



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, COURT – II**

I.A. No. 5094 of 2024

IN

C.P. (IB) No. 719/MB/2022

[Under 65 of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of National Company Law Tribunal Rules, 2016]

**Sunshine Infinity Co-operative Housing
Society Limited**

...Applicant

V/s.

**Mrs. Chetna Sutaria
Resolution Professional of
SQ Infrastructure Pvt. Ltd.**

...Respondent

In the matter of:

Quality Heightcon Private Limited

...Operational Creditor

V/s.

SQ Infrastructure Private Limited

...Corporate Debtor

Pronounced: 10.10.2025

CORAM:

**ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**



Appearances: Hybrid

For the Applicant : Adv. Nishi Bharkharia, Adv. Vishal Pathak.

For RP/ Respondent : Adv. Rohit Gupta a/w. Adv. Geeta Toraskar, Adv. Prajakta Menezes a/w. Adv. Manoj Mishra.

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND


1.1. This I.A. has been filed by ‘Sunshine Infinity Co-operative Housing Society Limited’ (Society) against Mrs. Chetna Sutaria, the Resolution Professional (RP) of SQ Infrastructure Pvt. Ltd., the Corporate Debtor (CD), seeking directions against her to consider and verify their claim of Rs.22.72 Crore, and for condonation of 142 days’ delay in filing the I.A. The Applicant is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960. The Applicant claims that the Society is comprised of 89 homebuyers/members.

2. SUBMISSIONS OF APPLICANT

2.1. A real estate project for construction of a building, namely ‘Kingsville’ was started as slum rehabilitation project by one ‘Grace Developers’ in the year 2006. It was subsequently transferred in 2009, to a company called ‘Sunshine Housing and Infrastructure Private Limited’ (SHIPL), by way of a Development Agreement. Due to financial constraints, SHIPL transferred the Project to the CD by a Business Transfer Agreement (BTA) dated 18.03.2019, on a slump sale basis. Under the BTA, all assets and liabilities pertaining to the Project were transferred to the CD on a going concern basis.



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- 2.2. Due to SHIPL's, and thereafter, the CD's inability to complete the Project, the Applicant entered into three Memoranda of Understanding (MoUs) for completion of the Project and payment of certain taxes owed to statutory authorities such as, (i) MoU dated 06.11.2018 between the Applicant and SHIPL; (ii) MoU dated 17.08.2019 between the Applicant and the CD; and (iii) MoU dated 23.03.2021 between the Applicant and the CD.
- 2.3. Pursuant to these MoUs, the Applicant disbursed Rs.28 Crore between the years 2018 and 2021, with approximately Rs.9 Crore paid for completing the Project directly to the CD and Rs.19 Crore to vendors, contractors, and statutory authorities, etc., on behalf of the CD. The CD repaid Rs.10 Crore during 2018-2023. Pursuant to repeated follow-ups by the members of the Society, one of the promoters/directors of the CD offered a settlement against the total outstanding amount under the MoUs, subject to certain terms. However, the settlement did not fructify.
- 2.4. Subsequent to certain developments involving claims related to some Flat units, and pursuant to initiation of CIRP of the CD w.e.f. 18.12.2023, the members of the Society resolved to (i) cancel the resolution of full and final settlement, passed in the General Meeting dated 02.05.2023; (ii) file claim by the Applicant with the Respondent; and (iii) authorised its Managing Committee to take necessary actions. Accordingly, the Applicant, after collating claims of the homebuyers who had contributed funds to the Society for disbursing the amounts under the MoUs, filed a claim of Rs. 22.72 Crore (comprising Rs.18.24 Crore principal amount and Rs.4.48 Crore as interest at 12% p.a.), with the Respondent/RP on 07.08.2024.
- 2.5. The RP, by email dated 14.08.2024, rejected the claim submitted by it, stating that the same was belated and that it could not be verified. The Applicant has further taken the following grounds in its grievance against the RP, viz., (i) Delay by RP in intimating the initiation of CIRP of the CD; (ii) Dereliction of RP in the discharge of duties under the Code; and (iii)



incomplete settlement between the Applicant and the CD. The Applicant has, thus, filed the instant I.A. also for condonation of delay of 142 days in filing its claim with the RP, and for reversal of rejection of the claim by the RP.

2.6. It is submitted that the 89 homebuyers of the Society were not aware of initiation of CIRP of the CD; however, they came to know about the same only when the belated email by the Respondent/RP was received. Substantial time was consumed in collating documents from the members of the Society, and hence, the delay in submitting their claims with the RP. The Respondent was required to include all the assets and liabilities of the CD in the Information Memorandum as specified under Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). Further, the Respondent/RP was also responsible for sending communications to all the creditors under Regulation 6A of the CIRP Regulations. Had the Respondent/RP informed the Applicant regarding the commencement of CIRP of the CD on time, they would have submitted claims within the prescribed timeframe. Hence, the delay to be condoned. Since the Plan is pending approval of the Adjudicating Authority, this Tribunal has jurisdiction to direct the Respondent to consider their claims.

3. CONTENTIONS OF RESPONDENT/RP

3.1. On the contrary, the Respondent/RP contends that Public Announcement was made by the Interim Resolution Professional (IRP) on 21.12.2023. The IRP had intimated the Applicant by email dated 14.03.2024, about the initiation of CIRP of the CD and requested to submit claims. However, no claim was received from the Applicant as there was a settlement between the Applicant and the developer of the CD. Further, the Applicant was aware of the initiation of CIRP of the CD, as evident from the letter dated 06.03.2024 (Exhibit-E produced by the RP) from one Mr. Pratik Jayesh Vira (Owner of Flat 2601 of the Society), addressed to the Secretary and Managing Director of the



Applicant, regarding filing of claim before the RP. The said letter was also copied to the IRP. However, no claim was submitted to the IRP in spite of information as to the commencement of CIRP of the CD from the letter. Further, the RP, *vide* email dated 11.03.2024, informed the Applicant regarding her appointment and requested the Society to verify the existence of any outstanding amount from their records prior to CIRP commencement date and also to file claim as financial creditor. However, in view of the resolution passed by the Applicant in its Special General Body meeting held on 02.05.2023, it had fully and finally settled their claim with the CD. The developer had also complied with the settlement and executed registered agreement for sale in respect of the commercial units on the ground floor of the Society. Possession of the commercial units was also given to the Applicant. The developer also had provided no objection certificate to the Applicant for transfer of Land Under Construction Tax (LUC) refund in their name. Therefore, no claim of the Applicant subsists as against the CD.

- 3.2. There is nothing on record to suggest that the Applicant has any locus in filing the present I.A. on behalf of the Society, as no authorisation/authority to represent the interests of the members of the Society has been produced. The Applicant has thus not succeeded in showing that it represents the Society to agitate any of its vested rights.

4. ANALYSIS AND FINDINGS


- 4.1. We have heard both the Ld. Counsel for the Society and the Respondent/RP and also perused all the materials on record. It is brought on record that, pursuant to the initiation of CIRP of the CD on 18.12.2023, the IRP made Public Announcement on 21.12.2023 and fixed 01.01.2024, as the last date for submission of claims. However, records reveal that the Society submitted its claim dated 03.08.2024, only on 07.08.2024, as shown in Exhibit-M produced by the Respondent. The Applicant has admitted that there is a delay of 142 days in submission of claim. Regulation 12(1) of the CIRP Regulations



provides that a creditor shall submit claim with proof on or before the last date specified in the public announcement. Further, the proviso to Regulation 12(1) allows submission of claims up to the date of issue of Request for Resolution Plan (RFRP) or 90 days of the date of commencement of CIRP. The RFRP was issued on 31.03.2024. Further, 90 days of CIRP period w.e.f. 18.12.2023 ended on 17.03.2024. Regulation 13(1B) of the CIRP Regulations provides that the claims submitted after the stipulated time under Regulation 12(1) and seven days preceding the date of meeting of the CoC for voting on the plan, the IRP/RP shall verify the said claims and categorise as acceptable or not acceptable. The Applicant has admitted that the claim was made belatedly on 03.08.2024, by email dated 07.08.2024, only after 142 days of delay. That too, after the approval of the Resolution Plan by the CoC in its 9th meeting on 06.07.2024.

- 4.2. In this connection, the law laid down by the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Ltd. and Ors.* [2021 Ibclaw.in 63], which was relied upon by the Hon'ble NCLAT in *Suraksha Realty Ltd. v. Mr. Anuj Bajpai* [2023 ibclaw.in 709 NCLAT], needs consideration:


“It is well settled that no claims can be entertained after the approval of the plan by the Committee of Creditors as it would de-rail the whole process which has to be concluded within a time bound manner. In this regard, a reference can be made to the law laid down by the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Ltd. and Ors. 2021 Ibclaw.in 63 whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP. It was further held that the Resolution Applicant cannot be expected make a provision



in relation any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12. It was further observed that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by his has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the Corporate Debtor. In the instance case also, since the Resolution Plan has already been approved by the CoC and plan is pending for approval with the Adjudicating Authority, admission of any claim at this stage would jeopardize the whole CIRP process and on this short ground, the application deserved to be dismissed being without any merit.”

4.3. In the present case, it is seen that the claim was submitted by the Applicant beyond the timeline stipulated under the law, and therefore, the RP could not have admitted the same. Record reveals that the Respondent/RP filed I.A.(IBC)(Plan) No.75 of 2024 on 08.08.2024 before this Adjudicating Authority, after the Plan had been approved by the CoC on 06.07.2024. The Applicant was already informed of all the developments in the CIRP of the CD by the Respondent/RP. However, the Applicant filed the present I.A. on 11.10.2024. Considering the facts and the legal position, we are not inclined to buy the contention of the Applicant that it took time to collate relevant documents from the individual homebuyers as such contention is not supported by any evidence.

4.4. The Respondent/RP has submitted that the books of the CD do not reflect any amount due and payable to the Applicant. Further, the Respondent has relied upon the letter dated 14.03.2024, wherein the full and final settlement of the claim, by virtue of the Settlement Agreement with the developer, was reflected. Admittedly, the CD had already complied with the settlement by executing registered agreement for the sale of



commercial units on the ground floor of the 'Sunshine Infinity' in favour of the Society. The Society has also taken possession of the same. Further, pendency of approval of the Resolution Plan by the Adjudicating Authority, after the same having been approved by the CoC, is no ground for considering an invalid claim of the Applicant. Any challenge, at this juncture, to the decision of the Respondent/RP in rejecting the claim would amount to challenging the Resolution Plan already approved by the CoC. The Applicant has also not demonstrated whether, he validly represents the Society or has any authorisation from the alleged homebuyer-creditors to represent them. Hence, we hold that the Applicant does not have any locus to pray for admission of its claim. This I.A., therefore, does not have any merit and is only liable to be rejected.

4.5. In the result, I.A. No.5094/2024 is **dismissed**. No order as to costs. Ordered accordingly.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Aditya Kalia, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)