
(2022) 05 NCLT CK 0078
In the National Company Law Appellate Tribunal
Case No : CA 11/2020 (IB)310(ND)2019

Suman Chadha

APPELLANT

Vs

Kamal Aggarwal, Liquidator & Anr

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 33, 42

Citation : (2022) 05 NCLT CK 0078

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Virendra Kumar Gupta, Member (T)

Bench : Division Bench

Advocate : Neeraj Yadav, Aditi Sharma, Siddharth Arora

Final Decision : Allowed

Judgement

Virendra Kumar Gupta, Member (Technical)

CA NO.11/2020

1. This application has been filed under Sec 42, IBC, 2016 against the decision of the Liquidator vide its email dated 22.11.2020, whereby the claim of the appellant was rejected by the Liquidator.

2. The facts, in brief, are that the application of the operational Creditor i.e appellant in the present matter was admitted and CIRP was initiated against the corporate debtor vide order of this Adjudicating Authority dated 14.06.2019 and Mr. Shyam Araora was appointed as IRP. The said order was appealed by the corporate debtor before Hon'ble NCLAT and the same was dismissed. The corporate debtor further approached the Hon'ble Supreme Court against the order of Hon'ble NCLAT which was also dismissed on 16.12.2019.

3. Mr. Shyam Arora, the IRP was later replaced by Mr. Kamal Agarwal as RP, subsequently order for initiation of liquidation U/s 33 of IBC, 2016 was passed on 21.09.2020 and the RP was appointed as the liquidator.

4. It is submitted by the appellant that the claim filed 17e appellant was initially accepted by the erstwhile IRP. However, when the respondent was appointed as RP (now "the liquidator"), he called upon the Appellant to submit the invoices in respect of the total amount of debt claimed. The appellant replied to the RP by email dated 02.01.2020, stating that no invoice was ever demanded by the Corporate Debtor and that the debt is an admitted debt, which has been accepted by this Adjudicating Authority on the basis of the same documents an order of admission of initiation of CIRP was passed. It is further submitted that the said order was affirmed by the Hon'ble NCLAT as well as the Hon'ble Supreme Court. However, the RP, in spite of this has rejected the claim of the appellant for the reason that the claim was not supported by the invoices.

5. It is further submitted that the Appellant had challenged the rejection of the claim by the RP before this Adjudicating Authority but during the pendency of the application, the liquidation was ordered by this Adjudicating Authority vide order dated 21.09.2022 and the respondent was appointed as the liquidator.

6. It is further submitted that the Appellant / Operational Creditor has again filed the claim with the Liquidator in terms of Form C of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 29.10.2020 but the same was rejected by the liquidator vide email dated 22.11.2020 on the very same ground that the appellant has failed to provide the invoices for the admitted debt and is not Operational Creditor in terms of the provisions of the IBC, 2016. The liquidator also stated that the other documents furnished by the Appellant did not establish the existence of a debt.

7. The Learned Counsel for the appellant further claimed that the claim of the Appellant is based on the Demand as raised in the demand notice sent by the Operational Creditor under Section 8, IBC, 2016 in Form 3 to the corporate debtor before filing of application under Section 9 IBC, 2016. It is further submitted that a claim can be substantiated even on the basis of documents other than invoice.

8. On the other side, the Liquidator vehemently submitted that as no invoices were submitted by the applicant to proof its claim as an operational creditor, thus, the stand taken by the applicant in the capacity of being an RP was right and justified.

9. We have considered the submissions made by both the sides and material on record.

10. In this case, it is noted that the application U/s 9 of IBC, 2016 was filed by the operational creditor on the basis of agreement/ documents which were hand written. The application U/s 9 of IBC, 2016 was admitted as the corporate debtor was found liable to pay the outstanding debt. An application against the order of admission of the corporate debtor into CIRP passed by this Adjudicating Authority was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT also upheld the order passed by this Adjudicating Authority. This order of Hon'ble

NCLAT was also challenged before the Hon'ble Supreme Court, however, the Hon'ble Supreme Court also confirmed the order of Hon'ble NCLAT. Thus, when the CIRP commenced, IRP had admitted the claim filed by the operational creditor in the course of CIRP, however, subsequent to change of IRP by the present RP, this claim was rejected by the current RP on the ground that no invoices were provided and other documents so provided could not substantiate the claim made by the operational creditor.

11. During the course of hearing, the Ld. Counsel appearing on behalf of Liquidator as well as the Liquidator in person, continued to harp upon the fact that there were no invoices, hence, the claim of the operational creditor was rightly rejected. At this stage, their attention was also invited to the provisions of Regulation 17(2)(iii) of Liquidation Process Regulations, 2016, which state that the existence of debt due to an operational creditor, may be proved on the basis of an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any and the order of admission passed by this Adjudicating Authority, being a Tribunal falls into this category. Even then, the Liquidator continued to state that the stand taken by the him was justified.

12. Thus, in this case, there is an adamant approach of RP who has not even bothered to take note of the fact that he is functioning as Liquidator in the present case only because of the such outstanding liability being found to be payable by the corporate debtor by an order of Adjudicating Authority, being NCLT. We further note that the Liquidator is handling many more assignments as IRP, RP as well as the liquidator, which is evident from the IBBI website, hence, such unethical/ unprofessional conduct of the RP cannot be accepted at any cost.

13. Accordingly, we direct him to accept the claim of the operational creditor. We further direct the Registry to refer this matter to IBBI for proper investigation into the conduct of RP namely Kamal Agarwal IBBI/IPA-001/IP-P00868/2017-2018/11466 in accordance with the provisions of law.

14. Thus, this application stands allowed and disposed of in terms indicated above.

15. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.