

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) (Ins.) No. 302 of 2021**

**IN THE MATTER OF:**

**Centrum Financial Services Ltd.**

2<sup>nd</sup> Floor, Bombay Mutual Building,  
Dr. D.N. Road, Mumbai – 400041

**...Appellant.**

**Versus**

**1. CFM Asset Reconstruction Pvt. Ltd.**

Registered Office:

A/3, 5<sup>th</sup> Floor,  
Safar Profitaire, Near Prahlad Nagar,  
Ahmedabad, Gujrat – 380015

**2. SRI Aranath Logistics Limited**

Through its Resolution Professional,  
Mr. Soumitra Lahiri  
IBBI/IPA-001/IP-P00734/2017-2018/11232

**Official Address:**

Flat No. 14D & E,  
Tower – 32, Genexx Valley,  
Joka, Diamond Harbour Road,  
Kolkata – 700104

**...Respondents.**

**Present:**

**For Appellant: Mr. Jayant K Mehta, Sr. Advocate with  
Mr. Aaditya Vijay Kumar and Mr. Pranay Chitale,  
Advocates.**

**For Respondent: Mr. Malak Bhatt, Advocate for R-1.  
Mr. Vikram Wadehra, Advocate for R-2 (RP).  
Mr. Vikas Sethi, Suspended Board of Director.**

**ORDER**  
**(Virtual Mode)**

**13.04.2021** Heard Learned Senior Counsel for the Appellant. The Appellant claims to be a Financial Creditor of the Corporate Debtor-Sri Aranath Logistics Limited. In substance, the grievance of the Appellant is that the Appellant is a Financial Creditor of the Corporate Debtor who filed claim before the Resolution Professional but the same was rejected on the ground of delay and the Adjudicating Authority has fixed the Application filed I.A. No. 1056 of 2020 to condone delay (Page 192) on a date which is subsequent to the date of CIRP ending.

2. A few dates may be referred.

The Application under Section 10 of Insolvency and Bankruptcy Code, 2016 (IBC in short) was admitted on 08<sup>th</sup> November, 2019 (Page 169). It is stated that Public Notice was issued on 28<sup>th</sup> November, 2019. As per Public Notice, the claims were required to be filed by 14<sup>th</sup> December, 2019. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process) for Corporate Persons Regulations, 2016 (Regulations in Short) is relevant. Regulation 12 of Regulations before Notification No. IBBI/2018-19/GN/REG 031 dated 03.07.2018 read as under:

*“12. Submission of proof of claims. (1) Subject to sub-regulation (2), a creditor shall submit proof of claim on or before the last date mentioned in the public announcement.*

*(2) A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or the resolution professional, as*

*the case may be, till the approval of a resolution plan by the committee.*

*(3) Where the creditor in sub-regulation (2) is a financial creditor, it shall be included in the committee from the date of admission of such claim:*

*Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”*

By above Notification dated 03.07.2018, w.e.f. 4.07.2018 clause 2 was substituted to read as under:

*“(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.]*

According to the Learned Senior Counsel Regulation 12(2) gives a scope of 90 days which in the present matter got over on 06<sup>th</sup> February, 2020. It is stated that the Appellant however filed the claim late by only 37 days on 07<sup>th</sup> April, 2020 (Page 180).

3. The claim was not decided in 7 days as required by CIRP Regulation 13(1) relevant portion of which reads as under:

*“13. Verification of claims. (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

*.....”*

Thus reasonable time is specified. It is stated that on 23<sup>rd</sup> April, 2020 the then Resolution Professional Mr. HM Choraria wrote to the Appellant (Page 187 Annexure A-10) that the claim has been received late and he would be  
*Company Appeal (AT) (Ins.) No. 302 of 2021*

mentioning so in his report. It is stated that new Resolution Professional Mr. Soumitra Lahiri came to be appointed on 29<sup>th</sup> September, 2020 and the new Resolution Professional rejected the claim filed by the Appellant on 09<sup>th</sup> October, 2020 sending email (Page 189 Annexure A-11) informing that on the ground of delay the claim was being rejected. The Appellant claims that the Appellant moved C. A. No. 1056 of 2020 in October, 2020 itself explaining the delay and requested the Adjudicating Authority to get condone delay and direct accepting of the claim. It is stated that thereafter the present Impugned Order was passed on 18<sup>th</sup> March, 2021 (Annexure A-1 Page 31) which shows that the Application of the Resolution Professional extend CIRP Period was extended by 30 days till 16<sup>th</sup> April, 2021 and the Application of the present Appellant came to be posted on 28<sup>th</sup> April, 2021. The Appellant claims that this would frustrate the claim of the Appellant as the CIRP would end on 16<sup>th</sup> April, 2021 and the Respondent No. 1 is the only Financial Creditor who would only have a voice in the CoC and Appellant would not have a voice therein.

4. The Learned Counsel for Resolution Professional submits that there is a Resolution Plan received which will be placed before the CoC today.

5. The grievance of the Appellant is that only because there was delay in submitting the claim Appellant is left out and thus the same is causing prejudice to the Appellant. It is stated that there were various difficulties due to Covid Situation and delay occurred.

6. We find that the IBC was enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of Corporate Persons,  
*Company Appeal (AT) (Ins.) No. 302 of 2021*

Partnership Firms and Individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto.

7. The IBC has various provisions which are time bound. Stakeholders in IBC cannot act or proceed in such matters in a manner to convert it into any other Ordinary Civil Proceeding or cause destructive delays which plagued the process under Sick Industrial Companies (Special Provisions) Act, 1985. In the present matter, the CIRP started on 08<sup>th</sup> November, 2019. Already more than one year has passed. The Order of Admission of CIRP Annexure A7 Page 169) in Paragraph 11 itself shows that the Appellant was before the Adjudicating Authority and had even raised objections which reads as under:

*“11. In this case, we find from the material on record that the Corporate Debtor committed default in paying the debt more than Rs. 1,00,000/- (Rupees One Lakh Only) of some of the creditors (reference Section 4 of IBC, 2016). Out of two, one financial Creditor earlier Standard Chartered Bank and now M/s. CFM Asset Reconstruction Pvt. Ltd. (Assignee) {Assignment agreement dated 24<sup>th</sup> July, 2019} has no objection to admit the corporate person in CIRP. Another financial creditor, namely, Centrum Financial Services Limited objected on the ground that they are secured creditors. We made it clear that Financial Creditor, namely, Centrum Financial Services Limited can raise its contention before the RP at proper stage. Application cannot be rejected on this ground. Ld. Counsel for some of the shareholders who were objecting this application submitted that the registered office as shown as registered office of the corporate person is not assets of the corporate person. At this stage, we are also not entering into Company Appeal (AT) (Ins.) No. 302 of 2021*

*that controversy. What are the assets of the Corporate Debtor shall be considered by the RP during CIRP and the objector have liberty to raise this issue before RP.”*

In spite of this, the claim were not filed within time specified in the Public Notice or within 90 days from insolvency commencement date, which was 06.02.2020. Till 06.02.2020 there was no lockdown. Even thereafter another 35 days were taken to file claim. When the claim was filed, if it was not decided within reasonable time, still matter was not taken up with the Adjudicating Authority. After the new Resolution Professional came in, he rejected the claim and only then the C.A. No. 1056 of 2020 was moved. The Learned Senior Counsel for the Appellant has submitted that the Regulation 12 has been held to be directory. Even if the said Regulation is directory a few days delay in set of facts can be considered. However, in present set of facts the Appellant who was in the picture since beginning, did not file claim in time. Now Appellant wants to take exception to the Resolution Professional taking six months to reject the claim and the delay which is taking place before the Adjudicating Authority although the claim was actually filed after Lock Down stated in March, 2020. It was not filed earlier when things were normal. The benefit of Lockdown can rather weigh in favour of Resolution Professional and Adjudicating Authority.

8. Clause 2 of Regulation 12 earlier had provision to submit claim till approval of Resolution Plan by the Committee. This was specifically substituted by Notification dated 3<sup>rd</sup> July, 2018 of IBBI. The intention is obvious. Beneficiaries under the IBC can not keep adopting the procedures and modes which would delay CIRP and progress in CIRP and defeat objects of IBC. In the

present matter as there is already a Resolution Plan, giving directions to the Adjudicating Authority would further delay the CIRP, which is already delayed.

9. Observations made by us in the present Judgment would not come in the way of the Adjudicating Authority taking a decision independently on I.A. No. 1056(KB)2020 which is stated to be listed on 28<sup>th</sup> April, 2021.

In the facts and circumstances of the present matter, we decline to entertain the Appeal. The Appeal is dismissed.

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

**[Dr. Alok Srivastava]**  
**Member (Technical)**

Basant B./md.

*Company Appeal (AT) (Ins.) No. 302 of 2021*