



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA(IBC)/400(CHE)/2023 IN CP(IB)/137(CHE)/2021

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule
11 of NCLT Rules, 2016)

In the matter of M/s. Uniply Décor Limited

SHUBHADRA INDUSTRIES
Plot No. C-18, Sector 20,
1.A. Jagdishpur,
Amethi, UP – 227 817

... Applicant

-Versus-

SANTHANAM RAJASHREE
Resolution Professional of
Uniply Décor Limited
No.37, TTK Road, CIT Colony,
Alwarpet, Chennai – 600 018

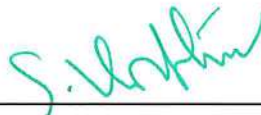
... Respondent / Resolution Professional

Order pronounced on 20th September 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : H. Mubena Almas, Advocate
For Respondent : Raj Jhabakh Advocate





ORDER

Per: VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IA(IBC)/400(CHE)/2023 is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- i. *To direct the Respondent to consider the claim of the applicant of Rs.58,99,847/- (Rupees Fifty-Eight Lakhs Ninety-Nine Thousand Eight Hundred and Forty-Seven Only), Principal amount Rs. 31,47,482/- (Rupees Thirty-One Lakhs Forty-Seven Thousand Four Hundred Eighty-Two Only) along with 24% per annum from 19.07.2018 till 11.03.2022 in the resolution process of the corporate debtor, in the interest of justice and fair play.*
- ii. *To direct the Respondent to include the information about the claim of the Applicant and reflect the pendency of the present case in the Information Memorandum to be issued by the Respondent and Direct the Respondent to allow the participation of the Applicant in the CoC meetings;*
- iii. *Any other or further relief as deemed fit and proper in the facts and circumstances of this case may also be granted in the interest of Justice.*

2. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this Tribunal on 11.03.2022. The Respondent / IRP caused the Public Announcement in Business Standard (English) and Makkal Kural (Tamil) as well as in Sandesh (Gujarati) on 14.03.2022, inviting claims in relation to the Corporate Debtor. The last date for the submissions of the claim was fixed as 25.03.2022.



3. As per Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, if the claim is not submitted within the time period stipulated in the public announcement, the creditor may submit a claim with the proof to the Resolution Professional on or before 90th day of the Insolvency Commencement date.

4. In the present case, the Insolvency commencement date is 11.03.2022 and the 90th day of the Insolvency Commencement date ended on 10.06.2022.

5. The Applicant herein has submitted his claim before the Respondent / RP only on 06.07.2022 in Form – B. The Respondent / RP vide email dated 07.07.2022 replied to the Applicant as follows;

Please note that since the claim is filed beyond 90 days of commencement of the Corporate Insolvency Resolution Process i.e. 11.03.2022, the Resolution Professional is not in a position to accept your claim.

6. It is stated in the Application that the Pre-Institution Mediation and Settlement Application under Section 12-A of the Commercial Courts Act, 2015 before Zila Vidhik Seva Pradhikaran Mediation Centre Faizabad, UP was pending and the same was disposed on 17.05.2022 on account of non – appearance of the Corporate Debtor. Thereafter upon diligent enquiry it was found that the Corporate Debtor was under Insolvency Resolution Process. The Applicant had no idea about such process as he was located at UP and carrying on his business in UP.

[Handwritten signatures]



7. It is stated that applicant being the resident of Jagdishpur District Amethi faced difficulties in finding legal assistance at Chennai and considerable time was taken in finding a lawyer at Chennai.

8. Heard the submissions made by the Learned Counsel for both the parties. In the present case, it is seen that the 90th day of the Insolvency commencement date came to an end on 10.06.2022. The Applicant herein filed the claim before the Respondent / RP in Form – B for a total sum of Rs.58,99,847/- on 06.07.2022 and the claim was rejected by the Respondent / RP on 07.07.2022. As against the rejection of the claim by the Respondent / RP, the present Application is filed before this Tribunal on 18.08.2022.

9. It is to be noted here that the RP was in receipt of Resolution Plan in respect of the Corporate Debtor as early as on 03.09.2022 and the same was in discussion before the CoC from 03.09.2022 till 30.11.2022. The Resolution Plan submitted by one M/s. West Coast Paper Mills Limited was approved by the CoC with 100% majority.

10. By the time the Applicant filed the claim before the RP, the Information Memorandum containing the list of claimants of the Corporate Debtor was already shared with the Prospective Resolution Applicants. At this juncture, we find it apt to refer to the Judgment of the Hon'ble NCLAT in the matter of **Deputy Commissioner, UTGST, Daman Vs. Rajeev Dhingra IRP for Radha Madhav Corporation Ltd.**



in *Company Appeal (AT)(Ins) No. 1340 of 2022* wherein at para 46 to 48, it has been held as under;

46. It was further added that the RP had categorically stated by email to UTGST that one of the reasons for rejecting their claims was attributable to the judgement of this Tribunal in the matter of **Harish Polymer Product v. George Samuel & Anr. in CA (AT) (Ins.) No. 420 of 2021** wherein it has been held that:

.....if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated."

47. There is adequate force in the above contention. The Report of Bankruptcy Law Reform Committee dated November 2015 propounds that time is the essence in any resolution process. The Preamble to the IBC, 2016 also clearly emphasizes that the IBC was enacted to consolidate and amend existing laws relating to, inter-alia, reorganization and insolvency resolution of corporate entities in a time bound manner. The Hon'ble Supreme Court has in a catena of landmark judgements including *M/s Innoventive Industries Ltd. v. ICICI Bank* (2018) 1 SCC 407 and *Arcelor Mittal India Private Limited v. Satish Kumar Gupta* (2019) 2 SCC 1 emphasized on the legislative fiat of timeliness in the conduct of CIRP and that the model timelines provided in Regulation 40A of the CIRP Regulations needs to be adhered to by all the parties as closely as possible.

48. **This Tribunal while applying its judicial mind in the exercise of its appellate jurisdiction cannot be oblivious of the fact that CIRP is a time bound process. Therefore, when a resolution plan has already been received and approved by the CoC, we are inclined to agree that if the claims of creditors are accepted at a belated stage after the stipulated time provided for submitting claims, then the possibility of resolution plan failing**



to materialize becomes very high and tantamount to defeat the objectives of IBC making the CIRP a time bound process. If the belated claim is considered at this stage, it shall adversely affect further implementation of resolution plan and be detrimental to the functioning of the Corporate Debtor. It is also pertinent to note that the SRA-Vama has claimed to have already made payments of Rs.7.90 crore while implementing the resolution plan.

(emphasis supplied)

11. Further, the Hon'ble Supreme Court, in the matter of **RPS Infrastructure Limited -Vs- Mukul Kumar & Anr** in *Civil Appeal No.5590 of 2021* has held in para 19 to 21 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.

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.

(emphasis supplied)

12. Thus, from the judgments referred above, we are of the view that if at this advanced stage, the claim of this Applicant is allowed, it will upset the timelines prescribed under IBC, 2016. Further, allowing the claim of the Applicant at such a belated stage, will not only be unfair to the other creditors, who could not file their claim with the RP because of the delay, but it would also dilute the purpose of publication of Form A. If the claim of the Applicant is allowed, it would entail revision of a Resolution Plan which is already approved by the CoC.

13. It is to be noted here that CIRP is a time-bound process and this Adjudicating Authority cannot set the clock back for the reason that the Applicant did not file the claim within the stipulated time period and certainly it would go against the main objective of IBC, 2016.

14. Thus, for the aforesaid reasons, we are not inclined to entertain the present Application. Accordingly, IA(IBC)/400(CHE)/2023 stands **dismissed**.

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond