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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

IA/814/IB/2020 in IBA/578/2019 filed  
under Section 60(5) of the Insolvency  
and Bankruptcy Code, 2016.

**In the matter of M/s. Leo Primecomp Private Limited**

**The Assistant Commissioner of Customs (EPCG-EODC)**  
Office of the Commissioner of Customs,  
Chennai-IV Commissionerate,  
Chennai-600001.

---Applicant

Vs.

**Mr. Mathur Sabhapathy Viswanathan,**  
Interim Resolution Professional of  
M/s. Leo Primecomp Private Limited  
13/35, Musafar Jung Bahadur Street,  
Triplicane, Chennai-600005

**M/s. Leo Primecomp Private Limited**  
No. 61 & 62, Lakshmanan Nagar,  
Kandanchavadi  
Chennai-600096.

---Respondents

**CORAM:**

**R. SUCHARITHA, MEMBER (JUDICIAL)**  
**B. ANIL KUMAR, MEMBER (TECHNICAL)**

For the Applicant : *Shri. V. Manivannan, Advocate*

For the Respondents : *Shri. Arvind Rajagopal, Advocate*

**ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

**Order Pronounced on: 10.06.2021**

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IA/814/IB/2020 in IBA/578/2019  
In the matter of M/s. Leo Primecomp Private Limited

Under adjudication is an Application preferred by the Applicant pursuant to section 60(5) of the Insolvency and Bankruptcy Code, 2016 requesting to condone the delay in filing the claim before the Resolution Professional of the Corporate Debtor.

2. The Applicant submits that the 2<sup>nd</sup> Respondent (M/s. Leo Primecomp Pvt. Ltd. had obtained 5 EPCG Authorisations between 17.03.2010 and 13.10.2011 from the Joint Director-General of Foreign Trade, Chennai based on which 2<sup>nd</sup> Respondent had imported capital goods and availed customs duty exemption under Customs Notification:102/2009-Customs dated 11.09.2009 (page.12-17 of the application) for a total sum of Rs.14,62,12,894/-. As per the conditions of the above Notification, 2<sup>nd</sup> Respondent (importer) had to fulfil their export obligation of six times of the duty saved value within a period of 6 years from the date of issue of EPCG Authorisation. It is further submitted that the 2<sup>nd</sup> Respondent had furnished Bonds (page 18-36) with Chennai Sea Customs in which the 2<sup>nd</sup> Respondent had undertaken to fulfil export obligations within 30 days from the expiry of the specified export obligation

period or pay the customs duty with interest at 15% per annum thereof to the Government. Hence, as per the conditions of Customs Notification, the Applicant states that 2<sup>nd</sup> Respondent is liable to pay the duty saved amount along with interest as detailed below:

1.	Total duty	Rs.14,62,12,894/-
2.	Total interest	Rs.20,99,94,406/-
	<b>Total liability</b>	<b>Rs.35,62,07,300/-</b>

3. According to the Applicant, this Adjudicating Authority ordered commencement of CIRP against 2<sup>nd</sup> Respondent on 24.07.2019 and 1<sup>st</sup> Respondent was appointed as the Interim Resolution Professional and subsequently the 1<sup>st</sup> Respondent/ IRP, made public announcement on 27.07.2019 calling for submission of claims from the financial/operational creditors on or before 10.8.2019. The Applicant had filed a claim before the 1<sup>st</sup> Respondent/IRP on 12.03.2020 in Form-B along with condonation prayer for the delay in filing the claims. By way of email communication dated 29.08.2019, the IRP informed the Petitioner that the claim form was received on 14.03.2020 as against the maximum time limit of 90 days i.e. on 22.10.2019 and also sought for

clarification from the Applicant informing that there are 6 licences issued to the 2<sup>nd</sup> Respondent against which the Applicant had submitted claim in respect of 5 licences only. It is further submitted that on verification in the DGFT website, it was seen that Redemption Letter had already been issued to one Licence bearing EPCG Authorisation No.0430001576 dated 19.03.2004 and hence there is claim for 5 Licences only as mentioned in the claim Form-B. Further, the 2<sup>nd</sup> Respondent had vide their letter dated 03.02.2020 informed the Applicant's office that CIRP has been initiated against in respect of **M/s. Leo Primecomp Private Limited**.

4. It is submitted that the Applicant, as a rightful Operational Creditor is eligible to claim and receive the amount payable to Government of India. The Applicant seeks (i) a direction to the 1<sup>st</sup> Respondent/IRP to include the Applicant's claim in the Resolution Process and (ii) condone the delay of 217 days in filing the claim before the IRP.

5. In the *common reply* filed on behalf of the Respondents on 08.01.2021, it is contended that



- (i) The a period of 217 days i.e. from 10.08.2019 to 13.03.2020 as calculated from the last date of submission of claims against the Corporate Debtor badly suffers from delay and laches having been filed with unjustifiable explanation is not maintainable. In response to the invitation of Expression of Interest in Form-G on 30.11.2020, resolution plan has been received and the finalisation of the same is in progress.
- (ii) The Applicant had issued a final notice dated 30.09.2019 for payment of outstanding duty amount of Rs.1,39,00,000/- and in response to the above notice, the 1<sup>st</sup> Respondent had informed the Office of the Applicant regarding commencement of CIRP of the Corporate Debtor through letter as well as email dated 04.10.2019. The Applicant is incorrect in stating that they are not aware of the commencement of CIRP.
- (iii) On 27.06.2019, the 2<sup>nd</sup> respondent requested the Applicant to extend the EPCG Licence period for fulfilling export


obligation which was rejected by the Applicant. The writ petition filed by 2<sup>nd</sup> Respondent against the office of Foreign Trade Department before the Hon'ble Madras High Court was allowed on 07.01.2020 and directed the Foreign Trade Department to follow due procedure in disposing of the representation of the 2<sup>nd</sup> Respondent (page. 12-18).

- (iv) Consequently, the office of Foreign Trade Department issued a notice dated 07.08.2020 to the 2<sup>nd</sup> Respondent advising that the EPCG Committee/Police relaxation committee at DGFT, New Delhi may be approached since the Applicant has no authority to extend the period of exemption beyond 2 years.
- (v) The applicant is unable to quantify their claim since the same is not crystallised due to pending finalisation of the exemption by the EPCG Committee and therefore the claim is only contingent on the outcome of the same. Hence, the Applicant does not have any locus to file this application.



6. Upon scrutinising the documents placed before this Adjudicating Authority, it is seen in accordance with section 15(1)(c) of the Code read with regulation 6(2)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), once the application for initiation of the CIRP is admitted by the National Company Law Tribunal (NCLT), a public announcement is required to be released by the IRP for inviting claims. The public announcement is required to provide for the last date for submission of such claims from the date of the appointment of the IRP. Further, regulations 7, 8, 9 and 9A of the CIRP Regulations provide for the form and manner in which claims have to be submitted by various creditors.

7. Regulation 12(2) of the CIRP Regulations provides that 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 IRP or the RP, as the case may be, on or before the ninetieth day of the insolvency commencement date. This deadline



of 90 days was introduced by way of an amendment, with effect from July 2018.

8. Restricting the time for submission of claims was necessary to ensure that the purpose of the CIRP under the Code was not defeated, i.e. to ensure a time-bound insolvency resolution process. The Code itself provides no time period for submission of claims. This led to creditor/s submitting their claims at the fag end of the resolution process which further led to the delay in the completion of the CIRP. In some cases, the last-minute filings also led to disputes being filed at the eleventh-hour before the concerned NCLT, over the inclusion/acceptance of such claims.

9. Although the introduction of a fixed timeline for submission of claims was more than welcome, the amended Regulation 12 (2) seems to have raised more issues than it purports to resolve. The amended Regulation 12 (2) is silent in regard to the status of creditors who have missed the deadline and are desirous of filing their claims.





10. Therefore, the question that arises is whether the 90 day period referred to in Regulation 12 (2) a mandatory timeline which had to be adhered to, or could any delay beyond 90 days be condoned by either the IRP/RP or the NCLT?

11. In the recent orders/judgements, the Hon'ble Tribunals have condoned the delay even after the time period of elapse of ninety days, citing that the amended Regulation 12 (2) is directory.

12. In the matter of *Twenty-First Century Wire Roads Ltd.*, an application was filed by one **AMA Agencies Pvt. Ltd.** before the **Hon'ble Principal Bench of the NCLT, New Delhi** for condonation of delay in filing their claim. The insolvency commencement date was 12th September 2018 and the claim was filed by AMA Agencies on 5<sup>th</sup> March, 2019. When the application was being heard, the CoC was still in the process of considering the resolution plans submitted. Therefore, the Hon'ble NCLT was pleased to condone the delay and direct the RP to consider the claim. A similar order was passed in another application for condonation filed in the same matter.



13. The Principal Bench of the NCLT, New Delhi, went one step further in the matter of *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.* and held as follows:

*“The rejection of claim on the ground of delay is not sustainable because the provisions has been held to be directory....We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory.”*

14. Interestingly, in *State Bank of India v. ARGL Ltd.* the Principal Bench of the Hon'ble NCLT, New Delhi, while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the corporate debtor and the RP/IRP would be required to take cognizance of the dues as per the books of accounts. Therefore, the application was allowed. The relevant portion of the order is reproduced herein below:



*"It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claim were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made.*

*Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."*

15. Hence, the question of delay of 217 days can be condoned?

The Applicant had been informed of commencement of CIRP by the Respondent. The Applicant has failed to establish the reason for the delay in submission of the claim. This led us to the questions that why not the Respondent / RP take corigance of outstanding statutory dues as per book of accounts of the Corporate Debtor. The

Respondent has clearly stated that the alleged dues are not yet quantified and litigations under various authorities are pending. The Respondent has also stated that the Resolution Plan is pending for approval before CoC. Hence, we are of the view that there is no merit in this application. The Applicant has failed to reason out the delay in submission of claim, the quantified amount is also under dispute. Hence, at this stage end of CIRP, we cannot entertain this application.

16. In view of the foregoing discussions, the IA/814/IB/2020 stands **dismissed**. No cost.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

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