

(2023) 12 NCLT CK 0024
In the National Company Law Tribunal
Case No : I.A. 84 Of 2020

Karnathaka Power Corporation Limited Vs Mr. C.B. Mouli & Another ?

Date of Decision : 05-12-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 42

Citation : (2023) 12 NCLT CK 0024

Hon'ble Judges : Virendrasingh G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ajay, Anuska Nagpal

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. This Miscellaneous Application 84/2020 is filed in C.P. (IB) 1239/MB/2017 by M/s Karnataka Power Corporation Limited ("Appellant") in the Liquidation Process of M/s Gupta Global Resources Pvt Ltd. ("Corporate Debtor") under Section 42 of the Insolvency and Bankruptcy Code, 2016 ("Code") for condonation of delay in submission of claim and for direction to the Liquidator of the Corporate Debtor to admit the applicant's claim which came to be rejected in terms of Liquidator's letter dated 25.05.2019.

2. By an Order dated 28th August, 2018 (pronounced on 21st August, 2018) passed by this Hon'ble Tribunal, the Respondent was appointed as Liquidator of Gupta Global Resources Pvt. Ltd. and liquidation process of Gupta Global Resources Pvt. Ltd. was commenced. As per the public notice dated 30th August, 2018 issued by the Respondent - Liquidator, the last date of submission of proof of claims by creditors was 27th September, 2018.

3. The Appellant is a Government company, involved in the generation of power in the State of Karnataka. The Appellant has coal based thermal power plants in Raichur and Bellary which is utilised for the generation of Power.

3.1. The Appellant had appointed the Corporate Debtor for setting up of the

washery for supplying washed coal to the Appellant and accordingly an agreement dated 29th November 2002 was entered into between the parties. The impurities generated while washing the coal i.e. the coal rejects were to be disposed of basis the prevailing environmental regulations and the Corporate Debtor was even paid for the said work. However, it came to the knowledge of the Appellant that the coal rejects are being sold to various parties without knowledge and permission of the Appellant. Accordingly, the Appellant had addressed letter dated 28th April 2008 to the Corporate Debtor stating that such sale is not permitted.

3.2. Thereafter, vide letter dated 31 May 2010, the Corporate Debtor agreed to handover the coal rejects to the Appellant. The Appellant vide its letter dated 10th June 2010 asked the Corporate Debtor to handover the coal rejects right from the commencement of the agreement, otherwise the Appellant will recover an amount equivalent to INR 476/- per MT of the coal rejects.

3.3. As no coal rejects were handed over to the Appellant, the Appellant vide its letter dated 5th December 2016, requested the Corporate Debtor to furnish the details of the coal rejects generated and sold by the Corporate Debtor.

3.4. As no information/details/coal rejects were forthcoming from the Corporate Debtor, the Appellant was constrained to file Original Suit No. 5220 of 2017 before the Hon'ble City Civil Court, Karnataka for recovery of the amounts towards the coal rejects i.e. an amount of INR 34,71,48,301 (Thirty Four Crore Seventy One Lakhs Forty Eight Thousand Three Hundred and one only), as per the agreement.

3.5. The Corporate Debtor had also addressed two letters dated 20th January 2018 and 20th February 2018 to the Chartered Accountants of the Corporate Debtor, informing that an amount of INR 34,71,48,301/- is due and payable by the Corporate Debtor under the Agreement.

3.6. Thereafter, as no reply came from the Corporate Debtor and it also came to the knowledge of the Appellant that the Corporate Debtor has gone under Liquidation, the Appellant had then filed his claim in Form C dated 18th May 2019 under the Code before the Respondent No. 1 for an amount of INR 34,71,48,301/- payable by the Corporate Debtor.

3.7. The Respondent No. 1 had vide Impugned Letter dated 25th May 2019, received by the Appellant on 27th May 2019, rejected the claim of the Appellant on grounds that the same is filed after the last date of submission i.e. 27th September 2018 and therefore the same cannot be accepted and requested to submit the claim before this Hon'ble Tribunal.

4. We have heard the learned Counsel and perused the material available on record.

4.1. The Liquidation Process Regulations mandates the creditors to file the claim within the time prescribed, which is 30 days from the date of commencement of

liquidation under Regulation 12(2)(b) of the IBBI (Liquidation Process) Regulations, 2016. The Applicant has pleaded the relaxation on ground of limitations caused by COVID-19 pandemic. It is trite law that the public announcement made by the Liquidator tantamount to putting every creditor to notice to file claim, and no individual notice(s) are required.

4.2. We find that the last date for submission of the claim was 27th September 2018, and the claim was filed by the Appellant on 18th May, 2019. The Applicant has placed reliance on the Corporate

Debtor's two letters dated 20th January 2018 and 20th February 2018 to the Chartered Accountants of the Corporate Debtor, informing that an amount of INR 34,71,48,301/- is due and payable by the Corporate Debtor under the Agreement, to contend that existence of the debt in the books of Corporate Debtor can not be doubted.

4.3. 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."

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

4.5. The Hon'ble NCLAT, Chennai Bench in the case of V.K. Abdul Rahim Vs. Jasin Jose, RP/ Liquidator (2023) ibclaw.in 632 NCLAT has held that "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".

4.6. Considering the facts of the case and judicial proposition cited above, we consider it appropriate to reject the prayer seeking condonation of the delay in submission of claim.

5. In view of the foregoing, MA 84/2020 is disposed of as dismissed.