



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A (IB) No. 1327/KB/2025
In
C.P (IB) No. 324/KB/2022

*An Application under Section 60(5) of the Insolvency and
Bankruptcy, 2016 read with Rule 11 of the National Company
Law Tribunal Rules, 2016.*

IN THE MATTER OF:

RAJKUMAR DEY AND ASHA DEY

.....Financial Creditor

VERSUS

USASHI REALSTATES PRIVATE LIMITED

.....Corporate Debtor

AND

IN THE MATTER OF:

MR. DEBJYOTI SANTRA

.....Applicant

VERSUS

MR. ARUN KUMAR GUPTA, Resolution Professional of Usashi
Realstates Private Limited.

.....Respondent

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
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I.A.(IB) No.1327/KB/2025
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Date of Pronouncement: 07.10.2025

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances(via Hybrid Mode):


Mr. Rishav Banerjee, Adv]	
Ms. Prasanta Naskar, Adv]	For the Applicant
Ms. D. Chowdhury, Adv]	
Ms. Urmila Chakraborty, Adv]	
Ms. Sonali Mukhopadhyay, Adv]	For the RP
Mr. Arun Kr. Gupta, RP]	

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

- 1.The Court convened through physical mode.
- 2.This Interlocutory Petition has been filed by Mr. Debjyoti Santra under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“NCLT Rules”) seeking the following reliefs:

I. The delay of 663 days in submitting the proof of claim be condoned;

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- II. *The respondent be directed to consider and accept the proof of claim submitted by the Applicant on 30 April, 2025;*
- III. *The successful resolution applicant be directed to include the petitioner's claim and also provide for payment thereof in the resolution plan;*
- IV. *In the alternative, the respondent be directed to execute the necessary Deed of Conveyance in favour of the Applicant and hand over physical possession of the flat in question, upon payment of balance consideration by the petitioner, if any.*
- V. *Costs;*
- VI. *Such further and/or other order or orders be passed and/or direction or directions be given, as this Hon'ble Tribunal may deem fit and proper.*

3. Background of the Case


3.1 The Applicant is a purchaser of a flat in the project of the Corporate Debtor named "Usashi Exotikan Project" at in Khalisakota Pally (Birati), Kolkata 700051. The Applicant being approached by the representatives of the Corporate Debtor in 2017, had agreed to purchase a flat in the aforesaid project against total consideration of Rs. 28,42,740/- and had made a substantial amount of payment from time to time,

aggregating to Rs. 16,38,551/- during the period 2017 to February, 2023.

3.2 Owing to the serious illness of the Applicant's wife during the period from June, 2024 to April, 2025, the Applicant could not keep track regarding progress of the aforesaid project of the Corporate Debtor. It is only in 26.04.2025, the Applicant received an email from the Corporate Debtor whereby he has been informed that the Corporate Debtor has gone into Corporate Insolvency Resolution process and further requested to contract with the Respondent for the purpose of recovery and/or refund of the consideration paid by the Applicant.

3.3 The Applicant made enquiry regarding the real estate project of the Corporate Debtor wherefrom he learnt that a letter dated 01.07.2024 was received at his residence informing such CIRP process. The said letter was received by the mother of the Applicant, who is a chronic patient of dementia and forgot to inform the Applicant about the said letter.

3.4 Thereafter, immediately after receipt of the email dated 26.04.2025, the Applicant submitted his claim against the Corporate Debtor before the Resolution Professional on 30.04.2025 i.e. within four days therefrom, as per the provisions of the IBC, 2016.



3.5 However, despite receipt of the said email, no response has been received from the Respondent till date, though the Applicant is entitled to refund of the entire consideration paid by the Applicant to the Corporate Debtor.

3.6 Hence, this application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

4. Submission on behalf of the Applicant

4.1 Ld. Counsel submits that the applicant was approached by the officials of the Corporate Debtor requesting to purchase a flat in a proposed real estate project namely 'Usashi Exotikaa Project' measuring 854.55 square feet. In such circumstances from March, 2017 till February 2019, the applicant has been making payments from time to time to the Corporate Debtor towards purchase of the flat in the said project. The applicant made payment of a total amount of Rs. 16,38,551¹ (Rupees Sixteen Lakhs Thirty-Eight Thousand Five Hundred Fifty-One only) to the Corporate Debtor for the purchase of the aforesaid flat in Block-B of the Usashi Exotikaa Project.


4.2 Ld. Counsel submits that the wife of the applicant fell ill and was suffering from febrile illness with

¹ Annexure- A

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025

C.P (IB) No.324/KB/2022




uncontrolled diabetes mellitus². Due to prolong illness the applicant used to serve his wife on a regular basis and has not been able to concentrate or look after any aspect of life. Due to such turbulence in life the applicant could not submit the claim on time.

4.3 Ld. Counsel submits that applicant's wife became slightly stable after more than one year and the applicant started enquiring about the status of the Real Estate Project of the Corporate Debtor. At such point of time in or about first week of April, 2025, the applicant found a letter addressed by the respondent herein, informing about the initiation of the CIRP of the Corporate Debtor. Further, due to busy taking care of his wife and regularly visiting the hospital, the only person who stayed at home was the applicant's mother. As such, the applicant realised that his mother could have received the letter dated 01.07.2024 and due to her dementia³, forgot to inform the applicant with regard to said letter. Had such letter been provided to the applicant, the applicant would have learnt that the CIRP has been initiated against the Corporate Debtor.

² Annexure- B Page No. 33-61 (Medical Documents)


³ Annexure- D Page No. 64-68 (Medical Prescriptions)



4.4 Ld. Counsel submits that the applicant found that a CIRP has been initiated in respect of the Corporate Debtor by an order dated 06.07.2023 passed by this Hon'ble Tribunal. The applicant further found that paper publication was also made by the respondent on 08.07.2023 and 10.05.2024. However, in view of the aforesaid predicament of the applicant, the applicant was unable to locate or be aware of the aforesaid publications or developments with regard to the CIRP in respect of the Corporate Debtor. The fact that CIRP was not intimated to the applicant at relevant point of time. Had the applicant known about such events, the applicant would not have paid such money to the Corporate Debtor. Thereafter, by an email dated 30.04.2025⁴, the applicant has lodged its claims.

4.5 Ld. Counsel submits that the applicant had made payment to the corporate debtor would be known to the respondent, as the respondent has presumably gone through all the financial records of the corporate debtor. Hence, the applicant legitimately expects that the entitlement and/or the claim of the applicant has already been included and/or considered by the successful resolution applicant in the resolution plan.

⁴ Annexure- E Page No. 69-71




4.6 Ld. Counsel submits that in view of the silence on the part of the respondent even after receiving the proof of claim on 30.04.2025, the applicant apprehends that steps have been taken by the successful resolution applicant or the respondent to exclude the entitlement of the claim of the applicant from the resolution plan. Further, states that such exclusion amounts to denial and/or violation of the right of the applicant to seek refund of the consideration amount paid by the applicant.

4.7 Ld. Counsel further submits that despite receipt of the said email, no response has been received from the respondent till date. The applicant has received email dated 26.04.2025⁵ and 08.05.2025⁶ from the corporate debtor asking the applicant to contact the respondent for the purpose of recovery and/or refund of the consideration paid towards purchase of the flat. The applicant has now found out that the CIRP has still not been concluded. From the orders passed by this Learned Tribunal, it appears that although a resolution plan has been approved by the Committee of Creditors of the corporate debtor, however, the said resolution plan has not yet been approved by this Learned Tribunal. It

⁵ Annexure- C Page No. 62

⁶ Annexure- C Page No. 63



further appears from the perusal of diverse orders passed by this Learned Tribunal that some challenges have been made to the resolution plan submitted by the successful resolution applicant. Hence, since the Corporate Insolvency Resolution Process has not yet concluded, and since the resolution plan has not yet been approved by this Learned Tribunal, no prejudice would be caused to any person in the event, the claim of the petitioner is admitted and/or included.

5. Submission on behalf of the Respondent / Resolution Professional

5.1 Ld. Counsel submits that the present application is filed by one Debjyoti Santra claiming to be a homebuyer of Block-I project namely Usashi Exoticaa of the Corporate Debtor, inter alia, praying for condonation of delay of 633 days in submitting the claim.

5.2 Ld. Counsel submits that under Regulation 12 of the CIRP Regulations, 2016, a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. In the present case, public announcement has been made twice by the RP and the last date has also been mentioned therein. Despite paper publication being made twice one in July, 2023 and another in May, 2024 to lodge the claim, no claim

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025

C.P (IB) No.324/KB/2022


has been lodged by the applicant herein within such time as prescribed.

5.3 Ld. Counsel submits that under Regulation 12(1) 1st proviso stipulates that a creditor who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the IRP or the RP, as the case may be, up to the date of issue of RFRP under Regulation 36B or 90 days from the insolvency commencement date, whichever is later. In the present case, RFRP has been issued on 24.06.2024. Even if we take the same, then, also it is evident from the above that the applicant has failed to lodge his claim within such prescribed extended timeline.

5.4 Ld. Counsel submits that 2nd proviso to Regulation 12(1) of the CIRP Regulations, 2016 stipulates that the creditor shall provide reasons for delay in submitting the claim beyond the period of 90 days from the insolvency commencement date. In the present case, no claim has been submitted by the applicant within such prescribed extended timeline. From the said application, it is evident that the applicant had full knowledge about the CIRP process. The applicant is admittedly well aware of the two paper publications dated 08.07.2023 and 10.05.2024 [Pg 9 para (1) of IA]

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025
C.P (IB) No.324/KB/2022




both of which were prior to the alleged illness of the wife of the applicant on and from June, 2024 onwards (Pg 6 para (h) of IA). As such, there are no reasons for delay nor any sufficient cause has been disclosed in the said application which would warrant condonation of delay as sought for.

5.5 Ld. Counsel submits that Sub-Regulations (1B) and (1C) of the Regulation 13 of the CIRP Regulations, 2016 have been inserted vide Notification No. IBBI/2023-24/GN/REG 106 dated 18.09.2023 with effect from 18.09.2023. Pursuant to the said provisions, the RP has filed the application being I.A. No.2288 of 2024 in respect of claims submitted belatedly but categorized by the RP as acceptable to seek condonation of delay of such claims from this Hon'ble Tribunal, which was allowed and delay was condoned by this Hon'ble Tribunal by the Order dated 26.11.2024.

5.6 Ld. Counsel submits that out of the 1004 Nos. of Speed Posts, which were sent out, the applicant herein has received the intimation of CIRP commencement date in respect of the Corporate Debtor as admitted at page 9 para (k) of IA.

5.7 Ld. Counsel submits that despite having full knowledge of the Order of Admission, the applicant has belatedly lodged his claim with the RP. It is a well-




settled proposition of law that paper publication is deemed knowledge and tantamount to constructive notice. Please see the judgment of the Hon'ble Supreme Court reported in (2023) 10 SCC 718, paragraphs 21 to 24 in the matter of *RPS Infrastructure Limited Vs. Mukul Kumar & Anr.*

5.8 Ld. Counsel further submits that after approval of the plan by the CoC, the question of admission of any fresh claim does not and cannot arise, as the same will have the effect of reopening the whole process, unleashing the hydra-headed monster of undecided claims on the SRA. The plan cannot go back and forth, and more so, when the entire process under the IBC, 2016, is a time-bound process where the timelines are sacrosanct. It is also pertinent to mention in this context that a change in the list of creditors at this stage would affect the feasibility and viability of the plan. Moreover, those creditors who have not filed their claims are also dealt with in the resolution plan. In view of the aforesaid, the present application is being I.A (IB) No.1327(KB)/2025 is liable to be dismissed.

6. Analysis and Finding

6.1 We have heard the Ld. Counsel for the Applicant and the Respondent/RP. Perused the record carefully.




6.2 From the facts of the case, it is noted that pursuant to insolvency petition filed by the Rajkumar Dey and others, Financial Creditor cum Homebuyers under section 7 of the IBC, 2016, Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor ('CD') was initiated vide order dated 06.07.2023 and thereafter the Resolution Professional in accordance with the applicable Regulations invited claims and collated it for necessary action.

6.3 The present IA have been filed on 13.08.2025. Further, it is the submission of the RP that the applicant has filed its claim in the requisite form but not within timeline as prescribed under the IBC, 2016, and the said claim of Rs. 16,38,551 (Rupees Sixteen Lakhs Thirty-Eight Thousand Five Hundred and Fifty-One) have been raised for the first time after the filing of the Interlocutory Applications [IA(IBC)(Plan)20/KB/2024] dated 21.11.2024 for approval of the Resolution Plan. We also note that the Applicant states due to serious medical problem of his wife and mother, the applicant could not file his claim within prescribed time and since the CIRP has not yet concluded, and since the resolution plan has not yet been approved by the Adjudicating Authority no prejudice would be caused if the claim is admitted at such belated stage.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025
C.P (IB) No.324/KB/2022




6.4 This Adjudicating Authority notes that the Applicant is a Genuine Homebuyer who has invested Rs 16,38,551 (Rupees Sixteen Lakh Thirty-Eight Thousand Five Hundred Fifty-One only) out of total consideration of Rs. 28,42,740 (Rupees Twenty-Eight Lakhs Forty-Two Thousand Seven Hundred Forty only) in the project of the Corporate Debtor namely "Usashi Exoticaa". Applicant claim is substantiated by booking documents and advance payment receipt which are collectively attached in the application.

6.5 This Adjudicating Authority after careful perusal of the medical records and documents of the Applicant's wife and mother, notes that the reason for delay-chronic illness of the Applicant's wife which leads to multiple operation over a long period of time and his mother's dementia- remains uncontested. These circumstances clearly established that the Applicant was prevented by sufficient cause beyond his control from filing and submitting the claim within time as prescribed under the code.

6.6 It is relevant to note that the registered office of the Corporate Debtor is situated in Kolkata, and accordingly, the public announcement of CIRP was published in newspaper having circulation in Kolkata. However, the Applicant is a resident of Village-

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025
C.P (IB) No.324/KB/2022




Sultanpur in Hooghly district, a different district, where such advertisements do not have wide reach. Therefore, the Applicant, due to his personal circumstances and geographical limitation, was further handicapped in receiving timely knowledge of the initiation of CIRP.

6.7 It is settled law that while the timelines under the IBC are sacrosanct, the Adjudicating Authority, in exercise of power under Rule 11 of NCLT Rules, 2016, can permit acceptance of claims in exceptional and extraordinary circumstances to uphold the objective of the Code. That Rule 11 empowers this Adjudicating Authority to pass any orders to meet the ends of justice and the said rule is reproduced below:

“Rule 11 of NCLT Rules, 2016

Inherent Powers. - “Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal”.

6.8 Further, Article 21 of the Constitution of India guarantees the right to life and dignity. The Supreme Court has consistently held that the right to housing/shelter forms an intrinsic part of Article 21. The Applicant, being a homebuyer, cannot be left



remediless merely on account of procedural delay when his substantive rights are directly impacted and have cited genuine reasons for the delay.

6.9 The paramount objective of the Code is maximisation of value of assets and balance the interests of all stakeholders. Accepting the Applicant's claim at this stage will not upset the commercial wisdom of the CoC.

6.10 Therefore, in the peculiar facts and circumstances, this Adjudicating Authority is of the considered view that the Applicant's claim deserves to be accepted, notwithstanding the delay, in order to balance procedural discipline with substantive justice.

6.11 At this juncture it is important to mention a Judgment of Hon'ble Supreme Court of India in matter of Mool Chandra Vs. Union of India and Anr⁷ where the court held as follows:

"20. *****

It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is

⁷ 2024 INSC 577

insufficient, irrespective of the period of delay, same would not be condoned.”

From the above Judgment, it is evident that once sufficient cause is satisfactorily established, the delay ought to be condoned irrespective of its duration. The settled principle of law is that the cause of substantial justice should not be defeated on account of mere technicalities or procedural lapses. It is well established that when a party is able to place on record genuine and bona fide reasons for the delay, the length of such delay-whether short or prolonged-loses its significance, and the paramount consideration becomes the advancement of justice rather than a rigid adherence to limitation.

7. Therefore, to mitigate the hardship of the Applicant, we thus, pass the following directions:

- I. The delay of 663 days in submitting the proof of claim is hereby condoned.
- II. The Resolution Professional is directed to consider the claim submitted by the Applicant on 30.04.2025. Further, the applicant shall provide all the proof/evidence which shall established his claim to the RP and RP shall verify the same and decide accordingly to add in the list of creditors and the

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025

C.P (IB) No.324/KB/2022

committee of creditors as per the provisions of the
Code.

8. Further, the claim of the Applicant shall be determined in accordance with the law, and remain at par with the class of homebuyers to which the Applicant belongs and the treatment given in the resolution plan.
9. Furthermore, this Adjudicating Authority has upheld the Applicant's to file a belated claim in the present matter; however, it is clarified that this order shall not be treated as a precedent in other cases/matters. The relief granted herein is based solely on the peculiar facts and circumstances of this case, wherein the Applicant has demonstrated substantial and sufficient reasons justifying the delay.
10. In the result, for the reasons discussed above, the present application I.A (IB) No. 1327/KB/2025 in C.P (IB) No.324/KB/2022 is partly allowed and disposed of only to the extent of acceptance and consideration of the claim of the Applicant.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.1327/KB/2025

C.P (IB) No.324/KB/2022

12. Let the certified copy of the order may be issued, if
applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 07th day of October 2025

S.T. LRA