

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 1894 of 2024

IN THE MATTER OF:

Nextgen Procon Pvt. Ltd.

(Through Its Liquidator Rajesh Panayanthatta) ...Appellant(s)

Versus

M.R.A Associates Pvt. Ltd.

...Respondent(s)

Present:

For Appellant : Mr. Arpit Dwivedi, Advocate.

For Respondents : Mr. Saurabh Kalia & S. Shishir, Advocates.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the Corporate Person through its liquidator to challenge the order dated 06.08.2024 passed by the NCLT, New Delhi by which an application filed by the Respondent under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 bearing CA No. 672 of 2019 for intervention in the proceedings initiated under Section 59(7) of the code has been allowed.

2. In brief, M/s Nextgen Procon Pvt. Ltd. (Corporate Person) and M/s MRA Associates India Pvt. Ltd. had entered into an agreement for quality surveying-cum-technical audit alongwith project management services on 10.02.2013. As per clause 5.3 of the said agreement, the Respondent was obliged to complete the work/project within a period of 30 months for which the Corporate Person agreed to pay a total sum of Rs. 40,50,000/- i.e. Rs. 1,35,000/- per month, plus the salary of two engineers on actual plus 40% over heads and profit on the same. The agreement was terminated by the Corporate Person within a period of 18 months and further the Respondent

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did not deploy any resource in April, 2013 at the site. The Respondent raised its invoice dated 18.09.2015 for final amount of Rs. 49,32,917/- though it had miserably failed to serve for the entire period of 30 months.

3. The Corporate Person after receipt of invoice, vide its email dated 18.11.2015 raised objections to the amount claimed by the Respondent. In the said email dated 18.11.2015, the Corporate Person clearly stated that firstly, the Respondent did not serve for the entire period of 30 months and has only served for a period of 18 months, therefore, it was not entitled to the entire consideration as agreed, secondly, mobilization advance is required to be adjusted in the final settlement and finally, the Respondent since did not deploy resource in the month of April, 2015, therefore, no demand can be raised for the said month.

4. However, the Respondent vide its reply dated 18.11.2015 insisted for payment of the entire amount as per invoice dated 18.09.2015 which was disputed by the Corporate Person.

5. The Respondent, thereafter, issued notice dated 23.02.2016 under Section 343 of the Companies Act, 1956 (Act) to which reply was filed by the Corporate Person on 16.03.2016 disputing its liability towards the amount claimed by the Respondent, particularly when the entire work under the agreement was not even completed by the Respondent.

6. The Respondent issued twice notice under Section 8 of the Code raising the claim of Rs. 40,50,000/-. The last notice was issued on 30.05.2017 which was contested by the Corporate Person by its reply dated 30.05.2017 disputing its liability of the amount which was claimed.

7. the Respondent despite the issuance of notice under Section 8 did not choose to file the proceedings under the provisions of the Code. The Corporate Person allegedly decided to close its business operation in the year 2018-19 and appointed the Appellant as its liquidator, who following due process of law as per the Code and in terms of Regulation 14 of the IBBI (Voluntary Liquidation) Regulations, 2017 (Regulations), issued public announcement in two newspapers on 07.02.2018 for inviting claims of the creditors. The last date for submission of claim was fixed as 07.03.2018 but the Respondent did not file any claim with the Appellant on or before 07.03.2018 of thereafter.

8. On 20.03.2018, the Appellant filed preliminary report and no objection certificate of Income Tax Authority was also received on 24.01.2019. Then in terms of Regulation 35 of the Regulations, the Appellant distributed the proceeds of the amounts to the stakeholders of the Corporate Person in terms of the Code and Regulations. The entire balance amount of the liquidation proceedings was remitted on 10.04.2019 and the liquidation bank account was closed on 04.05.2019. The Appellant in terms of Regulation 38(1) prepared the final report on 10.05.2019 and filed the same before the RoC and IBBI on 23.05.2019.

9. After the aforesaid work having been completed, the Appellant on 28.05.2019 filed the application under Section 59(7) of the Code for an order of dissolution of the Corporate Person by the Tribunal.

10. After the aforesaid application was filed, the Appellant received an email dated 28.05.2019 from the Respondent raising claim against the Corporate Person on the basis of invoice dated 18.09.2015. However, it is alleged that

with the said email, no claim was filed by the Respondent before the liquidator nor proof of claim was filed before the Tribunal.

11. The Respondent then filed an application bearing CA No. 672 of 2019 under Section 60(5) of the Code (intervention application) on 28.08.2019 but the said application was dismissed by the Tribunal vide its order dated 03.02.2021. The operative part of the order is as under:-

"It is on record that an absolute counter-offer of Rs. 9.6L was given by the non-applicant on 18.09.2015, without prejudice to their rights and conditions and it was asked to the Applicant to provide the project data to the non-applicant along with final invoice for closure, but the offer was rejected by the applicant."

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The Applicant has also sent a notice on 10.05.2017 under Section 8 of the IBC, 2016 to which reply was given by the non-applicant on 30.05.2017 denying the liability and made a reference the earlier reply dated, 16.03.2016 stating that a pre dispute is in existence, and no petition was filed under Section 9 of the IBC, 2016. In the meantime, the non-applicant namely, NextGen Procon Private Ltd., has proceeded to voluntary liquidate itself under Section 59 of the IBC, 2016. During the liquidation process, the notice was published on 05.02.2018 and the final report was filed by the Liquidator on 10.05.2019, but the applicant did not file any claim before the liquidator.

*....
We have heard both the sides and perused the record along with the pleadings in the application on hand, it is fully established from the facts and circumstances stated above that the cause of action arose on 18.09.2015 and the applicant did not agitate its claim before any Judicial Forum of competent jurisdiction within the period of three years. Now, after expiry of the period of limitation the Applicant wants to agitate the claim which is already disputed, by becoming the party in the Company Petition file under Section 59(7) of the IBC, 2016. The claim, if any, is hopelessly time barred. Therefore, there does not appear any ground for allowing the CA No.672/2019 for intervening in IB-1345 of 2019. Consequently, the Application stands **Rejected.**"*

12. However, the order dated 03.02.2021 was challenged in appeal before this court on the ground that since the rejoinder filed by the respondent was inordinately delayed which was not taken on record by the tribunal and the email dated 18.07.2016 annexed with the rejoinder shows the admission of liability, therefore, the claim of the Respondent is within the period of limitation. This Tribunal, vide its order dated 18.11.2022, allowed the appeal i.e. CA (AT) (Ins) No. 267 of 2021 on the limited issue that the Tribunal shall

take into consideration email dated 18.07.2016 issued by the Corporate Person and shall examine its effect.

13. The grievance in this appeal raised by the Appellant is that the Tribunal, even after the email dated 18.07.2016 is taken into consideration filed by the Respondent on 28.08.2019 claiming the amount of invoice dated 18.09.2015 held that it was beyond the period of three years.

14. Counsel for the appellant has argued that the application qua the claim made by the respondent on 28.08.2019 on the basis of the invoice dated 18.09.2015 was hopelessly time barred being beyond the period of three years as provided under Article 137 of the Limitation Act, 1963. In this regard, it is submitted that if the period of three years is to be counted from the date of invoice dated 18.09.2015 then the limitation had expired on 18.09.2018. If the limitation is to be counted from the email dated 18.11.2015 of the Corporate Person for Rs. 9,60,000/- then the limitation had expired on 18.11.2018, if the limitation is to be counted from 16.03.2019 i.e. reply filed by the Corporate Person to the notice under Section 434 of the Act wherein it had made an offer of Rs. 1,62,000/- yet the period of three years had expired on 16.03.2019. Lastly, if the limitation is to be counted from 18.07.2016 for which this court had issued a direction to be considered, the limitation of three years would have expired on 17.07.2019. It is submitted that since the application for intervention was filed on 28.08.2019, therefore, it was beyond the period of three years and as such it could not have been taken into consideration for passing the impugned order.

15. It is further submitted that the Respondent had been sleeping over his right at every stage much less from the date of issuance of invoice dated

18.09.2015, the date when notice under Section 8 was issued on 30.05.2017 and no proceedings were initiated under Section 9 of the code and when no claim was made within the time given by the liquidator when notice was issued on 07.02.2018 inviting claims and the last date for submission of claim was fixed as 07.03.2018.

16. It is further submitted that even in the email dated 28.05.2019 the Respondent had alleged that it has a claim against the corporate person by virtue of invoice dated 18.09.2015 and it is in the process of filing proof of claim before the Tribunal but no claim was filed by the Respondent to the liquidator nor any proof of claim was filed before the Tribunal. The only claim raised by the Respondent is the intervention application dated 28.08.2019 which was beyond the period of limitation even after counting the same from 18.07.2016.

17. Counsel for the Appellant has further submitted that ex-facie the application for intervention was not maintainable. It is submitted that once the liquidator has completed the voluntary liquidation process as per the prescribed procedure including issuance of public notices inviting claims, adjudication of such claims under Regulation 30, preparation of the final report under Regulation 38, and submission of the dissolution application before the Tribunal under Section 59(7), no further claim or intervention application can be entertained because the statutory framework does not contemplate any adjudicatory role for the Tribunal akin to the resolution or liquidation process under Part II of the Code particularly when the process stands concluded.

18. It is further submitted that permitting the intervention application at this terminal stage would undermine the finality of the liquidation process, disrupt the sanctity of the timelines and defeat the very purpose of a time bound and creditor driven voluntary liquidation regime. It is also submitted that the 3rd party having a legitimate claim can always file its claim within the statutory period but in the absence of not filing the claim in time it cannot be reopened especially when the application under Section 59(7) was filed. It is further submitted that the Appellant had made the final settlement by remitting the entire balance amount of the liquidation proceedings to the accounts of the stakeholders on 10.04.2019 and liquidation bank account was also closed on 04.05.2019. After completion of all the liquidation proceedings, the liquidator prepared the final report on 10.05.2019 and the same was filed before the RoC and IBBI on 23.05.2019 pursuant to which he filed the application, therefore, it was not the stage when the intervention application for the claim can be filed and entertained.

19. On the other hand, Counsel for the Respondent has submitted that the Tribunal has only allowed the intervention but the matter is yet to be decided on merits once the pleadings are complete. He has further submitted that the Tribunal took note of the email dated 18.07.2016 and passed the impugned order only for the purpose of intervention by the Respondent who had been directed to file reply to the main petition.

20. It is thus submitted that no prejudicial order has been passed by the Tribunal against which the present appeal has been filed.

21. Counsel for the Respondent has further submitted that the Respondent qualifies under the proviso to Section 59(3)(c) as a creditor with an

acknowledged claim. It is submitted that in case of existing debt, approval from creditors representing two thirds in value must be obtained but the respondent was neither considered nor included in this approval process. It is further submitted that the claim of the Respondent is not time barred and is well within the period of limitation. It is submitted that the Appellant initiated voluntary liquidation on 22.01.2018 and its claim is based on an invoice dated 18.09.2015 which remained valid till 17.09.2018. It is further submitted that the debt acknowledged by email dated 18.11.2015 and 18.07.2016 extended the limitation up to 17.07.2019. It is further submitted that the claim filed by the Respondent before the liquidator is a legitimate claim and a valid claim deserves recognition.

22. We have heard Counsel for the parties and perused the record with their able assistance.

23. The present proceedings have arisen from the application filed by the Appellant/Liquidator under Section 59 of the Code. Chapter V of the Code deals with the voluntary liquidation of the corporate Persons. Section 59 of the Code is reproduced as under:-

“Section 59. Voluntary liquidation of corporate persons.

(1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:—

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration under sub-clause (a), there shall be—

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).

(6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the

liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly

(9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.”

24. The Regulations came into being on 31.03.2017 which lays down the procedure. As per Section 59(7), where the affairs of the corporate person have been completely wound up and its assets are completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

25. The Appellant (Liquidator) had thus filed the application after remitting the entire balance amount of the liquidation proceedings to the accounts of the stakeholders on 10.04.2019, closed the liquidation bank account on 04.05.2019 and submitted the final report dated 10.05.2019 to the RoC and IBBI on 23.05.2019.

26. During the pendency of the application filed under Section 59(7), intervention application has been filed by the Respondent on 28.08.2019 for the claim raised on the basis of invoice dated 18.09.2015. The Tribunal, vide its order dated 03.02.2021, found that intervention application filed by the Respondent was time barred and dismissed the same but in appeal which was allowed on 18.11.2022 this court directed the Tribunal to consider the email dated 18.07.2016 and its effect because the respondent had alleged that the Corporate Person had acknowledged the debt vide its email dated 18.07.2016, therefore, the claim of the Respondent is within period of limitation.

27. It is needless to mention that limitation for an application which is not prescribed in the limitation act would fall within the purview of Article 137 of the Act which prescribe a period of three years.

28. There is no dispute that the Liquidator invited the claims in terms of Regulation 14 by making publication in two newspapers on 07.02.2018. The last date for submission of claim was 07.03.2018. The Respondent was supposed to file the claim, if any, on the basis of the invoice dated 18.09.2015 up to 07.03.2018 but no such claim was filed.

29. It is also pertinent to mention that the Respondent earlier had issued twice notice under Section 8 of the code raising the same claim and the last notice was issued in that regard was on 30.05.2017 which was duly replied by the Corporate Person but no proceedings were initiated by the Respondent under Section 9 of the code.

30. The Appellant / Liquidator completed the proceedings in terms of provisions of Section 59 r/w Regulations and not only remitted the entire balance amount of the liquidation proceedings to the accounts of the stakeholders on 10.04.2019 but also closed the liquidation bank account on 04.05.2019, thereafter, he prepared his final report on 10.05.2019 and informed the RoC and IBBI accordingly on 23.05.2019 and on 28.05.2019 filed the application under Section 59(7) of the Code before the Tribunal for seeking an order of dissolution of the corporate person. The Respondent alleged to have sent an email on 28.05.2019 and mentioned that it is in the process of filing the proof of claim but no claim was filed by the respondent before the liquidator nor proof of claim was filed to the Tribunal rather the

application for intervention for the purpose of raising the claim was filed for the first time on 28.08.2019 bearing CA No. 672 of 2019.

31. In view of the above facts and circumstances, if the limitation is counted from 18.09.2015 when the invoice was raised it would expire on 18.09.2018 and if it is to be counted from 18.07.2016 even then the same expired on 17.07.2019 whereas the application bearing CA No. 672 of 2019 raising the claim by way of invoice was filed on 28.08.2019 precisely after the expiry of period of limitation of three years.

32. Therefore, in our considered opinion, the Tribunal has committed an error in entertaining the application for intervention filed by the Respondent despite the fact that it was beyond the period of limitation of three years.

33. In view of the aforesaid discussion, the present appeal is allowed and the impugned order is set aside. No costs.

I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indavar Pandey]
Member (Technical)

New Delhi
16th July, 2025.
Sheetal