

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 335 of 2022

(Arising out of Order dated 21.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II, Company Appeal No.04/2022 in Company Petition No.(IB)-197(PB)/2017)

IN THE MATTER OF:

Anand Engineering Limited
(Formerly, Bajaj Infrastructure
Development Company Limited)
Through its authorised Representative
Mr. Ranjan Baranwal
Bajaj Bhawan, Jamnalal Bajaj Marg,
B-10, Sector-3, Noida - 201301

.... Appellant

Vs

Mr. Ramachandran Subramanian
Liquidator for Tecpro Systems Limited
Unit No.2, 1st Floor, No.25,
First Main Road, Gandhi Nagar,
Adyar Chennai-600020.

.... Respondent

Present:

For Appellant:

**Mr. Debal Kumar Banerjee, Sr. Advocate with
Mr. Alok Krishna Aggarwal, Mr. Shighra
Kumar and Mr. Mayank Bughani, Mr. Samuel
Kumr Singh, Mr. Bhishm Pratap Singh,
Advocates.**

For Respondent:

**Mr. Anurag Bhatt, Mr. Lokesh Pathak, Mr.
Vaibhav, Mr. Ankur, Advocates for Liquidator**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 21.02.2022 passed by the National Company Law Tribunal, New Delhi Bench-II

dismissing the Company Appeal No.04 of 2022 filed by the Appellant under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) challenging the decision of the Liquidator dated 07.01.2022 rejecting the claim of the Appellant.

2. Brief facts of the case necessary for deciding this Appeal are:

- (i) The Appellant Company is engaged in the business of executing EPC contracts for its clients. In the course of its business, the Appellant awarded contracts to Tecpro Systems Limited for execution of certain works as a sub-contractor in the year 2010-2011.
- (ii) In the year 2017, Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against the Tecpro Systems Limited – the Corporate Debtor on an Application filed by Edelweiss Asset Reconstruction Company Ltd.
- (iii) A demand notice dated 13.03.2017 was issued to the Bajaj Infrastructure Development Co. Ltd. (now Anand Engineering Limited – the Appellant) raising a demand of Rs.13,68,28,348. The demand notice received was replied by Bajaj Infrastructure Development Co. Ltd. pointing out the arbitration clause under the Contract and liability to pay the amount was denied. It was pleaded that an excess payment of Rs.12,20,72,608/- has already been made. On 05.08.2017, notice of arbitration was issued by Bajaj Infrastructure Development Co. Ltd.

- (iv) On 07.08.2017, CIRP was initiated against the Corporate Debtor, which was informed by IRP vide letter dated 10.08.2017 to Bajaj Infrastructure Development Co. Ltd. informing appointment of IRP and requesting that further payments payable by Bajaj Infrastructure Development Co. Ltd. be made in the Escrow Account of the Corporate Debtor. The Corporate Debtor has replied to the notice dated 05.08.2017 issued by Bajaj stating that CIRP has commenced against the Corporate Debtor, hence arbitration could not be invoked. After receipt of letter from IRP dated 10.08.2017, the Bajaj Infrastructure Development Co. Ltd. sent letter dated 06.09.2017 to IRP where it was stated that Bajaj Infrastructure Development Co. Ltd. claimed an amount of Rs.12,20,72,608/- against the Corporate Debtor. After the aforesaid letter, no communication was received from the IRP.
- (v) No Resolution Plan having been filed by the Resolution Professional, the Adjudicating Authority directed for Liquidation of the Corporate Debtor by order dated 16.01.2020. Respondent No.1 was appointed as Liquidator. The Liquidator issued public announcement on 23.01.2020 requiring claims to be filed on or before 19.02.2020. The Appellant could not notice the publication, nor could file the claim.

(vi) on 24.03.2021, the Corporate Debtor sought balance confirmation of Rs.12,78,65,736/- as due to Bajaj Infrastructure Development Co. Ltd. as per books of accounts of the Corporate Debtor. The Appellant sent reply dated 21.07.2021 to the Liquidator informing that it has already informed the IRP that no sums are due and payable to the Corporate Debtor. On 02.08.2021, the Appellant sent its claim in response to letter dated 24.03.2021 and 15.06.2021, claiming an amount of Rs.12,78,65,736/- from the Corporate Debtor. The Liquidator sent a letter dated 30.08.2021 to the Appellant on subject of settlement of outstanding amount. In reply to the letter dated 30.08.2021, the Appellant again sent letter dated 05.01.2022, giving details of the amount claimed. Subsequently, on 07.01.2022, the Liquidator wrote to the Appellant informed that the Liquidator is not in position to accept the claim of the Appellant and the issue can be taken only on the direction of NCLT, which may be sought regarding the claim. After the aforesaid letter dated 07.01.2022, Company Appeal No. 04 of 2022 was filed by the Appellant before the Adjudicating Authority, challenging the communication dated 07.01.2022, which Company Appeal came to be dismissed by the impugned order dated 21.02.2022. Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Debal Kumar Banerjee, learned Senior Counsel for the Appellant and Shri Anurag Bhatt, learned Counsel for the Respondent.

4. The learned Senior Counsel for the Appellant submits that Adjudicating Authority committed error in dismissing the appeal of the Appellant. The claim submitted by the Appellant ought to have been directed to be considered by the Liquidator. It is submitted that the Appellant have intimated about his claim to the IRP and no response was received from the IRP. The Appellant missed the publication by the Liquidator, but Liquidator himself was in correspondence with the Appellant and was asking details of the claim of the Appellant and when the Appellant has submitted its claim in response to the communication received from the Corporate Debtor, the same could not have been rejected as barred by time. The present is a case where for a period of two years the entire country was affected by Covid-19 pandemic and as soon as the Appellant received the communication from the Liquidator, it immediately submitted its claim. Hence, present is not a case, where the claim is to be rejected as barred by time. The communications issued by Liquidator were in exercise of his power under Section 39(2) of the IBC and when documents and claim was submitted in response to the query made by the Liquidator himself, the same could not be brushed aside on the ground that claim of the Appellant is barred by time. It is submitted that the Appellant has already in the year 2017 itself informed about its claim to the IRP, but unfortunately, the IRP did not respond to the claim. It is

submitted that the assets of the Corporate Debtor having not yet been disposed of, the claim of the Appellant can be entertained. The learned Senior Counsel for the Appellant has relied on various judgments of High Court to support his submission that claim cannot be denied to be considered, if the distribution of the assets has not been taken place.

5. The submissions made by learned Senior Counsel for the Appellant has been refuted by learned Counsel appearing for the Liquidator. It is submitted that there is no provision in the Code to condone the delay of submission of claim during the Liquidation process. The Appellant has filed its claim with delay of 687 days, which was rightly rejected by the Liquidator. The last date of submission of the claim was 14.02.2020. Condoning the delay of 687 days shall set a bad precedent and open flood gates. The order of the Hon'ble Supreme Court passed in Suo Moto Writ Petition No.03/2020 does not come to any assistance to the Appellant. Further, the Appellant has failed to provide any reason for delay in filing the claim.

6. We have considered the submission of the parties and have perused the record.

7. While noticing the facts of the case, we have noticed that present is a case where after initiation of CIRP, the IRP himself has written a letter to the Appellant on 10.08.2017 asking the Appellant to make payment of dues to the Corporate Debtor in the Escrow Account of the Corporate Debtor, which letter was replied by the Appellant on 06.09.2017. The Appellant has clearly informed the IRP that Appellant is claiming a sum of

Rs.12,20,72,608 from the Corporate Debtor. It is useful to notice the following statement in the letter dated 06.09.2017 sent on behalf of Bajaj Infrastructure Development Co. Ltd., the predecessor of the Appellant as follows:

“A perusal of the above correspondence would go to show and demonstrate that, in fact, it is BIDCO which is seeking and claiming a sum of Rs.12,20,72,608/- (Rupees Twelve Crores Twenty Lakh Seventy Two Thousand Six Hundred Eight only) from TECPRO. In pursuance to above, BIDCO has also sought to initiate the Arbitration proceedings, since TECPRO has been disputing the claim of BIDCO.

Since, your good self is now the Interim Resolution Professional duly appointed; we take this opportunity to request you to guide us, so that we may obtain our claims from TECPRO.

In the aforesaid matter, by the said communication we came to know about the appointment of Interim Resolution Professional only on 04.09.2017. However the date of publication and date of submission of any claims by us as creditor is not known to us. Accordingly we are submitting our claim through this reply along with all annexures.

We would also request you to kindly, if possible, send me your telephone no, so that we can speak to you in regards to our rightful claims.

Thanking you in anticipation.

Yours faithfully,

Sd/-

Authorised Signatory”

8. It is noted by Adjudicating Authority in its impugned order that there was no response by the IRP to the letter dated 06.09.2017, thus, the claim of the Appellant was communicated to the IRP. The Appellant's case is that they were not aware of the liquidation process and the publication made by the Liquidator. They could not file the claim within the period prescribed by the Liquidator vide publication dated 23.01.2020 and on 15.06.2021, the Liquidator sought balance confirmation from the Appellant, when they came to know about the liquidation proceedings. The letter dated 15.06.2021 has been brought on the record, where the Appellant was asked to confirm the balance of Rs.12,78,65,736/- and arrange to settle the dues at the earliest. The said letter was immediately replied on 21.07.2021 by the Appellant, where the Liquidator was informed that no balance is due to the Corporate Debtor, rather they have communicated their claim of Rs.12.20 crores. On 2nd August, 2021, details of the claim were filed by the Appellant to the Liquidator, which letter was replied by the Liquidator on 30.08.2021, writing to the Appellant on the subject of settlement of old outstanding amount. In the said letter, statement of account of all the orders submitted by the Corporate Debtor for payment was mentioned. In the letter, Liquidator has also noticed about the claim of Rs.12.20 crore raised by the Appellant, where following is stated in last few paragraphs:

“it is surprising to receive your claim now that you had paid excess payment of Rs.12.20 Cr which is not acceptable. It was never informed to Tecpro that excess payment has been released nor work carried out on our behalf at all the projects site. Had it been a fact, how Bajaj had released the payment of Rs.100 lacs during

May 2015. From all the sequences of events, it is clear that your intentions of not making any payment to Tecpro and now the false counter claim on Tecpro. It may kindly be noted that the plan is under your commercial operation since 2013 and till now there was no communication from your end for release of payment inspite of our repeated requests for due payments. Our mail dated 10th January 2017 may please be referred where we had requested to settle the due payment along with the additional price implication and the copy of the same is attached herewith for your ready reference. It is really surprising, we are being informed now that you had paid excess payment and we strongly object your attitude and it is not the good practice of a reputed concern after getting the job done by the contractor.

We are still open for amicable settlement against our 13.00 Cr outstanding payment and kindly inform us the suitable date for a meeting at your convenient date and time to enable us to attend accordingly. Also we are working on the delayed payment from Bajaj and the interest cost incurred by us.

We are enclosing herewith the statement of account of all the orders executed for you and the outstanding amount of each order for your ready reference. Meanwhile, we request you to kindly share all the details of payments, Statement of Account of Tecpro and the work done on behalf of Tecpro if any, to enable us to scrutinize the work so executed by others / Bajaj.

We once again request you to kindly look into the long pending issue and release our due payments without further delay along with the additional price implications submitted due to changes in the scope of work.”

9. At this juncture, we may notice that the letter dated 30.08.2021 is clearly referable to power of the Liquidator under Section 39, sub-section (2). Section 39 is as follows:

“39.Verification of claims.- (1) *The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.*

(2) *The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.”*

10. The letter at best can be treated as a letter in reference to claim of the Corporate Debtor against the Appellant and when in exercise of power of the Liquidator as per Section 39(2) allegations have been made against the Appellant for non-payment, it is always open for the Appellant to raise their defence in respect of the claim against the Corporate Debtor. Although, the above correspondence took place between the Appellant and the Liquidator, but on 07.01.2022 Liquidator communicated that since the claim submitted by the Appellant is not within the time frame, hence, it cannot be accepted. Communication dated 07.01.2022 is as follows:

“Dear Sir,

Sub: Claim with regard to Anand Engineering Limited

Ref: Your letter No.2022.01.05/ Liquidator/ Claim-Form-G dated January 05, 2022.

We are in receipt of the claim with respect to your client M/s Anand Engineering Limited for an amount of Rs.12,20,72,608/- along with Form G – Application in respect of the Claim. In this connection we would like to

bring your kind attention that, Tecpro Systems Limited had been directed for Liquidation and I have been appointed as Liquidator by Honorable NCLT Principal Bench, New Delhi vide its Order dated 16th January 2020.

Accordingly, the public Announcement had been made on 21.01.2020 and requesting all the stake Holders of Tecpro Systems Limited, to submit a proof of their claims on or before 19th February 2020.

The claim submitted by you now is not within the time frame stipulated as per the Public Announcement made by us and we are not in a position to accept the same.

You may take up the issue with the Honorable NCLT and directions may please be sought with regard to the said claim

Regards,

Sd/-

Ramachandran Subramanian

Liquidator for Tecpro Systems Limited

As per Order of NCLT, Principal Bench, New Delhi

IP Registration No. IBBI/IPA-001/IP-PO1440/2018-2019/12136”

11. The present is a case where the Appellant has informed about its claim to the IRP as early as on 06.09.2017 and the Liquidator himself sent letter dated 15.06.2021 asking the Appellant to make payment to the Corporate Debtor. The claim of the Appellant was forwarded to the Liquidator vide letter dated 21.07.2021 and 02.08.2021. Thereafter, the Liquidator wrote to the Appellant proposing settlement of old outstanding amount. The claim, thus, raised by the Appellant was under active consideration of the Liquidator and the view subsequently taken by the

Liquidator on 07.01.2022 that claim was not filed within the time period is unsustainable. It is true that Appellant did not file its claim before the Liquidator in pursuance of public announcement made on 23.01.2020, but when the Liquidator subsequently entered into correspondence with the Appellant and was confronted with the claim of the Appellant, instead of examining the claim of the Appellant, a short cut was taken by the Liquidator by not considering the claim of the Appellant on the ground that it is not filed within the time line, is not sustainable. The Liquidator was pursuing the claim of the Corporate Debtor against the Appellant, in response to which as a defence, the Appellant also raised its claim.

12. On a pointed query to the learned Counsel of the Liquidator, as to what is the stage in liquidation process, the learned Counsel for the Liquidator informed that assets of the Corporate Debtor are yet to be auctioned in liquidation process and no assets have yet been auctioned as on date. In the facts of the present case, we are of the view that the claim of the Appellant was required to be considered by the Liquidator on merits.

13. We may also notice one submission of learned Counsel for the Appellant relying on the judgments of Delhi High Court in ***Kamla Syntax Ltd. (2018) SCC DEL 9396*** and judgment of the Rajasthan High Court in (1972) WLN 68 – ***Ganeshilal Gupta vs. Bharatpur Oil Mills through official Liquidator***. The judgment relied by the learned Counsel for the Appellant were judgments in reference to Rule 177 of the Companies (Court) Rules, 1959. Rule 177, permitted a creditor, who fails to file proof of his debt with the Liquidator within the time specified for the purpose, to

apply to the court for relief. The above judgments are not helpful in interpreting the provisions under the IBC pertaining to liquidation as well as the Insolvency and Bankruptcy Board of India. (Liquidation Process) Regulations, 2016. With respect to liquidation proceeding under the IBC, it cannot be said that a creditor is entitled to file its claim at any time prior to distribution of assets. Normally, all claims have to be filed during the period as provided in the liquidation proceedings. But in the facts of the present case, there being special features of this case as noted above, which require consideration of claim of the Appellant on merits and rejection after making correspondence with the Appellant qua the claim of the Corporate Debtor against the Appellant, was not sustainable. It was not open for the Liquidator to shut out claim of the Appellant on the ground that it has not been filed within the time prescribed in the liquidation. Furthermore, as noticed above that in the present case, IRP also had informed the Appellant about the process, in reply to which details of claim was sent by the Appellant to IRP, which letter was never responded by the IRP.

14. We, thus, are satisfied that in the present case Adjudicating Authority committed error in simply rejecting/ dismissing the Appeal of the Appellant without taking into consideration the detailed correspondence, which were exchanged between IRP/Liquidator and the Appellant. Furthermore, no process regarding auction of the assets of the Corporate Debtor has yet been initiated. Hence, in the facts of the present case and to meet the ends of justice, the Liquidator is directed to consider the claim of the Appellant herein.

15. In view of the foregoing discussions, this Appeal is allowed. The order of Adjudicating Authority dated 21.02.2022 as well as communication of the Liquidator dated 07.01.2022 are set aside. The Liquidator is directed to consider the claim of the Appellant on the basis of material submitted before it and thereafter to proceed with the liquidation process. The Appeal is allowed to the above extent. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

20th September, 2022

Ashwani