

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

I.A (IB) No. 2069/KB/2024

In

C.P (IB) No. 03/KB/2017

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.***

IN THE MATTER OF:

NICCO CORPORATION LIMITED

..... Corporate Debtor

And

IN THE MATTER OF:

**THE COMMISSIONER OF CGST & CX, KOLKATA NORTH
COMMISSIONERATE & ORS.**

.....Applicants / Petitioners

Versus

VINOD KUMAR KOTHARI, Liquidator, Nicco Corporation Limited

.....Respondent / Liquidator

Date of Pronouncement: 21.05.2026

Coram:

SMT. BIDISHA BANERJEE (JUDICIAL)

MS. REKHA KANTILAL SHAH, MEMBER (TECHNICAL)

Appearances (via Physical / Hybrid Mode):

For CGST Authority : Mr. Shiv Shankar Banerjee, Adv.

: Mr. Abhradip Maity Adv.

For Liquidator

: Ms. Barsha Dikshit, PCS

: Ms. Neha Malu, PCS

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The present application is filed on behalf of the Commissioner of Kolkata North CGST & CX Commissionerate through its respective Divisional designated officials being Assistant Commissioner of the Barrackpore Division and BBD Bag -I Division *inter alia* seeking followings reliefs:

- a) *To condone delay, if any, in making the instant application.*
- b) *Consideration of claims in Form C filed by the Applicants by the Respondent/Liquidator as stated herein under Schedule A and B.*
- c) *Such further order and/or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may think fit and proper.*

2. **Brief Facts of the Case**

- a) The present application has been filed by the Commissioner of the CGST & Central Excise, Kolkata North Commissionerate through the concerned divisional authorities, namely the Barrackpore CGST & CX Division and BBD Bag-I Division, seeking appropriate directions regarding the admission and verification of claims submitted before the Liquidator in the liquidation proceedings of Nicco Corporation Limited.
- b) The insolvency proceedings against the Corporate Debtor were initiated and the petition was admitted on 18.01.2017. Subsequently, by order dated 17.10.2017, the Corporate Debtor was directed to be liquidated and Vinod Kumar Kothari was appointed as the Liquidator of the Corporate Debtor.
- c) The Applicants issued several show cause notices and adjudication proceedings were initiated by the concerned CGST authorities against the Corporate Debtor, resulting in

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

Orders-in-Original confirming duty demands against the Corporate Debtor. Based on such Orders-in-Original and related proceedings, claims were sought to be filed before the Liquidator.

- d) According to the Applicants, due to the fact that the concerned departmental offices had initially missed the paper publication regarding commencement of the liquidation proceedings, the departmental authorities were not aware of the liquidation process at the relevant time. Upon subsequently becoming aware of the liquidation proceedings, the concerned divisions began collecting the relevant show cause notices and Orders-in-Original from their office records for the purpose of filing claims before the Liquidator. However, due to misplacement of files and difficulty in tracing certain documents, the claims could not be consolidated immediately.
- e) Thereafter the Department engaged its then Senior Standing Counsel, who submitted a claim in Form-C before the Liquidator by forwarding letter dated 27.06.2022¹ on behalf of the Barrackpore CGST & CX Division for an amount of ₹185,11,94,015/-.
- f) Subsequently, 01.03.2023², the Barrackpore CGST & CX Division contacted the engaged Junior Counsel for filing an application along with an application for condonation of delay. Upon perusal of the documents, the Junior Counsel informed that several pages of the claim documents were illegible and that certain details in the forwarding memo were incorrect. The Junior Counsel also requested legible copies of the documents and missing pages in order to prepare the necessary application.

¹ Annexure- A

² Annexure- B

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

- g) That attempts were made to retrieve the missing documents and obtain confirmation of delivery of the claim submitted to the Liquidator. However, due to lapse of time, the postal tracking report could not be generated. Correspondence³ was also made with the postal authorities in this regard, but the same did not yield any conclusive result.
- h) Thereafter, the Department was advised that in the absence of confirmation regarding admission or rejection of the claim by the Liquidator, it may be appropriate to file a fresh claim supported by available documents. During this process, it was also found that the BBD Bag-I Division had additional claims based on a show cause notice and an Order-in-Original which had not been previously submitted.
- i) Accordingly, both divisions coordinated and after engagement of Senior Counsel and consultations with the concerned officials, the available documents were compiled. The Junior Counsel thereafter prepared the present application containing two schedules of claims, namely Schedule-A⁴ consisting of 52 cases relating to Barrackpore CGST & CX Division and Schedule-B⁵ consisting of one Order-in-Original and one show cause notice relating to BBD Bag-I Division.

3. Applicant's Contention:

- a) Ld. Counsel appearing for the Applicants submits that the claims of the Department arise from Orders-in-Original passed by the competent adjudicating authorities confirming duty demands along with applicable interest against the Corporate Debtor. It is submitted that such orders were passed after following the principles of natural

³ Annexure- D

⁴ Annexure- E

⁵ Annexure- F

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

justice and after granting opportunity of personal hearing to the representatives of the Corporate Debtor.

- b) It is further submitted that the Department had submitted its claim before the Liquidator through its erstwhile Senior Standing Counsel by forwarding letter dated 27.06.2022. However, no communication has been received from the Liquidator either acknowledging the claim or informing whether the same has been admitted or rejected.
- c) Ld. Counsel submits that in the absence of any response from the Liquidator, the Department has presumed that the claim has been deemed to have been rejected and has therefore approached this Tribunal for appropriate directions.
- d) It is contended that the delay in pursuing the claim was not intentional but occurred due to circumstances beyond the control of the Applicants, including non-awareness of the liquidation proceedings at the initial stage, misplacement of departmental records, illegible copies of documents, and difficulty in retrieving old records due to shifting of offices. It is submitted that the Department made continuous efforts to locate the necessary records and coordinate with counsel for filing the appropriate application.
- e) The Applicants further submit that unless appropriate directions are issued by this Tribunal, the Liquidator may not be in a position to verify and consider the claim of the Department. It is submitted that non-consideration of the claim would result in substantial loss of government revenue.
- f) Learned Counsel therefore prays that this Tribunal may permit the Liquidator to verify and consider the proof of claim submitted by the Applicants based on the available records. It is also prayed that liberty may be granted to the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

Applicants to place additional documents on record, if required, in order to substantiate the claim of the Department.

4. Analysis and Findings

- a) We have heard Ld. Counsels for the Applicant and the Respondent. We have noted that the Liquidator has not filed any written submission in reply to the applicant's contention. However, we have noted the oral submissions of both the parties and duly considered the documents available with us.
- b) It is observed that the Applicant, through its Learned Senior Counsel, Amitabrata Roy, submitted its claim in Form-C on 27.06.2022 for an amount of Rs. 185,11,94,015/-. It is further noted that no response was received from the Liquidator in respect of the said claim. Consequently, the Applicant has filed the present application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "Code") on 07.10.2024, seeking condonation of delay and a direction for consideration of its claim by the Liquidator.
- c) Now on merits, we would proceed to consider the application.
- g) That the Corporate Debtor entered CIRP on **18.01.2017** and was ordered into liquidation on **17.10.2017**. The Liquidator issued a public announcement on **25.10.2017** and **26.10.2017** fixing **22.11.2017** as the last date for filing claims. The Petitioner did not file its claim during CIRP or within the liquidation timeline and ultimately submitted its claim to the liquidator on **22.06.2022**—a delay of **1679 days**. Thereafter, no communication was received from the liquidator either acknowledging the claim

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

or informing whether the same has been admitted or rejected.

- h) It is submitted by the Applicant that the inordinate delay in filing the claim occurred on account of several circumstances, including lack of awareness of the initiation of the liquidation proceedings at the relevant time, misplacement of departmental records, and the availability of only illegible copies of certain documents. It is further stated that the process of retrieving the old records was considerably delayed due to the shifting of offices. The Applicant has further contended that it became aware of the liquidation proceedings only in the year 2022, pursuant to which it proceeded to submit its claim on 27.06.2022.
- i) This Adjudicating Authority has examined and finds that the Liquidator had duly complied with the statutory requirement of making a public announcement in terms of IBBI (Liquidation Process) Regulations, 2016, in four newspapers being “**Financial Express**”, “**Aaj Kal**”, “**Odisha Bhaskar**” on **25.10.2017** and “**Mumbai Mitra**” on **26.10.2017**, and had also uploaded the announcement on the IBBI portal as well as the dedicated website of the Corporate Debtor. Under the IBC framework, **public announcement is the primary mode of calling for claims**, and the Code as well as regulations does not mandate individual service of notice on each creditor. The Applicant, being a statutory authority of the State, is expected to function with diligence; ignorance of publicly advertised insolvency proceedings cannot be accepted as sufficient cause.
- j) Further, the Adjudicating Authority notes that the delay is not marginal but extraordinary—**1679 days**, far beyond any permissible period under the Code. The Hon’ble

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

Supreme Court and NCLAT have consistently held that delays of such magnitude defeat the very purpose of the IBC.

- k) This Adjudicating Authority is also conscious that accepting the Applicant's claim at this belated stage would severely prejudice other stakeholders who have submitted their claims within time. It would require re-opening of the claims register, re-working of the distribution waterfall under Section 53 of the Code, and delaying the liquidation process that is required to be completed within a strict timeline. Such consequences would defeat the core objective of the IBC.
- l) It is a settled position of law that alike corporate insolvency resolution process, liquidation is also a time-bound mechanism and not an endless process. Thus, a claim which is not filed within the time period as prescribed in accordance with law should not be entertained. We would refer to the judgement rendered by the Hon'ble Apex Court in ***The State of Madhya Pradesh vs. Bherulal***⁶ wherein it is observed that inordinate delay by the Government or the State Authority cannot mechanically be condoned merely because it is a government or a wing of the government. The Hon'ble Apex Court held that:

*"12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. **In the absence of plausible and***

⁶ Reported in MANU/SC/0781/2020: (2020) 10 SCC 654

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.'

"Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government."

(Emphasis Added)

- m) Further, we would rely on the judgment of the NCLAT in ***The Deputy Commissioner Commercial Taxes (Audit), Raichur Vs Surana Industries Ltd. (In Liquidation) & Anr***⁷, wherein the Hon'ble NCLAT categorically held that claims filed after prolonged delay cannot be entertained, as doing so would unsettle the claims register and adversely impact the mandatory timelines for liquidation.
- n) We have already noted that the Applicant has submitted its claim before the Liquidator long after **1679 days** from the last day of submission of claims and preferred this application long after **834 days** from the day of submission of claims to the liquidator.

⁷ CA (AT) (Insolvency) No. 1525 of 2019 dated 07.02.2020

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT NO.-I)
KOLKATA**

IA (I.B.C) No. 2069/KB/2024

In

CP (I.B.C) No. 03/KB/2017

- o) In terms of the enumerations supra, we would infer that the Applicant, however, being a government authority, has neglected and subsequently, failed to file its claim before the Liquidator within the given time period.
- p) This Adjudicating Authority finds no valid ground to condone the inordinate delay as the Applicant has failed to furnish any legally sustainable reason for condonation of such prolonged delay. Thus, the relief sought herein is not sustainable.
5. Accordingly, **I.A. (IB) No. 2069/KB/2025** is **dismissed** and **disposed of**.
6. The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 21st day of May, 2026.

S.T. (LRA)