

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

**Company Appeal No. 19 of 2022
IN
CP (IB) No. 1832/MB/C-II/2017**

Under Section 42 of the Insolvency and Bankruptcy Code, 2016.

Department of State Tax

through the Assistant Commissioner of State Tax,
(MUM-VAT-D-829) 4th Floor, A wing, Cabin-A-06,
Goods and Services Tax Bhavan, Mazgaon, Mumbai.

... Appellant

V/s

M/s Essar Project (India) Limited

Also known as Essar Construction Limited.

Essar House Mahalaxmi, 11 K K Marg,

Mumbai-400034, Maharashtra, India

... Respondent

In the matter of

IDBI Bank Limited

... Applicant/Financial Creditor

V/s.

M/s Essar Projects (India) Limited

Also known as Essar Construction Limited

... Corporate Debtor

Order Delivered on : 30.10.2023

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Coram:

Anil Raj Chellan
Hon'ble Member (Technical)

Kuldip Kumar Kareer
Hon'ble Member (Judicial)

Appearances:

For the Appellant : Adv. Amar Mishra
For the Liquidator : Adv. Shriraj Khambete

ORDER

Per: Anil Raj Chellan, Member Technical

1. The present appeal is filed by Department of State Tax through the Assistant Commissioner of State Tax, Mumbai-VAT-D-829 under Section 42 of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking condonation of delay of 92 days in filing the claim with the liquidator of EPC Constructions India Limited (the Corporate Debtor) and to direct the liquidator to register the claim of the Appellant in accordance with the provision of the Code.

Brief facts of the Case:

2. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) vide order of the Adjudicating Authority

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dated 20.01.2018, and appointed Mr. Abhijit Guhathakurta as the Interim Resolution Professional (IRP). The IRP was later confirmed as Resolution Professional (RP).

3. Subsequently, the Corporate Debtor was ordered to be liquidated vide order dated 07.05.2021 passed by the Adjudicating Authority and Shri. Abhijit Guhathakurta was appointed as Liquidator.
4. Pursuant to the above, the Liquidator/Respondent made public announcement calling for submission of claims on 19.05.2021 and also informed the Appellant regarding the initiation of liquidation vide e-mail dated 25.05.2021. Subsequently, the Appellant lodged its claim along with Form-B vide letter dated 18.09.2021 for a sum of Rs.103,74,91,150/- and submitted proof of claim.
5. The claim submitted by the Appellant was rejected by the liquidator/Respondent vide e-mail dated 20.09.2021 for the reason that the last date of submission of the claim had lapsed. The Appellant, therefore, filed the present appeal to condone the delay in lodging its claim with the Liquidator and admit the claim against the Corporate Debtor.

Submission of the Appellant:

6. The Appellant had filed the claim in CIRP proceedings on time, however, during the liquidation proceedings there has been a delay of 92 days for submission of claim and delay of 203 days for filing of the present appeal on account of personal medical difficulty of the officer in charge.
7. The Appellant had vide e-mail dated 06.02.2023 requested the liquidator to provide them with the copy of the financials and annual reports for the period 2017-18 onwards. The liquidator had provided the Appellant with a copy of the annual report for the financial year 2017-18, but stated that due to non-cooperation of the Corporate Debtor, financial statement for the period after 2018-19 had not been finalized.
8. The Appellant submitted that the financials of the Corporate Debtor for the financial year 2007-08 and 2008-09 show non-payment of taxes on account of disputes. The financials for the subsequent periods were finalized by the liquidator and the tax dues payable to the Appellant might have been recorded in the books of the

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Corporate Debtor as orders for those dues were passed after 31.03.2018. Thus, the Appellant submitted that the financials for the period 2018-19 when finalized, should contain the dues raised by the Department of State Tax. It is also evident that the Liquidator was aware of the statutory dues of the Appellant.

9. The Appellant further submitted that rejection of the claim of the Appellant is illegal, unsustainable and perverse as all the supporting documents had been submitted to the Liquidator.

10. In support of the above contention, the Appellant relied upon the following decisions:
 - (a) State Bank of India v. ARGL Limited. (2019) ibclaw.in 72 NCLT;
 - (b) Bijoy Prabhakaran Pulipra (Resolution Professional) v. State Tax officer (Works Contract) SGST Department. Company Appeal (AT) (CH) (Insolvency) No. 42 of 2021;
 - (c) Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs. (2022) ibclaw.in 103 SC;

Submission of the Respondent/Liquidator:

11. The Respondent submitted that there was a delay of 93 days in submission of the claim with the liquidator and 358 days delay for the purpose of preferring this application under Section 42 of the Code. Thus, there is an aggregate delay of 451 days in the case.

12. The Respondent further submitted that 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. 1524/2019.

Analysis and Findings:

13. We have heard the advocates appearing for the parties and perused the documents on record.

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14. It is observed that the Liquidator was aware of the claim of the Appellant as evident from the financial statements of the Corporate Debtor and that the Appellant had filed its claim in CIRP proceedings.

15. It can also be seen from the submissions that the sole reason for not admitting the claim of the Appellant is the delay in filing the claim with the Liquidator. It is true that the Appellant seeking condonation of delay is required to show sufficient cause for the delay as held in the Authorities cited by the Respondent. The reason/grounds stated by the Appellant for condonation of delay are, in our opinion, sufficient cause for condonation of delay. The delay in submission of this Application against the rejection of claim by the Liquidator is also condonable by the Adjudicating Authority.

16. It is also observed that the liquidation proceedings are still underway, and the admission of claim which is a statutory dues will not derail/protract the liquidation proceedings in respect of the Corporate Debtor. At the same time, in the interest of justice it is necessary to consider the claim of the Appellant .

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17. The rejection of claim solely on the ground of delay would not be justified in the facts and circumstances of the case.
18. In view of the above, the Company Appeal bearing no. **19 of 2022** is **allowed** by condoning the delay and the Respondent is directed to consider the claim of the Appellant in accordance with law.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)