

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT III**

**CA -11/2020  
(IB)-310(ND)2019**

***In The Matter Of***  
Suman Chadha

. ....Appellant

versus

Kamal Aggarwal, Liquidator & Anr

....Respondent

**Order pronounced on: 27.05.2022**

***Coram:***

Sh. Bachu Venkat Balaram Das : Member (Judicial)

Sh. Virendra Kumar Gupta : Member (Technical)

***Appearances (via videoconferencing):***

For Appellant

: Mr. Neeraj yadav, Advocate  
Ms. Aditi Sharma, Advocate  
Mr. Siddharth Arora, Advocate

For Liquidator

: Mr. Kamal Agarwal, In person

**ORDER**

**Per : *Virendra Kumar Gupta, Member (Technical)***

**CA NO.11/2020**

1. This application has been filed under Sec 42 , IBC, 2016 against the decision of the Liquidator vide its email dated 22.11.2020, whereby the claim of the appellant was rejected by the Liquidator.
2. The facts, in brief, are that the application of the operational Creditor i.e appellant in the present matter was admitted and CIRP was initiated against the corporate debtor vide order of this Adjudicating Authority dated 14.06.2019 and Mr. Shyam Araora was appointed as IRP. The said order was appealed by the corporate debtor before Hon'ble NCLAT and the same was dismissed. The corporate debtor further approached the Hon'ble Supreme Court against the order of Hon'ble NCLAT which was also dismissed on 16.12.2019.

3. Mr. Shyam Arora, the IRP was later replaced by Mr. Kamal Agarwal as RP, subsequently order for initiation of liquidation U/s 33 of IBC, 2016 was passed on 21.09.2020 and the RP was appointed as the liquidator.
4. It is submitted by the appellant that the claim <sup>by</sup> filed <sup>for</sup> the appellant was initially accepted by the *erstwhile* IRP. However, when the respondent was appointed as RP (now "*the liquidator*"), he called upon the Appellant to submit the invoices in respect of the total amount of debt claimed. The appellant replied to the RP by email dated 02.01.2020, stating that no invoice was ever demanded by the Corporate Debtor and that the debt is an admitted debt, which has been accepted by this Adjudicating Authority on the basis of the same documents an order of admission of initiation of CIRP was passed . It is further submitted that the said order was affirmed by the Hon'ble NCLAT as well as the Hon'ble Supreme Court. However, the RP, in spite of this has rejected the claim of the appellant for the reason that the claim was not supported by the invoices.
5. It is further submitted that the Appellant had challenged the rejection of the claim by the RP before this Adjudicating Authority but during the pendency of the application, the liquidation was ordered by this Adjudicating Authority vide order dated 21.09.2022 and the respondent was appointed as the liquidator.
6. It is further submitted that the Appellant / Operational Creditor has again filed the claim with the Liquidator in terms of Form C of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 29.10.2020 but the same was rejected by the liquidator vide email dated 22.11.2020 on the very same ground that the appellant has failed to provide the invoices for the admitted debt and is not Operational Creditor in terms of the provisions of the IBC, 2016. The liquidator also stated that the other documents furnished by the Appellant did not establish the existence of a debt.
7. The Learned Counsel for the appellant further claimed that the claim of the Appellant is based on the Demand as raised in the demand notice sent by the Operational Creditor under Section 8, IBC, 2016 in Form 3 to the corporate

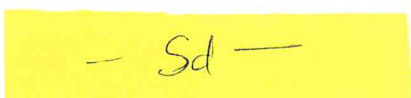
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debtor before filing of application under Section 9 IBC, 2016. It is further submitted that a claim can be substantiated even on the basis of documents other than invoice.

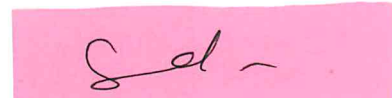
8. On the other side, the Liquidator vehemently submitted that as no invoices were submitted by the applicant to proof its claim as an operational creditor, thus, the stand taken by the applicant in the capacity of being an RP was right and justified.
9. We have considered the submissions made by both the sides and material on record.
10. In this case, it is noted that the application U/s 9 of IBC, 2016 was filed by the operational creditor on the basis of agreement/ documents which were hand written. The application U/s 9 of IBC, 2016 was admitted as the corporate debtor was found liable to pay the outstanding debt. An application against the order of admission of the corporate debtor into CIRP passed by this Adjudicating Authority was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT also upheld the order passed by this Adjudicating Authority. This order of Hon'ble NCLAT was also challenged before the Hon'ble Supreme Court, however, the Hon'ble Supreme Court also confirmed the order of Hon'ble NCLAT. Thus, when the CIRP commenced, IRP had admitted the claim filed by the operational creditor in the course of CIRP, however, subsequent to change of IRP by the present RP, this claim was rejected by the current RP on the ground that no invoices were provided and other documents so provided could not substantiate the claim made by the operational creditor.
11. During the course of hearing, the Ld. Counsel appearing on behalf of Liquidator as well as the Liquidator in person, continued to harp upon the fact that there were no invoices, hence, the claim of the operational creditor was rightly rejected. At this stage, their attention was also invited to the provisions of Regulation 17(2)(iii) of Liquidation Process Regulations, 2016, which state that the existence of debt due to an operational creditor, may be proved on the basis

of an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any and the order of admission passed by this Adjudicating Authority, being a Tribunal falls into this category. Even then, the Liquidator continued to state that the stand taken by the him was justified.

12. Thus, in this case, there is an adamant approach of RP who has not even bothered to take note of the fact that he is functioning as Liquidator in the present case only because of the such outstanding liability being found to be payable by the corporate debtor by an order of Adjudicating Authority, being NCLT. We further note that the Liquidator is handling many more assignments as IRP, RP as well as the liquidator, which is evident from the IBBI website, hence, such unethical/ unprofessional conduct of the RP cannot be accepted at any cost.
13. Accordingly, we direct him to accept the claim of the operational creditor. We further direct the Registry to refer this matter to IBBI for proper investigation into the conduct of RP namely Kamal Agarwal IBBI/IPA-001/IP-P00868/2017-2018/11466 in accordance with the provisions of law.
14. Thus, this application stands allowed and disposed of in terms indicated above.
15. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.



**Bachu Venkat Balaram Das**  
Member (Judicial)



**Virendra Kumar Gupta**  
Member (Technical)

The order is pronounced Under Rule 151 of National Company Law Tribunal Rules, 2016.



**Madhu Narula**  
(Court Officer)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT III**

**CA -12/2022  
(IB)-310(ND)2019**

***In The Matter Of***  
M.L. Gupta & Ors..

. ....Appellants

versus

Kamal Aggarwal, Liquidator & Anr

....Respondent

**Order pronounced on: 27.05.2022**

***Coram:***

Sh. Bachu Venkat Balaram Das : Member (Judicial)

Sh. Virendra Kumar Gupta : Member (Technical)

***Appearances (via videoconferencing):***

|                |   |                                                                                            |
|----------------|---|--------------------------------------------------------------------------------------------|
| For Appellant  | : | Mr. Sameer Vasisth, Advocate<br>Ms. Sanjana Nangia, Advocate<br>Mr. Manashwy Jha, Advocate |
| For Liquidator | : | Mr. Kamal Agarwal, In person                                                               |

**ORDER**

**Per : Virendra Kumar Gupta, Member (Technical)**

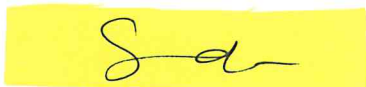
1. This application has been filed under Sec 42 IBC, 2016 against the decision of the Liquidator vide its email dated 04.01.2021, whereby the claim of the appellant was rejected by the Liquidator as a whole.
2. The brief facts are that the CIRP was initiated vide order of the Adjudicating Authority dated 14.06.2019, subsequently , order for initiation of liquidation U/s 33 of IBC, 2016 was passed on 21.09.2020. The appellant submitted its claim before the Liquidator on 29.10.2020 which was resubmitted on 01.12.2020 after removing the defects as pointed out by the Liquidator. The Liquidator rejected the claim in *toto* vide its email dated 04.01.2021 for the reasons that the appellant was not a financial creditor and the amount of claim was not a financial debt.
3. The Liquidator was further of the opinion that the claim was not substantiated within the parameters as laid down in Regulation 18 of Liquidation Process
4. Regulations, 2016. In this background, it is submitted by and on behalf of appellant that certain properties were given on rent to one M/s AGS Retail Pvt.

Ltd. vide lease deed dated 25.08.2009 at a monthly rent of Rs.17,14,500/-. The lease rent was not paid which resulted into civil proceedings between the parties. A decree was passed by the competent Civil Court on 30.05.2017, whereby the appellants were entitled for possession as well as payment of outstanding lease rent w.e.f 2011 along with interest at 18% per annum. The execution proceedings were filed on 19.01.2019 and Execution Court issued warrants of possession in respect of subject property. It is claimed that the execution of the said warrant was resisted by the erstwhile Director of the corporate debtor. However, subsequently the objections were withdrawn by the corporate debtor on 03.05.2019. In this background, it is claimed that to avail the benefit of moratorium, the corporate debtor got an order of admission of itself into CIRP in collusion with one of the operational creditors.

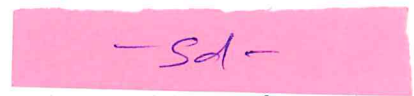
5. It is also claimed that one application i.e. IA No.3587/2020 had been filed on 02.08.2020 for claiming possession of the said properties from the Liquidator, which was not accepted by the Liquidator. It is also claimed that the corporate debtor is continuing illegal possession of the property without paying any occupation charges. It was claimed that on the basis of said judgment and decree dated 03.05.2017, the appellants filed a claim for recovery of lease rent i.e (occupation charges).
6. On the other side, the Liquidator has submitted that the said decree is not passed against the corporate debtor as the corporate debtor was never a party to the petition. It is further claimed that warrant of possession dated 19.01.2019 did not confer upon the appellants of being a financial creditor. It is also brought to our notice that appellants never filed any claim at CIRP stage despite being fully aware of the fact of commencement of CIRP in the case of corporate debtor.
7. It is also pointed out that the appellants had filed an application U/s 60(5) of IBC, 2016 vide CA No.605 of 2019 dated 14.08.2019 praying for denial of protection to the corporate debtor U/s 14 of IBC, 2016 in respect of said property. Another IA No.3587 of 2020 was filed. Both these applications were however rejected by this Adjudicating Authority vide order dated 08.03.2021. It is claimed that only thereafter the appellants lodged a claim with the Liquidator on the basis of the said order and decree as financial creditor. Thus, there was an unexplained

delay irrespective of the fact, whether they could be considered as financial creditor or not. In this regard, it is further claimed that the appellants have filed their claim against the corporate debtor with malafide and despite being fully aware that no claim of whatsoever nature was maintainable against the corporate debtor.

8. We have considered the submissions made by both the sides and material on record.
9. It is noted that the corporate debtor is not a party to the Court proceedings nor any decree has been passed against the corporate debtor. Further, there is no lease agreement between the appellant and the corporate debtor. Even otherwise there is no merit in the claim of the appellant that they were financial creditors as it has not been done at the behest of the Liquidator as claimed by the appellants because the Liquidator only pointed out to them that the claim should be made in the appropriate form.
10. Further, no plausible reason has been given for delay which remain unexplained.
11. Thus, considering above facts, this application is dismissed as such.
12. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.



**Bachu Venkāt Balaram Das**  
Member (Judicial)



**Virendra Kumar Gupta**  
Member (Technical)

The order is pronounced Under Rule 151 of National Company Law Tribunal Rules,  
2016



**Madhu Narula**  
(Court Officer)