



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-04

IB-1731/ND/2019

IA/3643/2023

IN THE MATTER OF:

Mayoga Investment Ltd.

Vs.

M/s. MK Overseas Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 12.09.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA/3643/2023 in IB-1731/ND/2019 is **disposed off**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

**IA NO. 3643/2023
IN
CP IB NO. 1731/ND/2019**

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Mayoga Investment Limited

...Financial Creditor

VERSUS

M/s. MK Overseas Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

Toyota Financial Services India Limited

...Applicant

1st Floor, Centropolis No. 21, Langford Road,
Richmond Town, Bangalore- 560025

VERSUS

1. Mr. Suresh Kumar Jain

(Erstwhile Resolution Professional)

3775/3, Kanhaiya Nagar,
New Delhi-110035

Mr. Sapan Mohan Garg

(Current Resolution Professional of MK Overseas Pvt. Ltd.)

D-54, First Floor, Defence Colony,
New Delhi-110024

2. Committee of Creditors

M/s. MK Overseas Pvt. Ltd.

3775/3, Kanhaiya Nagar,
New Delhi-110035

...Respondents

IA No. 3643/2023

In

CP IB No. 1731/ND/2019

Order Delivered on: 12.09.2023



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CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Appearances (through Video Conferencing/physical hearing)

For the Applicant : Mr. Amit Kumar, Adv. Shankar Sen
For the Respondent : Shekhar Kumar, Advocate
For the RP : Adv. Satyam Dwivedi
For the J.C : Jaskaran S. Bhatia, A Sinha
For the SRA : Adv. Arveena Sharma
For the HDFC : Richa Sandilya, Adv.

ORDER

PER: SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The present I.A. No. 3643 of 2023 is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") along with Rule 11 of the NCLT, Rules, 2016. The present application is preferred by Toyota Financial Services India Limited ("**Applicant**"), for seeking appropriate directions against the Resolution Professional of M/s. MK Overseas Pvt. Ltd. to admit claim of the Applicant.
2. The Applicant has made the following prayers in the application:
 - a) *Allow the present Application;*
 - b) *Direct the Respondent No.1 to admit the Claim of the Applicant as Financial Creditor of M/s. MK Overseas Pvt. Ltd. and to re-constitute the CoC.*
 - c) *Direct that application regarding approval of the Resolution Plan of M/s. MK Overseas Pvt. Ltd. be kept in abeyance till the present application is heard and decided.*

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- d) *Direct that no resolution plan of M/s. MK Overseas Pvt. Ltd. be passed till the present application is heard, decided and claim of the Applicant is admitted.*
- e) *Pass such other or further order / order(s) as may be deemed fit and proper the facts and circumstances of the instant case.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows:

- (i) That the claimant is inter-alia engaged in business of financing to customers along with its other verticals, apart from other portfolios.
- (ii) That this Adjudicating Authority ordered the initiation of CIRP dated 19.09.2019 in respect of M/s MK Overseas Pvt. Ltd. and declared the moratorium for the Corporate Debtor and further, appointed the Interim Resolution Professional (IRP) as per the provisions of the Code.
- (iii) That the Applicant was not in the knowledge of the initiation of CIRP proceedings against the Corporate Debtor and it is only in the month of May 2023 that the Applicant through its Collection Agent came to know regarding the CIRP proceedings, hence, could not file its claim in the prescribed time limit. That immediately on coming into the knowledge of the CIRP proceedings prevailing against the Corporate Debtor the Applicant sent a mail to the Respondent No. 1/ Resolution Professional (RP) thereby filing claim form dated 23.05.2023 vide E-mail dated 23.05.2023. However, the Respondent No.1/Resolution Professional was very well aware of the claim prevailing in the records of the Corporate Debtor and the same being pending before the Corporate Debtor.
- (iv) That in response to the Applicant's mail dated 23.05.2023, the Respondent No. 1/ Resolution Professional vide mail dated 05.06.2023 stated that the RP is unable to consider the claim of the Applicant, as the Resolution Plan of M/s. Exclusive Motors Pvt. Ltd. has already been approved by the Members of Committee of Creditors in its 20th CoC meeting held on 27.11.2020.



- (v) That an application for approval of resolution plan has been filed under Section 30(6) of the Insolvency and Bankruptcy Code 2016 (Code) which is pending for adjudication before this Adjudicating Authority.
- (vi) That the claim of the Applicant would constitute voting share in the CoC which is substantial in nature.
- (vii) That grave prejudice would be caused to the Applicant/ Toyota Financial Services India Limited if the Claim Form C dated 23.05.2023 is not admitted by the Respondent No.1/Resolution Professional.
- (viii) That the Information Memorandum as submitted by the Respondent No.1/Resolution Professional before the Prospective Resolution Applicant ought to have included the claim of the Applicant herein, who has not filed its claims to correct *liabilities* of the Corporate Debtor for its appropriate resolution.

4. The Resolution Professional of M/s MK Overseas Private Limited has filed reply to the averments of the applicants. The defense taken by the resolution professional, respondent herein, are stated in brief as follows:

- (i) That the CIRP against the Corporate Debtor was initiated on 19.09.2019. The public announcement of the same was made on 21.09.2019 with the deadline for submission of claims I.e., till 04.10.2019.
- (ii) That the Applicant filed the claim belatedly on 23.05.2023 i.e., after a delay of 1327 days (3 years, 7 months, 19 days). Thereafter, the Applicant approached this Adjudicating Authority vide IA No. 3643 of 2023 seeking to admit the claim Form-C dated 23.05.2023.
- (iii) That the Applicant gave no sufficient cause for the delay of 1327 days and also did not seek condonation of delay.
- (iv) That the Applicant violated the Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which says that “A creditor, who fails to submit claim with

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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.”.

- (v) That the Applicant failed to provide any reasonable justification for such delay which runs into several years. Furthermore, the applicant gave vague justifications like unawareness as to initiation of CIRP against the Corporate Debtor.
 - (vi) That the Resolution Plan is submitted by the Successful Resolution Applicant, which is pending before this Adjudicating Authority for approval. Accepting new claims at this belated hour, that too without sufficient cause, would jeopardize and derail the entire resolution process.
5. No rejoinder has been filed to the reply filed by the respondent.
 6. We have gone through documents on record filed by the applicant and heard the arguments advanced by counsels of both the Applicant and the Respondent.
 7. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.
 8. We find that in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement. This enables the potential resolution applicants to submit



realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

“12. Submission of proof of claims. –

(1) xxxxxx

(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) Xxxxx ”

9. Adverting to the facts of the present case, the respondent/IRP had made public announcement in the newspapers having wide circulation on 21.09.2019 as per which the last date for submission of claim was 04.10.2019. However, the Applicant had filed the claim in Form-C dated 23.05.2023 i.e., after lapse of more than 3 years. Therefore, the Respondent is unable to admit the claim of the Applicant as the Committee of Creditors in the 20th CoC meeting held on 27.11.2020 had already approved the resolution plan submitted by M/s Exclusive Motors Pvt. Ltd. and an application bearing I.A./5534/ND/2020 is filed before this Adjudicating Authority seeking approval of the Resolution Plan.
10. The submission of the applicant is that the applicant was unaware as to initiation of CIRP dated 19.09.2019 against the Corporate Debtor and therefore, could not file the claim within the prescribed time. The Applicant filed the claim immediately after its coming into knowledge of the said CIRP via Form-C on 23.05.2023. The Applicant further claims that the Resolution Professional was very well aware of the claim prevailing in the records of the Corporate Debtor. Even if this Adjudicating Authority, considers the submission of the Applicant that the Applicant was unaware



as to the initiation of the CIRP against the Corporate Debtor, a prudent financial creditor would have taken the trouble to follow up with the Resolution Professional about the status of his claim. However, there appears to be no vigilance on the part of the Applicant for more than 3 years. Therefore, we do not find any force in the applicant's submission that the Applicant was not aware about the insolvency status of the Corporate Debtor.

11. Further, in this context, we are conscious of the decision on similar facts of the Hon'ble NCLAT in **Axis Bank Ltd. Vs. Shubhkamna Buildtech Pvt. Ltd. & Anr. – NCLAT New Delhi (2022) ibclaw.in 640** in which Hon'ble NCLAT has placed reliance on the decision of the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors : 2019 SCC Online SC 1478**, in which it is held that:

“107. 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 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, the NCLAT judgment must also be set aside on this count”.

12. In view of the aforesaid discussion and judicial pronouncement we are of the considered view that the applicant has failed to show due diligence in submitting the claim before the Resolution Professional. We, therefore, cannot accede to the request for issuing direction for the acceptance of the claim of the applicant as the same has been filed much after the approval of the Resolution Plan in 20th CoC Meeting held on 27.11.2020.
13. Resultantly, the present application i.e., I.A./3643/2023 being devoid of merits stands dismissed. No orders to cost.

Sd/-
(Rahul Bhatnagar)
Member (Technical)

Sd/-
(Mahendra Khandelwal)
Member (Judicial)