

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT - II)**

**Item No. 203**  
**(IB)-1232(ND)2019**

**IA/2158/2020, IA/2668/2020, IA/5559/2020, IA/1294/2021**

**IN THE MATTER OF:**

**M/s. American Express Banking Corp** ... **Applicant/Petitioner**

**Versus**

**M/s. Fourth Dimension Solution Ltd.** ... **Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 22.07.2021**

**CORAM:**

**SHRI. ABNI RANJAN KUMAR SINHA,**  
**HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,**  
**HON'BLE MEMBER (T)**

**PRESENT: Ms. Raveena Rai and Mr. Rohit Ghosh, Advocates for the Applicant in I.A. No. 2668/2020**

**Mr. Abhishek Anand, Advocate with Mr. Tanveer Oberoi, Advocate for RP**

**ORDER**

**IA/2668/2020:** By filing this Application, the Applicant has prayed for the following relief:

- “(i) Set aside the impugned communication dated 06.06.2019 issued by the Resolution Professional of the Corporate Debtor rejecting the claim submitted by the Applicant;**
- (ii) Direct the Resolution Professional to carry out a forensic audit of the books of the Corporate Debtor;**
- (iii) Direct the Resolution Professional of the Corporate Debtor to verify and admit the claim filed by the Applicant in Form B dated 20.03.2020 under the provisions of the Code (along with the CIRP Regulations) and in accordance with law.**
- (iv) Pass any other order (s) direction (s) that this Hon'ble Adjudicating Authority deems fit in the facts and circumstances of the present case and in the interest of the justice.”**





2. Heard the Ld. Counsel appearing for the Applicant and the Resolution Professional and perused the averments made in the application and reply filed by the parties respectively.

3. Ld. Counsel appearing for the RP submits that the Resolution Plan in the present matter was approved by the COC on 28<sup>th</sup> April 2020, which has also been approved by the Adjudicating Authority on 25<sup>th</sup> September 2020. He further submits that after the approval of the Resolution Plan by this Adjudicating Authority, no claim can be entertained.

4. On the other hand, Ld. Counsel appearing for the Applicant submits that she has sent the claim to the RP in the month of March, which was received by the RP on 6<sup>th</sup> June 2020, but she was unable to produce the postal receipt in support of her contention. In the course of arguments, she however, admitted that though she has drafted the claim in the month of March 2020, but the same remained inadvertently in her office and was dispatched to RP in the month of June 2020.

5. In the light of the aforesaid submissions, we consider the contention of the Applicant, and we notice that admittedly the COC had approved the Resolution Plan on 28<sup>th</sup> April 2020 much before the submission of the claim by the Applicant. We further notice that the Adjudicating Authority has also approved the Resolution Plan on 25<sup>th</sup> September 2020.

6. Therefore, before considering the submissions, we would like to refer to the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. in which the Hon'ble Supreme Court [Civil Appeal No.8766-67/2019 and other petitions] ("Essar Case") 2019 SCC Online SC 1478** in which the Hon'ble Supreme Court held that : *"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"*.



7. Further, the Hon'ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020, decided on 24.3.2021**, again considered this issue in para 135, 135.1, 135.2 and 136 of the said judgement and held that:

*“135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an application for corporate insolvency resolution process, the Adjudicating Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and call for submission of claims under Section 15. As per Section 15, the material information in the public announcement is to contain, inter alia, the last date for submission of claims, as may be specified. The IRP is enjoined with several duties under Section 18 and as per clause (b) thereof, he is to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof on or before the last date mentioned in the public announcement; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof on or before the ninetieth day of the insolvency commencement date. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.*

*135.1. Due adherence to the timelines provided in the Code and the 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 a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as*



also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In *Essar Steel (supra)*, while dealing with the topic *Extinguishment of Personal Guarantees and Undecided Claims*, this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate. This Court, inter alia, held as under: -

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, NCLAT judgment must also be set aside on this count.*

*135.2. It has not been the case of anyone that in the process in question, any of the requirements of Sections 13, 15 and 18 had not been complied with. It has also not been any body's case that any claim made by any fixed deposit holder within the stipulated time was not taken into account by IRP.*

*136. In the given fact situation and in view of the law declared by this Court, we find no justification for the directions contained in paragraph 125 of the order passed by NCLT. Those directions are required to be annulled.*

*Point F Objections of the financial creditor of subsidiary of the corporate debtor.”*

8. On the basis of the decisions referred (Supra), we find that the Hon'ble Supreme Court in Jaypee case has reiterated the decision of Essar Case and held that the claim, which is not submitted within the stipulated period, cannot be taken into consideration.

9. In the light of the aforesaid decisions, when we consider the prayer of the Applicant we notice that the applicant had filed its claim much after the approval of Resolution Plan by the Committee of Creditors. Subsequently, the Plan has also been approved by this Adjudicating Authority.

10. Under such circumstances and in view of the decisions referred (Supra), we are of the considered view that the prayers of the applicant are not liable to be accepted. Hence, we find no merit in the application filed the Applicant.

**11. The prayers made in the application are hereby Rejected and the IA is Dismissed.**



**IA/2158/2020 & IA/5559/2020:** Ld. Counsel for the Applicant submits that she has filed the Affidavit of Service on 16<sup>th</sup> March 2021 but the same is not on record. Therefore, the Ld. Counsel appearing for the Applicant is directed to get it verified from the Registry and if there is any defect, remove the same. Registry is also directed to upload the same, if it is defect free.

List the IA 5559/2020 along with IA 2158/2020 on 13<sup>th</sup> August 2021.

**IA/1294/202:-** By filing this Application, the Applicant has prayed for the following relief:

- “(i) Please allow the present application.
- (ii) Direct Respondent Bank to revive the CBC agreement and reinstate the terms of the contract;
- (iii) Pass such other order(s), direction(s) as deemed fit and proper in the facts and circumstances of the case and in the interest of justice and equity.”

2. Heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application. It is seen that the present application is filed under Section 60 (5) of IBC, 2016. Therefore, we would like to examine the said provision, to consider this fact that whether the prayer of the applicant comes within the purview of Section 60 (5) of IBC, 2016 or not?

3. The relevant provision of Section 60 (5) of IBC, 2016 is quoted below:

**IBC Section 60-Adjudicating Authority for corporate persons.**

1.....

2.....

3.....

4.....

5. Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

- (a) any application or proceeding by or against the corporate debtor or corporate person;



*(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

*(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

6.....

4. In terms of the provision of Section 60 (5) of IBC, 2016, when we consider the prayer of the applicant, we observe that the provisions of Section 60 (5) (a) & (b) of IBC, 2016 are not attracted in this matter.

5. Now, we consider, whether the prayer of the applicant comes within the purview of Section 60 (5)(c) of IBC, 2016 referred (Supra). Section 60(5)(c) of IBC, 2016 says that any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code shall be considered by the Adjudicating Authority.

6. Admittedly, the Resolution Plan in the present matter has already been approved. Therefore, at this juncture, we would like to consider the definition of 'insolvency resolution process period', which has been defined under Section 5 (14) of IBC, 2016 as below :

***5(14) "insolvency resolution process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;***

7. A bare perusal of the provision shows that the "insolvency resolution process period" means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.



8. This period of 180 days is extendable under Section 12 of IBC, 2016. In terms of the amended provision of Section 12 of IBC, 2016, the total period of insolvency resolution process can be of 330 days. Which means, the period so referred to in Section 5 (14) of IBC, 2016 is subject to the extension made under Section 12 of IBC, 2016 or till when the Resolution Plan is approved by the Adjudicating Authority.

9. Here in the case in hand, the Resolution Plan has already been approved by the Adjudicating Authority. Therefore, no insolvency proceeding is pending before this Adjudicating Authority.

10. Under such circumstances, in our considered view, Section 60 (5) of IBC, 2016 is applicable only if any insolvency resolution or liquidation proceedings of the corporate debtor or corporate person is pending before the Adjudicating Authority and in the instant case, it is seen that no such proceeding is pending before this Authority. Therefore, the present application filed by the applicant under Section 60 (5) of IBC, 2016 is not maintainable.

11. **Accordingly, the application is Dismissed.**

- Sol -

(L.N. GUPTA)  
MEMBER (T)

- Sol -

(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)