(2021) 12 NCLT CK 0040

In the National Company Law Tribunal

Case No : ?MA No. 3413/MB/C-II/2019 In C.P (IB) No. 2668/MB/C-II/2018

Qamruddin Faizi APPELLANT

Vs

Kaizen Aac Blocks Pvt Ltd RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 12, 33, 60(5)
Insolvency and Bankruptcy of India (Insolvency Resolution Process for Corporate Person), Regulations, 2016 — Regulation 12

Citation : (2021) 12 NCLT CK 0040

Hon'ble Judges : Ashok Kumar Borah, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Shyam kapadia, Dr. S. K. Jain, Yahya Batatawala

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The present application is moved by M M Lubricants through its proprietor Mr. Sohel Harnoon Bhai. (hereinafter called as "the Applicant") in the matter seeking direction from this Tribunal to condone the delay of 213 days in filing the proof of claim i.e. Form B with the Interim Resolution Professional i.e. Mr. Manoj Kumar Jain ("IRP") and thereafter to consider the proof of claim lodged by the Applicant on 19th September, 2019.

Submissions made by Applicant:

2. The Applicant i.e. M M Lubricants is into the business of supplying Mould Oil.

3. The Applicant state that the pursuant to various orders raised by Kaizen ACC Blocks Private Limited, the Corporate Debtor over a phone, the Applicant has delivered goods i.e. Mould Oil to the Corporate Debtor. All the transaction between the Applicant and Corporate Debtor were carried out after following routine procedure in the ordinary course of the business. Upon delivery of goods,

invoices were raised by the Applicant, which were accepted and acknowledged by the Corporate Debtor and/or its representative, receiving the goods, without raising any objection of whatsoever nature.

4. The Applicant states that from 22nd November 2016 to 23rd January 2019, the Applicant had raised various tax invoices amounting to sum of Rs.36,53,192/- (Rupees Thirty-Six Lakhs Fifty-Three Thousand One Hundred and Ninety-Two Only) upon the Corporate Debtor. The Applicant has received part payment amounting to sum of Rs.24,46,342/- from the Corporate Debtor. Even thereafter, a sum of Rs.8,06,850/- (Rupees Eight Lakh Six Thousand Eight Hundred and Fifty Only) was due and payable by the Corporate Debtor.

5. The Applicant states that in the month of September 2019 the Applicant was approached one of the employees of the Corporate Debtor and requested him clear the outstanding dues. The Applicant learnt from him that one of the director cum shareholder of the Corporate Debtor Mr. Qamruddin Faizi filed the captioned Compony Petition under section 7 of Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor. Further informed that this Tribunal vide order dated 23rd January 2019 admitted the Company Petition and appointed Mr. Manoj Kumar Jain as Interim Resolution Professional ('IRP') and IRP by a public announcement dated 1st February, 2019, published in Financial Express and Mumbai Lakshadweep invited the claims from the Creditors on or before 17th February, 2019. In these circumstances, he can not release the outstanding dues without the consent of IRP.

6. The Applicant was not aware of the order passed by this Hon'ble Tribunal, as the same was not intimated by ex-directors and/or IRP to the Applicant. It is pertinent to note that the Applicant has raised various invoices after 23rd January, 2019 upon the Corporate Debtor and the Corporate Debtor has made the payments towards the same.

Submissions made by Interim Resolution Professional (IRP):

7. The Applicant was fully aware of the appointment of, Manoj Kumar Jain as IRP of the Corporate Debtor, by this Tribunal dated 23.10.2019. Still in para 6 of the said Application, the Applicant has falsely stated that the Applicant was not intimated by the ex-Directors and /or IRP to the Applicant. Further states that the Applicant was fully aware of the appointment of IRP by this Tribunal as the Applicant continued to supply materials to the Corporate Debtor and payment of such suppliers were made by the IRP of the Corporate Debtor.

8. Moreover, IRP had also made Public Announcement on 01/02/2019 which was published in Financial Express and Mumbai Lakshwadeep. In the said Public Announcement, IRP had invited claims from the Creditors of the Corporate Debtor on or before 17/02/2019. Pursuant to the said Public Announcement, the IRP had received claim from Financial Creditors but no claims were received from any Operational Creditor. Hence, the contention of the Applicant that he was not

aware of Order dated 23/01/2019 and it is only in the month of September, 2019, Applicant learnt of filing of Company Petition and Orders passed by this Tribunal appointing Mr. Manojkumar Jain as IRP.

9. The Applicant has also falsely stated that he came to know about the Public Announcement made by the IRP when he visited to Mumbai in the month of September, 2019. The Applicant was fully aware of the appointment of IRP as he had signed cheques for payment against bills of the Applicant as IRP of the Corporate Debtor.

10. Inspite of being aware of the Appointment of IRP, the Applicant did not submit his claim on or before 17/02/2019 i.e. the last date of receiving claim by IRP from creditors but also did not file his claim within the outer limit of the 90th days from the date of commencement of Insolvency Process as provided in Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Person), Regulations, 2016.

11. The IRP submits that 330 days period which is outer period for conducting resolution process under 1st provision to section 12 of the IBC, 2016 on 28/12/2019 and there has not been any progress in carrying out the resolution process in absence of independent and functional CoC. In absence of independent CoC comprising of unrelated Financial Creditors, the Corporate Debtor is hearing for Liquidation under 33 of the IBC, 2016 subject to approval of this Tribunal. IRP has already filed such Applicant before this Tribunal under Section 33 of the IBC, 2016.

Findings:

12. We have perused records available and heard the submissions of parties it is noted that the Corporate Debtor is going concern. We direct the IRP to verify claims on merits. The delay is condoned subject to payment of cost of Rs.10,000/- to the IRP. The IRP is also directed to file progress report.

13. With the aforesaid observation the present IA No. 3413 of 2019 In C.P (IB) No. 2668/MB/C-II/2018 stands disposed of.

