

PROOF OF CLAIM IN LIQUIDATION: WHETHER DISPENSABLE?

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Editor's Note: Collation of claims is one of the basic tasks which a resolution professional/liquidator has to perform. The claims form the basis of payouts in resolution plan or distribution in liquidation, The law lays down detailed procedure for each class of stakeholders for submission of proof of claims. The claimants are required to submit their claims in accordance with the CIRP Regulations/Liquidation Regulations along with facts substantiating their claim; however, whether such proof of claim is mandatory, forms an interesting question. Find below, the answer to this question, its analysis and our view on the same.

In [SBS Transpole Logistic Pvt. Ltd. v. M.M. Cargo Container Line Pvt. Ltd. & Ors.](#) [CA 152/2018 in CP (IB) 204(ND)/2017] before National Company Law Tribunal, New Delhi Bench ("NCLT"), the applicant's claim was not entertained in the resolution process and was filed after commencement of liquidation proceedings. The liquidator resisted entertaining the claim on the ground that after liquidation proceedings have commenced, he cannot include the claim unless permitted by the adjudicating authority. The applicant prayed for inclusion of claim to be considered in the process of liquidation.

The NCLT noted that the claim of the applicant was reflected in the balance sheet of the corporate debtor. The Code mandates the resolution professional to collect all the claims and therefore, it would be the duty of the liquidator to entertain and ascertain all claims whether or not filed by the claimant. Until the period that the liquidation assets are distributed, a verified claim should not be summarily rejected. It is only after distribution of assets that no further claim can be entertained. Hence, the liquidator was directed to entertain the claim.

The case sets, humbly, sets an erroneous principle. Most humbly, the ruling fails to appreciate the following:

1. Proof of debt: whether mandatory or merely procedural

Both the terms 'proof' and 'provable' are of technical import in the language of the law of insolvency. A creditor proves its debt when it lodges a proof in a mode as prescribed by the statute and having done that its debt is proved as per the requirements of the law [[GovindPrasad v. Pawan Kumar](#) (1944) 46 BOMLR 306]. Proof of debt is basically the document by which the parties seek to establish their claim.

Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the "Regulations") requires that the public announcement shall "call upon the stakeholders to submit their claims as on the liquidation commencement date; and provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date". In

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furtherance of this, regulation 16 requires that a person who claims to be a stakeholder shall prove its claim for debt or dues to it, including interest, if any, as on the liquidation commencement date.

As is evident, filing of a proof of debt is therefore a mandatory requirement. The view is strengthened by an exclusive carve-out for workmen and employees under regulation 19(4), by virtue of which the liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim. Such specific relaxation for a particular class of stakeholders speaks for the compulsory nature of such requirement for other class(es) of stakeholders.

Therefore, the mere presence of the debt in the books of accounts of the corporate debtor, is not evidential enough for the claim to be considered and admitted by the liquidator. Undoubtedly, the liquidator is mandated to “verify claims of all the creditors”; however, a claim which has not been submitted cannot be verified.

It must be noted that the Code treats the corporate insolvency resolution process and the liquidation process as two separate stages, and proof of claim is to be filed separately at each stage.

The liquidator cannot solely rely on the balance sheet of the corporate debtor to “ascertain” such claims, as required by the NCLT. Doing so would completely undermine the requirement of “proof of claim” as envisaged under the Code and the Regulations which lay down detailed procedures and timelines for submission of proofs. Proof of claim assumes significance under the liquidation process given the limited assets of the debtor available for disbursement.

On a conservative side, it is open to the liquidator to “provide” for such claims (which have not been submitted) until the assets of the liquidation estate are distributed; however, making such provision, in any manner, does not constitute “admission” of the claim, per se. A claim which has not been filed, cannot be admitted; and a claim which is not admitted, cannot be paid/repaid.

2. Proving of Claims: Resolution vs Liquidation

In the instant case, the liquidator resisted entertaining the claim on the ground that after liquidation proceedings have commenced, he cannot include the claim unless permitted by the adjudicating authority.

However, nothing in the Code bars a person who has not filed a claim in resolution from filing a claim during liquidation. The intervention of adjudicating authority is required only where the claim is filed after the last date for submission of claims. No specific approval of the adjudicating authority is required where the claim was not filed during resolution but is filed during liquidation within the specified time frame.

It must be noted that the Code treats the corporate insolvency resolution process and the liquidation process as two separate stages, and proof of claim is to be filed separately at each stage. In the resolution phase, the submission of claims and verification thereof is with respect to determining the eligibility to be a member of the committee of creditors and rights arising as such; whereas under the liquidation process, the objective is to determine the total amount of dues and priority thereof to be paid out of the liquidation estate.

As such, a claim which was not submitted during resolution, but was first submitted during liquidation cannot be summarily rejected on the ground that it was not submitted during resolution.

3. Time limit for filing claims

As regards the liquidation process, section 38(1) of the Code expressly specifies the time period of 30 days from the date of commencement of the liquidation process for receipt and collation of the claims of creditors by the liquidator. Thus, pursuant to this section read with regulation 12(2)(b) of the Regulations, the authority of the liquidator to accept the claims cannot extend beyond this prescribed time limit.

It must be noted that section 38(1) does not imply that the claimant shall be deprived of its right to recover its claim in case of delayed submission of claim. By virtue of section 42 of the Code, remedy has been provided by way of appeal against the rejection of claim by the liquidator within 14 days of the receipt of the decision of the liquidator. A joint reading of sections 38(1) and 42 implies that the delayed submission of claim can be admitted by the liquidator only when directed to do so by the adjudicating authority on appeal under section 42. See, [UCO Bank v. Nicco Corporation Limited \(in liquidation\)](#) [CA (IB) No. 31/KB/2018 in CP (IB) No. 03/KB/2017, Order dated 14.02.2018].

The NCLT ruling in *SBS Transpole* will, therefore, have the effect of rendering section 38(1) of the Code and regulation 12(2)(b) of the Regulations meaningless.

4. Admission of claims pending distribution of assets

The NCLT observes that until such period that the liquidation assets are distributed, a verified claim should not be summarily rejected. It is only after distribution of assets that no further claim can be entertained. The observation holds true, provided the claim is submitted and admitted in accordance with the provisions and the principles as discussed above. The author in the post titled, "[Latecomers in Liquidation: Entitlements and Penalties](#)", has dealt with the issue of late claims of creditors in detail.

The discussion as above makes it clear that proof of claims is an indispensable part of the resolution and liquidation process and mere presence of the debt in the books of the corporate debtor cannot be taken as a basis, unless expressly provided for.
