

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 763 of 2020 in CP(IB) 257 of 2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2021**

Name of the Company: Harish Polymer Product Through Its Sole
Proprietor Ekta Gupta
V/s
George Samuel RP For Jason Dekor Pvt
Ltd

Section 60(5) IBC r.w reg 12(2) IBBI & Rule 11 of
NCLT rules,2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				


ORDER

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 24th day of March, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA 763 of 2020 in
CP (IB) No.257/7/NCLT/AHM/2019

In the matter of:

M/s. Harish Polymer Product
Through its Sole Proprietor
Ms. Ekta Gupta
2/13, Nandan Garden
W.K. Road
Meerut
Uttar Pradesh-250 002

.... Applicant

Versus

Mr. George Samuel
Resolution Professional of
M/s. Jason Dekor Private Limited
217, Ganesh Glory
Jagatpur Road
SG Highway
Ahmedabad-382 481

....Respondent

Order delivered on 24th March,2021.

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:

Mr. Abhishek Anand, Advocate for the applicant.
Mr. Monaal Davawala, Advocate for the respondent / RP.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by Ms. Ekta Gupta, the Sole Proprietor of M/s. Harish Polymer Product (hereinafter referred to as 'Applicant'), under Section 60(5) of the Insolvency and





Bankruptcy Code, 2016, read with Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 and Rule 11 of NCLT Rules, 2016, with following directions:-

- a) To allow the present application and condone the delay (after considering the lockdown exclusion as per Regulation 40C of the CIRP Regulations, 2016) in filing the claim by the Applicant beyond the period of 90 days as prescribed under Regulation 12(2) of the IBBI (CIRP) Regulations, 2016; and
- b) Direct the Respondent i.e. the Resolution Professional to verify the claim and admit the claim of the Applicant and include Applicant's name in the list of operational creditors.

2. The facts of the case are stated herein:

2.1 CP (IB) 257 of 2019 was admitted on 19.12.2019 by this Adjudicating Authority under Section 7 of the IB Code for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, viz., M/s. Jason Décor Private Limited and Interim Resolution Professional (hereinafter referred as "IRP") was appointed.

2.2 In pursuance of the said admission order, IRP issued a public announcement for inviting the claims from the stakeholders and the last date for submission of claims was fixed as 07.01.2020.

2.3 The Applicant submitted that the Applicant came to know about the CIRP against the Corporate Debtor in the month of September 2020 and accordingly, filed its claim before

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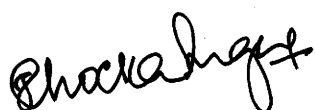
the RP on 15.09.2020 vide email along with Form B, and supporting documents. However, the claim so submitted was not within the stipulated time, which was 07.01.2020. It is further submitted that the claim so filed by the Applicant was rejected by the RP on 13.10.2020 on the ground of delay in filing her claim.

3. On receipt of notice, Mr. Monaal Davawala, Advocate appeared on behalf of the RP and advanced his arguments denying the statements and allegations made by the Applicant in the application. He filed his reply, stating that

3.1 no claim was received even on or before the ninetieth day of the insolvency commencement date viz. 17.3.2020 i.e. 90 days from 19.12.2019 as stipulated in Regulation 12(2) of the Regulations. The applicant has admittedly filed its claim for the first time only on 15.09.2020, i.e., after more than 8 months from the last date for filing claims in the CIRP.

3.2 That the applicant has not been able to explain the delay in filing of the claim anywhere in the application. Moreover, the applicant has conveniently tried to take shelter and conjure up an excuse of the lockdown period on account of COVID-19.

3.3 That the ninetieth day from the insolvency process commencement date was 17.03.2020 and there is no dispute that the lockdown was imposed only on 25.03.2020. Even after the relaxed lockdown period from 01.06.2020, the applicant has only filed its claim on 15.09.2020. Thus, the assistance of Regulation 40C of the Regulations may not be applicable in the case of the applicant as timelines of the activity of submission of the claims at least within 90 days of the





commencement of the CIRP ended on 17th March, 2020.

- 3.4 That on receipt of the claim of the applicant on 15.09.2020, he wrote to the applicant stating that the process pursuant to the EOI dated 08.06.2020 was already initiated and the prospective Resolution Applicants were provided with Information Memorandum (IM) on 4.7.2020 with the last date of receipt of Resolution Plan being 04.08.2020. RP has also informed to the applicant that two Resolution Plans from prospective Resolution Applicants based on the IM given to them which included only the claims received and admitted till 04.07.2020.
- 3.5 That the respondent has duly forwarded the claim received from the applicant to both the Resolution Applicants for which they have expressed appreciation towards the respondent for conducting a CIRP in a transparent manner. The CIRP of the Corporate Debtor is at the stage of approval of Resolution Plan submitted by the Resolution Applicants and the Respondent has no power to accept the claim at this stage.
- 3.6 That the Respondent will admit the claim of the applicant if directed to do so by this Tribunal.
4. The said rejection of the claim of the Applicant has been done taking into consideration the interest of all the creditors / stakeholders (and not only the present Applicant). In the event of acceptance of any claim at such belated stage would cause prejudice to the other claimants as that would be after consideration of the extended period of 90 days and the lockdown period, under such circumstances and also looking to the object of the IB Code





which is to be completed in time bound manner, the application so filed is not maintainable.

5. Heard learned lawyer for the Applicant as well as the RP, also seen the record. It is a matter of record that the main petition, i.e. CP (IB) 257 of 2019, was admitted on 19.12.2019 and IRP was appointed, who invited claim(s) by making public announcement in Form-A and the last date for submission of claims were mentioned as 07.01.2020. However, the Applicant has submitted its claim only on 15.09.2020, much beyond the stipulated time as well as extended period of 90 days. It is to be mentioned herein that the lockdown period is from 25th March 2020 till 31st May 2020 and applicant lodged his claim only on 15.09.2020, i.e. after eight months of the last date and have also not explained about the delay caused. It is matter of record that RP has already provided Information Memorandum (IM) to Resolution Applicant on 04.07.2020, where applicant has lodged her claim on 15.09.2020
6. The Applicant has cited various case laws of the Hon'ble Supreme Court, Hon'ble NCLAT and Hon'ble Principal Bench, there is no dispute with regard to those case laws. However, each case has its own merits, based on the facts and circumstances of the case.
7. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP

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and it is at the final stage of approval of the CoC (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Memorandum (IM). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that, if the claims of the different creditors are being accepted in a phase manner and / or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make corrections in the IM and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Moreover, CIRP cannot be allowed / extended beyond upper limit of 330 days, in that event the corporate debtor would be compelled to go for liquidation. Further, if the Resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan / infusion of money, which practically takes a longer time and

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by the time they would complete all these processes, the period of CIRP will be over, not to speak about further amendment of the Resolution Plan and re-voting thereon by the CoC with requisite percentage. That apart, the asset of the corporate debtor may get deteriorated, which will affect the maximization of the value of the asset of the corporate debtor.

8. Further, if such a practice is allowed, keeping abeyance the stipulated period, that too after extended time period of 90 days, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s). However, in the instant matter, prospective Resolution Applicant may withdraw himself.
9. It is also pertinent to mention herein that this is not an isolated claim, there is one more application pending for adjudication, who filed its claim before the RP in much belated stage and now approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. If this application is





allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plan, as it will be a burden with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IM. Thus, under such situation, the Corporate Debtor may be pushed for liquidation.

10. The Hon'ble NCLAT, in the matter of **Binani Industries Limited vs. Bank of Baroda & Anr.** held that *"the objective of the I&B Code is Resolution. The purpose of resolution is for maximization of value of the assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for 'stakeholders' or 'a set of stakeholders' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is 'resolution'. The second order objective is "maximization of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interest. This order of objective is sacrosanct".* The performance of the Code in terms of these objectives will ultimately show up in overall growth of the economy of the country. Based on the above objective, time is an important factor in the resolution process to preserve the value of the assets of the corporate debtor. The Code lays down 180 days for completion of CIRP. It permits one-time extension of up to 90 days to be granted by the Adjudicating Authority





in deserving cases only. In order to reduce the time for resolution, the Code envisages a competitive industry of IUs who would hold an array of information about all firms.

11. The Hon'ble Supreme Court in the matter of **Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors**, unequivocally held that "*the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible"*".

12. Moreover, the RP acted in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,

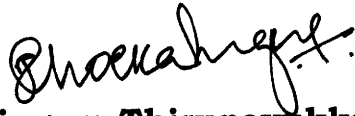
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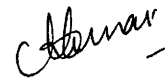
2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

13. In the above backdrop, we found that there is no merit in the instant application, hence, the same is dismissed.

14. No order as to costs.



Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)

Sudha