

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 02.05.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/237/2023, IA (IBC)/1435/2023 in CP(IB) No.376/7/HDB/2018</b>
<b>NAME OF THE COMPANY</b>	<b>Sagar Infra Rail International Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>State Bank of India</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Sagar Infra Rail International Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA (IBC)/237/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

**IA (IBC)/1435/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II**

**IA No.237 of 2023 in  
CP(IB) No.376/7/HDB/2018**

*Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 read with Regulation 44 of the IBBI (Liquidation  
Process) Regulations, 2016 and Rule 11 of NCLT Rules, 2016*

In the matter of M/s.Sagar Infra Rail International Limited

Between:

**Mr. Sri Vamsi Kambhammettu,**  
Liquidator of M/s.Sagar Infra Rail  
International Limited, Regd Office: Rao & Rao,  
Chartered Accountants, A85, DX4, 2<sup>nd</sup> Floor,  
Road No.11, Film Nagar,  
Jubilee Hills, Hyderabad – 500 033.

**....Applicant/Liquidator**

*A n d*

**M/s.Perfect Synergy Advisory  
Services Private Limited,**  
Regd Office: No.1501, Chiranjiv Tower 43,  
Nehru Place,  
New Delhi – 110 019.

**....Respondent**

**Date of Order: 02.05.2024**

**CORAM :**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)  
Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr.VVSN.Raju, Ms.N.Aiswarya,  
Counsels

For the Respondent : Mr.G,Kalyan Chakravarthy, Counsel

**Per : [Rajeev Bhardwaj, Member(Judicial)]**

Date of Order: 02.05.2024

## **ORDER**

1. The instant Application has been filed by Mr.Sri Vamsi Kambhammettu, Liquidator for M/s.Sagar Infra Rail International Limited (**hereinafter referred as Applicant**) for obtaining the original Title Documents of the properties which are in the possession of the Respondent, M/s.Synergy Advisory Services Private Limited.
2. Brief facts necessary to dispose of the present Application, as stated, are:
  - 2.1 The liquidation order of M/s.Synergy Advisory Services Private Limited was passed on 04.03.2021 (**Annexure 1 - Page Nos.8-13 of the Application**). Thereafter, invitation of claims as per Regulation 12 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 was published on 24.03.2021 in Economic Times (English Language) and Surya (Regional Language) at Hyderabad, wherein the last date for submission of the claim was mentioned as 21.04.2021.
  - 2.2 The Respondent did not provide any intimation regarding relinquishment/realization of the properties within 30 days from the date of commencement of the Liquidation Process. Regulation 21 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 mandates that in case of failure or intimation within 30 days from the commencement of the Liquidation Process, the assets covered under the security interests shall be presumed to be part of the liquidation estate.
  - 2.3 The following properties are covered under Regulation 21A :
    - a) Survey No.127 situated at Mallapur under GHMC, Kapra Circle, Uppal, Ranga Reddy District in Andhra Pradesh admeasuring 600 Sq Yards vide Document No.2385/2010 dated 02.09.2010.

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b) Flat Nos.601 & 602 (5<sup>th</sup> Floor) having built up area of 1900 sq feet (including common area) along with an undivided share of land admeasuring 48 Sq Yards (out of 622 Sq Yards) on plot No,532 & 533, MIGH 11 of Sai Ramana Towers situated at KPHB Colony, Kukatpally Village and Municipality, Balanagar Mandal, Ranga Reddy District, Andhra Pradesh registered vide Document No.8464 dated 05.09.200.Survey No.127 situated at Mallapur under GHMC, Kapra Circle, Uppal, Ranga Reddy District in Andhra Pradesh admeasuring 600 Sq Yards vide Document No.2385/2010 dated 02.09.2010.

- 2.4 The Respondent was intimated by the Applicant vide e-mail and letter dated 17.05.2022 that these properties (**hereafter referred to as the Properties in question**) were legally presumed to be part of the liquidation estate.
- 2.5 Thereafter, the Respondent issued legal notice dated 15.06.2022 informing that the Respondent in exercise of option available under Section 52 does not wish to relinquish its security interest to the liquidation estate. The Applicant sent reply to the said legal notice vide e-mail dated 13.07.2022.
- 2.6 It is averred that the Respondent submitted the claim to the Applicant on 22.06.2022, which was filed after the expiry of the stipulated period and accordingly the Respondent was intimated vide e-mail dated 29.06.2022.
- 2.7. Thus, it has become clear from the claim form submitted by the Respondent that he is in possession of the aforesaid properties as mortgagee and the title documents have been deposited as security deposit for the short-term loan facility availed by the CD. The properties mentioned above have become part of the liquidation estate. Therefore, the Respondent is required to handover the title documents to the Applicant.

3. The Respondent by filing the reply has not denied that the properties have been mortgaged to it, but submitted:
  - 3.1 The properties were mortgaged because the Applicant vide loan agreement dated 19.05.2011 took loan, but failed to pay it. In addition to the mortgage, the Managing Director and Director of the Applicants have also furnished two irrevocable and unconditional Personal Guarantees.
  - 3.2 For the recovery of the loan amount, the Applicant has already filed a Civil Suit before the Hon'ble High Court of Delhi. As the title deeds of the mortgaged immovable properties have also been challenged in the said Civil Suit, therefore, these cannot be released till the disposal of the Civil Suit.
4. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
5. It is not disputed that the properties in question are owned by the CD and therefore, as per liquidation order dated 04.03.2011. (**Annexure 1 - Page Nos.8-13 of the Application**), these properties have become part of the liquidation estate under Section 36(3) of the IBC. The Respondent has claimed that these properties have been mortgaged to it by the CD because of short-term loan availed vide agreement dated 19.05.2011. (**Annexure 4 - Page Nos.40-51 of the Application**).
6. The Liquidator is supposed to take into his custody/control of all the assets/properties, effects and external claims of the CD under Section

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35(1)(b). As per the claim filed by the Respondent, the Company is a secured creditor. A secured creditor has the option to either relinquish or realize its security interest during liquidation process (section 52 of the Code). Regulation 21A (1) of the Liquidation Regulations provides that a secured creditor shall intimate the liquidator about its decision in regard to relinquishment or realization of the security interest within 30 days from the liquidation commencement date. In case of the latter option, the secured creditor has to first indicate its option, within the time prescribed (30 days, in Form C or D of Schedule II to the Liquidation Regulations). The liquidator may then, per Section 52(3), permit the secured creditor to realize such dues as are proved to exist, as security debts. Upon clearance by the liquidator, the secured creditor may proceed to enforce its claim, under Section 52(4). If there is resistance during the process, the secured creditor may approach the NCLT [Section 52(5) and (6)]. Upon enforcement, any excess amount realized should be tendered to the liquidator [Section 52(7)]. Reference in this regard can be made to the decision in *Paschimanchal Vidyut Vitran Nigam Ltd. versus Raman Ispat Private Limited and Orsz.*

7. The Respondent has not exercised this option within 30 days from the liquidation commencement date. Therefore, the security interest shall be treated to be part of the liquidation estate.
8. The Respondent has filed copy of the Civil Suit titled "*Perfect Synergy Advisory Services Limited versus Sagar Infra Rail International Limited & Others*" pending before the Hon'ble High Court of Delhi. This suit is for recovery of Rs.6,22,56,850/-, but the Respondent has failed to show that the original title deeds of the properties in question have also been deposited

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with the Hon'ble High Court of Delhi. Moreover, once the properties have become a part of the liquidation estate, it is to be dealt with as per the provisions of Section 53 of the IBC. Therefore, the Applicant is directed to handover the original title deeds of the properties in question.

9. In view of the aforesaid discussions, **IA No.237 of 2023 in CP (IBC) No.376/7/HDB/2018 is allowed.**

**SD/-**

**(Sanjay Puri)**  
**Member(Technical)**

*Vinod*

**SD/-**

**(Rajeev Bhardwaj)**  
**Member(Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II**

**IA No.1435 of 2023 in  
CP(IB) No.376/7/HDB/2018**

*Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 read with Regulation 44 of the IBBI (Liquidation  
Process) Regulations, 2016 and Rule 11 of NCLT Rules, 2016*

In the matter of M/s.Sagar Infra Rail International Limited

**Between:**

**M/s.Perfect Synergy Advisory  
Services Private Limited,**  
Regd Office: No.1501, Chiranjiv Tower 43,  
Nehru Place,  
New Delhi – 110 019.

**....Applicant**

*A n d*

**1. M/s.Sagar Infra Rail International Limited,**  
Regd Office: B-67, AIPE, Balanagar,  
Hyderabad, Telangana - 500 037.

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

**2. Mr. Sri Vamsi Kambhammettu,**  
Liquidator of M/s.Sagar Infra Rail  
International Limited, Regd Office: Rao & Rao,  
Chartered Accountants, A85, DX4, 2<sup>nd</sup> Floor,  
Road No.11, Film Nagar,  
Jubilee Hills, Hyderabad – 500 033.

**....Respondent/Liquidator**

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**CORAM :**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)



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**Counsels present:**

For the Applicant : Mr.G.Kalyan Chakravarthy, Counsel  
For the Respondent : Mr.VVSN Raju, Counsel

**Per : [Rajeev Bhardwaj, Member(Judicial)]**

**ORDER**

1. Aggrieved and dissatisfied with the decision of the Liquidator of M/s.Sagar Infra Rail International Limited, the Applicant has approached this Authority by filing this Appeal under Section 42 read with Section 60(5) of the IBC, 2016.
2. Brief facts necessary to dispose of the present Application, as stated, are:
  - 2.1 The Applicant granted loan of Rs.3,50,00,000/- to M/s.Sagar Infra Rail International Limited (**hereinafter referred as Corporate Debtor/CD**) with an interest of 18 per cent per annum etc., and the total due amount was Rs.11,25,33,151/-. As per the loan agreement dated 19.05.2011, the said loan was secured by creating mortgage on the following properties:
    - a) Survey No.127 situated at Mallapur under GHMC, Kapra Circle, Uppal Ranga Reddy District in Andhra Pradesh admeasuring 600 Sq Yards vide Document No.2385/2010 dated 02.09.2010.
    - b) Flat Nos.601 & 602 (5<sup>th</sup> Floor) having built up area of 1900 sq feet (including common area) along with an undivided share of land admeasuring 48 Sq Yards (out of 622 Sq Yards) on plot No,532 & 533, MIGH 11 of Sai Ramana Towers situated at KPHB

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Colony, Kukatpally Village and Municipality, Balanagar Mandal, Ranga Reddy District, Andhra Pradesh registered vide Document No.8464 dated 05.09.200.Survey No.127 situated at Mallapur under GHMC, Kapra Circle, Uppal, Ranga Reddy District in Andhra Pradesh admeasuring 600 Square Yards vide Document No.2385/2010 dated 02.09.2010.

- 2.2 The Liquidator invited the claims on or before 21.04.2021. It is claimed that the Applicant after coming to know about the public announcement, filed the claim immediately on 22.06.2022, which is after a delay of 427 days. However, the Liquidator has wrongly and arbitrarily rejected the claim filed by the Applicant.
- 2.3 It is averred that the delay in filing the claim was neither willful nor wanton and reliance has also been placed on the decision of the Hon'ble Supreme Court of India in *Surendra Trading Company versus Juggilal Kamlapat Jute Mills Company Limited and others (2017)16 SCC 143* wherein it was held that the provisions contained in IBC are procedural in nature and cannot be treated to be a mandate of Law. It was further held that the time line provided in the IBC is to expedite and not to scuttle the process of law.
- 2.4 Therefore, the Applicant has prayed that the decision of the Liquidator dated 29.06.2022 be declared as wrong and illegal, and

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the Respondent be directed to admit the claim for the financial debt of Rs.11,25,33,151/-.

3. In the Counter, the Respondent has contended and contested the averments of the Applicant and challenged the stand of the Applicant by submitting that:

3.1 The liquidation order was passed on 04.03.2021 and subsequently the Liquidator invited claims and the last date for submission of the claim was 21.04.2021. This notice was given in two newspapers, i.e., Economic Times and Surya, which have wide circulation.

3.2 The Applicant sent e-mail dated 22.06.2022 along with Form D for claiming an amount of Rs.11,25,33,151/-. The claim was rejected by the Liquidator vide e-mail dated 29.06.2022 because the Liquidator under Section 38 of IBC is allowed to receive or collect the claims from the creditors within a period of 30 days from the date of commencement of liquidation process. Since there was a delay of 427 days in submitting the claim, the claim was rejected. As per Section 42 of IBC, an appeal against the order of the Liquidator is to be filed within a period of 14 days from the date of receipt of such decision. The Applicant even filed the present Application after a delay of 390 days.

3.3 Therefore, there is not only a delay of 427 days in submitting the claim to the Liquidator, but there is also a delay of 390 days in filing the appeal against the decision of the Liquidator. Accordingly, it is submitted that the present appeal is required to be rejected and in

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support of his contention, the Respondent has placed reliance on the decisions in *National Spot Exchange Limited versus Mr.Anil Kohli, Resolution Professional for Dunar Foods Limited in Civil Appeal No.6187 of 2019, decided on 14.09.2021* and *The Regional Provident Fund Commissioner, Employees Provident Fund Organisation versus Mr.Vasudevan, Resolution Professional & Liquidation of M/s.Titanium Tantalum Products Limited in Company Appeal (AT) (CH)(INS) No.182 of 2022 and IA No.415 of 2022, decided on 11.07.2022.*

4. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
5. The Corporate Debtor was admitted into Liquidation on 04.03.2021 and the last date for submission of the claims was on 21.04.2021.
6. A stakeholder is required to submit the proof of his claim to the liquidator in the specified Form: (i) through electronic means only, if he is a financial creditor (regulation 18(1) of the Liquidation Regulations); (ii) in person, by post or by electronic means, if he is an operational creditor including workmen and employee or any other stakeholder (regulation 17(1), 19(1) and 20(1) of the Liquidation Regulations).
7. However, the Applicant has submitted his claim on 22.06.2022 which is after delay of 427 days and therefore, the Liquidator rejected the said claim vide e-mail dated 29.06.2022. The present Appeal has been filed

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against the rejection order of the Liquidator on 14.08.2023. Thus, there is a delay of 427 days in submitting the claim to the Liquidator and another delay of 390 days in filing the appeal against the rejection of the claim by the Liquidator.

8. As far as rejection of the claim after a delay of 427 days is concerned, we want to refer to Section 38 of IBC, which provides that the Liquidator shall receive or collect the documents of creditors within a period of 30 days from the commencement of the liquidation process. Section 38 of IBC is extracted below, which says that:

*(1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.*

*(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:*

*Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section (3).*

*(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.*

*(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).*

*(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.*

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9. Therefore, the Applicant is required to explain the delay of 427 days in making the claim besides filing the appeal under Section 42 after a delay of 390 days. Section 42 of IBC is extracted below:

*“A creditor may appeal to the Adjudicating Authority against the decision of the liquidator <sup>1</sup>[accepting or] rejecting the claims within fourteen days of the receipt of such decision”.*

10. In view of the aforesaid background, Learned Counsel for the Applicant has relied upon the decision of the Hon'ble Apex Court in ***Surendra Trading Company supra*** that the time-line fixed in the IBC is not mandatory and the same cannot be allowed to deny justice. Therefore, the delay in filing the claim as well as the appeal are to be condoned. Learned Counsel for the Respondent by placing reliance on the decision in ***National Spot Exchange Limited versus Mr.Anil Kohli, Resolution Professional for Dunar Foods Limited, Civil Appeal No. 6187 of 2019 decided on 14.09.2021*** and ***The Regional Provident Fund Commissioner, Employees Provident Fund Organization versus Mr.Vasudevan, Resolution Professional & Liquidation of M/s.Titanium Tantalum Products Limited Company Appeal (AT) (CH)(INS) No.182 of 2022 and IA No.415 of 2022 decided on 11.07.2022*** has submitted that the law made by the Parliament must be given effect and the law overrides equitable considerations.

11. The decision in the ***National Spot Exchange supra*** relied upon by the condone the delay of only 15 days over the period of 30 days, if there is sufficient cause. This provision is similar to Section 34 of the Arbitration

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& Reconciliation Act and Section 125 of the Electricity Act. In such situation, it was held that when the statute provides the period of limitation and to condone the delay upto a particular period, the delay beyond that period cannot be condoned. Therefore, it was held that the Hon'ble NCLAT has rightly refused to condone the delay of 44 days, which was beyond the 15 days from the completion of 30 days. In case of Sections 38 and 42 of IBC, there is no such extended period within which the appeal is to be filed. Accordingly, Section 5 of the Limitation Act will come into picture in condoning the delay, if there is no such extended period provided under any specific provision.

12. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations), a liquidator is required to complete the process of liquidation of a corporate debtor within a period of one year from the date of commencement of the liquidation process. At the same time, there may be genuine reasons for not approaching this authority well in time. That is why the Hon'ble Apex Court in *Surendra Trading Company supra* explained certain circumstances when the strict adherence to the timeline would render injustice and therefore it is for the adjudicating authority to decide as to whether sufficient cause is shown in not removing the defects beyond the period of seven days under section 7 IBC.
13. Viewed holistically, the timelines are in consonance with the desired cut-off period for the conclusion of the liquidation process as envisaged by the legislature in the IBC and it is for the party who wants exemptions

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from such timeline to show that he was prevented by sufficient cause from approaching this authority in time.

14. Length of delay is no matter, acceptability of the explanation is the only criterion. It has been held in *N.Balakrishnan versus M.Krishnamurthy (1998)7 SCC 123* that sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. As what sort of explanation is sufficient cause or not, the Hon’ble Supreme Court in *Ram Nath Sao versus Gobardhan Sao (2002)3 SCC 195* has held that it will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps.
15. The principles for condoning the delay have been summarized in *Perumon Bhagvathy Devaswom versus Bhargavi Amma (Dead) by LRs. and Ors. (2008)8 SCC 321* as below:
  - (i) The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The



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words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

- (ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.
- (iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.
- (iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.
- (v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When

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nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

16. Applying the ratio of the law laid down above as what principles are to be kept in mind while determining 'sufficient cause', the Applicant has claimed that he was ignorant about the issuance of public notice in the newspapers and the moment when he came to know about this, he filed the claim with the Liquidator. It is settled law that ignorance of law is no excuse. The notice issued particular time for filing the claim was given as per the requirements of law. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations)' mandates that public announcement through newspapers for filing claim would constitute deemed knowledge of the Applicant as in similar case, it was held by the Hon'ble Apex Court in *RPS Infrastructure Ltd. versus Mukul Kumar and Ors. (2023)10 SCC 718*, that "the appellant is a commercial entity. That they were litigating against the corporate debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the circumstances to find out whether the corporate debtor was undergoing CIRP. The appellant has been deficient on this aspect." Therefore, unawareness of the initiation or pendency of

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insolvency proceedings of corporate debtors ought not to be construed as a '*sufficient ground*' for condonation of delay in submission of claims by the creditors. Moreover, mere saying of the Applicant is not suffice unless there is evidence supporting the contentions that the Applicant was ignorant till the filing of the claim.

17. For filing appeal after 390 days of rejection of the claim, there is not even any explanation of semblance from the Applicant. Law assists those who are vigilant and not those who sleep over their rights.

18. In view of the aforesaid discussions, **IA No.1435 of 2022 in CP (IBC) No.376/7/HDB/2018 is dismissed.**

**Sd/-**  
**(Sanjay Puri)**  
**Member(Technical)**

**Sd/-**  
**(Rajeev Bhardwaj)**  
**Member(Judicial)**

*Vinod*