THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No. 98/2022, IA No. 180/2022 &
IA No. 751/2022
in
CP (IB) No.105/Chd/Hry/2019
(Admitted)

<u>In the matter of:</u>

Mrs. Kusum Chadha & Anr. ….Petitioner-Operational Creditor

Versus

C & C towers Limited …Respondent-Corporate Debtor

And in the matter of:-

<u>IA No. 98/2022</u> Under Section 60(5)(c) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

Gharinder Singh & Anr.. ….Applicant
Vs.
C & C Towers Ltd. through Monitoring Agency ….Respondent

And in the matter of:-

<u>IA No.180/2022</u> Under Section 60(5) of the IBC, 2016

Ashok Kumar Ghai ….Applicant
Vs.
Resolution Professional, C & C Towers Ltd. ….Respondent

And in the matter of:-

<u>IA No.751/2022</u> Under Section 60 (5) of the IBC, 2016 and read with Rule 11 of the NCLT Rules

Harvinder Kaur & Anr. ….Applicant
Vs.
Mr. Gaurav Khurana,
Resolution Professional,C & C Towers Ltd. ….Respondent

Order delivered on: 30.09.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Applicant
in IA No 98/2022 : Mr. R. S. Randhwa, Advocate

For the applicant
in IA No. 180/2022 : Mr. Ajay Bhagwati, Advocate

For the applicant
in IA No. 751/2022 : Mr. Vivek Sethi, Advocate

For the Respondent
in IA No. IA No 98/2022, 180/2022
& 751/2022 : Mr. Anand Chibbar, Senior Advocate
Mr. Vaibhav Sahni, Advocate
Mr. Sanjay Bhatt, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA Nos .98/2022, 180/2022 & 751/2022

IA No.98/2022, 180/2022, 751/2022 are being taken up together, being on the same issue of filing of claims beyond the date of approval of the resolution plan with COC.

2. The present applications are filed under Section 60(5)(c) of the IBC, 2016 by Gharinder Singh Kathuria (Applicant No. 1 in IA No.98/2022) and Joginder Singh Gulati, (Applicant No. 2 in IA No.98/2022); by Mr. Ashok Kumar Ghai (Applicant in IA No.180/2022) and Ms. Harvinder Kaur (Applicant No. 1 in IA No.751/2022) & Mr. Rajinderpal Singh Walia (Applicant No. 2 in IA

No.751/2022) against Gaurav Khurana, Resolution Professionals of C&C Towers Limited (herein referred as “Respondent”).

3. The applicants have prayed to direct the Resolution Professional to admit the claims of the applicants. In IA No. 98/2022 and 180/2022, It is also prayed to include the name of the applicant in Committee of Creditors and in the list of creditors. In IA No. 751/2022, it is also prayed to declare that applicant has right, title and interest over Unit Nos. 10,11 &12 at 4th Floor in the project of the corporate debtor.

4. The brief facts of the case are that

i. The CIRP of the corporate debtor was initiated by order dated 10.10.2019.

ii. The IRP made the public announcement on 12.10.2019 and the last date for the submission of the claim was fixed as 24.10.2019.

iii. The Resolution Professional received Resolution Plans from two PRAs and after deliberation and negotiations by COC, the resolution plan of Mahakram Developers Private Limited (MDPL) was put for e-voting before the CoC In 17th CoC meeting on 30.04.2021 and the voting was opened till 11.05.2021.

iv. The Resolution Plan of MDPL was approved by 68.21% votes as notified on 12.04.2021.

v. The application for the approval of the resolution plan in respect of the Corporate Debtor under Section 30(6) read with Section 31 of the Code was filed on 11.06.2021.

5. The applicant in their respective applications have briefly stated as under:

5.1 IA No. 98/2022

5.1.1 The applicants have been allotted a commercial space in the commercial complex developed by the Corporate Debtor by allotment letter dated 13.01.2011 (Annexures A1 and A2 of the application).

5.1.2 The applicants have paid a sum of Rs. 5,50,548/- (by Applicant No. 1) and Rs. 12,05,285/- (by Applicant No. 2) to the Corporate Debtor in lieu of investments made by the applicant. The Corporate Debtor has issued letters dated 14.11.2017 to Applicant No. 1 and dated 03.07.2017 to Applicant No. 2 promising an interest @ 8.8% from the date of receipt of 35% of the basic sale price to 31.08.2016.

5.1.3 The applicants have also filed claims with the Resolution Professional on 07.07.2021 in Form B for the amount of Rs. 12,86,717/- (by Applicant No. 1) and Rs. 28,25,863/- (by Applicant No. 2).

5.1.4 The Resolution Professional rejected the claims of the applicants by emails dated 19.07.2021 by stating that the same were not filed within the stipulated time of 90 days.

5.2 IA No. 180/2022

5.2.1 The applicant is the allottee of Unit No. 40 & 41 at 4th Tower of the project of the Corporate Debtor

5.2.2 The applicant has deposited the sum of Rs. 7,92,400/- and Rs. 8,34,400/- with the Corporate debtor in respective of Unit No. 40 & 41 and an Allotment Letter dated 12.09.2013 and 25.11.2013 was issued to the applicant.

5.2.3 The applicant filed an application before Permanent Lok Adalat(PUS) SAS Nagar, Mohali which was withdrawn on account of the initiation of CIRP of the Corporate Debtor.

5.2.4 The applicant has approached the Resolution Professional of the corporate Debtor by an email dated 24.11.2021 requesting to entertain the claims of the applicant.

5.2.5 The resolution Professional by an email dated 08.03.2022 stated that at this stage, No claim can be filed by applicant as the resolution plan has already been approved and No claim has been filed by the applicant in the prescribed form.

<u>5.3 IA No. 751/2022</u>

5.3.1 The applicants have purchased commercial units bearing Unit No.10, 11 & 12 on 4th floor in the project of the corporate debtor and a sale consideration of Rs.1,39,34,600/- was paid to the corporate debtor.

5.3.2 As the corporate debtor has failed to deliver the possession of the commercial unit on time. Therefore, the applicants have filed complaints before the Real Estate Regulatory Authority (RERA) and the same were allowed by order dated 06.07.2021.

5.3.3 Thereafter, the applicants filed their claim amounting to Rs. 1,40,84,600/- as per FORM-CA on 29.11.2021 and by Email on 30.11.2021 with the Resolution Professional.

5.3.4 The Resolution Professional has rejected the claims of the applicant by email dated 08.03.2022, on the ground that it is time-barred.

6. The respondent has filed its reply filed by Diary No.00072/1 dated 15.03.2022 (In IA No. 98/2022) and Diary No.01509/01 dated 01.08.2022 (In IA

No. 751/2022) and written submissions by Diary No.00422/01 dated 25.05.2022 (In IA No. 180/2022) wherein it has mentioned that Applicants are real estate allottees who filed their claims by emails dated 16.07.2021, 17.07.2021, 30.11.2021. The last date for the submission of the claim as per public announcement was fixed as 24.10.2019. The claims of the applicants were belated and cannot be considered since the resolution plan had already been passed in 17th Meeting of CoC held on 30.04.2021 by 68.21% votes before the filing of the claims by the applicants.

7. The Respondent has also referred to a judgment of the Hon'ble NCLAT in ***Mukul Kumar vs. M/s RPS Infrastructure Ltd., Company Appeal (AT) (Insolvency) No. 1050 of 2020 ("Mukul Kumar Judgment) dated 30.07.2021*** *which has held as follows**:***

> *"29. With the aforesaid it is apparent that the IRP/RP can accept the claim as per extended period as provided in Regulation 12(2). It means after extended period of 90 days of the insolvency commencement date the IRP/ RP is not obliged to accept the claim.*
> *30. It is argued on behalf of the Respondent that the Regulations are directory but not mandatory and for this purpose, placed reliance on the Judgment of Hon'ble Supreme Court in the case of Brilliant Alloys Pvt. Ltd. (Supra). In this Judgment, Hon'ble Supreme Court has dealt with the provision of Section 12(A) with Regulation 30 and held that the stimulation in the Regulations can only be construed as directory depending on the facts of each case. There is no ratio of the Judgment that the Regulations are directory and not mandatory.*
> *<u>31. With the aforesaid, we are of the view that whenever any claim is filed after extended period provided in Regulation 12 (2) of the Regulations, the RP should have rejected the claim. The Legislation has not provided any discretion to RP for admitting the claim after the extended period." [Emphasis supplied]</u>*

8. We have heard the learned counsel for the Applicants and the respondent and perused the records carefully.

9. In the present cases, the claims were filed by the applicants on 07.07.2021, 24.11.2021 (both in IA No. 98/2022) and 31.11.2021 (in IA No.

751/2022). The CIRP was initiated on 10.10.2019. Thus, the aforementioned claims were filed much later and after the approval of the resolution plan in 17th Meeting of CoC held on 30.04.2021. It is needless to mention that these claims were filed beyond 90 days as stipulated in Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016, which is extracted below:-

> **"12. Submission of proof of claims.**
> **12.**
> [(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.]
> XXXXXXX"

10. 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 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. <u>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</u>. 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".(Emphasis Supplied)*

11. We also note that in IA No. 180/2022, no claims were filed in the prescribed format and we placed reliance on the judgment passed by the Hon'ble NCLAT in *"**CoC of Associated Décor Ltd. through Union Bank of***

India Vs. State of Karnataka" in *Company Appeal (AT)(CH) (Insolvency) No. 160 of 2021 dated 19.09.2022 where it has been held that*

> "40. The code prescribes the duties to be performed by the 'Interim Resolution Professional' and the 'Resolution Professional', as per Section 18 and Section 25 of the I & B Code, 2016. The IBBI (Insolvency Resolution Process for Corporate persons) Regulations 2016, prescribes the procedure to be adopted/followed. As per Chapter IV Regulation 7 of the Regulations, the 'Claims' by the 'Operational Creditor' to be submitted with proof to the 'Interim Resolution Professional' in Form-B and as per Regulation 8 of the Regulations, the 'Financial Creditors' shall submit the 'Claims' to the 'Interim Resolution Professional' in Form-C. After receipt of the 'Claims', the 'Interim Resolution Professional', shall verify the 'Claims' in accordance with Regulation 13 and the 'Interim Resolution Professional', maintained 'List of Creditors', containing 'Names of Creditors' along with the 'Amount' claimed by them, the amount of their 'Claims' admitted and the 'Security Interest', if any, in respect of such 'Claims'. There is no such provision that the 'Interim Resolution Professional', shall admit the 'Claim' without filing a 'Claim Form' either in 'Form-B' or in 'Form-C'. Therefore, this 'Tribunal', is of the considered view, that the 'Interim Resolution Professional', 'suo-motu' cannot admit the 'Claims' without their being a 'Claim' by the 'Claimants' viz. 'Operational Creditors', 'Financial Creditors' and 'Claims' by other 'Creditors'. Every 'Claim' shall be submitted by the 'Claimant' with proof and the issue is answered accordingly." (Emphasis Supplied)

12. In view of the above, we hold that the applicants in IA No. 98/2022, 180/2022, and 751/2022 have 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 regarding statutory dues by the Resolution Professional as the same has been filed after the approval of the Resolution Plan in 17th meeting of CoC held on 30.04.2021.

13. Consequently, IA No.98/2022 IA No. 98/2022, 180/2022 and 751/2022 are dismissed and accordingly disposed of.

Sd/- 30.9.22	Sd/- 30.9.22
(Subrata Kumar Dash) Member (Technical)	(Harnam Singh Thakur) Member (Judicial)

September 30, 2022

YP/SA