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

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

**I.A.No.528 of 2022 in
C.P.(IB)No.14/BB/2017**

**Under Sections 42 and 60 (5) of IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016**

In the matter of:

M/s. Edelweiss Asset Reconstruction Company Limited - Petitioner

Versus

M/s. Falcon Tyres Limited - Respondent

And in the matter of I.A.No.528 of 2022:

Securities and Exchange Board of India
SEBI Bhavan,
Plot No.C4-A, 'G' Block,
Bandra-Kurla Complex, Bandra (East)
Mumbai – 400 051

And local office at
2nd Floor, Jeevan Mangal Building,
No.4, Residency Road,
Bengaluru – 560 025

- Applicant

Versus

Mr. Shivadutt Bannanje
Liquidator of Falcon Tyres Limited,
R/o. at K.R.S. Road, Metagalli,
Mysore – 570 016

- Respondent

Order delivered on: 13th April, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri R.V.S.Naik, Sr. Counsel with
Ms. Rashmi Subramanya

For the Respondent : Ms. Lekha Chandrashekar

Per: T. Krishnavalli, Member (Judicial)

ORDER





1. This Application has been filed by Securities and Exchange Board of India (Applicant), U/ss. 42 & 60(5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 and other relevant provisions of the IBC and Rules thereunder against Mr. Shivadutt Bannanje, Liquidator of Corporate Debtor (Respondent), seeking to set aside the impugned decision dated 19.10.2022 passed by the Liquidator; and to condone the delay of 988 days (29.01.2020 to 13.10.2022) in submission of the proof of claim by the Applicant before the Liquidator and consequently, direct the Liquidator to consider the Applicant's proof of claim dated 13.10.2022 on merits, admit and process the said claim in accordance with the provisions of the IBC.
2. Securities and Exchange Board of India (hereinafter referred to as Applicant), is Statutory Regulatory Authority established under the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The Applicant is one of the Creditor of the Corporate Debtor and it has been established to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market etc.
3. The facts stated in the instant Application, as under:
 - i. Initially, this Adjudicating Authority has admitted C.P.(IB)No. 14/BB/2017 vide Order dated 01.05.2018, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium etc. Thereafter, the Corporate Debtor was ordered to be liquidated by this Adjudicating Authority vide its Order dated 30.12.2019 and Shri Shivadutt Bannanje was appointed as the Liquidator. Thereafter, the Liquidator has caused a public announcement on 01.01.2020 and the last date for submission of claim was fixed on 29.01.2020.
 - ii. It is submitted that the Applicant's claim arises out of Adjudication Order bearing No.EAD-3/ORDER/JS/SP/2018-19/1332 dated 21.09.2018 passed by the Applicant in exercise of the powers conferred U/s.15-I of the Securities and Exchange Board of India Act, 1992 R/w. Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and imposing Penalties) Rules, 1995, whereby monetary penalty of Rs.35,00,000/- was imposed





on the Corporate Debtor for violation of Section 11C(3) of the SEBI Act.

- iii. It is submitted that no payment was made by the Corporate Debtor towards the above penalty. It was only during August/September 2022, while reviewing pending cases for further action, the Applicant noticed the same and upon making enquiries on the website of the Ministry of Corporate Affairs and the IBBI, the Applicant became aware for the first time in September, 2022 that the Corporate Debtor was undergoing liquidation proceedings under the IBC and that a claim covering the penalty payable by the Corporate Debtor was required to be submitted before the Liquidator.
- iv. The Applicant immediately vide email 21.09.2022 intimated the Liquidator of the Adjudication Order whereby the above penalty was imposed on the Corporate Debtor which had not been paid and requested the Liquidator to send the relevant form for filing its proof of claim. Thereafter, the Liquidator vide his email dated 30.09.2022 *inter alia* expressed his inability to accept any claim by the Applicant on the ground that he does not have the discretion or authority to condone the delay in filing the claim after the last date of submission of claims i.e. 29.01.2020 and suggested to the Applicant to approach this Adjudicating Authority to condone the delay in filing the claim. He also informed that the liquidation proceedings were at an advanced stage.
- v. On receipt of the above email, the Corporate Debtor submitted its proof of claim by email and personally in the Form dated 13.10.2022 before the Liquidator for Rs.52,06,466/- (which comprises the penalty amount of Rs.35,00,000/- together with interest thereon @ of 12%p.a). The said claim was rejected by the Respondent vide email dated 19.10.2022 merely on the technical ground of delay of 988 days in submission of the Applicant's claim.
- vi. It is submitted that on account of the COVID-19 pandemic, the Hon'ble Supreme Court vide various orders resting with order dated 10.01.2022 in *Suo Moto W.P.No.3/2020* has directed that the period of limitation for all proceedings irrespective of the period of limitation prescribed under all general or special laws to be





excluded from 15.03.2020 to 28.02.2022. Therefore, while the Liquidator has calculated the delay to be 988 days (29.01.2020 to 13.10.2022), after excluding the above period from 15.03.2020 to 28.02.2022 i.e. 716 days, the bona fide delay in filing the proof of claim by the Applicant from the last date of submission of claims i.e. 29.01.2020 is 272 days.

vii. The learned Counsel for the Applicant has relied upon the following judgements:

- *State of Haryana v. Chandra Mani* reported in (1996) 3 SCC 137 (paras 8, 9 & 11);
- *State Bank of India v. Deepak Cable (India) Ltd.*, passed by the Hon'ble National Company Law Tribunal, Bengaluru Bench vide Order dated 04.02.2020 in I.A.No.697/2019 in C.P.(IB)No.154/BB/2017 (paras 5 & 6);
- *New Age Real Properties, LLP v. Bhuvana Infra Projects Pvt. Ltd.*, passed by the Hon'ble National Company Law Tribunal, Bengaluru Bench vide Order dated 02.03.2022 in I.A.No.12/2022 in C.P(IB)No.122/BB/2017;
- *Mahle Filter Systems (India) Pvt. Ltd., v. Concur Marketing Pvt. Ltd.*, passed by the Hon'ble National Company Law Tribunal, Bengaluru vide Order dated 07.03.2022 in I.A.No.78/2022 in C.P.No.235/2017;
- *Sunrise Enterprises v. Karuturi Foods Pvt. Ltd.*, passed by the Hon'ble National Company Law Tribunal, Bengaluru vide Order dated 08.02.2022 in I.A.Nos.250 & 263/2021 in C.P.(IB)No.28/BB/2017;
- *Moonbeam Advisory Pvt. Ltd., v. Sammrudhi Reality Ltd.*, passed by the Hon'ble National Company Law Tribunal vide Order dated 07.08.2021 in I.A.Nos.399 & 411/2020 and 127, 234, 237 & 239/2021 in C.P.(IB)No.189/BB/2018;
- *Edelwiess Asset Reconstruction Company Ltd., V. Falcon Tyres Ltd.*, passed by the Hon'ble National Company Law Tribunal vide Order dated 16.03.2022 in I.A.Nos.430/2022, 317/2022 and 83/2022.

4. The learned Counsel for the Respondent, has filed statement of objections dated 20.01.2023, by inter alia contending as follows:

- i. During the course of investigation various statutory notices were issued to the Corporate Debtor in the years 2015 to 2017. Accordingly, penalty of Rs.35,00,000/- was imposed on the Corporate Debtor through order dated 21.09.2018. Therefore, the date of order is the day when the right to claim the said amount





- accrued on the Applicant. This date is after the commencement of the CIRP of the Corporate Debtor.
- ii. However, it is alleged by the Applicant that Corporate Debtor has not made any payments till date and it was only during the course of the Applicant's review process in the month of August/ September 2022, the Applicant realized that the penalty levied on the Corporate Debtor has not been paid. Subsequently, the Applicant intimated the Respondent through email dated 21.09.2022 about the penalty levied. However, the said claim could not be taken into consideration owing to the fact that the said claim was submitted after two years and at the end of the liquidation process. However, the Applicant submitted a claim of Rs.52,06,466/- comprising of penalty amount of Rs.35,00,000 along with 12% interest on 13.10.2022.
- iii. It is also point out that the liquidation process led by the Respondent is at an advanced stage and is about to get concluded. All the assets of the Corporate Debtor have been sold and portions of the sale proceeds have been disbursed to the eligible stakeholders. The entire process of liquidation is a time-bound process, and all stakeholders are mandated to exercise their rights within the timelines specified. In a similar case, where there was a large delay on the part of an Applicant – also a statutory body – in lodging the claim, the Chennai Bench of this Adjudicating Authority by way of its order in Comp/App/1/2021 in CP/611/IB/2017 (Recovery Officer, Employees' Provident Fund Organization V. M/s. Sri Nagananthana Mills Limited and others) dated 23.09.2022, rejected the Application filed on account of enormous delay.
- iv. It is submitted that, the Applicant has also filed additional affidavit, claiming the order of the Hon'ble Supreme Court on limitation during the COVID-19 period in W.P.(Suo Moto)No.3/ 2020, the delay is in fact not 988 days, but only 272 days. Since the said order only applies to cases where the limitation period expired between 15.03.2020 and 28.08.2022. However, the limitation period of the Applicant to file the claim ended on 29.01.2020.





5. In response to the aforesaid objections of the Respondent, the learned Counsel for the Applicant has filed its rejoinder on 24.01.2023, by inter alia stating as under:

- i. It is submitted that the Order dated 23.09.2022 in Comp/App/1/2021 in C.P./611/IB/2017, relied upon by the Respondent, does not come to his aid. In the said case, the Appeal U/s.42 of the IBC was filed 335 days after the rejection of the claim by the Liquidator and all the assets of the Company in liquidation had been distributed. In the present case, the Appeal U/s.42 was filed on 28.10.2022 which is well within the statutory limit of 14 days from the receipt of the email dated 19.10.2022 rejecting the claim of the Applicant. Further, all the sale proceeds have not been disbursed in the present case.
- ii. It is further stated that the period of liquidation in the present Petition has been extended to 29.01.2023 vide Order of this Adjudicating Authority dated 12.08.2022 and the liquidation of the Corporate Debtor has not yet been completed. Admittedly, all the sale proceeds have not yet been disbursed.

6. Heard Shri R.V.S.Naik, learned Sr. Counsel for the Applicant and Ms. Lekha Chandrashekar, learned Counsel appearing for the Liquidator. We have carefully perused the pleadings on record by the respective parties.

7. It is seen that though the process of liquidation is still going on and the sale proceeds have not been disbursed and Application for the closure of the liquidation process is also yet to be filed. We are convinced with the reasons given by the Applicant for condonation of delay in making its claim with the Liquidator with a direction to consider its claim as per merits, in so far as the penalty levied by SEBI is concerned. Therefore, we are inclined to allow the Application as prayed for.

8. In the circumstances and for the reasons stated above, the instant Application is allowed as under:

- a. The delay in preferring the claim by the Applicant is condoned;
- b. The Liquidator is directed to consider the claim of the Applicant in accordance with Code and Regulations made thereunder and to pass an appropriate order within two weeks' from the date of





receipt of this Order and communicate the same to the Applicant forthwith thereafter;

c. Accordingly, I.A.No.528/2022 is disposed of.

-Sd-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-

T. KRISHNAVALLI
MEMBER (JUDICIAL)

Shruthi



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OF THE ORIGINAL**

for  **DEPUTY/ASST. REGISTRAR**
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench

