

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 804

**I.A. 657/ND/2023, 807/ND/2023,
1556/ND/2023, 1580/ND/2023,
2032/ND/2023 IN IB 763/(ND)/2021**

IN THE MATTER OF:

**M/s. Berger Paints India Ltd. Pvt Ltd and ors v/s Mr. Kanti Mohan
Rustagi**

**Order under Section 60(5) of Insolvency and Bankruptcy Code,
2016**

Order delivered on 14.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

I.A. 657/ND/2023, 807/ND/2023, 1556/ND/2023, 1580/ND/2023,

2032/ND/2023 IN IB 763/(ND)/2021 stands dismissed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

**I.A. 657/ND/2023, 807/ND/2023, 1556/ND/2023,
1580/ND/2023, 2032/ND/2023**

IN

Company Petition No. (IB) – 763/(ND)/2021

*Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.*

IN THE MATTER OF:

M/s. Minda Industries Ltd.

.... PETITIONER

VERSUS

M/s Unicast Autotech Pvt. Ltd.

..... RESPONDENT

AND IN THE MATTER OF -

M/S BERGER PAINTS INDIA LTD.

.... APPLICANT IN IA 657/2023

M/S AAR CEE AUTO COMPONENTS PVT. LTD..

.... APPLICANT IN IA 807/2023

S.RAMACHANDRAN.

.... APPLICANT IN IA 1556/2023

M/s SMART TOOLING.

.... APPLICANT IN IA 1580/2023

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M/S MICRO TURNER.

.... APPLICANT IN IA 2032/2023

VERSUS

KANTI MOHAN RUSTAG

RP of CD

...RESPONDENT

CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

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

For the Applicant: Mr. Anant Singh and Ms. Srishty Kaul, Advs. in IA/807/2023 Ms. Sandhya Tanwar, Adv. in IA/1556 and IA/1580, Mr. Vishal Sharma and Ms. Sunita Gupta, Advs. in IA/2032/2023., Mr. Abhishek Gaurav Verma and Ms. Siddhant Jaiswal, Advs. in IA/657/2023.

For the RP :Mr. Shubham Sachdeva and Ms Kanishka Gautam, Advs. and Mr. Kanti Mohan Rustagi, RP in person in IA,2032/2023, 1580/2023, 1556/2023, 657/2023, 807/2023

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 14.09.2023

1. These applications have been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against rejection of claims of the applicants by the Resolution Professional and for condonation of delay in filing their claims before the Resolution Professional.
2. Briefly stated the facts of the case as mentioned in the instant applications, which are necessary for adjudication, are as follows: -
 - i. That IA No 657/ND/2023 has been filed by Berger Paints India Ltd against the rejection of claim dated 12.12.2022 for Operational Debt of Rs. 18,49,510/- by the Resolution Professional. RP informed the Applicant that even though the claim was otherwise admissible, however, as the last date of submission of claims was 16.10.2022, it is beyond powers of the RP to admit the claim. Hence, the applicant has prayed for condonation of delay of 67 days in filing

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claim before the RP. The applicant relied on the judgement of Hon'ble NCLAT in the matter of Punjab National Bank v. Mr. Animesh Mukhopadhyay wherein the NCLAT vide order dated 21.04.2022 held that the "delay in submission of proof of PNB's claim should be condoned. Further, the Hon'ble NCLAT directed COC to consider the revised claim of PNB, for payment through the resolution plan by successful resolution applicant, the resolution plan would thus stand revised only in so far as the revised claim "

- ii. IA No 807/ND/2023 has been filed by M/s AAR CEE Auto Components Pvt. Ltd. on account of rejection of claim dated 16.12.2022 of Operational Debt by the Resolution Professional. RP vide email dated 22.12.2022 informed the Applicant that even though the claim was otherwise admissible however, as the last date of submission of claims was 16.10.2022, it is beyond powers of the RP to admit the claim. Hence, the applicant prayed to admit the claim of the applicant.
- iii. IA No 1556/ND/2023 has been filed by Shreeram Constructions (through its proprietor Mr. S Ramchandran)

on account of rejection of claim dated 09.02.2023 of Operational Debt of Rs. 82,49,959/- by the Resolution Professional. RP vide email dated 14.02.2023 requested the Applicant to approach NCLT since the last date of submission of claims was 16.10.2022. Hence, the applicant prayed to condone the delay and admit the claim of the applicant.

iv. IA No 1580/ND/2023 has been filed by Smart Tooling (through its proprietor Smt. Triveni M.R) on account of rejection of claim dated 13.02.2023 of Operational Debt of Rs. 13,91,575.41/- by the Resolution Professional. The RP vide email dated 14.02.2023 requested the Applicant to approach NCLT since the last date of submission of claims was 16.10.2022. Hence, the applicant prayed to condone the delay and admit the claim of the applicant.

v. IA No 2032/ND/2023 has been filed by applicant i.e., Micro Turner. on account of rejection of claim dated 19.11.2022 of Operational Debt of Rs. 13,91,575.41/- by the Resolution Professional. The RP vide email dated 23.12.2022 requested the Applicant to approach NCLT

since the last date of submission of claims was 16.10.2022.

Hence, the applicant prayed to condone the delay and admit the claim of the applicant.

3. The resolution professional of the Corporate Debtor had filed his reply to the averments of the applicants. The defence taken by the resolution professional, respondent herein, are stated in brief as below: -

- i. That, the RP made public Announcement on 12.07.2022 for inviting the claims of the Creditors of the CD, wherein the last date of submission of claim was 22.07.2022.
- ii. That as per the provision of Regulation 12 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation, 2016, all the creditors of the Corporate Debtor shall file the proof of their claim before the Resolution Professional or the Interim Resolution Professional, as the case may be, either within the time provided under the Public Announcement or prior to the completion of 90 days of the Corporate Insolvency Resolution Process.

- iii. That the applicants failed to file their claims before the expiry of 90 days (i.e., 16.10.2022) from the date of CIRP in view of Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016. Therefore, it is not within the powers and duties of the Resolution Professional as enshrined under the Code, 2016 to admit the said claims further, the Resolution Professional also requested the Applicants to approach NCLT and seek condonation of delay with respect to their claim.
- iv. The Resolution Professional relied on the judgement of Hon'ble Supreme Court in the case of *CoC of Essar Steel India Limited (through authorized signatory) V. Satish Kumar Gupta and others (2020) 8 SCC 531* wherein it was held that “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 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”.

4. We have gone through the documents on record filed by all the parties and arguments advanced by counsels of all the parties.

5. 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.

6. We find that the in 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, quite obviously to enable 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:

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“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) *Xxxxxx ”*

7. Adverting to the facts of the present case, the public announcement was made on i.e., 12.07.2022 according to which last date for submission of the claim was 22.07.2022.

8. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 16.10.2022. The application for approval of the Resolution Plan as approved by the Committee of Creditors is also reserved by this Tribunal.

9. It is pertinent to refer to the judgment of Hon’ble Supreme Court in the matter of *Essar Steel India Limited vs. Satish Kumar Gupta & Ors* (2020) 8 SCC 531 dated 15.11.2019

wherein it was 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. 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."

10. Further in the matter of Tata Capital Financial Services Limited and Ors. vs. Santanu T. Ray and Ors. (02.09.2021 - NCLT - Mumbai) : MANU/NC/3503/2021 in para 86 it was held as under : -

86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is

*required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. **The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.***

11. The applicants had sufficient opportunities to file the claim within time. Public Announcement was made on

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12.07.2022 wherein last date for submission of claim was 22.07.2022. The applicants even failed to file the claim within the extended time period as provided in Regulation 12(2) of IBBI (CIRP) Regulations, 2016. The extended period expired on 16.10.2022 and the applicants filed their claims after the expiry of the extended period. If the claims of the applicants are admitted at this stage, then the very purpose of IBC would be defeated as discussed in the abovesaid judgements. Keeping in mind the very objective of the Insolvency and Bankruptcy Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of assets. Therefore, this Adjudicating Authority dismisses the applications filed the applicants.

Let copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)