

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

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 28.08.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1082/2022 & IA (IBC)/1083/2022 in CP (IB) No.278/7/HDB/2018
NAME OF THE COMPANY	BS Ltd
NAME OF THE PETITIONER(S)	State Bank of Baroda
NAME OF THE RESPONDENT(S)	BS Ltd
UNDER SECTION	7 of IBC

ORDER

These applications are dismissed and disposed of vide separate order.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

VL

**NATIONAL COMPANY LAW TRIBUNAL
BENCH II, HYDERABAD**

**IA No.1082/HBD/2022
IA No.1083/HDB/2023
in
CP(IB) No.278/7/HDB/2018**

under Section 60(5) read with Rule 11 of NCLT Rules , 2016
In the matter of M/s.B.S.Limited

Between:

M/s.IFCI Limited,
IFCI Tower,61 Nehru Place,
New Delhi - 110 019.
Regional Office at IFCI Limited,
8th Floor, Taramandal Complex,
5-9-13, Saifabad,
Hyderabad - 500 004.

...Applicant Petitioner Company

AND

M/s.BS Limited, (In liquidation
Represented by its Liquidator Mr.Yada
Villi Karunakar,
IP Regn No.IBBI/IPA-001/IP-P00191/2017-
18/10370, BS Limited, Flat No.205-B,2nd Floor,
Kushal Towers, D.No.6-2-975,
Khairatabad,
Hyderabad - 500 004,
Telangana, India.

....Respondent/Liquidator

Date of order: 28.08.2023

Coram

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)
Hon'ble Sri Charan Singh, Member (Technical)

Parties/ Counsels present:

For the Applicant : Mr VVSN Raju, Mr.AVP.Reddy,
Mr Praveen Kumar Jain, Ms.Aiswarya Rajasree N,
Ms.Sowmya TRN, Advocates

PER: BENCH

ORDER

1) Both the above Applications are filed by the Applicant Company under Section 60(5) read with Rule 11 of the NCLT Rules, 2016 and Section 5 of the Limitation Act, 1963 seeking to condone the delay of 184 days in approaching this Tribunal after excluding the period from 15.03.2020 to 28.02.2022, which is the period excluded in *Suo Moto* in Writ Petition (C) No.3 of 2020.

2) The facts briefly mentioned in the Application are as follows:

a) The Petitioner, IFCI Limited is a Government undertaking (Financial Institution) which had granted financial facilities to the Corporate Debtor for an extent of Rs.150 crores.

b) An Application was filed by the Financial Creditor, State Bank of India under Section 7 of Insolvency and Bankruptcy Code, 2016 and was admitted, Interim Resolution Professional was appointed, who was later confirmed as Resolution Professional by the Committee of Creditors.

c) The Petitioner submitted his claim in response to the Public Announcement and the same was accepted by the Resolution Professional on 22.11.2018 and he became a part of the CoC with voting share of 9.448%.

d) Consequent upon rejection of the resolution plan by CoC, the order of liquidation was passed on 25.10.2019 and Liquidator was appointed. The Liquidator, through his order dated 25.01.2021, rejected the claim of the petitioner. The reasons assigned by the Liquidator for rejection of claims are unsustainable and contrary to the provisions of the IBC.

e) Aggrieved by the orders of the Liquidator, the petitioner is entitled to file appeal under Section 42 of the IBC. But he could not file the application within 14 days. Hence, this Application seeking for condonation of the delay.

3) A Counter was filed by the Respondent Liquidator contending that according to the *Supreme Court Judgement in the matter of National Spot Exchange Limited Vs Mr.Anil Kohli, Resolution Professional for Dunar Foods Limited*, “where the period of limitation and the permissible extension to such period, attributable to a sufficient cause justifying such delay, is unambiguously stated in the IBC, the Tribunal had no inherent powers to condone a delay being the period/extended period specified under IBC, 2016.”

4) Heard both the Counsels. At the outset, reading Section 42 of IBC would be beneficial, It reads as follows:

“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.”

5) Though the Petitioner now contends that the order passed by the Liquidator is not a rejection order, in the application, the order is very much construed as a rejection order. However, a perusal of the order would show that part of the claim was accepted. Section 42, not only deals with the order of rejection, but also deals with the order of acceptance. In Swiss Ribbons Case, WP (Civil) No.99 of 2018, Supreme Court held that *even when the liquidator determines the value of claims admitted under Section 40, such determination is a decision, which can be appealed under Section 42 IBC*. Hence, the order passed by the liquidator is held to be an order passed under Section 42, whereas an appeal against the said order can be filed within 14 days. There is no provision under Section 42 for condoning the delay in filing an appeal.

6) The counsel for the Respondent relies on an order passed by the Hon'ble NCLAT in the company appeal No.182 of 2022 and IA No.415 of 2022 between *The Regional Provident Fund Commissioner Vs Titanium Tantalum Products which is extracted below:*

“An unpardonable lackadaisical approach/ attitude of the 'Party in pursuing a matter before the Competent Authority/Tribunal' is not to be accepted. The 'Law of Limitation' being harsh, will affect a 'Litigant', but it has to be pressed into service with all its vigour and rigour in the considered opinion of this 'Tribunal'. 43. In Law', a 'Tribunal'/ a 'Court of Law' has no power to find out a device in granting Relief to a 'Party' who may appeared to have been hard done by. To put it precisely, an Application' for condonation of delay undoubtedly create a jurisdictional fetter' against 'consideration of tangible/substantive matter on merits'. A 'Tribunal' cannot determine the 'sufficiency of cause', apart from the facts pleaded and made out in a given case.

Just because the Appellant is a Statutory Organisation, no 'indulgence' or 'latitude' can be shown, since the 'Law' applies to one and all in a level playing field. In reality, the Officials must act with as much as diligent as is expected from a 'Litigant', as per decision in District Board, Sargodha

Appeal against Liquidator's Decision:

To be noted, that Section 42 of the I & B Code, 2016, enjoins that as against the decision of the Liquidator either accepting or rejecting the Company Appeal (AT) (CH) (INS) No. 182 of 2022 claims, a 'Creditor' may prefer an

'Appeal' before the Adjudicating Authority' and it cannot be gainsaid that the process of Liquidation' is to be completed, within the prescribed time and conclusion of proceedings in this regard, is to be made within one year as enunciated under I & B Code, 2016.

"Speed" is the essence of I & B Code, 2016. "Time Wasted/ Lost cannot be revisited/regained. The process of Liquidation is time bound, to be completed within one year in the teeth of the I & B Code, 2016. Undoubtedly, the Code is an inbuilt and self-contained one and the object of the I & B Code, 2016, is that, a time barred 'Debt cannot be resurrected or given a fresh tenure of life, as opined by this "Tribunal'.

In the light of foregoing discussions, this "Tribunal' keeping in mind the present facts and circumstances of the instant case, in a conspectus fashion and also considering the submissions of the Appellant side and the stand taken on behalf of the Respondent/Liquidator, comes to a consequent conclusion that the view arrived at by the Adjudicating Authority, (National Company Law Tribunal), Division Bench, Court-1, in dismissing the IA/442/CHE/2021 (in condoning the delay of 936 days in claiming the EPF & MP Act dues) in TCP/413/IB/CB/2017, through its Company Appeal (AT) (CH) (INS) No. 182 of 2022 "Impugned order dated 17.12.2021 is free from legal infirmities'. Resultantly, the 'Appeal' fails.

7) Another judgement passed by this Bench in IA 868/2022 and IA 1004/2022 between ***State Bank of India and BS Limited*** was relied upon, wherein by relying on the judgement in ***Civil Appeal No.6187 of 2019 between National Spot Exchange Limited Vs.Mr Anil Kohli, Resolution Professional of M/s.Dunar Foods Limited case***, it was held that an appeal filed beyond 14 days cannot be entertained.

8) The Petitioner relied on a judgement of Hon'ble NCLAT, Principal Bench, New Delhi in CA No.573 of 2023 and IA No.1874 of 2023 between ***Cloud9 Apartments Owners Association Vs.Mohit Goyal, Resolution Professional for Aadi Best Consortium Pvt Ltd & Anr.***, wherein the Hon'ble NCLAT considered the judgement in “ ***National Spot Exchange Limited Vs.Mr Anil Kohli, Resolution Professional of M/s.Dunar Foods Limited case and held that the Tribunal does not have jurisdiction to condone the delay after a period of 45 days in view of the decision rendered by the Hon'ble Supreme Court in National Sport Exchange Limited.***”

9) The Counsel for the Petitioner places reliance on the ***judgement of the Hon'ble NCLAT Principal Bench, New Delhi in Company Appeal(AT) (Insolvency) No.655 of 2023 between Canara Bank Vs. Commercial Tax Department, Circle 09, Indore, Madhya Pradesh & Another***, wherein it was held ***“that since the claim was filed with 19 days delay and after not acceptance of the claim by the Liquidator, Appeal was filed with delay of 111 days, the Hon'ble NCLAT held that the delay in filing the appeal is clearly condonable while exercising the power under Section 5 of the Limitation Act.”***

In view of the ***judgement of the National Spot Exchange Limited***, this judgement cannot be applied to the facts of this case. Moreover, on facts it can be distinguished since the rejection of the claim was there on the ground of delay in submitting the claim, which is the case now herein.

10) The Hon'ble Supreme Court has emphatically held in ***“National Spot Exchange Limited case that when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corporation's case”***.

It further observed that as the pronouncement in ***“Chhattisgarh State Electricity Board [AIR 2010 SC 2061] lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. If further held that with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature”***.

11) The Counsel for the Petitioner relied on judgement of Hon'ble NCLAT, New Delhi in CA No.655 of 2023 between ***“Canara Bank Vs. Commercial Tax Department Circle 09, Indore, wherein the claim was admitted in CIRP process and when liquidation commenced, the claim was filed of the same amount with interest claim. In these circumstances, the Tribunal held that in the interest claim, the rejection was not correct”***. The present case is distinguishable of facts, hence, the said judgement cannot help the petitioners.

12) A judgement rendered by the NCLT, Hyderabad Bench in IA No.990 of 2022 in CP No.328/2018 between “***KVK Nilanchal Power Private Limited Vs.Power Finance Corporation Limited***” was relied upon, which relates to the condonation of delay in filing the claims, which is not the case here.

13) When there is a clear statutory bar in entertaining an appeal, which is filed beyond the period prescribed under the statute, the Tribunal cannot exercise its inherent powers and condone the delay, hence, these applications are dismissed.

Sd/-
Charan Singh
(Member, Technical)

Sd/-
Justice Telaprolu Rajani
(Member, Judicial)

Vinod