

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 420 of 2021**

In the matter of:

**Harish Polymer Product
(A Sole Proprietorship Firm)
Represented through its Sole Proprietor
Smt. Ekta Gupta
W/o Sh. Arvind Gupta
Aged about 50 years
R/o 2/13, Nandan Garden,
W.K. Road, Meerut,
Uttar Pradesh- 250002.**

....Appellant

Vs.

**1) Mr. George Samuel
The Resolution Professional
For Jason Dekor Pvt. Ltd.
217, Ganesh Glory, Jagatpur Road,
SG Highway, Ahmedabad,
Gujarat- 382481.**

**2) Jay Overseas Pvt. Ltd.
Resolution Applicant
Having its Registered Office at:
402, Shoppers Plaza-IV,
Opp. Lal Bungalow,
C.G. Road, Navrangpura,
Ahmedabad, Gujarat- 380009.**

....Respondents

**For Appellant: Mr. Devashish Bhadauria, Advocate.
For Respondents: Mr. Madhusudan Sharma, Advocate for R1.**

ORDER

(Through Virtual Mode)

18.06.2021: Heard Learned Counsel for the Appellant and the Learned Counsel for the Resolution Professional. The Respondent No.2 in this Appeal is stated to be the ‘Successful Resolution Applicant’.

2. This Appeal has been filed by the Appellant claiming that the Appellant is 'Operational Creditor' who had to recover Rs.33,23,718/- from the Corporate Debtor- 'Jason Dekor Private Limited'. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on 19th December, 2019. The Appellant has mentioned that the Interim Resolution Professional (IRP)/ Resolution Professional (RP) issued Public Notice and as per the Public Notice, the claims were invited from the public and the last date to submit claims was 7th January, 2020. The Appellant claims that the Corporate Debtor is situated at Ahmedabad while the Appellant operates at Meerut in U.P and did not know about the CIRP initiated against the Corporate Debtor. When the Appellant decided to initiate action against the Corporate Debtor for non-payment of the dues and contacted Counsel, the Appellant got knowledge that there is already CIRP against the Corporate Debtor. The Learned Counsel states that coming to know this, the Appellant filed claim in Form-B with the Resolution Professional sending the same by e-mail on 15th September, 2020. It is stated that the Resolution Professional rejected the claim filed on 13th October, 2020 on the ground of delay. Learned Counsel for the Appellant submits that due to COVID-19 situation, there was delay and the Appellant could not file the claim in time and delay was required to be condoned. The Appellant claims that in such situation the Appellant filed I.A No. 763/2020 in CP (IB) No. 257/7/NCLT/AHM/2019. The Adjudicating Authority (National Company Law Tribunal, Ahmedabad) after hearing the parties has rejected the application.

3. The Learned Counsel for the Appellant is arguing that the Adjudicating Authority was required to see that the Appellant was situated at Meerut and did not

have knowledge earlier and so delay should have been condoned specially taking into consideration that COVID-19 had spread Nationwide and there was lockdown imposed due to COVID-19. The Learned Counsel submits that apart from the Appellant there was another Operational Creditor which was also the Company of the Appellant which had made a claim but he would not be pressing that claim as that is small amount. It is stated that in the CIRP there were two other Operational Creditors whose claim was time barred and then the 5th Claimant was only a person who had a small amount of claim of Rs.22,000/-. The Learned Counsel submits that considering these aspects the Adjudicating Authority should have let the Appellant file claim even if the same was filed belatedly.

4. Counsel for the Resolution Professional submits that the claim filed was delayed. It is also stated that the CIRP is now at the stage where the Resolution Plan has already been approved by the Committee of Creditors and the same has been filed before the Adjudicating Authority for approval.

5. Regulation 12 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reads as under:-

“12. Submission of proof of claims.

(1) Subject to sub-regulation (2), a creditor shall submit 22[claim with proof] on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution

professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”

6. As per Regulation 12(2), the ninetieth day would be 17th March, 2020 as the CIRP started on 19th December, 2019. The Learned Counsel for the Appellant submits that as per the order of the Hon’ble Supreme Court dated 8th March, 2021 in SMW (C) No. 3 of 2020, the Hon’ble Supreme Court had, for the purpose of computing the period of limitation for any suit, application or proceeding, excluded the period from 15th March, 2020 till 14th March, 2021. On this basis, the Learned Counsel states that the claim of the Appellant should have been accepted.

7. The Appellant has also taken stand that because of the lockdown the Appellant was unable to file the claim in time. The IBBI inserted Regulation 40C in the CIRP Regulations, which reads as under:-

“40C. *Special provision relating to time-line. Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be*

completed due to such lockdown, in relation to a corporate insolvency resolution process.”

8. The Nationwide lockdown was imposed on 25th March, 2020. When the period of 90 days expired on 17th March, 2020, if Regulation 12(2) read with Regulation 40C is kept in view, the Appellant cannot take advantage by claiming that because of the COVID-19 situation, the Appellant could not file the claim with the Resolution Professional. Submitting of the claim cannot be equated with filing of the application so as to rely on the judgment of the Hon’ble Supreme Court referred above. It is admitted position that already Resolution Plan has been approved and perusal of the record shows that after much efforts the Resolution Professional could take the CIRP to the stage of approval of Resolution Plan.

9. The Adjudicating Authority observed in the impugned order, as under:-

“5. Heard learned lawyer for the Applicant as well as the RP, also seen the record. it is a matter of record that the main petition, i.e. CP (IB) 257 of 2019, was admitted on 19.12.2019 and IRP was appointed, who invited claim(s) by making public announcement in From-A and the last date for submission of claims were mentioned as 07.01.2020. However, the Applicant has submitted its claim only on 15.09.2020, much beyond the stipulated time as well as extended period of 90 days. It is to be mentioned herein that the lockdown period is from 25th March 2020 till 31st May 2020 and applicant lodged his claim only on 15.09.2020, i.e. after eight months of the last date and have also not explained about the delay caused. It is matter of record that RP has already provided Information Memorandum (IM) to Resolution Applicant on

04.07.2020, where applicant has lodged her claim on 15.09.2020.

6. The Applicant has cited various case laws of the Hon'ble Supreme Court, Hon'ble NCLAT and Hon'ble Principal Bench, there is no dispute with regard to those case laws. However, each case has its own merits, based on the facts and circumstances of the case.

7. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Memorandum (IM). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that, if the claims of the different creditors are being accepted in a phase manner and / or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make corrections in the IM and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Moreover, CIRP cannot be allowed / extended beyond upper limit of 330 days, in that event the corporate debtor would be compelled to go

for liquidation. Further, if the resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan/ infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over, not to speak about further amendment of the Resolution Plan and re-voting thereon by the CoC with requisite percentage. That apart, the asset of the corporate debtor may get deteriorated, which will affect the maximization of the value of the asset of the corporate debtor.

8. *Further, if such a practice is allowed, keeping abeyance the stipulated period, that too after extended time period of 90 days, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s). However, in the instant matter, prospective Resolution Applicant may withdraw himself.*

9. *It is also pertinent to mention herein that this is not an isolated claim, there is one more application pending for adjudication, who filed its claim before the RP in much belated stage and now approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. If this application is allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plan, as it will be a burden*

with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IM. Thus, under such situation, the Corporate Debtor may be pushed for liquidation.

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11. The Hon'ble Supreme Court in the matter of **Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors**, unequivocally held that “the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed “as closely as possible”.

12. Moreover, the RP acted in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) regulations, 2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. *In the above backdrop, we found that there is no merit in the instant application, hence, the same is dismissed.”*

10. We find that the reasons recorded by the Adjudicating Authority have substance and 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.

11. We do not find any reason to interfere with the impugned order. There is no substance in the Appeal. We decline to admit the Appeal.

12. No costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Anjali/g