

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

**IA No. 359 of 2022
IN
CP (IB) No. 1832/MB/C-II/2017**

**In the matter of Section 42 of the
Insolvency and Bankruptcy Code**

And

**In the matter of Section 7 of Insolvency
and Bankruptcy Code, 2016**

**Assistant Commissioner, CGST &
Central Excise, Division –IV,
Surat Commissionerate**

..... Applicant

v/s

**Shri Abhijit Guhathakurta,
Liquidator for EPC Constructions India
Limited**

.... Respondent/Liquidator

In the matter of

IDBI Bank Limited

....Org. Operational Creditor

v/s

EPC Constructions India Limited

**... Org. Corporate Debtor
(In Liquidation)**

Order delivered on: 30/10/2023

Coram:

**Anil Raj Chellan
Hon'ble Member Technical**

**Kuldip Kumar Kareer
Hon'ble Member Judicial**

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Appearances:

For the Applicant : Adv. Maya Majumdar
For the Respondent : Adv. Shriraj Khambete

ORDER

Per: Anil Raj Chellan, Member Technical

1. The present application is filed by Assistant Commissioner CGST & Central Excise, Division-IV, Surat Commissionerate under Section 42 of the Insolvency and Bankruptcy Code, 2016 (the Code) against the rejection of claim of the Applicant for condonation of delay of 46 days in filing its claim and to direct the Respondent to verify and admit the claim of the Applicant against EPC Constructions India Limited, in liquidation and to add the existing claim of the Applicant as Operational Creditor of the Company in liquidation.

Facts of the Case :

2. EPC Constructions India Private Limited (the Corporate Debtor) was put into Liquidation vide order dated 07.05.2021 passed by this

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Tribunal and Shri Abhijit Guhathakurta was appointed as Liquidator. Pursuant to the above, the Respondent made public announcement for submission of claims on 19.05.2021 and also intimated the Applicant vide his email dated 25.05.2021 requesting to submit all their claims against the Corporate Debtor on or before 17.06.2021 with supporting documents for verification. The Applicant submitted the claim in Form-B for an amount of Rs.612,08,07,246/- on 11.06.2021 (i.e. prior to the due date of 17.06.2021 specified by the Respondent). The claim was rejected by the Respondent on the ground that the claim was not in appropriate form. Accordingly, the Applicant re-submitted the claim in Form-C along with the supporting documents. The Respondent vide his mail dated 05.08.2021 informed the Applicant that the timeline for submission of the claim had already lapsed, so any claim filed at this stage would be incapable of verification by the Respondent/Liquidator. The Applicant, therefore, filed the present application to condone the delay in lodging its claim with the Liquidator and admit the claim against the Corporate Debtor.

Submissions of the Applicant:

3. The Applicant submitted that the claim had been rejected by the Respondent on a technical ground that the claim had not been filed in the appropriate form. The delay in re-submission of the claim in correct form was inadvertent. Since, the liquidation process is still ongoing, no prejudice would be caused to the liquidation process or Liquidator or the Corporate Debtor. To buttress the above, the applicant relied on the decisions of the Hon'ble Principal Bench of NCLT in Edelweiss Asset Reconstruction Company Private Limited v. Adel Landmarks Limited and State Bank of India v. ARGL Limited. (2019) ibclaw.in 72 NCLT;

Submissions of the Respondent/Liquidator:

4. The Respondent submitted that there is delay of 46 days in submission of the claim with the Liquidator and 13 days delay for the purpose of preferring this application under Section 42 of the Code. The Respondent further submitted that the Applicant never filed its claim during Corporate Insolvency Resolution Process (CIRP) and no cogent reasons had been stated for considering condonation of delay. In support of the above, the Respondent relied on the decision of the Hon'ble Supreme Court in the case of H. Dohil Constructions Company Private Limited v. Nahar

Exports Limited, (2015) 1 SCC 680 and the decision of Hon'ble NCLAT in the case of Deputy Commissioner of Commercial Taxes v. Surana Industries Limited, Company Appeal (AT) (Insolvency) No. 1524 of 2019.

Analysis and Findings

5. We have heard the Advocates appearing for the parties and perused the documents on record.
6. It is observed that the Applicant submitted the claim within the due date specified in the public announcement for submission, though not in the proper Form. Thus, the Liquidator was aware of the claim of the Applicant and re-submission of claim by the Applicant was only a technical formality. Thus, the reason for delay in re-submission of claim is self-explanatory and the decision relied upon by the Respondent is not applicable in this case. It is also observed that the liquidation proceedings are yet to be completed and no prejudice would be caused if the claim of the Applicant is adjudicated and admitted.
7. The rejection of the claim solely on the ground of delay had not been accepted in various cases, particularly when the facts of the case like the present one support admission of the claim.

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8. In view of the above, the **Application bearing No. 359 of 2022 is Allowed** with an order that the liquidator will consider the claim of the applicant as per law.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)