

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1101 of 2020

IN THE MATTER OF:

Vinod Singh Negi,

Q165, 15th Floor, Gulshan Ikebana

Sector – 143, Noida – 201306

Uttar Pradesh

...Appellant.

Versus

Kiran Shah,

Liquidator of ORG Informatics Ltd. (Under Liqd.)

608, Sakar 1,

Near Gandhi Ram Railway Station

Opp. Nehru Bridge Ashram Road,

Ahmedabad – 380009

...Respondent.

Present:

**For Appellant: Mr. Anang Shandilya and Mr. Sandeep Joshi,
Advocates.**

For Respondent: None.

**ORDER
(Virtual Mode)**

19.01.2021 Heard Learned Counsel for Appellant.

2. This Appeal has been filed by the Appellant who claims to be ex-employee of the Corporate Debtor/ORG Informatics Ltd. which is in process of Liquidation.

3. The Appellant filed I.As No. 505 of 2020 and 306 of 2020 before the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench). These I.As were filed in CP (IB) No. 120/NCLT/AHM/2017 and the I.As came to be rejected on the basis that the claim which was sought to be filed late before the Liquidator itself was time-barred claim.

4. Thus the present Appeal.

5. The Learned Counsel for the Appellant refers to copy of the Application which was filed before the Adjudicating Authority. Copy of the same is filed with Diary No. 24669. The Application was filed under Section 42 of Insolvency and Bankruptcy Code, 2016 (IBC in short). The same was required to be filed as the Liquidator had sent communication Annexure F (Page 76) which was an e-mail dated 15th February, 2020 informing the Appellant who had filed claim for arrears of salary, etc. with interest, that the claim filed with the Liquidator was beyond time and the same could be filed with the Liquidator if the Adjudicating Authority condones the delay. The Learned Counsel argues that the Application which was filed before the Adjudicating Authority was merely for condoning the delay in filing of the claim and it was not with regard to the merits of the claim. It is argued that the Adjudicating Authority could not have gone into the merits of the claim to hold that the claim itself was time-barred.

6. We have gone through the record. Annexure E (Page 72) is Form E which is stated to have been filed on 07.01.2020 with the Liquidator as proof of claim by the Workman or Employee. The contents show that the Appellant claimed Rs. 34,94,287/- with interest and it was also stated that he was employee of the Corporate Debtor between 16.04.2007 to 31.07.2012. The Appellant relied on documents as mentioned in Column 10 like (i) Copy of Pan Card.

- (ii) Appointment Letters (ORG Telecom and ORG Informatics).
- (iii) Relieving Letter by ORG Informatics.
- (iv) Bank Statement.
- (v) Calculation of Claim Amount.

(vi) Duly Notarized Affidavit.

7. The prayer made in the Application (Copy of which is at Annexure I Diary No. 24669) is as under:

“In light of the above averments, it is hereby prayed that this Hon’ble Tribunal may graciously be pleased to pass necessary order(s):

- (1) Directing the Liquidator of ORG Informatics Limited (Under Lign.) to accept and admit the claim of the applicant.*
- (2) Condone the delay in filing of this petition and claim before the Liquidator due to aforesaid practical difficulty which was unintentional.”*

8. Thus the prayer made was that the Liquidator should not only accept the delayed claim but also admit the same. Learned Counsel for Appellant is now submitting that the Application should have been read as a whole and that in fact, what was sought, was only condonation of delay to file the claim and not with regard to considering the merits of the claim.

9. We are not impressed by the argument that when the Adjudicating Authority was called upon to consider the condoning delay to file the claim it was debarred from looking into the question whether or not the claim itself was maintainable. The Adjudicating Authority in the Impugned Order mentioned as under:

“20. It is very difficult, on the one hand, the applicant is saying that he has completed more than 5 years of service, whereas he has shown the date of continuation in service as per para 4 of the application as 16th April, 2007 till 31st July, 2012. Even if it is assumed that there is a certain typographical error, but then even to support

the claim, the applicant has not filed any documents such as salary slip, copy of bank statement in which the salary is credited, working of gratuity, and leave encashment, and the basis of calculation of interest and relieving order or resignation paper. In absence of supporting documents the claim so made by the applicant is not free from the shadow of doubt.

21. Further as per the application, the amount is due from 2012 but since 2012 till date applicant never demanded the amount from the Corporate Debtor. Not a single paper is attached, so as, to show that the applicant has demanded the amount. Under such circumstances, the claim itself became time-barred. However, in support of the claim, the applicant filed only a self-prepared statement/calculation sheet (Page No. 26).

22. The said statement is neither verified by its employer nor any proof has been given, so as, to show that at any point in time from 16.04.2007 till 31.07.2014 the applicant has claimed his due amount from its employer. Had there been such huge claim, the applicant would have never sit idle without making any correspondence with his employer claiming the pending arrear dues or as the case may be. In view of that, it creates Iota of doubt on the very claim made by the Applicant.

23. With regard to the prayer for condonation of delay by the applicant and filing this application for his claim before the liquidator, which was rejected on the ground that the application was filed beyond the stipulated period, would have been condoned as the Hon'ble

Supreme Court in its catena of the case have taken very liberal approach, but in the instant application the applicant cannot able to produce any documentary proof in support of his claim, therefore the claim is bad in absence of evidentry proof as also observed hereinabove.

24. *Moreover, this claim is of 2012, since then the applicant was sitting idle without making any correspondence for claim and / or filed any proceeding to show his bona fide against employer. Hence, the applicant is not entitled to the claim as made in the application. Under such circumstances when there is a shadow of doubt upon the claim of the applicant, itself the liquidator cannot accept the claim of the applicant even if delay is condoned.*

25. *In view of the above observations, the instant application is rejected.”*

10. The Hon’ble Supreme Court of India in the matter of ‘*B. K. Educational Services Pvt. Ltd. Versus Parag Gupta and Associates.*’ (MANU/SC/1160/2018) in para 6 of the Judgment had referred to reasons as to why Section 238 A with regard to Limitation was inserted in the provisions of IBC. For this purpose, Hon’ble Supreme Court referred to the Report of the Insolvency Law Committee of March, 2018 in which Paragraphs 28.2 and 28.3 read as under:

“28.2 Further, non-application of the law on limitation creates the following problems; first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh. The purpose of the law of limitation is “to prevent disturbance

*or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches"*⁴. Though the Code is not a debt recovery law, the trigger being 'default in payment of debt' renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30 (4) of the Code.

28.3 Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific Section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case to case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy."

11. It is clear that the writers of law were conscious that there could be situation where time-barred debts are claimed before the IRP/RP. In the present matter, it does not appear that before the IRP/RP claim was filed. At the stage of Liquidation, the Appellant suddenly woke up to make a claim of salary of 2012, without showing as to how it is within limitation. Considering the reasons

recorded by the Adjudicating Authority which we have reproduced above, it does not appear that the Adjudicating Authority erred in rejecting the Application of the Appellant.

For the above reasons, we do not find that there is any substance in the present Appeal.

We decline to admit the Appeal. It is rejected accordingly.

[Justice A.I.S. Cheema]
Member (Judicial)

[Mr. V.P. Singh]
Member (Technical)

Basant B./md.