

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

**COMPANY APPEAL NO.20/2023**

**In**

**CP(IB)No.1832/MB/C-II/2017**

**Appeal filed under section 42 of the Insolvency &  
Bankruptcy Code,2016**

Filed by:

**Slipco Construction Pvt. Ltd.**

**... Appellant**

Versus

**Shri Abhijit Guhathakurta**

**Liquidator of EPC Constructions India Limited**

**..... Respondent**

*In the matter of*

**IDBI Bank Limited**

**...Financial Creditor**

Versus

**EPC Constructions India Limited**

**...Corporate Debtor**

**Order Pronounced on: - 12.09.2023**

***Coram:***

**Anil Raj Chellan**

**Member (Technical)**

**Kuldip Kumar Kareer**

**Member (Judicial)**

***Appearances -***

**For the Appellant**

**For the Liquidator**

**: Adv Rajendra Yadav**

**: Adv. Shriraj Khambete**

**ORDER**

*Per: Anil Raj Chellan, Member Technical*

1. This is an appeal filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) to set aside the order dated 13.03.2023 of the Liquidator, wherein the claim of the Appellant has been rejected by the Liquidator and to direct the Liquidator to include the claim of the Appellant as secured creditor on the basis of the arbitration award passed in its favour.
2. The case of the Appellant is that EPC Constructions Ltd (“Corporate Debtor”) issued a work order dated 17.03.2012 in favour of the Appellant for construction of annular columns of air-cooled condenser unit at one of plant area for a contract value of Rs.48717304/- valid from 01.03.2012 to 31.03.2013. Before completion of the above contract, dispute arose between the parties which resulted in termination of the contract on 12.02.2013. This led to a reference for Arbitration u/s.18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 and then to Delhi International Arbitration Centre, Delhi High Court, resulting in passing of an award dated 06.03.2018 by the Sole Arbitrator in favour of the Appellant. The said award was presented before the competent court for execution on 14.08.2018 as per the Arbitration & Conciliation Act, 1996.
3. Meanwhile, on a Company Petition filed by IDBI Bank Ltd under Section 7 of the Code against the Corporate Debtor, the Adjudicating Authority vide its order dated 20.04.2018 admitted the petition, initiated Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Abhijit Guhathakurta as the Interim Resolution Professional (IRP).
4. On 26.04.2018, the IRP issued public announcement inviting claims to be filed against the Corporate Debtor. On 10.05.2018, the Appellant filed its claim against the Corporate Debtor and the same was admitted to the tune of Rs.

1,06,91,881/- (Rs. One Crore Six Lakhs Ninety-One Thousand Eight Hundred Eighty-One).

5. The IRP was confirmed as Resolution Professional (RP) in the Committee of Creditors (CoC) meeting dated 25.05.2018. Since the claim of appellant was admitted as Operational Debt vide RP's mail dated 17.08.2018, the Appellant raised an objection vide e-mail dated 04.09.2018 stating that the Appellant herein should not have been treated as an Operational Creditor in view of the final award dated 06.03.2018 passed in favor of the Appellant.
6. On 10.01.2019, the CoC approved a Resolution Plan of Royale Partners Investment Fund which was then approved by the Adjudicating Authority vide its order dated 25.11.2019. However, Royale Partners Investment Fund failed to implement the approved Resolution Plan, despite orders passed by Adjudicating Authority as well as Hon'ble National Company Law Appellate Tribunal and the Hon'ble Supreme Court. Resultantly, vide order 07.05.2021 passed by the Adjudicating Authority, the Corporate Debtor was directed to be liquidated w.e.f. 18.05.2021 and the RP was appointed as the Liquidator.
7. On 19.05.2021, the Liquidator made public announcement for submission of claims with 17.06.2021 as the last date for submission of the claim. On 27.05.2021, the Appellant filed a claim for Rs.1,06,00,000/- with the Liquidator. The claim was rejected by the Liquidator and as per the modified list of stakeholders as on 29.11.2021, it was rejected stating that the amount claimed by the OC is in excess of balance as per books of accounts of Corporate Debtor.
8. In response to the above, the Liquidator in his affidavit-in reply stated that the Liquidator vide his e-mail dated 27.05.2023 cautioned the Appellant that claims were to be submitted as per the appropriate format provided under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"); in the manner set forth in the public announcement

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dated 19.05.2021, and claims not made in the appropriate format would be rejected. Subsequently, the Liquidator vide his mail dated 24.07.2021 rejected the claim made by the Appellant on the ground that the claim submitted by the Appellant was not as per the appropriate format provided under the Liquidation Regulations and as per the provisions of Code and the public announcement dated 19.05.2021.

9. The Liquidator further submitted that the Appellant, after 590 days, wrote a mail dated 06.03.2023 requesting to accept its claim and add the Appellant's name in the list of creditors. The Liquidator vide his mail dated March 13, 2023 reiterated that the claim submitted by Appellant in Form C for Rs.10600000/- cannot be verified by the Liquidator as per the provisions of the Code and the records maintained with the Corporate Debtor.
10. We have heard the counsel for the parties. The learned counsel appearing for the Appellant further submitted that as the claim of the Appellant was accepted by the RP, the Liquidator has no power to reject the claim of the Appellant. In support of the above, the Appellant cited the order of the Hon'ble NCLAT in Vijay Kumar Gupta v Canara Bank; Company Appeal (AT) (Ins.) No. 1015 of 2021 wherein it was held that "...once the claim is admitted and submitted by the Liquidator to the Adjudicating Authority, if he receives any information, then he shall have no jurisdiction to reject or make any modification in the claims which has already been admitted in terms of Section 40 of the Code and has to approach the Adjudicating Authority for the purpose of its modification which precisely has been done in the present case by the Liquidator".
11. On the other hand, the counsel for the Liquidator has submitted that the Appellant failed to submit the claim in accordance with the forms and the manner specified by Section 38(3) of the Code and Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Further, if the Appellant was dissatisfied with the rejection of its claim by the Liquidator,

the Appellant should have filed the appeal within 14 days from the date of such decision as per section 42 of the Code (since the Appellant's claim was rejected by the Liquidator's mail dated 24.07.2021, the present appeal should have been filed within 07.08.2021). The present appeal has been filed on 24.03.2023 i.e. after an inordinate delay of 593 days. No justification for the delay had been given and the Appellant had also not sought any condonation of delay. The Corporate Debtor is at its last stage of liquidation where seven auctions were already conducted and the final e-auction for selling the Corporate Debtor as a going concern is pending approval before the Adjudicating Authority. Condoning the inordinate delay at this stage would result in further delay and additional costs in the liquidation process.

12. We have weighed the contention raised by the Counsel for the Appellant and the Respondent- Liquidator.
13. It is apparent from the records that the claim of the Appellant to the extent of Rs.1,06,91,881/- was admitted in the Corporate Insolvency Resolution Process (CIRP) and when the liquidation process commenced, the Appellant filed a claim for lesser amount (Rs.106,00,000/-) on 27.05.2021 i.e. well within the time of 17.06.2021 specified by the Liquidator in the public announcement. The above claim was rejected by the Liquidator on the reason that the Appellant did not file the claim in the appropriate format specified under the Liquidation Regulations. It appears that the requirement to adhere to the forms specified under the Liquidation Regulations is directory in nature for the timely completion of the process and not intended to scuttle the rights of the persons or increase the disputes and consequential appeal under Section 42 of the Code. Considering the above and the fact that the claim of Appellant had already been admitted in CIRP and that fresh claim was filed within the time announced by the Liquidator, rejection of the same merely on a procedure / format prescribed in the Liquidation Regulations may not, in our opinion, help to achieve the ends of

justice.

14. As regards the delay of 593 days in preferring the present appeal under Section 42 of the Code, we are of the opinion that the sequence of the events and the facts of the case do justify non-mentioning of condonation of delay. In a similar situation, the *Hon'ble NCLAT in the case of Canara Bank v. Commercial Tax Department, Madhya Pradesh and Anr.; (2023) ibclaw.in 342 NCLAT* held that the delay in filing the Appeal under Section 42 of the Code is clearly condonable while exercising the power under Section 5 of the Limitation Act.
15. It would be relevant to mention here that the Corporate Debtor is still undergoing liquidation process, and the application for selling the Corporate Debtor as a going concern is still pending for approval before the Adjudicating Authority. Acceptance of claim of the Appellant at this stage would not have a major direct bearing on the present process of liquidation.
16. For all the aforesaid reasons, **Company Appeal No. 20/2023** is **allowed** with a direction to the Liquidator to consider and verify the claim of Appellant on the basis of the award passed by the Arbitrator in accordance with Section 53 of the Code, 2016 and in the appropriate category as the debt of the applicant is admittedly based on work order executed by it would fall in the category of an operational debt.

Sd/-

**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**