No. (IB) 64/PB/2017 before the Ld. Adjudicating Authority and after hearing, the I.A. No. 2387 of 2020 was dismissed. Hence this Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellant during the course of argument and in his Written Submissions submitted that the Invoices have been admitted by the Corporate Debtor (para 6, page 2 of the Reply filed by Liquidator). However, a claim has been denied merely on the ground that only part of the invoice amount was payable. The contract in reference stands admitted which have not been dealt by Liquidator in rejection of the claim vide email dated 04.03.2020.

4. It is further submitted that the Appellant for and on behalf of the Corporate Debtor made advance payments of USD 5,88,750 through Citibank NA Hong Kong on 14.09.2016, USD 4,35,000 on 19.09.2016 and USD 1,80,000 on 19.10.2016 through DBS Bank Hong Kong Ltd. in supplier's designated account at Hong Kong. Therefore, the Appellant made a total payment of USD 12,03,750 on behalf of the Corporate Debtor. The said payments made on behalf of Corporate Debtor were well within the knowledge of the Directors of the Corporate Debtor.

5. It is further submitted that the Appellant filed an Application bearing I.A. No. 2387 of 2020 before the Hon'ble NCLT under Rule 11 of NCLT Rules, 2016 to direct the liquidator to accept, settle and pay the claim of USD 6,45,850.33 (equivalent to INR 4,58,94,124.4 @ the conversion rate of 71.06 as on 17.01.2020) to the Appellant. The said Application was rejected by the Hon'ble NCLT vide order dated 17.07.2020.

6. It is further submitted that the impugned order has been passed which is residuary in nature and the Ld. Tribunal did not sit in Appeal against the Order of Liquidator under Section 42 of the IBC, the Order of Liquidator is appealable. It is settled law that the Appellate Court is equipped in law to appreciate the evidence but the Court under residuary power has no power to appreciate the evidence and documents filed by the parties. Based on these submissions the impugned order is fit to be set aside and the Appeal be allowed.

Submissions on behalf of the Respondent

7. The Learned Counsel for the Respondent during the course of argument and in his Reply Affidavit along with Written Submissions submitted that the claim form was filed by the Appellant almost 6 months after the Respondent was directed to be liquidated, that too pursuant to receipt of the notice demanding the refund / repayment of the monies advanced by the Respondent to the Appellant for purchase of the machines.

8. It is further submitted that the documents sought by the Liquidator, provided by the Appellant, including the correspondence dated March 02,

2020, the Liquidator by his email dated March 04, 2020 rejected the claim of the Appellant based on the books of accounts and the supported documents furnished to him by the Appellant.

9. It is further submitted that being aggrieved by the Appellant filed an Application i.e. I.A. No. 2387 of 2020 in Company Petition No. (IB)/64/PB/2017 for seeking directions to accept, pay and settle the claim of USD 645,850.33 to the Appellant (being the 40% of invoice value, i.e. USD 538,208.61 along with 8% interest, i.e. USD 107,641.72).

10. It is further submitted that instead of filing Appeal of the aforesaid claim the Appellant had filed Application which was rightly dismissed by the Ld. NCLT vide order dated 17.07.2020.

11. It is further submitted that the Appellant had neither filed any claims pursuant to the commencement of the Corporate Insolvency Resolution Process or under the liquidation process, until such time as S3G's demand notice was received by the Appellant. It was only pursuant to such receipt that the Appellant filed its claim form (Form 'C') as the Operational Creditor of the Respondent.

12. It is further submitted that the Appellant ought to have raised its grievance for payment of the balance amount, if that was the case, within those three months where the machines were to be delivered, and if not within those three months then at least within three years from the date of the Proformas. However, the same was only done after receipt of the demand notice dated October 05, 2019 from S3G.

13. It is further submitted that the claim was belated not only after the passage of over six months from such time that the liquidation of the Respondent was directed but also only after the receipt of the demand notice from S3G. This is a clear indication that the same was done as an afterthought to evade its liability to return / refund the monies advanced by the Respondent to the Appellant for purchase of the machines which were never delivered to the Respondent. Based on these submissions no merit in the Appeal, the Appeal is fit to be dismissed.

FINDINGS

14. After hearing the parties and having gone through the pleadings made on behalf of the parties, we are of the considered view that the following facts are admitted in the instant Appeal.

- The Appellant has preferred the I.A. No. 2387 of 2020 in Company Petition No. (IB) 64/PB/2017 against the rejection of the claim by the Liquidator. The said I.A. was dismissed by the Adjudicating Authority on 17.07.2020. The Appellant did not prefer the separate Appeal against the order of the Liquidator and filed I.A. No. 2387 of 2020 which according to us is not maintainable.
- It is also an admitted fact that the Appellant did not file any claim during the Corporate Insolvency Resolution Process only after receipt of S3G demand notice, the Appellant filed its claim form (Form 'C') as the Operational Creditor of the Respondent. The Insolvency and Bankruptcy Code stipulates a time bound Resolution Process. Keeping

in view the ratio of the Judgment passed by Hon'ble Supreme Court in the case of "**Ebix Singapore (P) Ltd. Vs. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401**", we are of the view that in the absence of filing of the claim within the stipulated time, the Appellant now cannot seek realisation of the claim amounts at this belated stage.

ORDER

15. Taking all these facts and circumstances of the case, we are of the considered view that there is no illegality in the impugned order, therefore, the impugned order dated I.A. No. 2387 of 2020 in Company Petition No. (IB) 64/PB/2017 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench is hereby affirmed. There is no merit in the instant Appeal, the Appeal is hereby dismissed. No order as to costs.

16. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

New Delhi
04th April, 2022
R. Nath.

Company Appeal (AT) (Insolvency) No. 1070 of 2020