

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1591 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Loyal Scaffolding Pvt. Ltd.

...Applicant

V/s

Mr. Devarajan Raman

The Resolution Professional

...Applicant

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

Financial Creditor

Vs.

M/s Satra Properties India Limited

Corporate Debtor

Order delivered on: 05.12.2023

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Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Appearances

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

For the Applicant : Mr. Swapan Pradhan, Advocate

For the Respondent : Mr. Pulkit Sharma, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. The Interlocutory application 1591/2022 is filed by M/s Loyal Scaffolding Pvt Ltd. ("Applicant") under Section 60(5)(b) seeking directions against Sh. Devarajan Raman Resolution Professional ("Respondent") to consider and accept the claim of the Applicant; and to amend its Resolution Plan and make necessary provision(s) for the Applicant claim by the RP in terms of prayer (a) above.
2. The Company petition (IB)1632 of 2019 was filed under section 7 of the Insolvency & Bankruptcy Code 2016 ("Code"), read with Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution process ("CIRP") against M/s Satra Properties (India) Ltd. ("Corporate Debtor"), and the Corporate Debtor was admitted to CIRP vide Order dated 03-08-2020. The Respondent took the control of the Corporate Debtor and issued public announcement for inviting claims from the creditors of the Corporate Debtor, which were to be submitted by 19.8.2020. The Resolution plan in this case was approved by CoC on 21.09.2021.
3. It is the case of the applicant that, pursuant to the terms and conditions agreed upon between the parties vide Work Order dated 08.11.2016, the Applicant supplied scaffolding materials (on hire basis) to Jodhpur (Rajasthan) site of the Corporate Debtor from time to time against Challan and Road Permit, and Road Permit were provided by Corporate Debtor to Operational Creditor for transportation to such scaffolding materials from 8.11.2016 to 19.11.2016. Monthly bills were raised for hire charges of scaffolding materials, which as per agreed terms were payable before 7th of the month against respective invoices. However, Corporate Debtor failed

to adhere to the agreed payment schedule. Despite repeated requests and reminders, the Corporate Debtor failed to clear the outstanding amount. Hence, the Operational Creditor under Section 8 of the Code sent demand notice dated 19.04.2019 in Form 3 demanding payment of the outstanding/default amount. But no reply to said notice was received by the Operational Creditor.

3.1. It is stated that the Corporate Debtor neither paid the amount in default nor raised any dispute in terms of Section 8(2) of the Code. Thereafter in 2019 the applicant had filed petition before this Tribunal for initiation of Corporate Insolvency Resolution process against the Corporate Debtor with CP No.2446/2019 before Bench-1 and same was dismissed on 15-12-2021 as infructuous since the corporate debtor company had been admitted in CIRP prior to it.

3.2. On 28-12-2021 the applicant had filed form B Under Regulation 9 of the Insolvency and Bankruptcy Regulations, 2017, and on 4-01-2022 the IRP had rejected the applicant's claim stating that "*Your claim form has been submitted after the expiry of 90 days from the date of publication of notice inviting claims. The current status is that the Resolution plan approved by the Committee of Creditors has been submitted to the Hon'ble NCLT for approval. Hence, we are not in a position to file our claim at this stage.*"

4. The Resolution professional has submitted reply stating that this Tribunal appointed Ms. Vaishali Patrikar as Resolution Professional of the Corporate replacing the Respondent IRP vide order dated 22.9.2022, accordingly she is filing this reply in capacity of incumbent Resolution Professional.

4.1. It is also stated that the applicant had initially submitted the claim in Form D (Claim by Workmen or Employees) on 28.12.2021, the same was rejected on 29.12.2021 stating that the claim has been filed after approval of plan by CoC, and also beyond 90 days from

the date of publication of notice inviting claims. In the meanwhile, this Tribunal had dismissed CP (IB) 2446/MB/2019 filed by the Applicant for initiation of CIRP and allowed the liberty to the applicant vide order dated 15.12.2021 to file claim before RP/IRP. Accordingly, the Respondent replied to the Applicant on 10.3.2022 that they have filed claim in Form D, as applicable in Fast Track insolvency, and asked it to submit correct form B.

4.2. Thereafter, the applicant vide email dated 17.3.2022 filed the claim in Form B, to which RP had replied vide email dated 18.4.2022 that *“as the claim is submitted much after the 90 day period after the commencement of CIRP prescribed by the regulation, we are not in a position to admit the same. We have communicated this to you earlier vide our mail dated 29.12.2021. This is for your kind information. In case you are keen to get the claim admitted you may move an application before the Adjudicating Authority citing the reasons for the delay and in case the Adjudicating Authority (NCLT) permits then we can process your claim. However, kindly note that your claim was received much after the submission of the resolution plan to NCLT for approval”*.

5. We have heard the learned counsel and perused the material on record.
- 5.1. It is undisputed fact that this Tribunal had dismissed CP (IB) 2446/MB/2019 filed by the Applicant for initiation of CIRP and allowed the liberty to the applicant vide order dated 15.12.2021 to file claim before RP/IRP. Accordingly, the applicant had filed his claim for the first time on 28.12.2021, which was beyond 90 days of the public announcement for inviting the claim. However, we notice that the applicant was prosecuting its application u/s 9 in respect of same claim before this Bench, which came to be dismissed on 15.12.2021. Accordingly, the delay in filing the claim can not be attributed to the Applicant and the Respondent's ought not to have rejected the claim on this ground.
- 5.2. We further find that the Respondent had also communicated that the claim initially was filed much after the approval of the

Resolution Plan by CoC, the same could not be admitted on that ground also. However, we find that the Applicant's Application u/s 9 of the Code came to be dismissed on 15.12.2021 and the plan was approved on 21.09.2021. Even then, this Tribunal had granted liberty to the Applicant to file the claim, which was filed on 28.12.2021. Accordingly, after taking into consideration of peculiar facts and circumstances in the present case, we are of considered view that the applicant's claim ought to be admitted, as the same was in knowledge of the then IRP as well as Corporate Debtor at the time of commencement of CIRP itself. We are also of considered view that the filing of claim in wrong form is merely a procedural error and technicalities must not prevail over the substance.

6. In view of the foregoing, IA 1591/2022 is disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)