

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

IA No.147/ALD/2023 IN CP (IB) No.376/ALD/2019

IN THE MATTER OF:

An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

Commercial Taxes Department,
Government of Rajasthan
Through Assistant Commissioner,
Circle-B, Bhiwadi, Room No. 204,
Kar Bhawan, UIT Sector-6,
Near Agarwal Dharamshala,
Bhiwadi, Distt. Alwar, Rajasthan
Email: ac-bhiwadi-b@rajastha.gov.in

.....**Applicant Department**

VERSUS

Deepak Kumar Garg
Liquidator of M/s Arm Winsys Tech Pvt. Ltd.
411, 4th Floor, Essel House,
Asaf Ali Road, Delhi- 110002

..... **Respondent**

AND IN THE MATTER OF:

RIDHI SIDHI GLASSES (INDIA) PRIVATE LIMITED

.....**Petitioner/Financial Creditor**

VERSUS

ARM WINSYS TECH PRIVATE LIMITED

.....**Respondent/Corporate Debtor**

Order pronounced on: 02nd MAY, 2024

Coram:

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

Appearances:

Sh. Vidhan Vyas with : *For the Applicant in IA No.147/2024*
Sh. Syed Haider Shah, Advs.:

Sh. Abhishek Anand with : *For the Respondent in IA No.147/2023*
Sh. Karan Kohli, Advs.

ORDER

1. This application, bearing I.A. No. 147/2023 in CP(IB) 376/ALD/2019, has been filed on 10.04.2023 to challenge the order dated 29.06.2022 passed by the Respondent/Liquidator, rejecting the claim of the Commercial Tax Department on the ground that it was filed belatedly, i.e., after the last date for the receipt of claims. Furthermore, the application seeks to condone the delay of 342 days in filing the claim and directs the Respondent to admit the claim of the Applicant department in this regard.
2. Briefly stated facts of the case are that an application under Section 9 of the IBC, 2016 was filed by the Operational Creditor viz. Ridhi Sidhi Glasses (India) Pvt. Ltd. against the Corporate Debtor viz. ARM Winsys Tech Private limited,

which was duly admitted by this Tribunal starting the Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) of the Corporate Debtor and the Respondent herein Mr. Deepak Kumar Garg was appointed as the Interim Resolution Professional (IRP) vide order dated 28.1.2021, and was thereafter appointed as the Resolution Professional (RP) in the CIRP of the Corporate Debtor by the Committee of Creditors (COC) on 4.3.2021. Later, the COC approved the initiation of liquidation process and appointed the Respondent herein Mr. Deepak Kumar Garg as Liquidator on 14.6.2021 authorizing him to file an application for liquidation under Section 33(1) of the Code. This Tribunal vide order dated 16.3.2022 commenced the liquidation proceedings with respect to the Corporate Debtor.

- 3.** A public announcement was published on 24.3.2022 in the *Financial Express (English)* and *Jansatta (Hindi)* inviting stakeholders to submit their claims with the Respondent on or before the specified last date of 15.4.2022. After receiving the claims and their verification, the Respondent has admitted claim of Financial Creditor of the Corporate Debtor.

- 4.** The Applicant submitted that the Commercial Tax Department of State of Rajasthan passed assessment orders under the Rajasthan Value Added Tax Act , 2003 (RVAT) based upon the returns filed by the Corporate Debtor for various financial years and as on 23.3.2023, the Applicant has an outstanding claim of Rs. 9,35,26,413/- which arises out of various financial years from 2013 to 2018.
- 5.** The Applicant has stated that the claim was submitted to the Respondent via its letter dated 15.6.2022. However, the Applicant received an order in response, thereby dismissing the Applicant's claim on the grounds of delay. The reason for the said delay has been stated by the Applicant due to circumstances beyond control of the Applicant due to the ongoing Covid-19 pandemic in that period.
- 6.** The Applicant further submitted that the applicant department was unaware of the insolvency and liquidation proceedings and was therefore unable to contact the Liquidator. Additionally, the advertisement regarding the submission of the claim published by the Respondent was not made within the jurisdiction of the Applicant department.

7. The Applicant in support of its claim cited the case of **State Bank of India v. ARGL Ltd.** where while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the corporate debtor and the RP/IRP would be required to take cognizance of the dues as per the books of accounts. Thus, the application for condonation of delay was allowed.
8. The Applicant submitted that Section 47 of the RVAT is based on the Doctrine of Priority of crown debts according to which the crown has the preferential right for recovery of its debt/taxes and therefore the claim of the Applicant is revenue and thus, the priority should be given to State debts.
9. The Respondent/Liquidator has filed reply vide dairy no. 2963 of 2023 dated 10.11.2023 in support of his order dated 29.06.2022 rejecting the claim of the Applicant and denied all the allegations raised in the application at the outset.

- 10.** The Respondent submitted that, as per Regulation 30 of the Liquidation Regulations, the Liquidator is to verify claims submitted within 30 days from the last date of receipt of the claims and to either admit or reject the claim wholly or partly. The last date prescribed in this case was 15.4.2022. While the Respondent received and verified claims of Financial Creditors and Operational Creditors, including Statutory authorities, he did not, however, receive any claim from the Applicant within the prescribed time nor during the CIRP of the Corporate Debtor. Moreover, the decision of rejection is allowed to be challenged only in terms of Section 42 of the Code within 14 days, which expired on 13.7.2022. The instant application under Section 60(5) of the Code was filed on 17.4.2023 with the delay of almost nine months.
- 11.** Further the claim for an amount of Rs. 9,35,26,413/- raised by the Applicant was rejected on the ground that the said claim has been filed under IBBI (CIRP) Regulations when the Corporate Debtor was under liquidation by virtue of order dated 16.3.2022 passed by this Tribunal.

12. The Respondent submitted that pursuant to the initiation of the liquidation proceedings of the Corporate Debtor, the amount from the sale proceeds received from the auction of the asset was distributed by the Respondent as per Section 53 of the Code on 14.7.2022 and are as under:

S. No	Stakeholders under Sec 53(1)	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amount distributed (in Rs.)	Amount distributed to the amount claimed (%)
1.	CIRP cost	5,86,380	5,86,380	5,86,380	100%
2.	Liquidation Cost	26,13,620	26,13,620	26,13,620	100%
3.	Bank of Maharashtra	1,49,24,097.32	1,41,18,867	1,38,00,000	92.46%
	Total	1,81,24,097.32	1,73,18,867	1,70,00,000	

13. The Respondent submitted that it has no discretion for relaxation with respect to delayed submission of claim as the whole process is timebound and no valid explanation has been given for the said delayed claim by the Applicant. The Respondent has cited the cases of **Dy. Commissioner Commercial Taxes (Audit) Raichur v. Surana Industries Ltd., Company Appeal (AT) (Insolvency) No. 1525 of 2019** and **Employees State Insurance Corporation v. S. Muthuraju in IA (IBC)/1148/CHE/2021 in**

CP/611/IB/2017 in support of the abovementioned contention that the liquidation is a time bound process.

- 14.** It is further contended by the Respondent that the instant application has been filed under Section 60(5) of the Code in order to bypass the provision of limitation under the Code and regulations made thereunder when the said provision creates a residual jurisdiction for the Adjudicating Authority to adjudicate such questions of facts or law as they may arise during CIRP. The Respondent has relied upon the case of **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019** in this regard.
- 15.** The Applicant has filed a short synopsis pursuant to the order dated 12.01.2024 of this bench and has reiterated that they filed their claim of Rs. 9,35,26,413/- multiple times but no response was received in this regard except a communication dated 29.06.2022 wherein the Respondent rejected their claim on ground of delay in filing the claim and has not provided the Applicant a fair opportunity to be heard and present evidence.

16. The Respondent has filed a written submission in pursuance to the order dated 12.01.2024 wherein it is reiterated that the claim filed by the Applicant was rejected on the ground of delay vide letter dated 29.06.2022 and the aggrieved Applicant could have filed Appeal under Section 42 of the Code against this rejection within a period of 14 days i.e. on or before 13.07.2022. However, the instant IA has been filed on 10.04.2023 with a delay of almost nine months. The Respondent has relied upon the order of Hon'ble NCLAT, New Delhi in the matter of **The Dy. Commissioner Commercial Taxes (Audit) Raichur v. Surana Industries Ltd. (In Liquidation) & Anr.** where the bench declined to entertain the appeal preferred against rejection of claim of Appellant by Liquidator on the ground that no specific application seeking condonation of delay was filed beyond the prescribed period of 14 days. The rest of the contentions discussed in the written submission are same as it was raised in the reply and has already been discussed in this order, hence need not be discussed again for the sake of brevity.
17. We have perused the material on record and heard the submissions made by the Ld. Counsels of both the parties.

- 18.** The Applicant asserts that the assessing authority issued assessment orders against the Corporate Debtor, Arm Winsys Tech Pvt. Ltd., for tax payment under the Rajasthan Value Added Tax Act 2003 (RVAT), resulting in demands for various financial years. This Tribunal ordered the commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on 28.1.2021. Pursuant to commencement of the CIRP, the Respondent published public announcement in Form A on 04.02.2021 in two newspapers inviting claims from Creditors of the Corporate Debtor with the last date for submission of claims being 18.02.2021. However, the Applicant did not submit any claim till the last date of the closure of the submission of the claims.
- 19.** Thereafter, the COC on 14.06.2021 approved the initiation of liquidation process and appointed the Respondent as Liquidator authorizing him to file an application for initiating the Liquidation process of the Corporate Debtor and the same was done by him before this Tribunal. This Tribunal vide order dated 16.03.2022 commenced the liquidation proceedings with respect to the Corporate Debtor. Pursuant to the appointment of the Respondent as the Liquidator, a

Public Announcement in Form B of Schedule II was published on 24.03.2022 calling upon all the stakeholders to submit their claims with the Respondent on or before 15.04.2022. And as per Regulation 30 of Liquidation Regulations, the liquidator is required to verify claims submitted within thirty days from last date of receipt of claims and to either admit or reject the claim, in whole or in part.

20. After the abovementioned publication dated 24.3.2022, claims were invited from the creditors of the Corporate Debtor and the last date of closure of the submission of the claim as per the publication was 15.4.2022. However, the Applicant again did not file their claim before the closure of the submission date.

21. The Applicant then filed the claim with the Respondent on 15.6.2022, which was rejected due to delays. The Applicant attributes the said delay to their lack of awareness of the insolvency and liquidation proceedings, insufficient details of the appointed Liquidator for timely communication regarding the claim, and the ongoing Covid-19 pandemic during that period.

22. We have also found that the Applicant did not file any claim subsequent to the publications made by the RP after CIRP of the Corporate Debtor started, inviting claims from everyone. The last date of submission of the claim was 18.2.2021. The Applicant did not file the claim until the closure of the last date for submission of the claim when CIRP was already underway. However, CIRP was closed and the liquidation process began pursuant to the approval given in the COC meeting held on 14.6.2021 and order passed by this Tribunal on 16.03.2022 ordering commencement of the liquidation of the Corporate Debtor. Thereafter, claims were invited in terms of the publication made by the Liquidator via advertisement dated 24.03.2022, calling upon all stakeholders to submit their respective claims, with the closing date being 15.04.2022. Thus, the Respondent did not receive any claim from the Applicant either during the CIRP or Liquidation of the Corporate Debtor before the last date of the submission of the claim and instead filed the claim belatedly on 15.6.2022.

23. The Applicant contended that since the insolvency proceedings are still ongoing and the assets have not yet been

distributed, admitting their claim would not have caused any prejudice. However, the Respondent has countered this contention, stating that the Applicant if being aggrieved, ought to have preferred appeal u/s 42 of IBC, 2016 against his order dated 29.06.2022 rejecting his claim, within 14 days from the date of the said order i.e. 29.06.2022, whereas at the time of filing the present application on 10.04.2023, which was delayed by almost 9 months, the liquidation process was nearing completion.

- 24.** The Respondent has also submitted the details of the E-Auction made on 14.07.2022 and distribution of the sale proceeds from the e-auction of the asset of the Corporate Debtor and it has been contended by him that the liquidation has already been completed in all aspects by the time this application has been filed and it is also pointed out that a dissolution application u/s 54 of IBC, 2016 has been filed for dissolution of the Corporate Debtor in IA No. 463/2023 on 21.09.2023 with no pending litigation concerning the Corporate Debtor except for the present application which is time barred and also not maintainable as not filed under the correct provision of law being section 42 of IBC,2016, within

mandatory period of 14 days from the date of order passed being 29.06.2022.

25. From the details available on record we find that the respondent liquidator completed the E-auction process on 14.07.2022 realising Rs. 1,70,00,000/- from the successful bidder on sale of the Corporate Debtor and distributed Rs. 1,38,00,000/- to the sole secured Financial Creditor being Bank of Maharashtra against the amount of Rs. 1,49,24,097/- claimed by it and admitted to the extent of Rs. 1,41,18,867/- by the RP. Rest of amount was allocated towards CIRP cost and liquidation cost. As entire amount as realized during liquidation, had already been distributed, the respondent liquidator also executed the sale certificate in favour of the successful bidder on 02.09.2023. Thus, it is quite clear that the entire process of liquidation and distribution of sale proceeds from liquidation had been completed much before the filing of this application in this Tribunal on 10.04.2023.

26. We also find that the present application has been filed under Section 60(5) against the order dated 29.06.2022 of the Liquidator instead of section 42 of IBC, 2016. It is a settled

position of law that “*what cannot be done directly can also not be done indirectly*” being the doctrine of colourable legislation that will apply in the present case as instead of filing of appeal against the order of respondent liquidator under Section 42 within a prescribed statutory time limit of 14 days, the Applicant is trying the same by filing an application under Section 60(5) after the delay of 9 months. It is also pertinent to note that “*specific law prevails over general law*”, and hence, when specific provision of section 42 is available relating to the instant case, then applicability of general provision of section 60(5) shall extend excluded. For a ready reference, provisions of both Sections i.e. section 42 of IBC, 2016 providing specific action against the order of the liquidator and section 60(5) of IBC, 2016 providing residuary jurisdiction of NCLT, are reproduce as under: -

60. Adjudicating Authority for corporate persons-

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

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.

27. In the instant case, Section 42 of the Code shall be applicable for challenging the rejection of the claim of the Applicant by the liquidator, hence the Applicant need not to have resorted to Section 60(5) of the Code. However, it is also pertinent to note that the decision of rejection is allowed to be challenged only within 14 days in terms of Section 42 of the Code, which expired on 13.7.2022 but application u/s 60(5) has been filed on 10.04.2023, hence the Applicant did not meet the requirement of limitation period either while challenging the decision of the Liquidator.

28. Purportedly, the Applicant has relied upon clause (c) of Section 60(5) of the IBC, 2016, for maintainability of instant application whereas, it is a settled law that Section 60(5)(c) of

the Code only creates a residual jurisdiction for NCLT to adjudicate such question of facts or law, as they may arise during CIRP or liquidation, to ensure that natural justice is done to the claimant in these proceedings. The Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019** has held as regards of applicability of Section 60(5) (c) *vis-a-vis* any specific provision available in IBC (2016) and the relevant para of this decision is reproduce as under:

43. However, Shri Sibal exhorted us to hold that K. Sashidhar (supra) missed a very vital provision of the Code which is contained Section 60(5) of the Code. Section 60(5) reads as follows:

...

*It will be noticed that the non-obstante clause of Section 60(5) speaks of any other law for the time being in force, which obviously cannot include the provisions of the code itself. Secondly, **Section 60(5)(c) is in the nature of a residuary jurisdiction vested in the NCLT so that the NCLT may decide all questions of law or fact arising out of or in relation to insolvency resolution or liquidation under the Code. Such residual jurisdiction does not in any manner impact Section 30(2) of the Code which circumstances the jurisdiction of the Adjudicating Authority when it comes to the confirmation of a resolution plan, as has been mandate by Section 31(1) of the Code.** A*

*harmonious reading, therefore, of Section 31(1) and Section 60(5) of the Code would lead to the result that the **residual jurisdiction of the NCLT under Section 60(5)(c) cannot, in any manner, whittle down Section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30(2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority. This argument also must needs be rejected.***

- 29.** From the above decision, it is clear that a residual jurisdiction cannot be resorted to when a specific provision is provided in the IBC, 2016. Therefore, in the instant case, when specific provision is provided under Section 42 of the IBC Code, 2016 for filling of appeal against the order of liquidator challenging the rejection of claim of the Applicant by the liquidator, he cannot resort to Section 60(5) (c) to defeat the mandate of Section 42 with respect to the limitation period provided therein for raising grievances of rejection of his claim by the liquidator. Even in respect of delay of 9 months in filling of instant application, the same could not be explained by the Applicant in reasonable manner leave aside the claim filed before the liquidator itself was delayed by 342 days. 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.*

30. 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 application filed by the Applicant is not maintainable as it has not been filed within prescribed time limit of the relevant provision of law and hence, is time barred and also, the Applicant came before us when the entire process of the liquidation has already been completed and no cause of action in this regard is pending to be adjudicated upon by us. Therefore, the present application is hereby dismissed and disposed of accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: - 02nd MAY, 2024