
(2023) 10 NCLT CK 0076

In the National Company Law Tribunal

Case No : IA No. 2258 Of 2023 In CP(IB) 1832 (IB)2017

**Sri Vijetha Engineers and Infrastructure Private Limited Vs Shri Abhijit
Guhathakurta (Liquidator of EPC Constructions India Limited) ?**

Date of Decision : 27-10-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 42

Citation : (2023) 10 NCLT CK 0076

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Nausher Kohli, Shriraj Khambete

Final Decision : Disposed Of

Judgement

Anil Raj Chellan, Member Technical

1. The present Interlocutory Application is filed by Shri. Vijetha Engineers and Infrastructure Private Limited under Section 42 of the Insolvency and Bankruptcy Code, 2016 ('the Code') against the rejection of the claim of the Applicant to direct Mr. Abhijit Guhathakurta, the Liquidator of EPC Constructions India Limited, ('Corporate Debtor') to accept the claim by condoning the delay of 352 days.

Facts of the Case:

2. The Applicant had been awarded two construction work orders by the Corporate Debtor for Construction of Earthen Dam for Turial Hydroelectric Power Project, Mizoram vide work order dated 20.11.2013; and extraction of boulder from Rawthi Kotla Quarry near village Saipum, Mizoram vide work order dated 11.07.2014. The Applicant had successfully completed the work assigned to it. 10% of every bill was withheld by the Corporate Debtor during the Defect Liability Period and some amount was also outstanding towards the bills. In the meantime, the company was put under Corporate Insolvency Resolution Process (CIRP) vide order of the Adjudicating Authority dated 07.05.2021. The Respondent herein was initially appointed as Interim Resolution Professional and

thereafter, confirmed as Resolution Professional (RP). RP admitted the claim filed by the Applicant to the extent Rs 8,66,92,588/-

3. Though a Resolution Plan was approved, the successful resolution applicant failed to implement the resolution plan. Consequently, the Adjudicating Authority vide its order dated 07.05.2021 (effective from 18.05.2021) ordered liquidation of the Corporate Debtor and appointed RP as Liquidator. On 19.05.2021, the public announcement for submission of claims was published by the Liquidator and the last date for submission of the claim was 17.06.2021.

4. On 03.07.2022, the Applicant filed a claim for Rs. 8,66,92,588/- (the same amount admitted by RP in CIRP) but the Liquidator rejected the claim vide his email dated 26.07.2022 solely on the ground that the claim had been filed belatedly.

Submissions of the Applicant:

5. The claim submitted by the Applicant is for the same amount which had been admitted by the RP and the Liquidator should have admitted the claim.

6. The Applicant was not aware of the public announcement made on 19.05.2021 and he came to know of the same only on 03.07.2022 for the reason that the Applicant does not have operations or office at Mumbai, the whole-time director who was looking after this issue had expired on 01.06.2021, entire management of the Applicant and the staff were held up at Hyderabad/North-East India etc. The Applicant further contended that the Petitioner failed to communicate the invitation of claim through email.

7. The Liquidation process is still underway and the delay in filing the claim before the Liquidator is neither willful nor wanton, but for the reasons stated above.

Submissions of the Liquidator/Respondent:

8. The Liquidator denied the submissions of the Applicant and stated that there is a delay of 382 days and that the Application also filed beyond the permissible timeline (delay of 18 days) as per the Code and the Liquidation Regulations. The Respondent further submitted that the reasons/grounds stated by the Applicant do no merit consideration for various reasons.

9. To buttress the submissions, the Respondent/Liquidator relied on the decision of the Hon'ble NCLAT in Deputy Commissioner Commercial Taxes (Audi) vs. Surana Industries Limited (2020 SCC Online NCLAT 943) wherein it was held that sufficient cause and cogent reason should be stated for condonation of delay as Liquidation is a time-bound process. The Hon'ble Apex Court in H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another (2015) 1 SCC 680 upheld stringent scrutiny of explanation to determine sufficiency of cause of delay for condonation of delay.

Analysis and Findings:

10. We have heard the advocates appearing for the parties and perused the documents on record. It is a matter of record that the Applicant had submitted its claim during CIRP and the Respondent while acting as RP admitted the claim of the Applicant. Hence it is within the knowledge of the liquidator the claim of the Applicant though he was not mandatorily required to intimate the Applicant regarding the initiation of the liquidation proceedings in respect of the Corporate Debtor and/or the requirement of filing fresh claim in the liquidation proceedings.

11. It can be seen from the submissions that the sole reason for not admitting the claim of the Applicant is the delay in filing the claim with the liquidator. It is true that the Applicant seeking condonation of delay is required to show sufficient cause for the delay as held in the Authorities cited by the Respondent. The project/work in respect of which the Applicant submitted its claim is situate in the remote village of Mizoram and the submission of the Applicant that the main operation of the Applicant is in the North-Eastern parts of India/remote areas of Arunachal Pradesh cannot be doubted. Further, there is no reason for the Applicant who had submitted the claim in CIRP within time to delay the submission of claim in the liquidation proceedings. The reason/grounds stated by the Applicant for condonation of delay are, in our opinion, sufficient cause for condonation of delay. The delay in submission of this Application (18 days) against the rejection of claim by the Liquidator is also condonable by the Adjudicating Authority.

12. It is also observed that the liquidation proceedings are still underway, and the admission of claim will not derail/protract the liquidation proceedings in respect of the Corporate Debtor. At the same time, in the interest of justice it is necessary to consider the claim of the Applicant.

13. The rejection of claim solely on the ground of delay would not be justified in the facts and circumstances of the case.

14. In view of the above, the Application bearing no. IA 2258 of 2023 is allowed by condoning the delay and the Respondent is directed to consider the claim of the Applicant in accordance with law.