

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATABENCH
KOLKATA**

IA (IBC) No.778/KB/2021

In

CP(IB) No. 2171/KB/2019

In the matter of:

*An application under section 60(5) of the Insolvency and Bankruptcy Code for
condonation of delay in filing the claim before the Resolution Professional*

And

In the matter of:

Darkwell Merchandise Private Limited ... Operational Creditor

Versus

SKP Steel Industry Private Limited, having its registered office at 41A, Acharya Jagadish Bose Road, 6th Floor, Room No. 612, Kolkata Nonapukur Tram Depot, Kolkata 700017.

... Corporate Debtor

And

In the matter of:

Yes Bank Limited, having its branch office at Kolkata RSSC, Ist Floor, Stephen House, 56E, Hemanta Basu Sarani, Kolkata 700001

.... Applicant

Versus

Sri Soumitra Lahiri, RP of SKP Steel Industry Private Limited, having his office at 14D & E Tower – 32, Genexx Valley, Joka, Diamond Harbour Road, Kolkata 700104

... Respondent

Order reserved on: 26.11.2021

Order pronounced on:12.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conference)

Mr. Pratip Mukherjee, Advocate] For applicant Yes Bank

Mr. Sayak Ganguly, Advocate]

Dr. Soumitra Lahiri, RP] In person

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. The Court convened through video conferencing.
2. **IA (IBC) No.778/KB/2019** in **CP(IB) No. 2171/KB/2019** is an application filed by Yes Bank Limited seeking direction upon the Resolution Professional to consider the claim of the applicant afresh in accordance with the Rules and Regulations framed under the Insolvency and Bankruptcy Code.
3. Ld. Counsel appearing for the applicant states that the applicant is a financial creditor of the Corporate Debtor by virtue of advancing sum to the Corporate Debtor by duly executing a loan cum hypothecation agreement dated October 25, 2019. *Vide* an application made by the Operational Creditor herein for recovery of its debts, this Adjudicating Authority *vide* order dated 08th February, 2021 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
4. It is stated that pursuant to such order the Resolution Professional has duly made publications in Newspapers in accordance with the Code and had called for claims from all the creditors and stakeholders of the Corporate Debtor and by a letter dated July 13, 2021 informed the applicant herein about the order dated 08.02.2021.
5. It is also stated that in pursuance of such publication calling for submission of claims, the applicant had duly submitted its claim on July 28, 2021 *vide* email dated July 28, 2021 before the resolution professional which the RP rejected *vide* his email dated July 29, 2021 stating that it is time barred and is in violation of Section 12(2) of Insolvency Resolution Process for Corporate

persons Regulations, 2016 as the same has been preferred after a period of 170 days though the statutory period of filing the same was 90 days from the date of publication.

6. The Ld. Counsel for the applicant states that since the applicant was absolutely unaware about the order passed by this Adjudicating Authority in admitting the application filed by the Operational Creditor herein as well as subsequent publications being made by the respondent calling for submission of claims prior to July 13, 2021 the applicant couldn't take any steps in lodging its claim within the stipulated period as envisaged under the Code and the claim of the applicant is not barred by the laws of limitation nor the same has ever been disputed by the Corporate Debtor in any form prior to the insolvency commencement date and as such the applicant is a bonafide financial creditor of the corporate debtor company and is entitled to get the sum of Rs.60,57,086.94 as on July 28, 2021.
7. Ld. Counsel for the applicant further submits that under the prevailing circumstances the applicant being a financial creditor is also entitled to lodge its proof of claim before the Resolution Professional and any inadvertent delay which may have been caused in filing the said proof of claim may be condoned by this Adjudicating Authority for the ends of justice and that unless such delay is condoned the respondent herein cannot consider the claim of the applicant and cannot include the name of the applicant in the list of creditors who are entitled to receive sums on account of financial debt from the corporate debtor company which is presently under the CIRP.
8. In light of the abovementioned facts and circumstances the applicant has filed this application seeking the following reliefs:-

- a. Delay, if any in filing the claim by the applicant herein before the Resolution Professional beyond the statutory period as envisaged in the Code be condoned by this Adjudicating Authority;
 - b. A direction upon the Resolution Professional to consider the claim of the applicant afresh in accordance with the Rules and Regulations framed under the Insolvency and Bankruptcy Code;
 - c. Upon considering and verifying the claim of the applicant, the Resolution Professional be directed to include and publish the name of the applicant in the list of creditors of the corporate debtor as prepared and published by the Resolution Professional herein;
9. We have heard the Ld. Counsel for the applicant and perused the records. We are satisfied that the prayer made in the I.A. should be allowed and pass the following directions:-
- i) We are condoning the delay in filing the claim by the applicant before the Resolution Professional beyond the statutory period as envisaged in the Code.
 - ii) Resolution Professional is directed to consider the claim of the applicant afresh in accordance with the Rules and Regulations framed under the Insolvency and Bankruptcy Code, 2016 without reference to the fact that the delay stands condoned
10. The application bearing No.**I.A. No. 778/KB/2021** shall stand disposed of accordingly.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA(IBC) No.778/KB/2021
In CP (IB) No.2171/KB/2019
Yes Bank Ltd v Soumitra Lahiri, RP of SKP Steel Ind Pvt Ltd

11. The Registry shall e-mail copy of this order to the Counsel on record for the Applicant and for the Resolution Professional, and the Resolution Professional, for information and for taking necessary steps.
12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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