

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS.) No. 299 of 2023

(Filed under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the 'Impugned Order' dated 21.04.2022 in MA(IBC) / 39 /
KOB / 2021 in TIBA/7/KOB/2019, passed by the 'Adjudicating
Authority', (National Company Law Tribunal', Kochi Bench, Kerala)**

In the matter of:

V.K. Abdul Rahim

28/3858-D, Sargam House,
Waterland Road, Elamkulam,
Cochin, Kerala – 682020

..... Appellant

v.

Jasin Jose,

Resolution Professional / Liquidator

IBBI/IPA-001/IP-P00695/
2017-2018/11225, Ponmattam,
Madaserry House,
Mookkannoor PO, Ernakulam,
Kerala – 683577

..... Respondent

Present:

For Appellant : Mr. Babu Karukapadath, Advocate

For Respondent : Mr. Jerin Asher Sojan, Advocate

J U D G M E N T **(Virtual Mode)**

[Per: Shreesha Merla, Member (Technical)]:

Aggrieved by the Impugned Order dated 21.04.2022, passed in MA(IBC)/39/KOB/2021 in TIBA/7/KOB/2019, by the Adjudicating Authority, National Company Law Tribunal, Kochi Bench, Kochi, Mr. V.K. Abdul Rahim / the Suspended Managing Director of the Corporate Debtor Company / M/s. Sargam Builders Pvt. Ltd., has preferred this Appeal, under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code').

2. By the Impugned Order dated 21.04.2022, the Adjudicating Authority, has dismissed the Applications, preferred by the Applicant / Appellant herein, observing as follows:

20. ``We have heard the learned counsel for the applicant – Shri. Babu Karukapadath and learned counsel for Respondent No.1 Shri. Akhil Suresh and R2 Shri. Mohan Jacob George. We have meticulously perused the case records and various documents annexed with this MA. We have also gone through the extant provisions of the Code and Rules made thereunder. It is seen that the applicant was going on challenging the procedure adopted by the IRP / RP and Liquidator in the Corporate Insolvency Resolution Process. When Respondent Bank initiated proceedings under Section 7 of the I & B Code, 2016, after hearing the contention of the Corporate Debtor in which the applicant herein was the Managing Director, this Tribunal vide order dated

20.9.2019 admitted the application. In the 4th CoC meeting held on 3.9.2020 the CoC with 77.92% voting right resolved not to re-issue the Form G further and not to go for fresh EOI and recommended to file application before this Adjudicating Authority for Liquidation of Company under Section 33(2) of IBC, 2016. Resolution Professional based on the resolution passed in the 4th CoC filed I.A No.129/KOB/2020 on 07.09.2020 before this Tribunal. Vide order dated 16.09.2020 this Tribunal allowed the application and ordered Liquidation of M/s. Sargam Builders Pvt Ltd (Corporate Debtor) and appointed Shri. Jasin Jose as the Liquidator.

21. We have gone through the averments made in MA/207/KOB/2020 and found that similar contentions were raised in that MA in which the applicant herein was the applicant. After a detailed hearing and considering all the contentions of both sides, this Tribunal vide order dated 20.09.2021 dismissed that MA with costs of Rs.25,000/- which according to the Liquidator, the applicants therein have not paid. Without complying with the direction in that order, the applicant has again moved this Tribunal taking some other contentions regarding the non-acceptance of his claim and the interest levied by the Federal Bank. The Liquidator has satisfactorily clarified why his claim was not accepted and the interest charged by the Bank is as per the agreement between the Bank and the Corporate Debtor. It appears to us, that the only intention of the applicant is to delay the proceedings in one way or the other approaching various forums including the Hon'ble Supreme Court of India, wherein all his attempts were failed.

22. From the verification of the earlier proceedings of this matter, it is seen that the Suspended Directors are not at all co-operating in the CIR Process and they were only on the lookout of creating hurdle to the continuation of CIR Process. Moreover, the applicant herein is a shareholder of the Company and as rightly pointed out by the Respondents that he is not entitled to claim any relief against the CoC or the conduct of the CIRP.

23. Without attending the meeting conducted by the IRP / RP, the applicant is making bald allegations against the conduct of the CoC meetings. His challenge to the order of admission of the TIBA/07/K0B/2019 before the Hon'ble NCLAT and the appeal against the order before the Hon'ble Supreme Court was failed. Hence, he cannot challenge the wisdom of the IRP/RP/Liquidator or the CoC at this belated stage and this is a fit case for dismissal.''

3. The Learned Counsel for the Appellant submitted that the Corporate Debtor Company, was admitted into Corporate Insolvency Resolution Process on 20.09.2019, that a Liquidation Order, was passed by the Adjudicating Authority, on 16.09.2020, an Appeal, was preferred against this Liquidation Order, before the Appellate Tribunal, Principal Bench, New Delhi on 09.11.2020 in Comp. App (AT) (INS) No. 1297 / 2019, in which Appeal this Tribunal, vide Order dated 27.01.2020 has dismissed the Appeal.

4. It is submitted that the Appellant subsequently filed MA No. 207 / KOB / 2020 on 07.12.2020, seeking a direction to recall the Exparte Order of Liquidation, on various grounds. The Appellate Tribunal, Principal Bench, New Delhi, vide Order dated 16.12.2020, had permitted the Appellant to withdraw the Appeal and to prosecute MA No. 207 / KOB / 2020, which was a more comprehensive Petition. Thereafter, the

Adjudicating Authority, dismissed MA No. 207 / KOB / 2020 on 20.09.2021, which was challenged by way of an Appeal, by the Appellant in his capacity as a Shareholder in Comp. App (AT) (INS.) No. 264 of 2021.

5. It is submitted by the Learned Counsel for the Appellant that in view of the long pendency of the Proceedings and to avoid any further delay in finalizing the Liquidation Process, in the event of the Appellate Authority under IBC approving the Order of Liquidation, without prejudice to the right of the Appellant, to prosecute the challenge against the Order of Liquidation, the Appellant had submitted his Claim, on 16.11.2021 in Form D, dated 15.11.2021 to the Respondent, claiming an amount of Rs.2,93,17,492.65.

6. It is the case of the Appellant that the Respondent had refused to admit the Claim and communicated the same vide email dated 25.11.2021. The Adjudicating Authority, without taking into consideration that the Appellant had not made his Claim in Form D, immediately after the Public Announcement, as the Applicant was in fact, pursuing his remedies, against the very Order of Liquidation, with an expectation that the Order of Liquidation to be set aside in due course, had dismissed his Application. Despite having filed a Form D with all the subsequent documents, the Respondent had insisted for a direction from

the Adjudicating Authority, for admitting the genuine Claim of the Appellant.

7. The Learned Counsel for the Appellant further submitted that despite the Order of the Hon'ble Apex Court, extending the period of Limitation, on account of the Covid Pandemic from 15.03.2020 to 28.02.2022, the Adjudicating Authority, had erred in not excluding this period for the purpose of calculating the delay.

8. The Learned Counsel appearing for the Respondent / Liquidator submitted that the Appellant being the Suspended Managing Director, was aware of the Proceedings and had attended the Committee of Creditors Meetings, and therefore any delay in filing of the Claim, cannot be pardoned.

9. It is further submitted that the Appellant had filed MA No.207/KOB/2020, seeking to set aside the Liquidation Order and thereafter an Interlocutory Application for Amendment, was filed in this MA No. 207 / KOB / 2020 and was numbered as IA No. 101 / KOB / 2021.

10. The Respondent / Liquidator submits that both the Applications were heard together and dismissed on 17.08.2021, on the ground that the Suspended Directors, are not co-operating in the Corporate Insolvency

and Resolution Process and were only looking out to create hurdles in the continuation of the Corporate Insolvency Resolution Process.

11. It was further submitted that in the light of the conduct of the Appellant herein, the Adjudicating Authority, had dismissed the said Application with costs of Rs.25,000/-.

Assessment:

12. It is seen from the record that the Liquidation date is 16.09.2020, the Public Announcement was made on 24.09.2020, the last date for receipt of Claim was 22.10.2020 and the last date for Verification of the Claim was 22.11.2020.

13. It is significant to mention that subsequent to the last date of receipt of Claim i.e. 22.10.2020, the Appellant had filed an Appeal on 10.11.2020, without choosing to prefer any Claim, within the stipulated period.

14. Regulation 16 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, refers to 'Submission of Claim', and reads as hereunder:

“(1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.’’

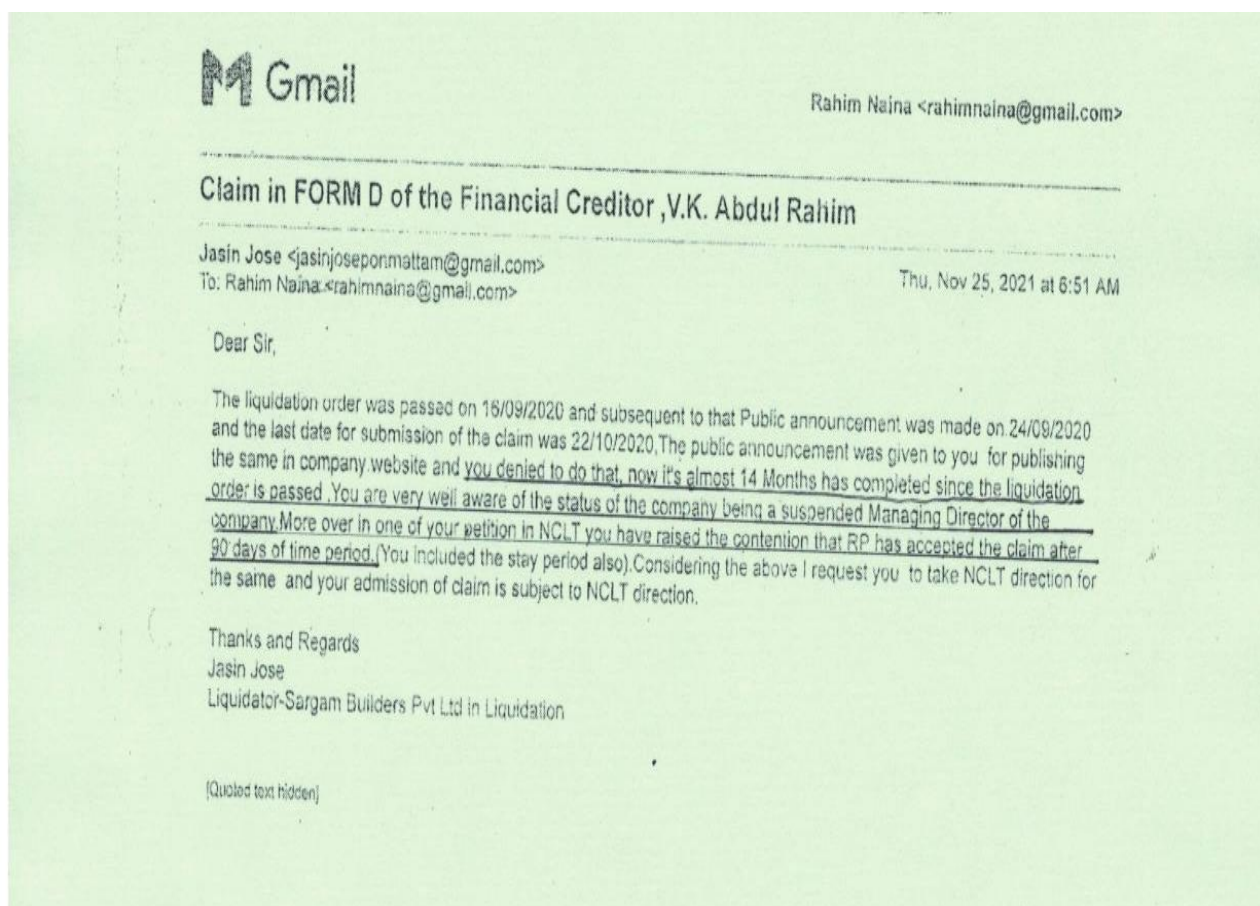
[Emphasis Supplied]

15. The Regulation clearly stipulates that the Claim has to be submitted on or before the last date mentioned in the Public Announcement.

16. In the instant case, it is an admitted fact that the Claim was submitted with an inordinate delay of 390 days. The contention of the Learned Counsel for the Appellant that this inordinate delay of 390 days is on account of pursuing the Appeal, challenging the Exparte Liquidation Order, is untenable on the ground that the last date for receipt of Claim was 22.10.2020, the Appeal challenging the Liquidation Order, was on 10.11.2020 and moreover, challenging the Liquidation Order by way of an Appeal, specifically in the absence of any ‘Stay Order’, does not prevent, viewed from any angle, the Appellant in preferring a Claim, within the stipulated period of time.

17. It is seen from the record that the Appellant had registered even the Publication of Form B in the Company’s Website. An email dated 26.04.2021, sent by the Appellant’s requests, the Liquidator, not to Publish Form B in the Website, until the case is disposed of.

18. At this juncture, it is relevant to reproduce the email dated 25.11.2021, addressed by the Liquidator to the Appellant herein, which is detailed as hereunder:



[Emphasis Supplied]

19. From the aforementioned email dated 25.11.2021, it is clear that the Liquidator had intimated to the Appellant herein, the reason for having rejected the Claim as the last date for Submission of Claim, was 22.10.2020 and 14 months had elapsed, since the Liquidation Order, was passed. Being the Managing Director of the Corporate Debtor Company, the Appellant cannot plead ignorance of the Proceedings and

this Tribunal is of the earnest view that preferring an Appeal and challenging the Liquidation Order, cannot be a substantial ground, for not having preferred the Claim on time.

20. This Tribunal, is of the considered view that IBC is a time bound process and the Liquidator cannot accept a belated Claim, which would go against with the provisions of the IBC, 2016 as well as the scope and objective of the 'Code'. It is also seen from the record that the Appellant had made every effort to derail the process and this Tribunal, does not find any substantial grounds to interfere with the well-reasoned order of the Adjudicating Authority.

21. For all the foregoing reasons, this Comp. App (AT) (CH) (INS.) No. 299 of 2023 fails and accordingly Dismissed. No Order as to Costs. The connected pending IA No. 916 of 2023 ('For Stay') is Closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

26 / 09 / 2023
SR / TM