

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.107/2023 IN CP (IB) No.128/ALD/2019

Application under Section 42 r/w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

M/s Jaikali Brick Field,
Having its registered office at,
Badhapur, Kanpur Dehat, Uttar Pradesh

.....Appellant

VERSUS

The Liquidator,
K.K. Milk Fresh India Limited (in liquidation)
Having his office at,
409, Ansal Bhawan, 16 K.G. Marg, Connought Place
New Delhi-110001

.....Respondent

AND IN THE MATTER OF:

Smt. Anuradha Devi

.....Applicant/ Operational Creditor

Versus

K K Milk Fresh India Limited

..... Corporate Debtor

Order pronounced on: 14th May, 2024

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Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Yatharth Nath Pathak with : *For Applicant*
Sh. Saumitra Dwivedi, Adv.

Sh. Karan Kohli with : *For Respondent/ Liquidator*
Sh. Abhishek Anand, Adv. *Mr. Chanchal Dua present*
in person

ORDER

1. This application has been filed by the Applicant/ Appellant *inter alia* seeking relief that the necessary orders may be issued to the Liquidator to consider the claim of the Appellant filed on 06.01.2023.
2. It has been averred in the application that the Applicant is an Operational Creditor in respect of the account of the Corporate Debtor and has supplied bricks for construction for an amount of Rs.2.30 Crore, which together with interest of Rs.1.80 Crore aggregates to Rs.4.10 Crore. It is also stated by the Applicant/ Appellant that it has received a partial payment towards his dues except for Rs.30.53 Lakh in addition to the interest of Rs.18 Lakh,

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which aggregates to Rs.48.53 Lakh, which was liable to be paid by the Corporate Debtor. It has been stated that *vide* an order dated 06.10.2021, the Liquidator was appointed and the Applicant/ Appellant on 06.01.2023 has filed its claim in terms of their email communication of the said date. However, the Liquidator has rejected the claim of the Applicant in terms of an email communication dated 12.01.2023.

3. Along with the present application, a delay condonation application has also been filed for an alleged delay of about 42 days in filing the present application, as the same has been filed after 14 days stipulated under the Code. A response has been filed to the aforesaid application by the Liquidator primarily objecting to the maintainability of the application on the ground of being barred by limitation for having not submitted the claim in time, as also for not having filed the present appeal as stipulated under the Code.

4. It has been averred in the application as well as submitted by the Ld. Counsel representing the Liquidator that the CIRP was initiated *vide* an order dated 24.09.2019 passed by this Adjudicating Authority. In pursuance thereof, the public announcements were issued on 01.10.2019 for inviting claims from all concerns. The last date for submissions of the claims was 12.10.2019. It is categorically submitted by the Ld. Counsel representing the Liquidator that in pursuance of the said publications, no claims had been filed by the present Applicant/Appellant, even though the last date for submission of the said claims was 12.10.2019.
5. Later on, the company went into liquidation in terms of an order dated 06.10.2021, and further publications were made on 11.10.2021, under which the last date for submission of the claims was stipulated as 05.11.2021. It is again categorically submitted that though in pursuance of this publication though the claims were lodged by the present Applicant/ Appellant, however belatedly on 06.01.2023. Since the said claims were belatedly filed

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after the closure of the last date for submission of the claim in pursuance of the publication made on 11.10.2021, wherein the last date was stipulated as 05.11.2021, it is submitted by the Ld. Counsel representing the Liquidator that the claim was rejected on 12.01.2023.

6. It has been further submitted on behalf of the Liquidator that the present application has been filed on 15.02.2023, which is again barred by Section 42, as a period of only 14 days is provided for the purpose of filing an appeal against any rejection made by the Liquidator with respect to the claim lodged by the Applicant.
7. We have heard both the parties and perused the record.
8. It is an admitted case of the Applicant/ Appellant that no claims had been filed, when initially the publication was made on 01.01.2019 in pursuance of the admission order dated 24.09.2019. The Applicant/ Appellant therefore, did not file the claim, which was invited by the Resolution

Professional providing the last date for submission of the claims in the publications itself.

9. We see that no reasons, much less any cogent and justifiable reasons have been coming forward to clarify us to why the claims have not been filed when they were originally sought to be filed in terms of the aforesaid publication 01.10.2019, for which the last date was provided as 12.10.2019.

10. Not only this, we further find that even when the liquidation order was passed on 06.10.2021, as already referred to in our foregoing paras of this order, the publication was made on 11.10.2021 prescribing the last date on 05.11.2021. Even this schedule has not been adhered and the claims were only filed on 06.01.2023, which had been rejected on 12.01.2023. Again, there is no justification coming forward as to when the last date was already prescribed as 05.11.2021 in terms of the publication dated 11.10.2021, what prevented the Applicant/ Appellant from filing the claim within the

stipulated period. The claims had been belatedly filed only on 06.01.2023.

11. It is also noticing and reiterating that the claim had been rejected on 12.01.2023 and the present application has been filed only on 15.02.2023, which is again beyond the stipulated period of 14 days as prescribed U/s 42 of the Code.

12. We have also perused the application for seeking condonation of delay of 42 days in filing the present application, which is accompanying the main application i.e. IA No.107/2023. We find that no cogent reasons have been furnished in the application seeking said condonation of delay in filing the present appeal beyond 14 days stipulated under the Code, except saying that there is a delay occurred in filing the present application, and that filing of this application is not intentional and therefore the delay should be condoned.

13. The application for seeking condonation of delay is also devoid of merit for want of any due justification in not

filing the present appeal within the stipulated period of 14 days as prescribed under Section 42 of the Code.

- 14.** In this context, we also seek to refer to Section 42 of the Code, which stipulates as under :-

42. Appeal against the decision of liquidator-

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.

- 15.** Therefore, in view of the fact that continued inaction on the part of the Applicant, in firstly not filing the claim at all in response to the notice issued by the RP, and then belatedly filing the claim even after the issuance of the notice by the Liquidator that too after the closure of the last date for submission of the claim, we do not see any reasons to entertain the present application, which is therefore hereby dismissed. Thus, in our view, the Liquidator has rightly rejected the claim belatedly filed by

the applicant and meanwhile, the entire liquidation proceedings have already been concluded.

16. Accordingly, the IA No.107/2023 stands disposed off.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Dated :14th May, 2024

*Typed by :
Kavya Prakash Srivastava
(Stenographer)*