

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH**

**Company Application CA(IB) No. 31/KB/2018  
In Company Petition CP(IB) No. 03/KB/2017**

**IN THE MATTER OF:**

An Appeal under Section 42 of the Insolvency and  
Bankruptcy Code, 2016;

**-And-**

**IN THE MATTER OF:**

**UCO Bank, a Banking Company constituted  
under the Banking Companies (Acquisition  
and Transfer of Undertakings) Act, 1970,  
having its Flagship Corporate Branch at  
premises No.2, India Exchange Place, Kolkata  
- 700 001;**

**- Appellant /Applicant**

**Nicco Corporation Limited (In Liquidation),  
represented through Mr. Vinod Kumar  
Kothari, the Liquidator appointed by this  
Tribunal, having his Office at "Nicco House",  
2, Hare Street, Kolkata - 700001.**

- **Corporate Applicant**

**Coram: Mr. Jinan K. R., Member(Judicial)**

**For the Applicants:**

**Mr. Supratim Laha, Advocate**

**Mr. Bikash Shaw, Advocate**

**Mr. Vinod Kumar Kothari, Liquidator**

**For Appellant UCO Bank:**

**Ms. Rajarshi Dutta, Advocate**

**Mr. Sourjya Roy, Advocate**

**Date of pronouncement of the Order : 14-02-2018**

**Per Jinan K. R.**

**ORDER**

This is an Appeal filed by one of the Financial Creditors, namely, UCO Bank under section 42 of the Insolvency and Bankruptcy Code, 2016(I&B Code) challenging the order of rejection of its claim by the Liquidator as per an order of rejection by way of an Electronic Mail dated 08-12-2017.

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This appeal has been filed on 18-12-2017. As per Section 42 of the IB Code, 2016, an application of this nature is to be filed within 14 days of the receipt of the decision under challenge. The appellant received the order under challenge on 08-12-2017. Therefore the appeal filed is in time.

This is a case in which a Liquidator Mr. Vinod Kumar Kothari has been appointed vide Order dated 17-10-2017 in respect of the NICCO Corporation Limited, the Corporate applicant and liquidation process is going on. The Liquidator caused public announcements inviting the creditors of Nicco Corporation Limited to submit proof of their respective claims on or before 22-11-2017 to the Liquidator. The Liquidator made public announcement on 25-10-2017 in Financial Express, Odisha Bhaskar, Aajkal and on 26-10-2017 in Mumbai Mitra.

According to the appellant herein, the Corporate applicant under liquidation is liable to pay certain dues to the appellant which has been secured and on failure of repayment of the dues due to the Bank, proceedings has been initiated under the SARFAESI Act, 2002 and since the appellant being one of the Financial Creditors of the Corporate Applicant, would have submitted its financial claim by 22-11-2017.

However, because of the renovation and repair work that was going on in the premises of the appellant Bank where the records were lying, prompt and effective steps could not be taken by the Officers of the

Appellant Bank who got hold of all the necessary documents that were required to be submitted along with the proof of claim and the Officers were able to trace out the records on 02-12-2017. Upon receipt of the documents on 04-12-2017, they submitted the proof of claim with the Liquidator as attachments to E-Mail dated 05-12-2017. The Liquidator rejected its claim vide reply E-Mail dated 08-12-2017. Aggrieved by the rejection, the Appellant filed this appeal.

The Ld. Liquidator has filed reply contending that he has considered and examined all the claims received by him till the last date as mentioned in the public notice, on 22-11-2017. According to the Liquidator, Section 38(1) of the Code permit the Liquidator to accept claims filed within 30 days of the commencement of the liquidation process and that the Appellant in the instant case, had failed to submit any claim to the Liquidator until the last date i.e. 22-11-2017.

The Liquidator further submits that upon expiry of period of submission of the claim preferred by the Appellant, he could not accede to the claim and therefore, it has been rejected.

Heard both sides.

According to the Ld. Counsel for the Appellant, the delay was due to want of necessary documents to be filed along with the reply and the

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documents were traced out of the connected files only on 02.02.2018 because of renovation and repair work which has been going on in the premises of the Bank where the records were kept. According to him, the Appellant being a member of the Consortium and the entire facilities availed by the Corporate Applicant are restructured on 22-06-2010 vide master restructuring agreement executed by the Corporate Applicant in favour of the various Financial Creditors, irrespective of the delay in submission of the proof of claim, the Liquidator would have considered the claim condoning the delay.

The Ld. Liquidator submits that he does not have the power to condone the delay and receive a claim which has been submitted for his consideration beyond the period stipulated for receipt of the claim. According to him, there is no provision in the Code enabling him to condone the delay and receive a claim hence he rightly rejected the belated claim.

On going through Regulation 12(2) of the Insolvency & Bankruptcy Code of India, 2016 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a claim can be considered by the resolution professional even after expiry of last date fixed in public announcement, i.e. till the approval of a Resolution Plan. But there is no similar provision in the Code or in the Regulation enabling the Liquidator in receiving a claim fixed in the public announcement. Therefore there is no infirmity or illegality in the order of rejection of the claim of the appellant herein.

So the question is whether the adjudicating authority can condone the delay and direct the liquidator to reconsider the claim on its merits?

In the case in hand, the Resolution Process is already finalised and the Liquidator has been appointed. Therefore, Regulation 12(2) above referred is not applicable. The Ld. Liquidator, at this juncture, brought to my notice, Section 474 of the Companies Act, 1956 to point out that as per Section 474 of the Companies Act, 1956, the Creditors if failed to provide claim in time, to be excluded. It is good to read Section 474 of the Companies Act, 1956 which reads as follows:

Section 474:

*"The Tribunal may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved."*

No similar provision is in Companies Act 2013. Moreover time limit in regards submission of claims by a creditor is now dealt with under the provisions of I&B, Code. When the liquidation process is initiated as per provisions under Chapter III of Part II of the Code, the power of acceptance of a claim filed with in the stipulated period is with the liquidator under section 38(1) of the code. A reading of section 38(1) is good for understanding the application of the section. It read as follows:-

Section 38(1) :

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*" The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process."*

Thus no doubt the liquidator can receive it if filed within 30 days from the date of commencement of the liquidation process. Admittedly the appellant did not file the claim in time. Then the question is whether he can reject the claim only on account of delay and with out following section 40(1) of the Code. Section 40 (1) and (2) read as follows:

Section 40(1) :

*" The liquidator, may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be :  
Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection."*

*40(2). The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor with in seven days of such admission or rejection of claims.*

Thus on going through the various provisions of the code, what I understood is that in the case of delay in submission of a claim by a financial creditor who has participated in the CIRP what is to be done by the liquidator is silent. On the other hand reading section 40 of the code, the liquidator may, after verification of claims under section 39, either admit or

claim, in whole or in part, as the case may be. Herein this case such verification of the claim submitted by the appellant has not been done.

The Ld. Liquidator also referred Rule 177 and 178 of the Companies (Court) Rules 1959, which dealt with Procedure on failure to prove the debt within the time fixed.

As per the Rule 177, if any Creditor fails to file proof of his debt with the Liquidator within the time specified in the advertisement referred to in Rule 148, such creditor may apply to the Court for relief, and the Court may, thereupon, adjudicate upon the debt or direct the Liquidator to do so.

As per Rule 178, any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the Liquidator available for distribution of dividend, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

On reading of Rule 177 and 178, of the Companies (Court) Rules 1959 and reading section 40(1) of the Code, it appears to me that one more opportunity can be allowed to the claimant here in the instant case who failed in submission of its claim in time. But there is no undue delay though the reason for the delay in submission of the claim is found not at all satisfactory.

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At this juncture Ld. Liquidator cited a Judgement, **T.R.Rajakumari Vs. The Motion Picture Producers (1942) 1 MLJ 182** of Hon'ble Madras High Court for highlighting the power of this Tribunal in granting relief in the case of delay in submission of the claim. Though the above said decision was dealt with referring to the Rule 83 of the Indian Company Rules the proposition in excusing the delay in filing the claim by a creditor at a belated stage can be applied in the case in hand .

In view of the above said discussion, it appears to me that the delay in submission of the claim by the appellant is liable to be condoned. Accordingly, I hereby condone the delay in the submission of the claim by the appellant and directed the Liquidator to reconsider the claim in accordance with the provisions of code and Regulations.

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(Jinān K.R.)  
Member(Judicial)

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