

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

Company Appeal(IBC)/6/KOB/2025

IN

IA (IBC)/408/KOB/2022

IN

CP (IBC)/26/KOB/2022

(Under Section 42 of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016)

Date of institution: 02.05.2025

Order delivered on: 30.10.2025

In the matter of:

M/s Rubberwood India (P) Limited (In Liquidation)

MEMO OF PARTIES:

Assistant Commissioner of Customs,
Customs House, Cochin-682009

... Appellant

-Vs-

Mr. Renahan Vamakesan,

Liquidator of Rubber Wood India Private Limited, Villa 23, Skyline, Rosemount Homes, Kunjan Bava Road, Ponnuruni, Vyttila P.O., Ernakulam District, Kerala.

&

**M/s Rubberwood India (P) Limited
(In Liquidation)**

Rubber Board - RRDTC Complex,
Manganam, Kottayam-68018
Represented by the liquidator Mr.
Renahan Vamakesa

...Respondents

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Appellant : Mr. Suvin R Menon, Advocate

For the Respondents : Mr. Akhil Suresh, Advocate

ORDER

Per Coram

1. This Company Appeal has been filed by the Assistant Commissioner of Customs, under Section 42 of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, in the matter of M/s. Rubberwood India Pvt Ltd, against the order of the Liquidator vide email communication dated 19.03.2025, rejecting the valid claims of the Customs Department, seeking the following relief:
 - i. *To condone the delay of 787 days in filing the Annexure A6 claim before the 1st Respondent.*
 - ii. *To issue directions to the Respondent No. 1/Liquidator to accept the Annexure A6 claim submitted by the Appellant.*

2. The Appellant submitted that in CP(IB)/26/KOB/2022, the Corporate Debtor, M/s. Rubberwood India Pvt. Ltd. was admitted into the Corporate Insolvency Resolution Process by this Adjudicating Authority vide order dated 17.05.2022. Subsequently, in IA(IBC)/408/KOB/2022, this Adjudicating Authority, vide order dated 15.12.2022, ordered the liquidation of the Corporate Debtor and appointed Respondent No.1 as the Liquidator.
3. The Appellant stated that the Corporate Debtor was engaged in import and export activities and had availed benefits under the Export Promotion Capital Goods Scheme. The Corporate Debtor had imported goods under eight Bills of Entry during the years 2000 and 2001, availing concessional duty benefits under Notification No. 49/2000 dated 27.04.2000 and Export Promotion Capital Goods Licence No. 1030000031/3/11/00 dated 10.08.2000. As per the terms and conditions of the Export Promotion Capital Goods Scheme, the Corporate Debtor was required to fulfil the corresponding export obligation within the prescribed period.
4. The Appellant further submitted that, due to the non-fulfilment of the export obligation under the Export Promotion Capital Goods Scheme, the Assistant Commissioner of Customs, vide Order No. EPCG 8A/2000-01 Gr.VII.Cus. dated 25.06.2009, confirmed a demand of duty amounting to Rs. 14,08,172/- (Rupees Fourteen Lakhs Eight Thousand One Hundred and Seventy-Two only) and directed Respondent No. 2 to remit the said amount along with applicable interest from the date of clearance of the consignments, within fifteen days from the date of receipt of the order.
5. Aggrieved by the said order dated 25.06.2009, Respondent No. 2 preferred Appeal No. 119/2013 before the Commissioner of Customs

- (Appeals), Cochin under Section 128A of the Customs Act, 1962. Vide order dated 09.10.2013, the Commissioner of Customs (Appeals) dismissed the Appeal and upheld the original order. Thereafter, Respondent No. 2, being further aggrieved, preferred Appeal No. 20906/2024 before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore, under Section 129E of the Customs Act, 1962. However, the said Appeal was closed as abated by order dated 26.09.2024, on the ground that Respondent No. 2 was under liquidation.
6. The Appellant further stated that the legal department of Customs reviewed the order dated 26.09.2024 and, after thorough scrutiny at various levels, decided to approach Respondent No. 1 to raise the claim. The Customs Department, being an Operational Creditor, is legally entitled to a share in the liquidation proceeds. Accordingly, the Assistant Commissioner of Customs, through Letter No. GEN/TAR/AUL/7/2025-RRCELL dated 12.03.2025, submitted a claim in Form B under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before Respondent No. 1. The total claim amounted to Rs. 64,33,262/-, comprising Rs. 14,08,172/- as duty foregone and Rs. 50,25,090/- as interest calculated up to 17.05.2022. The said claim was also forwarded to Respondent No. 2 via email on 12.03.2025.
7. It is further submitted by the Appellant that, the Respondent No. 1 rejected the claim on the ground that the claim in Form B under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was required to be filed within fourteen days of the public announcement of

the commencement of the Corporate Insolvency Resolution Process, which had already concluded on 15.12.2022, when this Adjudicating Authority ordered the liquidation of the Corporate Debtor. It was further stated that, after the commencement of liquidation, the claim ought to have been filed in Form C under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, on or before 20.01.2023, as the public announcement had been made on 20.12.2022.

8. The Appellant further submitted that, by Letter No. GEN/TAR/AUL/7/2025-RRCELL dated 17.03.2025, a claim in Form C was filed before the 1st Respondent and was simultaneously forwarded via email on the same date. However, the said claim was rejected by the Respondent No.1 as communicated through email dated 19.03.2025, on the ground that the claim had been filed beyond the prescribed period of 30 days from the liquidation commencement date, as per Regulation 12(2)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
9. It is further submitted that the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore was passed only on 26.09.2024, which prevented the Appellant from filing the claim before 20.01.2023. Consequently, there occurred a delay of 787 days in filing the claim. The said claim pertains to the Customs Department and thereby to the revenue of the Government of India. If the delay of 787 days in filing the claim is not condoned, it would result in substantial prejudice to the Appellant and cause loss to the public exchequer. The Appellant submits

that the delay was neither wilful nor deliberate, but due to genuine and unavoidable circumstances beyond its control.

10. The Respondents submitted that the liquidation estate included leasehold rights over 4.58 acres of land, which were auctioned on 12.10.2023 for Rs. 23.7 Crores. After setting aside operational reserves, the Liquidator began preparing for the distribution of proceeds as per the Section 53 waterfall mechanism. However, disbursement has been stayed due to interim orders from the Hon'ble High Court of Kerala in *WP(C) No. 42610 of 2024 (Revindran P.C. & Ors. v. Union of India & Ors.)*, which relates to the treatment of certain statutory dues claimed by the EPFO. Both the proceedings before this Adjudicating Authority and the Hon'ble High Court are ongoing and directly impact the final distribution of the liquidation proceeds.
11. The Respondents submitted that the present Application under Section 42 of the Code is misconceived, untenable, and devoid of merit. The Assistant Commissioner of Customs, Cochin, seeks to challenge the rejection of a claim amounting to Rs. 64,33,262/-, filed in Form C during the liquidation process. The said claim pertains to a confirmed customs duty liability, which had attained finality after adjudication under Section 128 of the Customs Act, 1962, and subsequent dismissal of the statutory appeal.
12. It is submitted by the Respondents that while the Appellant relies upon the adjudication order under Section 128 of the Customs Act, the suspended management of the Corporate Debtor had already preferred an appeal before the Hon'ble CESTAT, Bangalore, which was dismissed as abated without any adjudication on merits. The said appeal was never disclosed by the suspended directors either during the handover to the

Resolution Professional or later to the Liquidator. This deliberate non-disclosure undermines the transparency and integrity of the claim verification process and disentitles the Applicant from seeking any equitable relief before this Adjudicating Authority.

13. The Respondents further submitted that the Respondent No.1 has carefully examined the claim submitted by the Appellant, along with the accompanying documents, and observed that the claim amount included interest calculated beyond the liquidation commencement date. It is a settled legal position that no interest accrues or is admissible after the date of the liquidation order. Therefore, the inclusion of such post-liquidation interest renders a portion of the claim inadmissible and inconsistent with the distribution framework prescribed under Section 53 of the Code.
14. The Respondents stated that the Applicant's assertion seeking priority payment of Government dues, including customs duty, is misconceived and unsustainable. Under Section 53(1)(e) of the Insolvency and Bankruptcy Code, 2016, Government dues rank below secured creditors, workmen's dues, and certain other categories in the waterfall mechanism. The Appellant cannot claim any preferential treatment or priority payment outside this statutory order. No competent authority has issued any order conferring such priority status upon the Appellant. Accordingly, the Liquidator's decision to reject the claim was lawful, proper, and in strict compliance with Regulation 30 of the IBBI (Liquidation Process) Regulations, 2016. Furthermore, the claim submitted by the Appellant was incomplete and included inadmissible components such as post-

liquidation interest, without proper quantification or supporting documentation.

15. The Respondents further submitted that the claim was evaluated based on the available records and financial statements of the Corporate Debtor. Owing to the non-disclosure by the suspended management and the abatement of the appeal before CESTAT without a decision on merits, the Liquidator was left with incomplete and insufficient records to validate the claim. The Applicant, if so advised, may pursue remedies available under the Customs Act, 1962, or other applicable laws; however, such recourse cannot override the provisions of the Insolvency and Bankruptcy Code or the priority framework under Section 53.
16. The Respondents relied upon the decision of the Hon'ble National Company Law Appellate Tribunal in ***Y. Shivram Prasad v. S. Dhanapal & Ors. [Company Appeal (AT) (Insolvency) No. 224 of 2018]***, wherein it was held that no creditor, including Government Departments such as the Income Tax Department, is permitted to file a claim beyond the statutory timeline unless sufficient cause for the delay is established. The Respondents submitted that in the present case, the Customs Department has failed to provide any adequate or reasonable justification for the inordinate delay of 787 days in filing its claim. Accordingly, the said claim is not maintainable under the provisions of the Insolvency and Bankruptcy Code, 2016.
17. We have heard the submissions made by the Ld. Counsels for the Appellant and the Respondents and perused the documents and material placed on record by both parties.

18. The Liquidation of the Corporate Debtor, M/s. Rubberwood India Pvt. Ltd. was ordered by this Adjudicating Authority vide order dated 15.12.2022, and the Respondent No. 1, Liquidator, made a public announcement on 20.12.2022, inviting claims from all stakeholders. As per Regulation 12(2) read with Regulation 30 of the IBBI (Liquidation Process) Regulations, 2016, the last date for submission of claims was 20.01.2023. However, the Appellant, i.e., the Assistant Commissioner of Customs, filed its claim in Form C only on 17.03.2025, with an admitted delay of 787 days. The Liquidator, having considered the belated nature of the claim and the statutory timelines prescribed under the Code, rejected the same vide email dated 19.03.2025.
19. The Appellant has sought condonation of the said delay, attributing it to the pendency of an appeal before the Hon'ble CESTAT, Bangalore, which was ultimately closed as abated on 26.09.2024. The Appellant submitted that the claim could not have been filed earlier since the adjudication before the appellate forum was still pending. However, it is pertinent to note that during the pendency of the said appeal before the Hon'ble CESTAT, no stay order or any subsisting restraint was preventing the Appellant from filing its claim before the Liquidator or the Adjudicating Authority.
20. The Hon'ble NCLAT in ***The Regional Provident Fund Commissioner Employees Provident Fund Organisation vs Mr. Vasudevan Resolution Professional & Liquidator of M/s. Titanium Tantalum Products Limited*** in Company Appeal (AT) (CH) (INS) No. 182 of 2022, while dismissing a delayed claim, held inter alia that:

"41. It is to be remembered that the length of the delay is immaterial. However, the acceptability of an explanation furnished by the 'Party'

is the prime criterion. A Tribunal or a Court of Law will be very reluctant / slow to excuse the delay to lend a helping hand / assistance to a Litigant / Stakeholder who is guilty of inaction or bad faith or laches or negligence.

44. Just because the Appellant is a Statutory Organisation, no indulgence or latitude can be shown, since the law applies to one and all in a level playing field. ...

46. Speed is the essence of I & B Code, 2016. Time Wasted/Lost cannot be revisited/regained. The process of Liquidation is time bound, to be completed within one year..."

21. Further, the Hon'ble High Court of Madras in ***S.R. Vediappan vs S.P. Ramalingam, C.M.P. No. 7730 of 2017 in A.S. SR No. 34779 of 2017,*** held that:

"While condoning the delay, the Courts must be cautious and only on genuine reasons, the Courts are empowered to condone the delay. ... The condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses."

22. Similarly, the Hon'ble Supreme Court in ***RPS Infrastructure Ltd. vs. Mukul Kumar & Ors. (MANU/SC/1001/2023)*** held as under:

19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry.

23. Further, the Hon'ble NCLAT in ***The Assistant Commissioner of Commercial Taxes vs. Right Engineers & Equipment India Pvt. Ltd. (in***

liquidation), Company Appeal (AT) (CH) (Insolvency) No. 255 of 2021, held that:

“It is an axiomatic principle in law that the Tribunal is required to consider the sufficiency of cause, whether the cause ascribed is reasonable looking to all the facts of the matter. However, the aspect of existence of sufficient cause is to be determined based on the facts and circumstances hovering around each particular case. Indeed, there ought not to be an inaction or want of bona fides or negligence attributable to a litigant/party.”

24. At the outset, it must be noted that the timelines prescribed under the Insolvency and Bankruptcy Code, 2016 and the IBBI Regulations are mandatory in nature and are intended to ensure expeditious completion of the insolvency and liquidation process. The object of the Code is to bring finality and certainty within defined time limits. The pendency of an appeal or other proceeding before a different forum cannot be considered a sufficient or valid ground for non-filing of a claim within the prescribed period. If such a plea is accepted, it would defeat the very purpose of a time-bound liquidation process and open the floodgates for stale claims at any stage of the liquidation proceedings.
25. Moreover, as rightly submitted by the Liquidator, the process of public announcement is to notify all creditors and stakeholders regarding the commencement of liquidation, thereby enabling them to file their claims promptly. The Appellant, being a statutory authority with nationwide infrastructure, cannot plead ignorance of the insolvency or liquidation proceedings. The expectation of due diligence applies equally to Government departments, and the Appellant was required to be vigilant once the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process by this Adjudicating Authority on 17.05.2022.

26. It is further observed that the issue before this Adjudicating Authority primarily concerns the delay in filing the claim and not the merits of the claim itself. The pendency of proceedings before the Hon'ble CESTAT cannot be a ground for disregarding the mandatory timelines under the Code. The records clearly show that the Appellant was aware of the customs duty demand since 2009 and the subsequent appellate orders, yet took no steps to file its claim during either the Corporate Insolvency Resolution Process or within the prescribed liquidation period. Moreover, there was no stay or injunction in force during the pendency of the CESTAT proceedings that could have prevented such filing, and mere pendency without a stay does not constitute sufficient cause for condonation. Such prolonged inaction cannot be condoned as bona fide.
27. As per the provisions of the Insolvency and Bankruptcy Code, 2016, every creditor is required to submit its claim within the prescribed time from the date of publication of the invitation for claims. In the present case, such opportunities arose twice, during the Corporate Insolvency Resolution Process pursuant to the public announcement made after the admission of CP(IB)/26/KOB/2022, and again during the liquidation process when a public notice was issued by the Liquidator on 20.12.2022, inviting claims up to 20.01.2023. However, the Appellant failed to avail either opportunity and now seeks to justify the delay by citing the pendency of an appeal before the Hon'ble CESTAT, Bangalore. It is pertinent to note that the said appeal was dismissed/abated on 26.09.2024, whereas the Appellant first attempted to submit its claim through correspondence dated 12.03.2025 and formally filed Form C only on 17.03.2025. Thus, even after the conclusion of the appellate proceedings, the Appellant took

nearly six months to file its claim, despite the statutory requirement of filing within 30 days from the date of public announcement during liquidation. The delay, even after the closure of the appeal, remains unexplained. The Appellant has failed to demonstrate due diligence in pursuing its own claim, nor has any material been placed on record to show that the pendency of the CESTAT proceedings legally prevented it from filing its claim earlier. It is only in the present Appeal that the Appellant has raised such a plea, which appears to be an afterthought and is therefore liable to be ignored.

28. Although in the Reply, the Respondents raised all sorts of objections opposing the relief sought in this Appeal, at the time of the final hearing, the Learned Counsel for the Respondents submitted that admission or non-admission of the claim has no bearing in liquidation, and this Adjudicating Authority may pass an appropriate order in accordance with law. In a deterrent manner, the Respondents have thus diluted their defence at the time of the final hearing. In our considered opinion, such a shifting of stance by the Respondents towards a lighter opposition would not have any bearing on the merits of the case. The Insolvency and Bankruptcy Code, 2016, is a special enactment, and time is the essence of the process envisaged thereunder. The possible consequences or after-effects of any step cannot justify the condonation of such an inordinate delay. If this Adjudicating Authority were to allow the delay-condonation application in the present case, it would set an erroneous precedent and defeat the very purpose of the Code. Once the Appellant failed to file its claim within the prescribed period without sufficient cause or a satisfactory explanation for the delay, this Adjudicating Authority is duty-

bound to take a strict view, in line with the settled principles laid down by the Hon'ble Supreme Court.

29. It is also pertinent to note that allowing such delayed claims at this advanced stage of liquidation would seriously prejudice the orderly distribution of assets under Section 53 of the Code and disrupt the finality of the liquidation process. The principle of equality among creditors and the objective of expeditious resolution cannot be compromised to accommodate one creditor, even if it is a statutory authority.
30. Considering the facts and circumstances of the present case, the applicable law, and the decisions of the Hon'ble Supreme Court, Hon'ble High Courts, and Hon'ble NCLAT cited above, this Adjudicating Authority finds no sufficient cause to condone the inordinate delay of 787 days in filing the claim before the Liquidator.
31. Accordingly, the **Company Appeal (IBC)/6/KOB/2025** stands **dismissed**.
32. The Registry is hereby directed to send e-mail copies of the order forthwith to the parties and their counsels to take necessary steps.
33. Let the certified copy of the order be issued upon compliance with requisite formalities.
34. File be consigned to records.

Sd /-

MADHU SINHA
(MEMBER TECHNICAL)

Sd /-

VINAY GOEL
(MEMBER JUDICIAL)

Signed on this, the 30th day of October, 2025.

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