

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

APPEAL 58 OF 2023

Appeal u/s 42 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

**M/s Kantiroy Securities & Finance Pvt
Ltd.,**

V/s

Mr. Bhaskar Gopal Shetty, Liquidator

AND

APPEAL 59 OF 2023

Appeal u/s 42 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

Antriksh Capital Services Pvt Ltd,
502, Nirmal-Preeti CHSL,
Near Devi Dayal Garden,
Mulund (West), Mumbai – 400 080

...Applicant

V/s

Mr. Bhaskar Gopal Shetty,
Liquidator of **Mirage Ceramics Private**
Limited, Having address at
C-77, Shanti Shopping Centre,
Mira Road (East), Mumbai,
Maharashtra – 401 107 **... Respondent**

In the matter of

C.P. (IB) No. 571/MB/2019

STPM Logistics LLP

...Petitioner

V/s.

Mirage Ceramics Private
Limited

... Respondent

Order delivered on: 22.02.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Appellant

: Mr. Rajat Jain Advocate
:
: Mr. Bhaskar Gopal Shetty for
Liquidator in Person

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Appeal 59/2023 has been filed by the Applicant, viz. **Antriksh Capital Services Pvt Ltd**, against the Respondent, Liquidator of the Corporate Debtor u/s 42 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016, seeking the following reliefs:

- i. Consider and allow this present Interlocutory Application in terms of Section 42 of the IBC 2016 read with Rule 11 of the NCLT Rules 2016 of the IBC 2016.***
- ii. Pass necessary order to admit the Proof of Claim dated 28th August 2023 filed by the Applicant before the Liquidator.***
- iii. Set aside the Respondent/Liquidator email communication dated 1 October 2023 thereby refusing to consider the claim submitted by the Applicant.***
- iv. For ad-interim/interim reliefs in terms of prayer clause (i), (ii), and (iii);***

2. The Appeal 58/2023 has been filed by the Applicant, viz. **Kantiroy Securities and Finance Pvt Ltd**, against the Respondent, Liquidator of the Corporate Debtor u/s 42 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016, seeking the following reliefs:

- i. Consider and allow this present Interlocutory Application in terms of Section 42 of the IBC 2016 read with Rule 11 of the NCLT Rules 2016 of the IBC 2016.***
- ii. Pass necessary order to admit the Proof of Claim dated 28th August 2023 filed by the Applicant before the Liquidator.***
- iii. Set aside the Respondent/Liquidator email communication dated 1 October 2023 thereby refusing to consider the claim submitted by the Applicant.***
- iv. For ad-interim/interim reliefs in terms of prayer clause (i), (ii), and (iii);***

3. Since both of these appeals have identical facts, accordingly are disposed of by this common Order. For the sake of brevity, the facts in Appeal 59/2023 are taken up.
4. It is submitted that the Applicant is a private limited company validly under the provisions of the Companies Act, 2013 and engaged in multifaceted business activities, including but not limited to warehousing and storage services, service activities incidental to land transportation, and an array of financial services.
5. The Respondent herein is one Mr. Bhaskar Gopal Shetty, Liquidator of the Corporate Debtor appointed by this Bench. It is further submitted that somewhere in the Month of January 2018, Mr. Srikant Khadilkar, the Chief Executive Officer ("CEO") of the Corporate Debtor initiated discussions with the representatives of the Applicant herein i.e. Financial Creditor therein, sought a working capital loan to address the company's financial needs over the upcoming financial year i.e. FY 2019.
6. The Loan Agreement, *albeit* verbal, was entered into in 1 week of February 2018. The Applicant states that the Corporate Debtor had assured and confirmed to the Applicant that he shall strictly comply with his obligations i.e.
 - a. The Applicant was requested to provide an unsecured loan amounting to Rs. 92,50,000/- &
 - b. The Corporate Debtor committed to providing timely interest payments and the repayment of the principal amount at the end of the financial year, as decided by and between the parties as per the verbal Agreement.
7. Accordingly, the Applicant, extended an unsecured loan of Rs.92,50,000/- (Rupees Ninety-Two Lakhs Fifty Thousand only) to the Corporate. Debtor. However, the Corporate Debtor failed to adhere to the terms and conditions based on the Verbal Agreement.

8. Afterwards, the Applicant, initiated a series of email communication and messages with the Corporate Debtor and its team, in order to resolve the issue of the outstanding interest and the Principal amount, which the Corporate Debtor is legally liable to pay towards the loan given by the Applicant. The Applicant and/or his representatives were subjected to a frustrating and time-consuming ordeal, being forced to run from pillar to post in their pursuit of what the Applicant rightfully deserved.
9. In the Interregnum, the Operational Creditor **i.e. STPM Logistics**, filed a Petition under Section 9 of the IBC before this Bench against the Corporate Debtor, and this Tribunal vide order dated 14.02.2020, admitted the Captioned Company Petition and consequently initiated the commencement of the Corporate Insolvency Resolution Process ("CIRP") and appoint Mr. Bhaskar Gopal Shetty as the Interim Resolution Professional. During the CIRP, the Committee of Creditors ("CoC"), faced with the unfortunate failure of the Resolution Process, decided to pursue the Liquidation of the Corporate Debtor as the most viable course of action. Accordingly, the Respondent filed an Interlocutory Application bearing No. 1487/2021 before this Tribunal thereby seeking Liquidation of the Corporate Debtor.
10. Afterwards, this Tribunal vide order dated 15.06.2023, allowed the IA No. 1487/2021 and passed the Liquidation Order against the Corporate Debtor. Vide the Liquidation Order, the Respondent herein was appointed as the Liquidator. The Liquidator had made Form - B ("Public Announcement") under Regulation 12 of the IBC (Liquidation Process Regulations), 2016 on 05.08.2023, thereby invited claims from all the creditors to be submitted to the Respondent on or before 04.09.2023.

11. It is submitted that the Applicant herein submitted their claim on 28.08.2023, to the Liquidator / Respondent appointed for the matter. However, on 01.10.2023, the Liquidator rejected the claim of the Applicant citing following grounds:
- a. The claim forms are not supported by Loan agreement or contract;
 - b. Supporting documents do not prove that the Applicant demanded payments back and the Corporate Debtor failed to fulfil his obligations;
 - c. Evidence of any legal action initiated to recover the money in last five years is also missing;
 - d. Date of default;
 - e. No claim was submitted during the CIRP Process.
12. Heard learned Counsel and perused the material on records.
13. On perusal of the reasons for rejection, we are of considered view that the Liquidator has rejected the claim on extraneous reasons without understanding that the applicant is not making an application in terms of section 7 of the Code. The bank statement of the Applicant clearly evidence that an aggregate sum of Rs. 92,50,000/- was paid to the Corporate Debtor on different dates i.e. from 26.2.2018 to 31.3.2018. The absence of the loan agreement in writing cannot invalidate the claim for recovery of money, if the amount claimed is otherwise appearing in the books of the Corporate Debtor. Further, non-filing of claim during CIRP process can disentitle a creditor to file claim in liquidation proceedings, which is a separate and independent process and the Liquidator is bound to invite claims from all the creditors and admit the same after adjudication thereof. All other reasons also do not have any substance. The email communication from Liquidator nowhere denies that the amount claimed by the Applicant is not reflecting in the books of account of the Corporate Debtor. Accordingly, we are of clear view that the

applicant's claim ought to be admitted if the amount claimed is reflecting in books of Corporate Debtor as payable.

14. In view of the above, Appeal 59/2023 and Appeal 58/2023 are allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)