National Company Law Appellate Tribunal
Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 621 of 2021
(Arising out of Order dated 17th March, 2021 passed by National Company Law Tribunal, New Delhi Bench, Court No. IV in IA No. 372/2019 in C.P. (IB) No.-1059/ND/2018).

IN THE MATTER OF:

Gitanjali Kapoor
Sole Proprietor of Kapoor & Co.
Office: E-11, Lower Ground Floor,
Jangpura Ext., New Delhi – 110014.
Email: admin@kapoorandcompany.com **...Appellant**

Versus

Anand Sonbhadra
Resolution Professional of
M/s. Shubhkamna Buildtech Private Limited
Office: E-10A, Kailash Colony,
Greater Kailash I, New Delhi – 110048.
Email: anand.sonbhadra@aaainsolvency.com
sonbhadra65@gmail.com **...Respondent**

For Appellant: **Mr. Abhay Gupta & Mr. Akhil Shankwar, Advocates.**

For Respondent: **Mr. Abhishek Anand & Mr. Nipun Gautam, Advocates.**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Appeal is to the Impugned Order dated 17.03.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court No. IV), in IA 372/2019 in CP (IB) No.-1059/ND/2018, whereby the Adjudicating Authority has dismissed the Application IA 372/2019 preferred by the Appellant herein giving the following reasons:

> *"14. The RP has denied that all information have been provided by the Applicant, the information sought is still awaited, which is the major reason for the RP*

being unable to verify the claim of the Applicant. RP is unable to admit the claim of the Applicant based solely on the information provided by the Applicant. The duty of the RP is to verify the claims and accept them if they are found to be genuine after due verification. If the information provided by any debtor is incomplete or if the RP is of the opinion that the claim is invalid, he may invite such further information as he deems fit, which is what was duly done in the present case.

15. The RP submits that in September, 2019 when the resolution plan was being considered by the Committee of Creditors the instant Application was moved by the Applicant which was listed on 30.09.2019. It is submitted that on 17.10.2019 the resolution plan was already approved by the CoC with 87.57% voting share. Consequently, the Application for approval of Resolution Plan was filed by the Resolution Professional before this Hon'ble Tribunal, which is still pending for approval before this Hon'ble Tribunal. The applicant had not obtained any stay against RP, and is clear that once the plan has been approved, no 'undecided claim' may be agitated.

16. RP supported its arguments with the ratio delivered by the Hon'ble Supreme Court in its decision dated 15.11.2019 in the case titled "Committee of Creditors of Essar Steel India Limited vs, Satish Kumar Gupta and On. ((2019) 153 CIA 275 (SC)", which has held as follows:

> *"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him 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 successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution*

professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

Hence, once a Resolution Plan was approved by the CoC, no undecided claim can be accepted which will amount to 'hydra head popping', which would throw into uncertainty the amounts payable by the prospective Resolution Applicant who successfully takes over the business of the Corporate Debtor.........”

“20. We have perused the relevant documents and submissions made by the counsels and find force in the contention of the Respondent that the resolution professional has sought for the clarifications/ documents with regard to the claim. The Applicant sat on their unsubstantiated claim for long time, without furnishing the proof substantiating its claim, owing to which their claim could not be verified and not admitted. In the absence-of documents supporting the claim of the Applicant, the RP cannot process and accept the claim of the Applicant. The applicant has signed Retainership Agreement with the directors of corporate debtor, in January 2017 and MCA uploaded the disqualification in September 2017, hence the knowledge of disqualification could not have been with the applicant. The arguments of respondent that the agreement is with disqualified director fails as ground to reject the claim, but for want of sufficient documents from the applicant, from date of filing claim in December 2018 upto filing of this application in September 2019, there is no explanation for lapse in filing proper documents with RP. More over the resolution plan is approved and as per the ration laid down by Hon’ble Supreme Court and Hon’ble NCLAT with respect to unsustainability of undecided claims after approval of resolution plan, there is no doubt to reject the application.”

2. It is the case of the Appellant that they had provided various legal and allied services to the ‘Corporate Debtor’ for a monthly fee of Rs.2Lakhs/- for the period 01.11.2016 to 01.11.2018 based upon a Retainer Agreement dated 13.01.2017 which was effected from 01.11.2016 and executed between the 'Corporate Debtor' and the Appellant herein. While so, on 26.11.2018, the 'Corporate Debtor' went into CIRP. It is submitted that the Appellant preferred their claim with the IRP on 18.12.2018, for which the IRP sought details of various matters handled and managed by the Appellant vide letter dated 23.01.2019. Subsequently, an RP was appointed on 12.02.2019 and the Appellant once again provided the information to the new RP on 11.03.2019.

3. The Learned Counsel for the Appellant submitted that the RP neither accepted nor verified the same within the specified time limit, and sent an email dated 16.04.2019 seeking further clarifications. Learned Counsel submitted that the Appellant once again provided clarifications sought for by the RP on 12.07.2019. Even after receipt of the email dated 12.07.2019, the RP did not respond regarding the acceptance of the claim of the Appellant and therefore the Appellant moved an IA before the Adjudicating Authority seeking a direction to the RP to verify and accept the claim of the Appellant.

4. Learned Counsel for the Appellant placed reliance on Section 31 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'), in support of their argument that the claim of the Appellant can be admitted even at the stage of approval of the Resolution Plan by the CoC, as the same has not yet been approved by the Adjudicating Authority.

5. Learned Counsel for the Respondent/RP submitted that the Directors in their individual capacity were represented by the Appellant and it is also a matter of public record that the Directors were disqualified under Section 164(2) of the Companies Act, 2013 for the period 2015-2020 as per the list available on the website of Ministry of Corporate Affairs. Learned Counsel placed reliance on the ratio of the Hon'ble Supreme Court in the Judgement of ***'Committee of Creditors of Essar Steel India Limited Through Authorized Signatory' Vs. 'Satish Kumar Gupta & Ors.' (2020) 8 SCC 531,*** in support of his argument that once a Resolution Plan was approved by the CoC, no claim can be accepted and the same shall amount to 'hydra-head popping' which would throw everything into uncertainty. It is also the case of the Respondent that a Successful Resolution Applicant cannot be asked to face undecided claims after the Resolution Plan submitted by them is accepted by the Committee of Creditors.

6. In the instant case, the information sought for by the RP vide email dated 16.04.2019 was provided by the Appellants vide email dated 12.07.2019, after a clear gap of three months. There are no substantial reasons given for this delay of three months specially keeping in view that IBC mandates a timebound process. It is also not in dispute that the Appellant represented the Ex-Directors of the 'Corporate Debtor' in their personal capacity and therefore the Resolution Professional sought for information from the Appellant herein to ascertain the liability of the 'Corporate Debtor' against the claims preferred by the Appellant. Admittedly, the Resolution Plan of the 'Corporate Debtor' was passed by a majority of 87.57% Voting by the CoC Members way back on 17.10.2019 and this Application was preferred by the Appellants in September, 2019, which was listed on 22.10.2019 and disposed of vide Order dated 17.03.2021. It is seen from the record that the Application seeking approval of the Resolution Plan under Section 30 of the Code was preferred before the Adjudicating

Authority on 21.10.2019. In the absence of any cogent reasons for having delayed supplying the information to the RP who had sought for clarification on 16.04.2019, but the Appellant had admittedly provided the information only on 12.07.2019 after 90 days after the receipt of the email.

7. The relevant extract of Section 31 of the Code is detailed as hereunder:

> ***"31. Approval of resolution plan. –***
> *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan................................"*

8. The contention of the Learned Counsel for the Appellant that Section 31 of the Code is applicable in their case, cannot be sustained as we do not find any material irregularity on the face of record to set the clock back, since the lapse is on behalf of the Appellant in delaying to provide the information sought for by the RP.

9. We are of the considered view that the ratio of the Hon'ble Apex Court in ***'Committee of Creditors of Essar Steel India Limited, (Supra)*** is squarely applicable to the facts of this case. For ready reference, the relevant para is reproduced as hereunder:

> ***"107.*** *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution*

professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him 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. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

10. Having regard to the facts and circumstances of the attendant case on hand, this Tribunal is of the earnest view that the Successful Resolution Applicant cannot be asked to face with undecided claims after the Resolution Plan submitted by him has been accepted by the Committee of Creditors as this would amount to lot of uncertainty.

11. We do not see any illegality or infirmity in the Order of the Adjudicating Authority. Hence, this Appeal fails and is accordingly dismissed. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
19th September, 2022
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