

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH, COURT V**

**I.A. 2725/2022**

**IN**

**C.P.(IB)-498(MB)/2021**

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

**IN THE MATTER OF,**

Mysore Petro Chemicals Limited

.....**Applicant/Operational Creditor**

**Vs.**

Mrs. Vandana Garg,

The Resolution Professional of M/s Raghuleela Builders Private Limited

(IBBI/IPA-001/IP/P-00025/2016-2017/10058)

Unit 307, 3<sup>rd</sup> Floor, Exgellecia Lodha Supremus 2 Wagle Estate, Panchpakhadi Thane 400604

..... **Respondent**

**In the original matter of:**

Moon Star Securities Trading & Finance Co. Ltd.

..... **Financial Creditor**

**Vs.**

Raghuleela Builders Pvt. Ltd.

..... **Corporate Debtor**

**Order Pronounced On : 18.12.2023**

***Coram:***

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Sanjiv Dutt, Member (Technical)

***Appearance:***

For the Applicant : Adv. Roshan Gaud

For the Respondent/RP : Adv. Rajeev K. Panday

**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

1. The present application has been preferred by the Applicant seeking direction for consideration of his claim amounting to Rs. 5,20,22,000/- and for condonation of delay in filing the same.
2. To appreciate the case of the Applicant, certain necessary facts deserve to be noticed. The Applicant purchased an office unit bearing No. 1001-B in the Corporate Debtor's project "ONE BKC" situated at Bandra, Mumbai and executed the agreement dated 02.07.2015. The Applicant paid the entire consideration amount of Rs. 12,93,60,000/-. As per the agreement, the Corporate Debtor was required to hand over the possession of the said office unit on or before 30.09.2015. In view of the non-delivery of the unit, the Applicant filed a complaint before Real Estate Regulatory Authority (RERA), Mumbai seeking protection of his right and claiming the interest and compensation in terms of the agreement.
3. Vide Order dated 08.10.2020, RERA disposed of the case by not allowing compensation to the Applicant. An appeal was preferred against the Order dated 08.10.2020 to the Maharashtra Real Estate Appellate Tribunal, Mumbai (MahaRERA). The case of the Applicant is that the copy of the appeal was served upon the Corporate Debtor on its last known address on 17.12.2020 and affidavit of service was filed by it before MahaRERA. As per the case of the Applicant, the appeal was listed on 17.03.2021 but none appeared on behalf of the Respondent. The Hon'ble MahaRERA vide Order dated 30.06.2022 granted the relief to the Appellant and the Corporate

Debtor was directed to pay interest at the rate of State Bank of India's highest Marginal Cost Lending Rate plus 2% on the amount paid by the Applicant from 01.10.2015 upto 30.11.2019.

4. The Applicant has submitted that on receipt of the Order dated 30.06.2022, he informed the Resolution Professional (RP) and ultimately filed his claim in Form-B on 19.07.2022. It is necessary to appreciate that during the pendency of the appeal before the MahaRERA, the Corporate Debtor was admitted to CIRP on 04.10.2021 and the last date of filing the claim before the RP was 05.11.2021.
5. It is further necessary to appreciate that the appeal before MahaRERA was allowed ex-parte. The Applicant has submitted that the IRP was duty bound to disclose all legal proceedings pending against the Corporate Debtor under the Information Memorandum as per Regulation 36(2)(h) of IBBI (Insolvency of Corporate Persons) Regulations, 2016. The non-disclosure by the IRP despite being in control of Corporate Debtor is dereliction of duty on the part of IRP.
6. On the other hand, the case of the Respondent/RP is that, firstly, the Order dated 30.06.2022 by MahaRERA having been passed after the moratorium having been imposed under Section 14 of Insolvency and Bankruptcy Code, 2016 is bad in law. The said Order was obtained by the Applicant by suppressing the fact that the Corporate Debtor was undergoing CIRP proceedings. Hence, in view of the moratorium being in operation, this Order is *non est* in the eyes of law.

7. Secondly, the claim of the Applicant is a delayed claim as last date to submit the claims as per the Public Announcement was 05.11.2021 whereas the Applicant submitted its claim on 30.03.2022. The Applicant even failed to submit its claim on or before the 90<sup>th</sup> day of insolvency commencement date i.e. 19.01.2022 as per Regulation 12 of the CIRP Regulations.
8. In view thereof, the RP contends that no case is made out for consideration of the claim of the Applicant at belated stage. Otherwise also, this claim has arisen only vide order dated 30.06.2022 passed by MahaRERA during the period of moratorium. To substantiate his arguments, the Ld. RP relied upon the judgment rendered by the *Hon'ble NCLAT in the matter of The Deputy Commissioner Division-VII, Central GST Vs. Mr. Kiran Shah, RP of Victor Stainless Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 328 of 2021:*

*“18. At the cost of repetition, we hold that the Resolution Professional was not duty bound to collate claims which are belatedly received after the last date thereby delaying the entire CIRP which is a time bound process and further having regard to the fact that the claim of the Appellant was incorporated in the Information Memorandum which was circulated to the Prospective Resolution Applicant and the Members of the Committee of Creditors for their consideration, there is no dereliction of duty on behalf of the IRP/RP as provided for under Sections 18 and 21(1) of the Code.”*

Thus, the RP submits that the claim of the Applicant merits no consideration firstly being a belated claim & secondly being barred due to moratorium having set in. Thus, the present I.A. deserves to be dismissed.

9. In response to the submissions of the RP, the Counsel for the Applicant vehemently contends that there is dereliction of duty on the part of the IRP in not disclosing the pendency of petition before MahaRERA in Information Memorandum. Regarding Moratorium issue, the contention of the Counsel is that the moratorium of Section 14 is only so as to protect the interest of the Corporate Debtor for maximisation of the value of assets & it does not automatically stops all pending proceedings. Reliance was placed on the judgment of the **Hon'ble Delhi High Court "Power Grid Corporation of India Ltd Vs. Jyoti Structure Ltd"**, *"the term 'proceedings' as mentioned in Section 14(1)(a) of the Code is not preceded by the word 'all' to indicate the moratorium provisions would apply to all the proceedings against the Corporate Debtor."*
10. Reference was also made to the judgment rendered by the **Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Limited & Anr Vs. Union of India & Ors (AIR 2019 SC 4055)** wherein it has been held that *the RERA Act is to be read harmoniously with the Code. It is only in the event of conflict that the Code will prevail over the RERA Act. Remedies that are given to allottees of flats/apartments are, therefore, concurrent remedies, such allottees of flats/apartment being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.* Thus, in view of the law laid down by the Courts & in view of the facts & circumstances of the present case, the counsel for the Applicant pleads that the claim of the Applicant deserves to be allowed.

11. In view of the submissions made by both the Ld. Counsels, we are of the considered opinion that the claim of the Applicant cannot be said to be a belated claim barred by the limitation as the Applicant filed the appeal before the MahaRERA much prior to the initiation of CIRP proceedings. The service of the appeal was effected upon the Corporate Debtor. Thus, the Corporate Debtor (or the IRP) were on the one hand duty bound to appear before MahaRERA or/otherwise is bound by the judgment rendered by Hon'ble MahaRERA. It was incumbent upon the IRP to find out and follow all the pending proceedings against the Corporate Debtor. In addition, we also consider it appropriate to hold in view of the settled proposition of law that the purpose of moratorium is to secure the assets of the Corporate Debtor and in view of the judgment rendered by Hon'ble Delhi High Court holding that the term "proceedings" not preceded by word "all" makes it abundantly clear that Section 14(1)(a) would not apply blindly without appreciating the facts to "all" the proceedings. In addition, the directions of the Hon'ble Apex Court holding that the RERA Act has to be read harmoniously with IBC also deserve to be appreciated and taken notice of. The reference placed by the RP on the judgment of Hon'ble NCLAT is misplaced and hence not relevant to the facts and circumstances of the present case.
12. Thus, in view of above position, we deem it appropriate to allow the present I.A. and direct the RP to consider the claim of the Applicant.

Sd/-

SANJIV DUTT  
Member (Technical)  
Shubham

Sd/-

REETA KOHLI  
Member (Judicial)