

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

IA/3617/2023

In

C.P.(IB)/3352(MB)/C-III/2019

*(Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.)*

1. Amit Gupta

2. Reena Vira

*Address: C 903, Parkwoods C C.H.S.L.,
Ghodbunder Road, Behind D Mart, Thane-
400615.*

.....Applicants

Vs.

Ashish Vyas,

**Resolution Professional of Vijay Citispace
Private Limited.**

*Address: Kanchansobha Debt Resolution
Advisors Private Limited, 1507, B Wing, One
BKC, G-Block, BKC, Bandra East, Mumbai-
400051.*

.....Respondent

In the matter of

Regency Ispat Private Limited

.....Operational Creditor

Vs.

Vijay Citispace Private Limited

.....Corporate Debtor

Order Pronounced on: 28.11.2023

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Applicant : Mr. Shavez Mukri, Adv.

For the Respondent: Ms. Manaswi Agrawal
a/w Ms. Saloni Kalwade i/b Miraki Chambers

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. The present application is filed by Mr. Amit Gupta and Reena Vira ("**Applicants**") under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") against the Resolution Professional of M/s. Vijay Citispace Private Limited ("**Corporate Debtor**"), seeking direction to the Resolution Professional to admit the claim of the Applicants as submitted in Form-CA and classify the Applicants as "*Financial Creditors in a class*" and to admit them to the Committee of Creditors ("**CoC**").

Relevant Brief Facts as narrated in the Application:

2. The Applicants entered into a Registered Agreement for Sale dated 18.04.2018 with the Corporate Debtor for Flat No. 805, Bldg. No. 4 in the Project known as "Vijay Enclave".
3. The Applicants accordingly made payments to the Corporate Debtor towards consideration of the premises and receipt of the payments is also acknowledged by the Corporate Debtor.

4. Further, the Company Petition was filed under section 9 before this Tribunal in 2019 by Regency Ispat Private Limited (Operational Creditor) against the Corporate Debtor and the same was admitted by this Adjudicating Authority and Mr. Ashish Vyas (Respondent) was appointed as the Interim Resolution Professional vide order dated 20.07.2021.
5. Following the admission order, the Respondent carried out publication dated 25.07.2021 inviting creditors to file their claims before him by 03.08.2021. Further, the 90 days to file claim before the RP was to be completed by 18.10.2021.
6. In July 2023, the Applicants had come to know about the CIRP of the Corporate Debtor after conversations with other homebuyers. The Applicants thereafter immediately filed their claim before the Respondent by submitting their claim vide Form-CA (Claim by Financial Creditors in a class) dated 26.07.2023.
7. Thereafter, the Respondent, vide email dated 26.07.2023 informed the Applicants that their claims cannot be admitted as there is a delay in filing the same and the CoC has already approved the Resolution Plan.
8. In such circumstances, the Applicants have filed the present Application seeking directions from this Bench to direct the Respondent to admit their claim and to condone delay of 723 days in filing the claim.

Applicant's submission:

9. The Applicants submitted that they had made payments to the Corporate Debtor towards consideration of the premises and receipt of the payments is also acknowledged by the Corporate Debtor. Further, the Applicants had obtained a loan from the bank to make payment towards the consideration of the flat and the Applicants till date are repaying the said loan by making payment to the bank vide monthly instalments.

10. The Applicants further submitted that in 2021, the Applicants were not able to take follow up with the Corporate Debtor with regards to the said premises due to the Applicant No. 1's mother being diagnosed with cancer. That the Applicant No. 1's mother eventually passed away on 18.11.2021. Hence, the Applicants in 2021 were occupied attending to their personal grievance and could not come to know about the CIRP of the Corporate Debtor.

11. The Applicants further submitted that the delay in filing the claim is completely unintentional and Applicants are genuine homebuyers of the Corporate Debtor and the same is reflected in the records of the Corporate Debtor. The Applicants were not aware of the CIRP of the Corporate Debtor and that they ought to have been informed about the same by the Respondent as Respondent is duty bound to inform the homebuyers of the Corporate Debtor after going through the records of the Corporate Debtor.

12. Further, the Applicants relied on the judgement of **Puneet Kaur vs. K V Developers Private Limited** *Company Appeal (AT) (Insolvency) No. 390 of 2022* and submitted that from the bare perusal of the above judgment of Hon'ble NCLAT, it is clear that the Respondent ought to have admitted the claim of the Applicants as the Resolution Plan has not been approved by this Tribunal as on date.

Reply by Respondent/RP:

13. The Respondent has submitted that the claim of the Applicants was filed with the Respondent on 26.07.2023 i.e. 21 months after the expiry of 90 days from the commencement of CIRP of the Corporate Debtor. By the time, the COC had already completed extensive deliberations with the PRAs and voted to choose the resolution plan of the SRA with 100% majority. In these circumstances, admission of the claim would affect the resolution plan which is already approved by the COC.
14. The Respondent has submitted that the Applicants have miserably failed to explain the delay in filing the claim against the Corporate Debtor with the Respondent. Further submitted that the real estate project of the Corporate Debtor, in respect of which the Applicants have made the claim, is situated in Thane and the Applicants also reside in Thane. Moreover, the public announcement of the commencement of the CIRP and invitation of claim by creditors of the Corporate Debtor was published in the newspapers in circulation in Thane.

Therefore, the Applicants cannot claim ignorance or lack of notice in respect of the commencement of the CIRP of the Corporate Debtor.

15. Further submitted that the resolution professional is not authorised to condone the delay in filing of the claims by the creditors of the corporate debtor beyond expiry of 90 days from the commencement of the CIRP. Thus, the claim of the Applicant can be admitted only upon the orders of this Tribunal. The Respondent prayed that in case this Bench is inclined to allow the above Interlocutory Application, an opportunity be allowed to him to verify the amount of the claim of the Applicants before admitting the same.

Findings and Order:

16. Heard the Parties for both the sides and perused the record.
17. We observe that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor by this Adjudicating Authority vide order dated 20.07.2021 and accordingly, the Interim Resolution Professional issued a Public Announcement in Form 'A' on 25.07.2021, inviting creditors to file their claims before him by 03.08.2021. Further, the 90 days to file claim before the RP was completed on 18.10.2021. The Applicants filed the Form-CA (claim) to the Respondent on 26.07.2023, after the delay of 723 days.

18. In the case of **Puneet Kaur vs. K V Developers Private Limited** Company Appeal (AT) (Insolvency) No. 390 of 2022, the Hon'ble National Company Law Appellate Tribunal held as under:

“18. It is thus clear that extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC.

*27. In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. However, **we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan.** Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the*

basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Company Appeal (AT) (Insolvency) Nos. 390, 391, 392, 393 & 394 of 2022 32 Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan.”

19. In view of the aforementioned judgement, it is incumbent upon the Resolution Professional to have included the claims of homebuyers who have not filed their claim before him and that the claims of homebuyers can only be extinguished upon approval of the resolution plan by the Adjudicating Authority and not by the CoC.

20. The Applicants made payments to the Corporate Debtor for the Flat No. 805, Bldg. No. 4 in the Project known as “Vijay Enclave”, which the Corporate Debtor also acknowledged. Additionally, the Applicants secured a bank loan to fulfil the payment obligations for the flat, and they have been consistently repaying the same through monthly instalments. This indicates that the Applicant’s claim would have been reflected in the record of the Corporate Debtor. Therefore, it was expected that the Resolution Professional (RP) would have

included these details in the Information Memorandum and that the Resolution Applicant (RA) would have appropriately addressed them in the Resolution Plan.

21. As the Applicant's claim existed in the Corporate Debtor's records at the time of preparing the Information Memorandum, the RP should have taken it into account. Hence, this bench believes that the 723-day delay in filing the claim before the RP should be condoned.

22. Based on the aforementioned facts and in view of the decision of Hon'ble NCLAT in the case of **Puneet Kaur vs. K V Developers Pvt. Ltd.** (*Supra*), this bench condones the 723-day delay in submitting the claim before the RP. The RP is directed to verify the Applicants claim and proceed further in accordance with the provisions of the Code and the applicable Regulations.

23. Accordingly, the IA/3617/2023 is **allowed**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)