Comp.A.No.29 of 2016
in
C.P.No.17 of 2004

S.MANIKUMAR, J.

Material on record and submissions discloses that SIV Industries Limited, was wound up on 25.08.2004. Contending inter alia that there was a delay of 131 days in filing the application in Form 66 of the Companies (Court) Rules, 1959, before the Official Liquidator in C.P.No.17 of 2004, the New India Assurance Company Limited, Mumbai, has filed a application to condone the same. The claim is for a sum of Rs.11,50,19,009/-. As per the supporting affidavit to the application No.2853 of 2007 filed for condoning of 131 days, the last day for submission of the claims was on 12.11.2006. According to the applicant the transaction was entered into and records pertaining to the claim were maintained with the Investment Department of the Head Office at Mumbai. There was a communication gap between the Regional Office at Chennai and Head Office at Mumbai where the records were maintained and thus the claim under Form 66 could not be filled before 12.11.2006 which resulted in a delay of 131 days.

2. Satisfied with the reasons stated in the supporting affidavit to Company Application No.2853 of 2007 in C.P.No.17 of 2004, this Court, vide order dated 07.11.2007, has condoned the delay of 131 days, in filing the claim application before the Official Liquidator, High Court,

Madras, and further directed New India Assurance Company Limited, Mumbai to file the claim application before the Official Liquidator, High Court, Madras, within two weeks, from the date of receipt of a copy of this order. Now, the present Company Application No.29 of 2016 has been filed in C.P.No.17 of 2004 to condone the delay of 3340 days, in filing the claim related to the term loan availed by the company in liquidation with the respondent in C.P.No.17 of 2004.

3. The reasons assigned by the New India Assurance Company Limited, Mumbai, the applicant, at paragraphs 5 and 6 of the affidavit filed in the support of the Judges summons in C.A.No.29 of 2014 are as follows:

> "It is submitted that the entire original file related to SIV Industries was only at its Head Office, Mumbai and only for the purpose of filing the said application, the matter was sent to the Chennai legal department. The matter was handed over to one of our panel advocates and the erstwhile counsel engaged is in no further correspondence with the complainants and has not provided the copy of the order. Further there was no communication thereafter from the counsel and in the meantime there were change of offices due to transfers & promotions both at Regional Office and Head Office. Also there were shifting of records from one place to other and in the said process many files were misplaced and lost during the shifting including this one. The department was re-transferred to Regional Office premises subsequently. All these transfers and changes in employees handing the records resulted in many records being missed and without proper follow up. All along the Head Office at Mumbai is of the impression that the claim of the applicant in respect of debenture series and the term loan has been filed with the respondent and the same has

been accepted. Due to communication gap between the advocate and the officers, the non filing of the claim pursuant to the said order was not noticed.

6. I state that in the meanwhile, the applicant had received a communication from the debenture trustee for the Series - B, D & E, ICICI Bank Ltd., stating that it had filed the claims on behalf of the NCDs holders including the applicant on 25.09.2014 with the respondent. In respect of G Series debenture. Further the IDBI Bank Trusteeship Services Limited, who is the debenture trustee in respect of G series had submitted the claim on behalf of the applicant and other institutional debenture holders on 23.07.2012 after getting permission from this Hon'ble Court. Since the debenture trustees have already filed the claims in respect of the debentures claims on behalf of the applicant, there is no requirement of filing once again by the applicant it was only recently noticed that the amount paid under the loan agreement was to be dealt with directly by the applicant and not through the Debenture Trustees. Hence, at present the applicant needs to file claim only in respect of the term loan claim with the respondent. The said claim could not be filed only due to the reasons stated above. The applicant is filng an application to condone the delay of 3340 days in filing the claim with the respondent. The delay in filing the claim is only due to the reasons stated above which is neither willful nor wanton. If the application is not allowed, the applicant will be put to irreparable loss and may not be in a position to recover the dues in respect of the term loan availed by the company in liquidation."

4. As stated supra, earlier when application No.2853 of 2007, was filed for condoning the delay of 131 days in filing the claim, New India Assurance Company Limited, Mumbai, has stated that the transactions entered into and the records pertaining to the claim were maintained at the Investment Department, Head Office at Mumbai and that there was a

communication gap between the Head Office and the Regional Office. The reasons assigned in paragraph-5 of the affidavit, are almost the same excepting to state that files have lost during shifting.

5. There is an inordinate delay of 3340 days. Despite, condoning the delay of 131 days in making the claim, New India Assurance Company Limited, Mumbai, has not shown its diligence, in making the claim with the supporting documents. The reason assigned, was not satisfactory. This Court is not inclined to condone the delay. Hence, this Company Application No.29 of 2016 in C.P.No.17 of 2004 is dismissed.

18.01.2016

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S.MANIKUMAR, J.

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