

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- V)
APPEAL (IBC)-19/2022
IN
COMPANY PETITION No. (IB)-441/PB/2018

APPEAL UNDER SECTION 42 OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016

IN THE MATTER OF:

REGIONAL PROVIDENT FUND COMMISSIONER-II, JAIPUR

Employees Provident Fund Organisation,
Regional Office, Nidhi Bhawan,
Jyoti Nagar, Jaipur-05

... Appellant

Versus

M/S. ADVANCE NAVOTPAD SURFACTANTS LTD.

511/2/1, Village Rajkori
Delhi, New Delhi- 110038
Email-cs@advancegroup.biz

...Respondent No. 1

MR. SETHURATHNAM RAVI,

Liquidator of M/s. Advance Navotpad Surfactants Ltd.
50S-A, Fifth Floor, Rectangle I
District Centre, Saket
New Delhi-110017
Email-casravLip@gmail.com

...Respondent No. 2

Order Pronounced on: 22.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Appeal (IBC)-19/2022

IN

C.P. No. (IB)-441/PB/2018

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PRESENT

For the Applicant : Mr. Rony John, Mr. Piyush Swami,
Mr. Amay Bahri, Adv.

For the Respondent :
For the Liquidator : Mr. Sarwar Raza, Mohd. Waseem Akram,
Mr. Shreya Kumar, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present appeal has been filed by the Regional Office, Employees Provident Fund Organization, Jaipur (hereinafter referred to as "Appellant") under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/Code") against the Impugned Rejection Letter dated 17.02.2021 issued by the Mr. Sethurathnam Ravi ("Liquidator/Respondent No. 2") for seeking the following prayers.
 - a) Allow the present Appeal and set aside the Impugned Letter dated 17.02.2021 issued by Respondent-2/Liquidator of Corporate Debtor whereby the claim of the Appellant has been rejected by him; and
 - b) Direct the Liquidator/Respondent-2 to set aside the amount to the extent of the Appellant's claim apart out from the Liquidation Estate of the Corporate Debtor and release it in favour of the Appellant in primacy over all other dues;
 - c) Pass any order which this Adjudicating Authority may deem fit and proper in the interest of justice
2. Briefly stated, the facts of this case leading to filing of this present appeal, averred by the Appellant are as follows:-
 - I. Appellant submitted that this Adjudicating Authority on 09.08.2019, passed an order in C.A. 1177 (PB)/2019 in Company Petition No. (IB)-441 (PB)/2018 ordering liquidation of M/s. Advance Navotpad Surfactants Ltd.

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- (hereinafter referred to as "Corporate Debtor") under Section 33 (2) of IBC and appointed the Respondent No. 2 herein as the Liquidator in terms of Section 34 (1) of the Code.
- II. Appellant further submitted that the Appellant had filed its claim on 26.11.2019 with the Liquidator in Form B (for Operational Creditor) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") for its dues to the extent of Rs. 35,864/- (Rupees Thirty-Five Thousand Eight Hundred and Sixty- Four only) against the Corporate Debtor pursuant to its failure to pay the contributions and charges under the EPF & MP Act for the period between 01.03.2015 to 24.10.2019.
 - III. Appellant further submitted that the Appellant was also pointed out to the Liquidator that PF dues against any Corporate Debtor have priority over all other dues under the scheme of the IBC and, therefore it is bound to admit the same and include the Appellant's claim in the list of stakeholders filed before the Adjudicating Authority. However the Liquidator has failed to admit the Appellant's claim and has rejected the same by the Impugned Rejection Letter dated 17.02.2021 stating that the claim of the Appellant is belated and the same cannot be admitted.
 - IV. Appellant submitted that the Appellant through email dated 21.01.2020 submitted over again claim with the Liquidator in Form C of the CIRP Regulations 2016 for its dues to the extent of Rs.35,864/-. In response to Appellant's claim dated 21.01.2020, the Liquidator on 30.01.2020 once again rejected it with the same reason that the Appellant has filed claim at the belated stage in incorrect form.
 - V. Appellant submitted that on 19.03.2020 a Show Cause Notice was issued by the Appellant herein on the Liquidator to appear before it in relation to the pending PF dues of the Corporate Debtor however, neither the representatives of the Liquidator nor the Corporate Debtor appeared.

VI. Appellant submitted that the Appellant once again sent a letter on 04.02.2021 to the Liquidator stating that the claims of the Appellant that arise under the EPF & MP Act are to be given priority over other claims and required to be admitted and requested the Liquidator to arrange the claim to be submitted before the Adjudicating Authority duly under the provisions of the IBC. In response to the Appellant's letter dated 04.02.2021, the Liquidator issued another letter (hereinafter referred to as "Impugned Rejection Letter") rejecting the claim and admitted that the only way the Appellant can be included in the list of stakeholders is by way of directions of the Adjudicating Authority as per Regulation 31 of the Liquidation Regulations allowing modification of the list of stakeholders. Hence the present appeal filed.

3. Consequent to the notice issued by this Adjudicating Authority, the Respondent through its counsel filed its reply and submitted that the Corporate Insolvency Resolution Process ("CIRP") was initiated against the Corporate Debtor by this Tribunal vide order dated 27.09.2018 and subsequently, liquidation was ordered by Adjudicating Authority vide order dated 09.08.2019 and the Respondent No. 2 herein appointed as the Liquidator. Pursuant to that the Liquidator caused paper publication dated 14.08.2019, sent an email to the appellant on 14.08.2019 and the last date for submission of the claim was fixed on 12.09.2019.
4. Respondent submitted that the liquidator did not accept the claim of the appellant as the claim was filed beyond the limitation which was duly communicated by the liquidator vide communication dated 09.12.2019 and suggested the appellant to take appropriate legal recourse before this Adjudicating Authority. Respondent further submitted that the Section 42 of the IBC provides for a provision of appeal against the decision of the liquidator within 14 days of the date of the decision, which in the instant case expired on 24.12.2019, and the appellant has filed the instant appeal on 19.04.2022 after around 847 days. It is further submitted that if

such extraordinary delay is condoned, it shall defeat the very purpose of the IBC, 2016.

5. Respondent submitted that the instant appeal is a gross misrepresentation of facts and the rejecting letter communication on 09.12.2019 which the appellant has put on record is incomplete and the appellant has failed to put the entire communication on record for the reasons best known to them.
6. Respondent submitted that the liquidator had informed the appellant about the initiation of the liquidation proceedings vide email dated 14.08.2019 and yet the appellant did not quantify their claim but is using a dilatory tactic now when the amount recovered from the proceedings have already been distributed in accordance with the law.
7. Further the Respondent submitted that once the liquidator has decided a claim, it is not in his power to review that decision, the only available remedy with the claimant to approach the Adjudicating Authority which the appellant had failed to do. The liquidator had submitted the list of the stakeholders in accordance with regulation 31 of the IBBI (Liquidation process rules) 2016, before this Adjudicating Authority in the preliminary report submitted on 24.10.2019 and could not have amended the same without express directions from this Adjudicating Authority.

Analysis and Findings

8. We have heard Ld. Counsels for the Appellant as well as the Ld. Counsel for the Respondent and perused the averments made in the application, Reply and rejoinder. The relevant documents annexed with the submissions have also been examined. Instant Appeal is filed under section 42 of the IBC against the rejection of the claim made by the Appellant towards the amount due from M/s. Advance Navotpad Surfactants Ltd. towards the Appellant.

9. It is pertinent to note that the appellant did not file the claim to the Liquidator prior to the date 12.09.2019 which was the last date for submission of the claim fixed by the Liquidator to receive the claim from the Creditors of the Corporate Debtor. The claim was subsequently filed on 26.11.2019, stating that the amount due to the EPFO should be given priority over other claims and the Appellant to support its contention placed the reliance on various judgements of *ICICI Bank Limited v. Varun Corporation Limited*, 2019 SCC OnLine NCLT 9084, *Jindal Steel & Power Limited v. Gujarat NRE Coke Limited*, 2019 SCC OnLine NCLT 12512, 2019 SCC OnLine NCLT 9084, *Jindal Steel & Power Limited v. Gujarat NRE Coke Limited*, 2018 SCC OnLine NCLT 23621 and *SMS India Pvt. Ltd. v. Kamineni Steel & Power India Private Limited*, 2019 SCC-OnLine NCLT 12512, *Regional Provident Fund Commissioner -I, Ahmedabad vs Ramchandra D. Choudhary, Company Appeal (AT) (Insolvency) No. 354 of 2019 Order dated 19.12.2019*, wherein it has stated that a creditor may come in and prove his debt at any time before the final distribution of the assets, but he cannot disturb any dividend which has already been paid. However, we observed that the fact of the above-said judgements and the fact of the present Appeal are significantly different. In the above-said judgements the Applicant was not sleeping over its rights, but was continuously following up with the Liquidator for the perusal of its claims. On the other side the Appellant herein admittedly filed its claim at a belated stage without sufficient reasons or explanations from the appellant for the delay. Admittedly, there is a delay of 75 days in the submission of the claim. Furthermore, the appellant has not provided any cogent reason or explanation for seeking condonation of such delay in the submission of the claim to the liquidator.
10. Furthermore, Section 42 of the IBC provides for a provision of appeal against the decision of the liquidator within 14 days of the date of the decision as the section 42 of the IBC referred as below;

“42. Appeal against the decision of liquidator-

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A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.”

- 11.** Admittedly the liquidator rejected the claim of appellant on 09.12.2019 with a suggestion that the appellant to take appropriate legal recourse before this Adjudicating Authority as once the liquidator has decided a claim, it is not in his power to review that decision except through the Adjudicating Authority. It is pertinent to note that appellant has ignored the liquidator suggestion of Liquidator which in the instant case expired on 24.12.2019, and the appellant has filed the instant appeal on 19.04.2022 after around 847 days. The Appellant through the instant Appeal given the defence against the limitation provision given under section 42 of the IBC that the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 03 of 2020* has extended the limitation period, whether condonable or not w.e.f. 15.03.2020 till further orders. However, we observed that the 14 days limit for filing the appeal ended on 24.12.2019, considering the appellant was informed of the non-acceptance of the claim via a letter dated 09.12.2019. Thus, the instant appeal is not covered by the Hon'ble Supreme Court order for the exclusion of the limitation period, which directs the exclusion of the period from 15.03.2020 to 28.02.2022 as the limitation of 14 days given under Section 42 of the IBC expired much before the issuance of above-said *Suo Moto* notification by the Hon'ble Supreme Court. The benefit of this order of the Hon'ble Supreme Court is available where the appeal could be filed after 15.03.2020. Therefore, the benefit of this order is not applicable in the present Appeal as the Appellant filed the instant appeal on 19.04.2022, approximately 847 days later and has not provided any cogent reason or explanation for seeking condonation of such a significant delay in filing the instant appeal before this Adjudicating Authority.

- 12.** The Insolvency and Bankruptcy Code, 2016 is a procedural Code and the process stipulated therein needs to be followed in letter and spirit. It is a settled law that

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once the assets of the Corporate Debtor have been liquidated as per the Provisions of the IBC, 2016, the Adjudicating Authority can't go back to look into the *sine non qua* involved in the Liquidation of the Corporate Debtor

13. Further, we do not see any reason to condone the delay of 847 days in filing the Appeal. In this regard, the Hon'ble National Company Appellate Tribunal, in the case of *Deputy Commissioner Commercial Taxes (Audit) Raichur vs Surana Industries Ltd., Company Appeal (AT) (Insolvency) No. 1525 of 2019* has held as under, emphasizing the liquidation process being a time bound process and hence, the condonation of delay cannot be granted without any valid reason:-

1. *"In terms of impugned order, the Appellate Authority (National Company Law Tribunal) Division Bench I Chennai declined to entertain the appeal preferred against rejection of claim of Appellant by the Liquidator on the ground that no specific application seeking condonation of delay was filed beyond the prescribed period of 14 days. Learned counsel for the Appellant submits that there was a confusion about communication of the impugned order and that manifested in filing of appeal after delay of 7 days beyond the prescribed period. However, that cannot be a ground for seeking condonation as the liquidation process is a time bound process and the Liquidator has to conclude his proceedings within one year as prescribed under Insolvency and Bankruptcy Code, 2016.*

2. *In absence of sufficient cause and cogent reason, we are unable to persuade ourselves to interfere with the impugned order. The appeal is accordingly dismissed."*

14. In view of the above fact and circumstances of the case and judicial pronouncements as discussed above, we are of the considered opinion that the instant appeal filed by the Appellant is not maintainable on as it has not been filed

within prescribed time limit of the relevant provision of law and hence, is time barred.

15. Taking into consideration the facts and circumstances of the present case, the instant appeal is hereby dismissed and disposed of accordingly.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)