

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 1015 of 2021

In the matter of:

Vijay Kumar Gupta

...Appellant

Vs.

Canara Bank

...Respondent

Present

For Appellant: Mr. Kushal Bansal, Advocate.

**For Respondent: Mr. PBA Srinivasan, Mr. V. Aravind, Ms. Srishti Bansal,
Ms. Prerana Sabharwal & Mr. Sumit Swami, Advocates.**

ORDER

Per:- Justice Rakesh Kumar Jain (Oral)

12.01.2023: This appeal is against the order dated 28.09.2021 passed by the National Company Law Tribunal, New Delhi by which an application bearing CA/725/2019 filed in (IB)-420(ND)/2017 filed by the Appellant (Liquidator) seeking the following reliefs which are reproduced hereunder :-

“1. To allow the applicant to reduce the claim of the Canara Bank from Rs. 12,14,00,229/- (Rupees Twelve Crore Fourteen Lakhs Two Hundred Twenty only) along with relevant interest applied from the date of transaction till Liquidation commencement date i.e. 13.09.2018.

2. To allow the Applicant to modify the entry in list of stakeholders in accordance with Regulation 31(3) of the Liquidation Process Regulations, 2016.”

has been rejected, inter-alia on the ground that the Regulation 31(3) of the IBBI (Liquidation Process) Regulations, 2016 for short the Regulation is not applicable, Liquidator is empowered under IBC to accept the claim and the prayer made by the liquidator is not thus acceptable.

2. Counsel for the Appellant has submitted that on receiving the additional information the Liquidator, proceeded in terms of the Regulation 31 of the Regulations. Regulation 31 of the Regulations is reproduced as under :

31. List of stakeholders.

(1) The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-

(a) the amounts of claim admitted, if applicable,

(b) the extent to which the debts or dues are secured or unsecured, if applicable,

(c) the details of the stakeholders, and

(d) the proofs admitted or rejected in part, and the proofs wholly rejected.

[(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.]

(3) The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

(4) The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.

(5) The list of stakeholders, as modified from time to time, shall be-

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor;

(c) displayed on the website, if any, of the corporate debtor.

[(d) filed on the electronic platform of the Board for dissemination on its website:

Provided *that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.]*

3. It is submitted that he had received a claim from the Canara bank of an amount of Rs. 55,90,10,316/- which was admitted. However, after receiving certain information during the process of transaction audit that the total claim of the Canara Bank is of Rs. 12,14,00,229/- an application was accordingly moved to the Adjudicating Authority in terms of Regulation 31(3) for the aforesaid two prayers which have been rejected.

4. Counsel for the Appellant has submitted that the Tribunal has committed an error in dismissing the application solely on the ground that the Regulation 31(3) is not applicable. He has submitted that Regulation 31(3) provides that the Liquidator may apply to the Authority to modify an entry in the list of stakeholders (in the present case is the Canara Bank) if he comes across additional information which may warrant modification and shall modify the entry only on the direction of the Adjudicating Authority. It is further submitted that there is no other provision either in the Code or in the Regulations. In such a situation, therefore, Regulation 31(3) is applicable and the order passed by the Adjudicating Authority is patently illegal.

5. On the other hand, Counsel appearing on behalf of the Respondent has referred to Section 39 of the Code to contend that the Liquidator is to verify the claim submitted under Section 38 as per the time prescribed by the Board and as per Section 39(2) may also require evidence which he thinks necessary for the purpose of verifying the whole or relevant part of such claim. He further submitted that as per Section 40 of the I & B Code, 2016 the Liquidator may then after verification of the claim under Section 39 admit or reject it in whole or in part as the case may be and in case, any party is not satisfied with the decision of Liquidator about accepting or rejecting the claim may prefer an appeal under Section 42. Section 38,39,40,41 & 42 are reproduced for a quick reference.

“38. Consolidation of claims. –

(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 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.

39.Verification of claims.

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document

or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

40. Admission or rejection of claims. –

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be: Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

41. Determination of valuation of claims. –

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

42. Appeal against the decision of liquidator. –

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.”

6. In rebuttal, Counsel for the Appellant has submitted that in the normal circumstances the procedure which has been provided in the Code starting from Section 38 to Section 42 has to be followed but Regulation 31(3) is a special provision which comes into operation if any information escapes the notice of the

Liquidator or comes to his knowledge after accepting the claim then he can apply to the Adjudicating Authority for its direction as to what has to be done in such situation for the purpose of modification of entry in the list of stakeholder.

7. We have heard Counsel for the parties and after perusal of the record are of the considered opinion that there is no quarrel with the scheme provided under Section 38 to 42 of the Code about consolidation of claims, verification, rejection of claims and the appeal against the decision of the Liquidator but 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.

8. Thus, it is apparent that the Tribunal has committed an error in not appreciating Regulation 31(3) in its right perspective and rejected the application solely on the issue that the said provision is not applicable and rather held that Liquidator is empowered to accept or reject the claims. No other issue has been raised. In view thereof, we are of the considered opinion that the Impugned Order is bad in law and therefore, the same is hereby set aside.

9. The matter is remanded back to the Learned Tribunal to decide the application filed by the Appellant in the light of the Regulation 31(3) of the

Regulations, 2016. The parties are also directed to appear before the Learned Tribunal on 6th February, 2023. It is needless to mention that the Tribunal shall take a decision about the application of the Liquidator in respect of the modification of the claim, admitted by it initially, by giving a hearing to the other party i.e. Canara Bank.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/RR