IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT-IV
Company Appeal 48/ND/2021
in
C.P. (IB) 2690/ND/2019

Under Section 42 of The Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Laxmi Steels
Through its partner – Mr. Rahul Singhal

...Appellant

Versus

Mr. Aishwarya Mohan Gahrana
Liquidator of VGA Developers Private Limited

...Respondent

AND IN THE MAIN MATTER OF:

Syndicate Steel Traders

...Operational Creditor

Versus

VGA Developers Private Limited

...Corporate Debtor

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order delivered on: 01.06.2026

PRESENT:

For the Appellant: Adv. Anshuj Dhingra, Adv. Akansha Sharma

For the Liquidator: Mr. Ahsan Ahmad, Mr. Rachit Ranjan, Mr. Aayush Kumar, Mr. Akshat Gautam, Advocates along with Mr. Aishwarya Mohan Gahrana, Liquidator

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Company Appeal 48/ND/2021 in C.P. (IB) No. 2690/ND/2019 has been filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 ("IBC") by Laxmi Steels Through its partner – Mr. Rahul Singhal ("Appellant") against Mr. Aishwarya Mohan Gahrana, the Liquidator of VGA Developers Private Limited ("Corporate Debtor") against the rejection of the claim of Rs.3,32,82,507/- by the Liquidator dated 03.12.2021 filed by the Operational Creditor.

2. The Appellant has made the following prayers in this appeal:

   "a) Pass necessary directions to the Liquidator towards proper appreciation and admission of the claim of the Appellant herein as submitted thereby in its Claim Form-C on 15.10.2021 to the Respondent-Liquidator; and;
   (b) Pass any such order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case."

3. Contentions of the Appellant

Brief facts of the case and contentions of the Appellant as mentioned in the instant appeal are as follows:

   i. The present appeal is filed challenging the order of rejection of the Claim of Rs.3,32,82,507/- of the Appellant by the Respondent/Liquidator stating that according to Section

38(5) of IBC, a creditor may withdraw or vary his claim under this section within fourteen days of its submission. The date of varying the claim of the Appellant is 15 October 2021 which is after 14 days from the date of the original claim as per its Email communication/order dated 03.12.2021 of the Respondent/Liquidator.

ii. Appellant is an Operational Creditor within the provision of Section 5(20) of IBC and was providing its services even prior to the initiation of CIRP. The Appellant had herein duly submitted its claim of Rs. 2,34,78,052/- along-with the interest @18% p.a. on the aforementioned total claim in the capacity of an Operational Creditor upon commencement of CIRP.

iii. The appellant states that Liquidation Order was received by the Liquidator on 07.09.2021 and Public Announcement was made on 09.09.2021. The last date of submission of claim against the Corporate Debtor thereto was 01.10.2021

iv. The Appellant states that in compliance of the timelines prescribed under the aforesaid invitation, it duly submitted its claims to the Respondent on 30.09.2021. Also, particularly in view of the provision enshrined under Section-38(4) of the IBC and further under the belief that the claim amount of Rs.

2,00,00,000/- of the Appellant against the Corporate Debtor under the Liquidation proceedings shall form part of unsecured financial debt, the Appellant herein submitted two separate forms i.e. Form C for an amount of Rs. 34,78,052/- alongwith interest @18% p.a. on the said claim in the capacity of Operational Creditor and another Form-D for a sum of Rs.2,00,00,000/- alongwith interest @18% p.a. on the said claim in the capacity of Financial Creditor (unsecured). This amount of Rs. 2,00,00,000/- was the advance amount given by Appellant to the Corporate Debtor in furtherance of its business objectives.

v. Separate emails were sent by the Respondent Liquidator on 09.10.2021 seeking clarification as regards the separate claims of the Appellant as Financial Creditor and Operational Creditor.

vi. The Appellant then submitted a rectified claim which was infact rather consolidated claim of the aforementioned amount of Rs. 2,00,00,000/- and Rs. 37,78,052/- as an Operational Debt in Form-C along-with interest @18% p.a. on the said claim. No new claim was introduced, it was only consolidated amounts which were earlier claimed as Financial Debt and Operational Debt respectively.

vii. This Consolidated Claim Form was submitted to the Liquidator on 15.10.2021 (i.e. well within the period of 7 days as provided by the Respondent for correction of discrepancies in the claim forms) and there was no delay in its submission.

viii. There was mistaken belief regarding the Liquidation process due to which two separate forms were inadvertently submitted to the Respondent-Liquidator both in the capacity of Financial Creditor (unsecured) as well as the Operational Creditor, therefore, in furtherance to the aforesaid realization, the Appellant herein also submitted a Cover Letter dated 15.10.2021 alongwith the consolidated Claim Form-C wherein the Appellant had clarified the aforesaid position and has further substantiated the fact that there is no novelty in submission of its rectified and consolidated Claim.

ix. However, the Liquidator overlooking the facts and the true perspective of filing the consolidated Claim Form-C dated 15.10.2021 vide his Email dated 03.12.2021 (in fact in response to the follow up mail dated 02.12.2021 of the Appellant) had in its most vague terms required to take reference of Section-38(5) of the IBC and particularly to the effect that "*a creditor may withdraw or vary his claim under this section within 14th day of its submission*" and has further also went on to record therein that the "*date of varying the claim by the Appellant which is after 14 days from the date of the original claim.*"

x. The Respondent has failed to consider the submissions of the Appellant and has further failed to appreciate that the total claim of the Appellant as an Operational Creditor was always for Rs. 2,34,78,052/- along with interest @18% p.a.

xi. Only in the light of the clarifications sought from the Respondent-Liquidator as regards the separate claims of the Appellant, the Appellant further made a bonafide attempt to resolve its position by filing single consolidated claim for the total principal amount of Rs. 2,34,78,052/-.

xii. The rectified and consolidated claim under Form-C was duly filed on 15.10.2021 i.e. within the timeline of 7 days provided in the E-mail(s) dated 09.10.2021 of the Respondent Liquidator seeking clarifications in respect of the original claims.

4. <u>Contentions of the Respondent</u>

The averments of the Respondent as contained in the reply on behalf of the Respondent Liquidator are as follows:

i. The Respondent received the order of liquidation on 07.09.2021 and duly made public announcement on

09.09.2021 inviting all the claimant/ stakeholders to submit their claim or update their claims submitted during the CIRP and the last date of the submission of the claim was 30 days from the date of Order i.e 01.10.2021.

ii. The present appeal filed by the appellant is based on misconceived and concocted facts as the appellant wrongly and with ill intention submitted that the claim was filed on 15.10.2021. The appellant earlier had filed two separate claims dated 26.09.2021 which was also sent through email on 30.09.2021. The first claim was for operational debt of Rs. 58,86,541/- in Form C while second claim was for financial credit in form D for Rs. 3,32,83,507/-.

iii. After verification, the respondent accepted first claim for operational debt for amount of Rs. 34,78,052 out of total claim of Rs. 58,86,541/- and the same was communicated to the appellant by email dated 9 October 2021 mentioning discrepancies leading to rejection of interest on operational debt and provided 7 days' time to cure these discrepancies. The respondent also rejected second claim of financial debt for amount of Rs. 3,32,83,507/- on the ground of insufficient proof or documents of the claimed transaction and the same was communicated to the appellant via the same email. Only ledger was attached without any proof of payment of such claimed amount to the Corporate Debtor or copy of cheque or NEFT etc.

iv. The appellant after receiving the mails dated 9 October 2021, to twist the facts, combined both these earlier claims and filed fresh claim dated 15.10.2021 as operational creditor under appeal without withdrawing, modifying, correcting or curing aforesaid both earlier claims. The affidavit for this claim was prepared on 16.10.2021 and the claim reached by courier to the office of respondent much later on 27.10.2021. The said claim was much beyond the 7 days' time to ratify the discrepancies of earlier claims and also much beyond 14 days' time to withdraw or vary a claim filed earlier.

5. Rejoinder by the Appellant

The Appellant has made the following submissions in the rejoinder:

i. The claim of the Appellant herein against the Corporate Debtor undergoing liquidation was rejected solely for the reason as provided under Section-38(5) of IBC, 2016.

ii. The Appellant duly sent two claim forms i.e. Form-C dated 30.09.2021 for an amount of Rs. 34,78,052/- alongwith interest @18% p.a. in the capacity of Operational Creditor and another claim Form-D dated 30.09.2021 for an amount of Rs.

2,00,00,000/- alongwith interest @18% p.a. in the capacity of an unsecured Financial Creditor. However, when vide Email dated 09.10.2021, the Respondent liquidator pointed out certain discrepancies in the claim forms, which originally were submitted as a consolidated claim in Form-B in the capacity of an Operational Creditor itself instead of two separate claims and also "as it is" were duly accepted by the Interim Resolution Professional and as a matter of fact were never as such objected to or reduced by the Resolution Professional, who also happens to be the Liquidator and the Respondent in the present case.

iii. The consolidated claim form since once previously was approved on merits and remained approved and untouched by the Resolution Professional, therefore, the Respondent, to avoid the approval of the same at present stage, refrained from commenting on merits of the consolidated claim form and rather found it convenient to reject the same allegedly on some technical ground of delay as provided under Section-38(5) of IBC.

iv. The Respondent is giving an impression that the claim of the Appellant has been decided and rejected on merits thereof which fact in itself is far from truth and the same stand contradicted by Respondent's own mail dated 03.12.2021 which rather is self-explanatory on the count that the consolidated claim Form-C of the Appellant was prima facie rejected on the ground of delay as contemplated under Section-38(5) of IBC.

v. Respondent pleads in its Reply that the consolidated claim of the Appellant was received thereby much later on 27.10.2021 as opposed to 15.10.2021 i.e. after sufficient days of delay for the same to have been considered. However, controverting the said contention of the Respondent, the Appellant herein submits that the consolidated claim Form-C was duly submitted by the Appellant to the Respondent on 15.10.2021 which fact also stands admitted by the Respondent in its own mail dated 03.12.2021.

6. The Appellant has relied on judgment of Hon'ble NCLT, Hyderabad bench in ***The Customs Department vs. Rajendra Prasad Tak (19.10.2022 - NCLT - Hyderabad) (MANU/NC/5692/2022)*** where it was observed that *"It is also settled law that even if there is any defect in an application, which is subsequently cured, the date of presentation of the application shall remain the same and shall not be dependent on the date when defects are cured."*

7. It is further submitted by the Appellant that in ***M/s Globe Express Services v. M/s MM Cargo (2018) ibclaw.in 289 NCLT, the Hon'ble NCLT, New Delhi Bench***, vide its order dated 21.05.2018, categorically observed that *"it is only after distribution of assets that no further claim can be entertained."* Accordingly, any rectification or consolidation filed prior to such stage is well within permissible limits under the IBC framework.

8. We have gone through the documents on record filed by the Parties as well as heard the arguments advanced by counsels of the Appellant and the Respondents.

9. The Appellant has submitted that it had inadvertently submitted claims by bifurcating them in separate forms in capacity of Financial Creditor as well as Operational Creditor, which later upon realisation of the error and clarification by liquidator was submitted as a Consolidated claim in the capacity of Operational Creditor.

10. The Respondent vide email dated 03.12.2021 stated that *"Please refer to Section 38(5) of the Code, a creditor may withdraw or vary his claim under this section within fourteen days of its submission. The date of varying your claim is 15 October which is after 14 days from the date of the original claim."*

11. The original claim of the Appellant was submitted on 30.09.2021 and the consolidated claim was submitted by the Appellant on 15.10.2021. This Adjudicating Authority deem it fit and proper to condone the delay of

one day of the Appellant in filing of the claim by the Appellant to ensure a fair opportunity to all the stakeholders of the Corporate Debtor. Accordingly, this application is allowed to the extent of condoning the delay with respect to filing of the rectified claim before the Liquidator.

12. The Respondent Liquidator has submitted that no proper proof of payment of the amount claimed by the Operational Creditor from the Corporate Debtor was filed. The Appellant may take necessary steps to approach the Liquidator in this regard.

13. Further, the Liquidator is directed to properly appreciate and consider the claim of the Appellant based on merits of the case and proceed further in accordance with the provisions of the Code and the Regulations made thereunder within a period of 30 days from passing of this order.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**