

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-II

IA No. 3014 of 2021

In

CP (IB) 2517(MB) of 2018

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T. Rules, 2016

IN THE MATTER OF

1. Mr. Jai Kumar Rai

2. Mrs. Supriya Saxena

Both residing at: Building No.02, Dreams Apartment, Flat No.1402, L.B.S. Marg, Bhandup West, Mumbai-400078.

... Applicant

V/s.

Mr. Arun Kapoor

Resolution Professional of Monarch Brookefields LLP, Having his address at: M/s. Areion Resolution and Turnaround Private Limited, A/301, Kanakia Zillion, Junction of LBS Marg and CST Road, BKC Annexe, Near Equinox, Kurla West, Mumbai-400070.

... Respondent

IN THE MATTER OF

M/s. Capri Global Capital Ltd.

502, Tower-A, Peninsula Business Park,
Senapati Bapat Marg Lower Parel Mumbai,
Maharashtra.

... Financial Creditor

V/s.

M/s. Monarch Brookefields LLP

Having its Registered Office at F. No. 701,
07th floor, Dheeraj Palace, Near Hira
Marriage Hall, Ulhasnagar, District: Thane,
PIN Code-421 001.

... Corporate Debtor

Order delivered on: - 24.04.2024.

Coram:

Mr. Kuldip Kumar Kareer, Member (Judicial)

Mr. Anil Raj Chellan, Member (Technical)

Appearances (Hearing in Physical Mode):

For the Applicant : Adv. Vinit J. Mehta

For the Respondent/RP : Counsel Mr. Amir Arsiwala a/w
Nupur Shah.

ORDER

Per: - Coram.

1. The Applicants in the present Interlocutory Applicant have prayed for directions to the Respondent to condone the delay in filing their claim and to consider and admit the claim of the Applicant. The claim of the

Applicant is Rs. 98,83,932/-, out of which the principal claim is of Rs. 40,00,000/- and the interest thereon is Rs. 58,83,932/-.

2. Brief facts necessary for disposal of the present Application are as follows:

- a. The Applicants state that they were allotted flat premises being Flat No. 101, Wing: Vermont, admeasuring 55.246 sq. mtrs plus 4.575 sq. mtrs (terrace) situated at Plot No. 03, Sector-20, Kalamboli, Navi Mumbai-410 218 with the Corporate Debtor for a total consideration of Rs. 40,00,000/- (Rupees Forty Lakhs only) through the registered Agreement for Sale dated 24th July, 2013. The Applicants have availed a mortgage loan from HDFC Ltd for the same vide Loan Agreement dated 17th August, 2013 at 10.50% p.a. The Applicants state that they have paid the entire sale consideration amount of Rs. 40 lakhs.
- b. The Applicants state that they had filed a consumer complaint vide CC/17/843 before the District Consumer Disputes Redressal Forum under the provisions of the Consumer Protection Act, 1986. The Applicants had also lodged a police complaint against the Directors of the Corporate Debtor, with Kalamboli police station.
- c. Corporate Insolvency Resolution Process (CIRP) against M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide Order of the Tribunal dated 27.09.2019 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (IRP).
- d. IRP issued a public announcement in Form 'A' on 24.11.2019

inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the last date for submission of claim was 07.12.2019.

- e. The Applicants state that the first time ever they were informed about the CIRP of the Corporate Debtor was on 18.11.2021. Based on the information received from one of the allottees, the present applicants filed their claim with the respondent on 18.11.2021 for an amount of Rs. 98,83,932/- (Rupees Ninety-Eight Lakhs, Eighty-Three Thousand, Nine Hundred and Thirty-Two only) including interest. The said claim came to be rejected by the Respondent on 19.11.2021 by way of an email on the grounds of delay in filing the claim and since the resolution plan had already been approved by the CoC, the claim of the Applicant could not be entertained at such a belated stage.
- f. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kapoor was appointed as Resolution Professional (RP) of the Corporate Debtor. The erstwhile IRP issued a public announcement dated 25.02.2021 for inviting Expression of Interest (EoI) from prospective resolution applicants. After receiving resolution plan from the prospective resolution applicants, two plans were considered and put to vote and the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of CoC in the 13th CoC meeting held on 15.11.2021 which was adjourned to 19.11.2021 on which date the modified resolution plan after having been incorporated with minor changes was approved. Hence, the Respondent filed an I.A. No. 70/2022 for

approval of a Resolution Plan before the Tribunal. The said Application for approval of Resolution Plan is pending adjudication before this Hon'ble Tribunal.

- g. The Applicants state that they have faced huge financial crises due to which they were prevented from filing their claim before the Respondent. Moreover, they were not aware of the present proceedings being filed against the Corporate Debtor. There were deaths of the relatives of the Applicants. The Applicant No.01 was jobless for over a year and later took-up a job in August, 2021 at 60% lower salary than his last drawn CTC.
- h. The Applicants state that of late at the time of filing the present application, they found an old letter addressed to them by the erstwhile IRP, Mr. Gopalkrishnan dated 23rd June, 2020 requesting them to file their claim in Form CA. The Applicants state that they were not aware of the said letter which was left inadvertently out of their sight as in May 2020, the Applicant got a cervical slip disc and was bed ridden for a period of 3 weeks and thereafter, due to the financial constraints and turmoil in their family, the said letter was left out of their sight as they were not in appropriate state of mind during the said period. The Applicants submit that due to aforesaid reasons, they were not able to lodge their claim timely with the respondent and hence, the delay in filing their claim may be condoned and the claim may be admitted by the respondent on merits.

3. Reply of the Respondent:

- a. It is an admitted position that the Applicants had received a letter

from the erstwhile IRP dated 23rd June, 2020 requesting them to file a claim in accordance with the provisions of the Code. Yet, no claim was filed despite the Applicants having received this letter.

- b. The erstwhile interim resolution professional had taken out an advertisement for inviting claims on 24th November, 2019. The period of 90 days for submission of claim as required under Regulation 12 of the CIRP Regulations, 2016 came to an end on 22nd February, 2020. Admittedly, the Applicants did not submit their claim before 18th November, 2021. Therefore, the claim submitted by the Applicants was thoroughly belated and could not have been processed or placed in the information memorandum or be made known to the potential resolution applicants. The acceptance of the claim of the Applicants would have derailed the CIRP of the Corporate Debtor and would have defeated the objectives of the Code.
- c. The Company Petition No. 2517/2018 was admitted against the Corporate Debtor on 27th September, 2019. The erstwhile IRP in accordance with Regulation 6 of the CIRP Regulations, 2016 published a public notice dated 24.11.2019 in one regional language and in one English language newspaper for inviting claims and the said public notice was also displayed on the website of the Corporate Debtor. Therefore, it is deplorable as to how the Applicants contend that they were unaware of the present CIRP process.
- d. The CoC had already approved the Resolution Plan submitted by Planet Builders and Developers in the 13th CoC meeting held

on 15th November, 2021 and only minor changes were required to be incorporated by the Prospective Resolution Applicant before 18th November, 2021. Therefore, the 13th CoC meeting was adjourned to 19th November, 2021 from 15th November, 2021. While, the Respondent has fullest sympathy for the Applicants, but the admission of their claim at this belated stage would upset the entire CIRP process as admission of their claim at this belated stage would jeopardise the approved resolution plan and would in-turn defeat the interests of all other homebuyers who dutifully and diligently submitted their claims. Hence, the Respondent prays that the instant application be dismissed with exemplary costs on the Applicants.

4. Submissions on behalf of the Applicant:

- a. Counsel for the Applicant submits that the Applicants are amongst the class of financial creditors of the Corporate Debtor and have paid the entire consideration to the Corporate Debtor through their own funds as well through the borrowed funds from HDFC Ltd. Counsel for the Applicant submits that on perusal of the records, it can be established that the claim has been submitted to the respondent prior to the approval of the resolution plan by the CoC as the Respondent had replied to the Applicants by email dated 24th November, 2021 stating that the claim of the Applicants has not been admitted as the plans have been put to vote. Thus, according to the learned Counsel for the Applicants, there is no hurdle in admission of the claim since the same has been submitted prior to the approval of the resolution plan by the CoC.

- b. Counsel for the Applicant has relied upon the judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd (2022 SCC Online NCLAT 245) wherein it was held that extinguishment of claims take place only upon approval of the resolution plan by the Adjudicating Authority and not otherwise. To buttress his submissions, Ld. Counsel drew our attention to Para 27 of the judgment wherein the Hon'ble NCLAT had held that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor ought to have been included in the Information Memorandum and the Resolution Applicant ought to have taken note of the said liabilities and should have appropriately dealt with them in the resolution plan. The Hon'ble NCLAT further held that non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution. Hence, the Counsel for the Applicant asserts that even if the Applicant's claim was not filed within time, his claim should have been considered and included in the Information Memorandum prepared by the RP, more so when the Lis against the Corporate Debtor was pending before the Hon'ble District Consumer Disputes Redressal Forum.
- c. As regards the outer time limit of filing the claim within 90 days of the insolvency commencement date under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, Counsel for the Applicant submits that the said time limit is directory and not mandatory in nature.
- d. Counsel for the Applicant has also relied upon the Order dated

03.03.2023 passed by this Bench in Company Appeal No. 09 of 2022 in CP(IB) No. 2517 of 2018 in support of the aforesaid submissions.

5. Submissions of the Respondent:

- a. The Respondent submitted that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC in its 13th meeting held on 15th November, 2021 and 19th November, 2021 and an I.A. No. 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan, which is currently pending. The Information Memorandum (IM) had been prepared on 26.07.2021 and the same was circulated to the prospective Resolution Applicants on 29.05.2021. The Resolution Plans were submitted pursuant to the above IM.
- b. Since the IM was published way before the filing of claim by the Applicant, there was no occasion to incorporate the claim of the Applicant in the IM. The claim of the Applicant had not been recorded with any Information Utility or in the books of accounts of the Corporate Debtor.
- c. To buttress the contentions, the Respondent relied upon the decisions laid down by the Hon'ble Supreme Court in the case of M/s R.P.S Infrastructure Limited v. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021) and Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta and Ors. ((2020) 8 SCC 534) wherein it was held that a Resolution Professional cannot be compelled to admit

claims which are received after the approval of the Resolution Plan by the CoC.

- d. The Respondent further submitted that there are many claims received after the approval of the Resolution Plan and many Applications relating to such rejection of claim are pending before the Tribunal. Admitting the present Application would lead to several hydra heads popping up which would derail the implementation of the Resolution Plan.

Analysis and Decision:

6. We have heard the Counsel appearing for the parties and perused the records. We have also weighed and carefully examined the contentions of the rival parties.
7. On perusal of the application of the Applicants, we find that admittedly the Applicants had lodged his claim before the Respondent on November 18, 2021 which came to be rejected by the Respondent on November 19, 2021. It is also not in dispute that Public Announcement in Form A was made by the erstwhile IRP on 24.11.2019 and the last date for submission of claims as per the aforesaid public announcement was 07th December, 2019. Thus, there is a delay of 712 days or 1 year, 11 months and 11 days.
8. The Applicants have pleaded in their application the reasons explaining the delay in lodging their claim with which we shall deal in seriatim. However, before doing that, we find that the Applicants have not annexed any document or material on record to prove, justify or substantiate the causes, reasons and/or explanations offer by them for condoning the delay. The Applicants have pleaded in their application

that the Applicant No.01 lost his father, late Mr. Shiv Prasad Rai, due to esophagus cancer on 25.01.2016. The Applicants further state that the Applicant No.02 had lost her mother named Mrs. Pramila Saxena on 07th February, 2017 and then the grandmother on 15th September, 2018. However, we are not satisfied with this explanation as the aforesaid bereavements took place much prior to the commencement of CIRP of the Corporate Debtor and therefore, the same has no direct or even remote nexus with the delay in filing their claim before the Respondent. As regards the death of Applicant's uncle on 02nd November 2021, there is no document on record to prove the factum of his death. The Applicants have stated in the application that their younger daughter is an asthmatic patient and had been in ICU five times in the past 3 years. However, here again, there is no document or evidence on record to prove the same.

9. The Applicants have stated that the Applicant No.01 lost his job last year amid Covid-19 pandemic as he used to work for a US based hospitality chain which got closed with effect from 01st February, 2020 as United State of America was hugely affected with the pandemic. The Applicants state that the Applicant was jobless or without income for more than a year as a result of which he was constrained to take up a job at 60% of his last drawn remuneration. The Applicants further state that they had opened up their Food Kitchen- MP Ki Rasoi (FSSAI Licensed) in Dreams Mall located at Bhandup West, which got burnt in the mall fire incident on 26th March, 2021. However, we do not find these reasons to be satisfactory for condoning the delay. Job loss or loss of business in itself is no satisfactory ground to condone the delay in filing the claim. In fact, by reason of economic necessity, the Applicants should have been more vigilant in filing their claims

before the Respondent. The Applicants state that HDFC has been hounding after the Applicants for recovery of its dues as the Applicants are unable to pay their home loan EMIs since March, 2020 and therefore, their bank accounts have been sealed. In this context, we state that besides there being no document, evidence or material on record to prove this assertion, the delay in filing the claim cannot be condoned on emotional pleas of the Applicants.

10. Lastly, the Applicants state that the Applicant No.01 got a cervical slip disc in May, 2020 and was bedridden for 3 weeks. This explanation is again unsatisfactory as the Applicant was bedridden only for three weeks since somewhere in the month of May in the year 2020; whereas the claim was submitted by the Applicants on 18.11.2021. Therefore, the delay in the interregnum remains unjustified. Even otherwise, there is no document on record to show that the Applicant was suffering from cervical slip disc in May, 2020. Thus, the ground of medical ailment taken by the Applicants is summarily rejected. Further, the Applicant No.02 suffering from high blood pressure is no good reason to condone the delay.

11. In our considered view, no sufficient and satisfactory explanation has been offered by the Applicants about their delay in lodging the claim before the Respondent. The Applicants state in their application that they became aware of the CIRP of the Corporate Debtor only on 18th November, 2021. However, in our opinion, this is not a satisfactory explanation as the public announcement concerning the CIRP of the Corporate Debtor was made on 24.11.2019. The Public Announcement of the CIRP of Corporate Debtor made through newspapers u/s 15 of the Code constitutes deemed knowledge on the

Applicant and therefore, ignorance of CIRP cannot be pleaded as a justifiable excuse for delay in filing the claim and more so when the erstwhile IRP named Mr. Gopalkrishnan had addressed a letter dated 23rd June, 2020 asking the Applicants to file their claim, however, the Applicants missed it out of their inadvertence and oversight.

12. CIRP is a process which is required to be completed in a time bound manner for achieving the purpose of value maximisation for all creditors. The Applicants submitted their claim on 18.11.2021 which is nearabout the time when the CoC had unanimously approved the resolution plan submitted by Planet Builders and Developers in the 13th CoC Meeting held on 15.11.2021 and adjourned to 19.11.2021 and an I.A. No. 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan, which is currently pending. The mere fact that the Adjudicating Authority has not yet approved the plan does not imply that the plan can go back and forth, thereby making CIRP an endless process. This would result in the re-opening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. Even otherwise, the delay in filing the claim cannot be condoned as the Applicants have not offered any sufficient or satisfactory reason justifying their delay.

13. Counsel for the Applicant has relied upon the following precedents in support of his submissions:

- i. Judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd. (2022 SCC Online NCLAT 245);
- ii. Order dated 03.03.2023 of NCLT in Company Appeal No. 9 of 2022 in CP(IB) No. 2517/MB/2018;

14. In view of the law laid down by the Hon'ble Supreme Court in RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. vide Judgment dated September 11, 2023 in Civil Appeal No. 5590 of 2021, the precedents of NCLT and NCLAT, which have been relied upon by the Counsel as above, are prior to the judgment of RPS Infrastructure Ltd (supra) and hence, those precedents do not hold the field anymore. Prior to the judgment of Hon'ble Apex Court in RPS Infrastructure Ltd (supra), there were divergent views on whether the claim can be admitted after the approval of resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code. In some of the cases, including the precedents relied upon by the Applicant, the Adjudicating Authority as well as the Appellate Authority under the Code, taking a lenient view, were inclined to condone the delay in admitting the belated claim of the claimant even if the same was filed after the approval of the resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code on the reasoning that the resolution plan becomes final only upon its approval by the Adjudicating Authority u/s 31 of the Code and therefore, there was some room left to accommodate the belated claims by the creditors/claimants, which were filed after the approval of resolution plan but prior to its approval by the Adjudicating Authority u/s 31 of the Code.

15. While in some other cases, such as Mukul Kumar v. RPS Infrastructure Ltd. (Judgment dated 30th July, 2021 in Company Appeal (AT) (Insolvency) No. 1050 of 2020), the Hon'ble NCLAT had held as follows: “34. *With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are*

entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated.”. This matter went in appeal before the Hon’ble Supreme Court of India and the law in this regard, as discussed below, has now been settled by the Hon’ble Apex Court.

16. The Hon’ble Supreme Court has observed in the judgment of Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. reported in (2020) 8 SCC 534 as follows: “A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”

17. The Hon’ble Supreme Court in M/s. RPS Infrastructure Ltd v/s Mukul Kumar & Anr. (neutral citation: 2023 INSC 816) has observed as under:

“20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. **This would**

***constitute deemed knowledge on the appellant.** In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.*

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

18. Hence, after having due regard to the law settled by the Hon'ble Supreme Court, as discussed above, we are of the considered view that the claim of the Applicant cannot be entertained at such a belated stage where the resolution plan has been unanimously approved by the Committee of Creditors and the same is pending for the approval of the Adjudicating Authority. At this stage, we cannot allow to unleash the hydra-headed monster of undecided claim(s) on the successful resolution applicant. Even otherwise, the Applicant has no good case on merits. Hence, the present application is liable to be dismissed.

19. In the facts and circumstances of the case and in view of the aforesaid discussions, we are not inclined to condone such a long, unjustified and unreasonable delay of 712 days on the part of the Applicants in submitting their claim before the Respondent and hence, **we hereby**

dismiss IA No. 3014 of 2021 filed in the above-captioned company petition with no order as to costs.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

