

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA No. 153/KB/2021
In
CP (IB) No. 146/KB/2019**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of

Reliance Commercial Finance Limited ... Financial Creditor

Versus

Vista Mining Private Limited ... Corporate Debtor

And

In the matter of

RD Fan Limited. ... Applicant

Versus

Soumitra Lahiri (Resolution Professional of
Vista Mining Private Limited) ... Respondents

Date of hearing: 17.05.2021

Date of pronouncement: 31.05.2021

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For the Applicant : Mr Sidhartha Sharma, Advocate
Ms. Ujjaini Chatterjee, Advocate
Mr. Arjun Asthana, Advocate

For Respondent/RP : Mr. Vikram Wadehra, Advocate
Ms. Vidushi Chokhani, Advocate

For Resolution Applicant : Mr. Arnab Dutta, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.

2. The present application has been filed by R.D. Fan Limited, one of the financial creditors of the corporate debtor against Mr. Soumitra Lahiri, Resolution Professional (RP) of Vista Mining Private Limited, the Corporate Debtor, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) praying to direct the Respondent to consider the claim filed by the Applicant on 24.12.2020.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the Applicant

3. On an application filed by Reliance Commercial Finance Limited the financial creditor, against Vista Mining Private Limited, the corporate debtor in underlying company petition bearing **CP (IB) No. 146/KB/2019** under section 7 of the Code, this Adjudicating Authority had admitted the corporate debtor into Corporate Insolvency Resolution Process (CIRP) on 25.02.2020.
4. On 29.02.2020, the Interim Resolution Professional (IRP) published the Public Announcement in Form A and invited the creditors of the corporate debtor to submit their proof of claim by 12.03.2020. However, due to the ailing health and advent of the Covid-19 pandemic and the subsequent lockdown imposed on 25.03.2020, the Applicant could not file the claim either before the IRP or the RP.
5. The Applicant reiterates that due to the lockdown and the social distancing norms imposed to prevent the spread of the virus, the entire operation of the Applicant was closed.
6. It was only on 02.11.2020 that the Applicant came to know of the publication of Form A. The Applicant on 24.12.2020 duly submitted its proof of claim in Form C disclosing all the necessary documents through an email. A copy of the said email along with Form C, are annexed to the Application and marked as Annexure D (Colly) on pages 34-178.
7. On 26.12.2020, *vide* an email, the Respondent refused to consider the claim stating that the claim should have been filed ninety days from the date of

commencement of CIRP. A copy of the said email is annexed to the Application and marked as Annexure E on page 179.

8. The Respondent has published Form G only on 16.09.2020 and the last date of submission of the Resolution Plan was 29.11.2020. No Resolution Plan has been finalised by the Committee of Creditors till the date of consideration of the claim of the Applicant.
9. On 16.12.2020, this Adjudicating Authority has excluded 153 days and extended the CIRP period by a further ninety days. On the same date, the Respondent had also received response from participants interested in submitting Expression of Interest (EoI). Therefore, consideration of the claim of the Applicant will not disturb the ongoing CIRP.
10. The delay in submitting the proof of claim is completely unintentional and without malice. The failure is not deliberate.
11. The Applicant has relied on *Suo Motu* Writ Petition (Civil) No. 3 of 2020 whereby the hon'ble Supreme Court has extended the limitation period. It has also relied on various notifications issued by the Central as well as the State Government imposing and extending the imposition of lockdown.
12. The Applicant has also relied on *Twenty First Century Wire Rods Limited*, CA-727(PB)/2019 in CP(IB)-737(PB)/2018 and *State Bank of India v. Surya Pharmaceuticals Limited*, CA-943(PB)/2019 in CP(IB)-904(PB)/PB and *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmark Pvt. Ltd.*, CA-1083(PB)/2019 and CA-184(PB)/2019 in CP(IB)- 1083(PB)/2018 for consideration of claim on merit. The Applicant further submits that in the light of the aforesaid judgements, timeline specified under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is only directory in nature.

Submissions of Mr. Vikram Wadehra, learned counsel for the Resolution Professional

13. The Interim Resolution Professional (IRP) published the Public Announcement in Form A and invited the creditors of the corporate debtor to submit their proof of claim by 12.03.2020, on 29.02.2020. The Respondent published the invitation for EoI in Form G first on 16.09.2020 and then on 05.11.2020. Subsequent to this the Respondent made a final list of Prospective Resolution Applicants and issued the same on 05.12.2020.
14. The Applicant herein filed its claim with the Respondent on 24.12.2020 which was rejected by him through an email dated 26.12.2020 on grounds that the ninetieth day from the commencement of CIRP was 25.05.2020, and the claim was filed after a delay of seven months from the expiry of ninety days.
15. Admittedly, the Applicant came to know about the initiation of CIRP on 02.11.2020, however, the claim was not filed by the Applicant until 24.12.2020. Further, the present application has been filed after one month after the rejection of the claim by the Respondent.
16. On 30.12.2020 a Resolution Plan was submitted and the CoC initiated negotiations with the Resolution Applicant (RA). Upon receipt of this application, the Respondent informed the CoC in its fourteenth meeting held on 12.02.2021. However, on 26.02.2021, in its fifteenth meeting, the CoC put the Resolution Plan for the vote. The voting was conducted between 28.02.2021 and 03.03.2021 and the Resolution Plan was approved by 82.45% of votes. Copy of Minutes of fifteenth CoC meeting is annexed with the affidavit in reply as Annexure A at pages 8 to 13.
17. The Respondent has already filed an application bearing IA No. 368 of 2021 for approval of the Resolution Plan before the Adjudicating Authority.
18. The Applicant has not been diligent in filing its claim with the Respondent. In the facts and circumstances of this case, the claim is liable to be rejected and the present application filed is liable to be dismissed.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the applicant, in reply

19. The direction to file an affidavit in reply had been issued by this Adjudicating Authority on 25.03.2021 within two weeks and the matter was made returnable on 10.05.2021, however, the same has already been filed on 08.05.2021 in contravention of the direction of this Adjudicating Authority.
20. The Applicant reiterates that the reason for the delayed submission of proof of claim was the lockdown that was imposed in the wake of Covid-19 and extended from time to time; due to the lockdown, the office of the Applicant had remained closed.
21. The Applicant further reiterates that the period of CIRP has been extended, therefore, the delayed submission of proof of claim does not cause any prejudicial effect on the CIRP.
22. Even though the final list of Prospective Resolution Applicant was issued on 05.12.2020, admittedly, no Resolution Plan was received on 24.12.2020, which is the date on which the claim had been filed. Upon rejection of the claim, the Applicant had requested the RP to reconsider the claim in the light of *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Idel Landmark Pvt. Ltd.* (Supra). However, such a request was not considered by the RP. The copies of an email dated 24.12.2020 and 27.12.2020 are annexed as Annexure X-1 to the affidavit in rejoinder on pages 11 to 14.
23. The present application was listed on 09.02.2021 and the Resolution Plan had not been put to vote until 26.02.2021. in this regard the Applicant reiterates its reliance on *Twenty-First Century Wire Rods Limited* (Supra) and *State Bank of India v. Surya Pharmaceuticals Limited* (Supra) for the proposition that till the time a Resolution Plan was being considered a creditor's claim can be considered; the RP must consider such claim without rejecting the same on grounds of delay.

24. The Applicant reiterates its reliance on decision *Suo Motu* Writ Petition (Civil) No. 3 of 2020 dated 23.03.2020 and its revival order dated 27.04.2021. Given this, the limitation in case of all the proceedings has been condoned as a result of the ongoing pandemic.

Findings

25. We have heard the learned counsel appearing on both sides and have gone through the records.
26. The CIRP against the corporate debtor in the present case had been initiated on 25.02.2020 and a public announcement concerning the same had been made by the IRP on 29.02.2020 fixing 12.03.2020 as the last date for submission of the claim.
27. The Applicant herein came to know of the CIRP on 02.11.2020 and filed a claim with the RP on 24.12.2020 which was rejected by the RP on 26.12.2020. The present application was filed on 27.01.2020 and the Resolution Plan was approved by the CoC on 26.02.2021. An application for approval of the Resolution Plan has also been filed by the RP and the same is pending consideration by this Adjudicating Authority.
28. The Applicant first submitted that due to ill health and outbreak of Covid-19 which resulted in lockdown being imposed from 25.03.2020, it failed to submit its claim with the IRP and then the RP. The Applicant later submitted that it was only on 02.11.2020 that it came to know about the CIRP of the corporate debtor. If it was only on 02.11.2020 that the Applicant came to know about the CIRP, a claim could definitely not have been filed by it before 02.11.2020, be the Applicant sick (no document supporting which has been filed) or the nation under lockdown (that had been lifted in parts since October 2020).
29. Further, the Applicant came to know about the CIRP on 02.11.2020 but it filed its claim with the RP only on 24.12.2020, which is almost two months after it came to know about the CIRP. Nothing has been said in

substantiation for this delay except the fact that the Government of West Bengal had decided to extend certain lockdown measures on 31.08.2020 and 01.11.2020. However, it was only activities related to education and training institutions, cinema halls, entertainment parks, gathering and congregation that were prohibited by the Government of West Bengal. This Adjudicating Authority was very much functional through video conference and has been taking up matters and deciding them during the said period.

30. It is also pertinent to note that the CoC has already approved a Resolution Plan in the present matter and the same is pending consideration by this Adjudicating Authority. A Resolution Plan is based on the Information Memorandum prepared by the RP after receiving and compiling the claims received from all the creditors. If at this stage, the claim of this Applicant is allowed, the information memorandum will have to be changed and, in effect, the entire CIRP period will start again at the stage where it is about to end.
31. Further, allowing the Applicant's claim at such a belated stage, on grounds that seem specious at best, will not only be unfair to the other creditors who could not file their claim with the RP because of the delay but would also dilute the purpose of publication of Form A.
32. We are all aware that the CIRP is a time-bound process and if the Adjudicating Authority sets the clock back for the reason that the Applicant was not diligent enough in pursuing its claim, it would certainly go against the main objective of the Code.
33. It is apposite to recall that the timeline for submission of claims was introduced *vide* Notification No.IBBI/2018-19/GN/REG031 dated 03.07.2018 (w.e.f. 04.07.2018). Sub regulation (2) of regulation 12 before its substitution stood as follows-

"12. A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional

or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.”

While we appreciate the submission of the Applicant that the timeline is only directory and not mandatory, it cannot mean that the directory provision of the Code can be used to contravene or defeat the very objective of the Code itself. Condonation of delay cannot be had just for the asking but is a discretion to be exercised for good and sufficient reasons. Otherwise, the whole purpose of the substitution to regulation 12(2) of the CIRP Regulations would be rendered nugatory.

34. It is also noted that the Applicant submitted that on 16.12.2020, the Adjudicating Authority had excluded 153 days and extended the CIRP period by a further ninety days and that the consideration of the Applicant's claim would not affect the CIRP. We, however, do not agree with this submission, since the extended period is also nearing the end. Moreover, the possibility of other creditors approaching this Adjudicating Authority for their claims to be allowed on the same ground cannot be denied; this would turn an otherwise time-bound process into a never-ending process.
35. Besides, while this Adjudicating Authority appreciates the submission of the Applicant that the timeline is only directory and not mandatory, it cannot mean that the directory provision of the Code be used to contravene the objective of the Code.
36. In the light of the aforementioned discussion, we are not inclined towards granting the prayer of the Applicant.
37. We, therefore, dismiss the **IA No. 153/KB/2021**.
38. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

39. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

SR (LRA)

Rajasekhar V K Digitally signed
by Rajasekhar V K
Date: 2021.05.31
13:47:04 +05'30'
Rajasekhar V.K.
Member (Judicial)
31.05.2021

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA No. 159/KB/2021
in
CP (IB) No.146/KB/2019**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of

Reliance Commercial Finance Limited ... Financial Creditor

Versus

Vista Mining Private Limited ... Corporate Debtor

And

In the matter of

Dhandhanania Electronics Ltd. ... Applicant

Versus

Soumitra Lahiri (Resolution Professional of
Vista Mining Private Limited) ... Respondents

Date of hearing: 17.05.2021

Date of pronouncement: 31.05.2021

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For the Applicant : Mr Sidhartha Sharma, Advocate
Ms. Ujjaini Chatterjee, Advocate
Mr. Arjun Asthana, Advocate

For Respondent/RP : Mr. Vikram Wadehra, Advocate
Ms. Vidushi Chokhani, Advocate

For Resolution Applicant : Mr. Arnab Dutta, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.

2. The present application has been filed by Dhandhanias Electronics Limited, one of the financial creditors of Vista Mining Private Limited, the corporate debtor against Mr. Soumitra Lahiri, Resolution Professional (RP) the Corporate Debtor, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) praying to direct the Respondent to consider the claim filed by the Applicant on 24.12.2020.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the Applicant

3. On an application filed by Reliance Commercial Finance Limited the financial creditor, against Vista Mining Private Limited, the corporate debtor in underlying company petition bearing **CP (IB) No.146/KB/2019** under section 7 of the Code, this Adjudicating Authority had admitted the corporate debtor into Corporate Insolvency Resolution Process (CIRP) on 25.02.2020.
4. On 29.02.2020, the Interim Resolution Professional (IRP) published the Public Announcement in Form A and invited the creditors of the corporate debtor to submit their proof of claim by 12.03.2020. However, due to ailing health and advent of Covid-19 pandemic and the subsequent lockdown imposed on 25.03.2020, the Applicant could not file the claim either before the IRP or the RP. The Applicant had extended an inter corporate deposit of Rs.55,00,000/- (Rupees fifty-five lakh only) to the corporate debtor. The Applicant reiterates that due to the lockdown and the social distancing norms imposed to prevent the spread of the virus, the entire operation of the Applicant was closed.
5. It was only on 02.11.2020 that the Applicant came to know of the publication of Form A. The Applicant on 24.12.2020 duly submitted its proof of claim in Form C disclosing all the necessary documents through an email. A copy of the said email along with Form C, are annexed to the Application and marked as Annexure D (Colly) at pages 33-188.
6. However, till date, the Respondent has not informed the Applicant about the acceptance or rejection of its claim.

7. The Respondent has published Form G only on 16.09.2020 and the last date of submission of Resolution Plan was 29.11.2020. No Resolution Plan has been finalised by the Committee of Creditors till date and admission of Applicant's claim shall not prejudice any stakeholder in the CIRP.
8. On 16.12.2020, this Adjudicating Authority has excluded a period of 153 days and extended the CIRP period by further ninety days. As on the same date, the Respondent had also received response from participants interested in submitting Expression of Interest (EoI). Therefore, consideration of claim of Applicant will not disturb the ongoing CIRP.
9. The delay in submitting the proof of claim is completely unintentional and without malice. The failure is not deliberate.
10. The Applicant has relied on *Suo Motu* Writ Petition (Civil) No. 3 of 2020 whereby the Hon'ble Supreme Court has extended the limitation period. It has also relied on various notifications issued by the Central as well as the State Government imposing and extending the imposition of lockdown.
11. The Applicant has also relied on *Twenty First Century Wire Roads Limited*, CA-727(PB)/2019 in CP(IB)-737(PB)/2018; *State Bank of India v. Surya Pharmaceuticals Limited*, CA-943(PB)/2019 in CP(IB)-904(PB)/PB and *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.*, CA-(IB) 1083(PB)/2019 and CA-184(PB)/2019 in CP(IB)- 1083(PB)/2018 for consideration of claim on merit. The Applicant further submits that in the light of the aforesaid judgements, timeline specified under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is only directory in nature.

Submissions of Mr. Vikram Wadehra, learned counsel for the Resolution Professional

12. The Respondent published the invitation for EoI in Form G first on 16.09.2020 and then on 05.11.2020. subsequent to this the Respondent

made a final list of Prospective Resolution Applicants and issued the same on 05.12.2020.

13. On 24.12.2020, the respondent received two emails from the advocate of the Applicant pertaining to submission of claims for the **Dhandhanian Brothers Private Limited** and RD Fan Limited. The Respondent replied to both the emails on 26.12.2020.
14. On 26.12.2020, the Respondent received another email pertaining to submission of claim for **Dhandhanian Electronics Limited**. Since the names **Dhandhanian Brothers Private Limited** and **Dhandhanian Electronics Limited** are similar, the Respondent mistook the email from Dhandhanian Electronics Limited to be a repetition of Dhandhanian Brothers Private Limited and, therefore, overlooked the same.
15. After receipt of the present application, the Respondent *vide* an email dated 03.05.2021, rejected the claim filed by the Applicant on ground that the same was submitted way beyond the period of ninety days from the initiation of CIRP. A copy of the said email of rejection is annexed to the affidavit in reply as Annexure A at pages 9 and 10.
16. Admittedly, the Applicant came to know about the initiation of CIRP on 02.11.2020, however, the claim was not filed by the Applicant until 24.12.2020. Further, the claim has been filed after the period of seven months from the expiry of ninety days as provided in the Code. Furthermore, the present application has been filed after the period of one month from the rejection of claim by the Respondent.
17. On 30.12.2020 a Resolution Plan was submitted and the CoC initiated negotiations with the Resolution Applicant (RA). Upon receipt of this application, the Respondent informed the CoC in its fourteenth meeting held on 12.02.2021. However, on 26.02.2021, in its fifteenth meeting, the CoC put the Resolution Plan for vote. The voting was conducted between 28.02.2021 and 03.03.2021 and the Resolution Plan was approved by

82.45% of votes. Copy of Minutes of fifteenth CoC meeting is annexed with the affidavit in reply as Annexure B at pages 11 to 16.

18. The Respondent has already filed an application bearing IA No.368/KB/2021 for approval of Resolution Plan before the Adjudicating Authority.
19. The Applicant has not been diligent in filing its claim with the Respondent. In the facts and circumstances of this case, the claim is liable to be rejected and the present application filed is liable to be dismissed.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the applicant, in reply

20. The direction to file affidavit in reply had been issued by this Adjudicating Authority on 25.03.2021 within two weeks and the matter was made returnable on 10.05.2021, however, the same has already been filed on 08.05.2021 in contravention of the direction of this Adjudicating Authority.
21. The Applicant reiterates that the reason for delayed submission of proof of claim was the lockdown that was imposed in the wake of Covid-19 and extended from time to time; due to the lockdown, the office of the Applicant had remained closed.
22. The Applicant further reiterates that the period of CIRP has been extended, therefore, the delayed submission of proof of claim does not cause any prejudicial effect on the CIRP.
23. Even though the final list of Prospective Resolution Applicant was issued on 05.12.2020, admittedly, no Resolution Plan was received on 24.12.2020, which is the date on which the claim had been filed by the Applicant. Upon rejection of the claim, the Applicant had requested the RP to reconsider the claim in the light of *Adel Landmark Ltd* judgment (*supra*). However, such request was not considered by the RP. The copies of email dated 24.12.2020 and 27.12.2020 are annexed as Annexure X-1 to the affidavit in rejoinder at pages 11 to 14.

24. The Applicant denies that the present application was filed after one month of rejection of claim as it has been admitted by the Respondent that such rejection was informed only on 03.05.2021.
25. The present application was listed on 09.02.2021 and the Resolution Plan had not been put to vote until 26.02.2021. In this regard the Applicant reiterates its reliance on *Twenty First Century Wire Rods Limited (supra)* and *Surya Pharmaceuticals Limited (supra)* for the proposition that till the time a Resolution Plan was being considered, a creditor's claim can be considered; the RP must consider such claim without rejecting the same on grounds of delay.
26. The has failed to consider the claim of the Applicant in a manner that is unjust, unfair and contrary to the directions passed by the Adjudicating Authority time and again. The judgment in *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmark Pvt. Ltd.* (Supra) had also been brought to the knowledge of the Respondent.
27. It is submitted that though the Resolution Plan has been approved by the CoC on 26.02.2021, the Applicant's plea to consider the claim was made long before the said approval on 24.12.2020. Even the present application was on 27.01.2021 which is a month prior to the approval of the said Resolution Plan.
28. The Applicant reiterates its reliance on decision of Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* dated 23.03.2020 and its revival order dated 27.04.2021. In view of this, the limitation in case of all the proceedings have been condoned as a result of ongoing pandemic.

Findings

29. We have heard the learned counsel appearing on both the sides and have gone through the records.
30. The CIRP against the corporate debtor in the present case had been initiated on 25.02.2020 and a public announcement concerning the same had been

made by the IRP on 29.02.2020 fixing 12.03.2020 as the last date for submission of the claim.

31. The Applicant herein came to know of the CIRP on 02.11.2020, filed a claim with the RP on 24.12.2020 (as per the Applicant, and on 26.12.2020 as per the Respondent), which was rejected by the RP only on 03.05.2021 because on 24.12.2020 he had received two emails from the advocate of the Applicant pertaining to submission of claims for the Dhandhanian Brothers Private Limited and RD Fan Limited and he replied to both the emails on 26.12.2020. On 26.12.2020, he received another email pertaining to submission of claim for **Dhandhanian Electronics Limited**, the Applicant herein. However, mistaking this email to be a repetition mail for claim from **Dhandhanian Brothers Private Limited**, because of similarity in names of both the Applicants *viz.*, **Dhandhanian Brothers Private Limited** and **Dhandhanian Electronics Limited**, the Respondent did not reply to the Applicant's email. We consider this to be a genuine mistake of fact on the part of the Resolution Professional and not an intentional one.
32. The present application was filed on 27.01.2021 and the Resolution Plan was approved by the CoC on 26.02.2021. An application for approval of the Resolution Plan has also been filed by the RP and the same is pending consideration by this Adjudicating Authority.
33. Although, the present application had been filed before the approval of Resolution Plan by the CoC and before the Respondent rejected the claim, and although, the Respondent is at fault for having not replied to the email by the Applicant herein within reasonable time, the Applicant also does not seem to have put in any reminder or follow up with the RP regarding its claim after submitting it. Further, the claim by other two Applicants named hereinbefore, *i.e.*, Dhandhanian Brothers Private Limited and RD Fan Limited filed with the RP on 24.12.2020 had also been rejected by the RP on 26.12.2020, had the RP not mistaken Applicant's email to be a repetition of claim as aforesaid, he would have, in all probability, rejected the

Applicant's claim too on the same ground that it was filed beyond the stipulated time period.

34. Moving ahead, the Applicant first submitted that due to ill health and outbreak of Covid-19 which resulted in lockdown being imposed from 25.03.2020, it failed to submit its claim with the IRP and then the RP. The Applicant later submitted that it was only on 02.11.2020 that it came to know about the CIRP of the corporate debtor. If it was only on 02.11.2020 that the Applicant came to know about the CIRP, a claim could definitely not have been filed by it before 02.11.2020, be the Applicant sick (no document supporting which has been filed) or the nation under lockdown (that had been lifted in parts since October 2020).
35. Further, the Applicant came to know about the CIRP on 02.11.2020 but it filed its claim with the RP only either on 24.12.2020 or on 26.12.2020, which is almost two months after it came to know about the CIRP. Nothing has been said in substantiation for this delay except the fact that the Government of West Bengal had decided to extend certain lockdown measures on 31.08.2020 and 01.11.2020. However, it was only activities related to education and training institutions, cinema halls, entertainment parks, gathering and congregation that were prohibited by the Government of West Bengal. This Adjudicating Authority was very much functional through video conference and has been taking up matters and deciding them during the said period.
36. It is also pertinent to note that the CoC has already approved a Resolution Plan in the present matter and the same is pending consideration by this Adjudicating Authority. A Resolution Plan is based on Information Memorandum prepared by the RP after receiving and compiling the claims received from all the creditors. If at this stage, the claim of this Applicant is allowed, the information memorandum will have to be changed and, in effect, the entire CIRP period will start again at the stage where it is about to end.

37. Further, allowing the Applicant's claim at such a belated stage, on grounds that seem specious at best, will not only be unfair to the other creditors who could not file their claim with the RP because of the delay but would also dilute the purpose of publication of Form A.
38. We are all aware that the CIRP is a time-bound process and if the Adjudicating Authority sets the clock back for the reason that the Applicant was not diligent enough in pursuing its claim, it would certainly go against the main objective of the Code.
39. It is apposite to recall that the timeline for submission of claims was introduced *vide* Notification No.IBBI/2018-19/GN/REG031 dated 03.07.2018 (w.e.f. 04.07.2018). Sub regulation (2) of regulation 12 before its substitution stood as follows-

"12. A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee."

While we appreciate the submission of the Applicant that the timeline is only directory and not mandatory, it cannot mean that the directory provision of the Code can be used to contravene or defeat the very objective of the Code itself. Condonation of delay cannot be had just for the asking but is a discretion to be exercised for good and sufficient reasons. Otherwise, the whole purpose of the substitution to regulation 12(2) of the CIRP Regulations would be rendered nugatory.

40. It is also noted that the Applicant submitted that on 16.12.2020, the Adjudicating Authority had excluded 153 days and extended the CIRP period by a further ninety days and that the consideration of the Applicant's claim would not affect the CIRP. We, however, do not agree with this submission, since the extended period is also nearing the end. Moreover, the possibility of other creditors approaching this Adjudicating Authority

for their claims to be allowed on the same ground cannot be denied; this would turn an otherwise time-bound process into a never-ending process.

41. It is wrong on the part of the Applicant to submit that the RP has himself caused unnecessary delay in consideration of the claim of the Applicant, that had been filed even before the Resolution Plan was received by the RP. The Applicant had filed the claim on 24.12.2020 and the RP had responded to it on 26.12.2020. Since it is not in the powers of the RP to condone the delay, it was Applicant's duty to approach this Adjudicating Authority within reasonable time, especially in a case where the claim with the RP had been submitted by the Applicant's Advocate.
42. Besides, while this Adjudicating Authority appreciates the submission of the Applicant that the timeline is only directory and not mandatory, it cannot mean that the directory provision of the Code can be used to contravene the objective of the Code.
43. In this view of the matter, we are not inclined towards granting the prayer of the Applicant. The result is that **IA No.159/KB/2021 shall stand dismissed as devoid of merit.**
44. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
45. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Rajasekhar V K Digitally signed
by Rajasekhar V K
Date: 2021.05.31
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Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

31.05.2021

SR (LRA)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

IA No.343/KB/2021

in

CP (IB) No.146/KB/2019

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of

Reliance Commercial Finance Limited ... Financial Creditor

Versus

Vista Mining Private Limited ... Corporate Debtor

And

In the matter of

Dhandhanian Brothers Pvt. Ltd. ... Applicant

Versus

Soumitra Lahiri (Resolution Professional of
Vista Mining Private Limited) ... Respondents

Date of hearing: 17.05.2021

Date of pronouncement: 31.05.2021

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For the Applicant : Mr. Sidhartha Sharma, Advocate
Ms. Ujjaini Chatterjee, Advocate
Mr. Arjun Asthana, Advocate

For Respondent/RP : Mr. Vikram Wadehra, Advocate
Ms. Vidushi Chokhani, Advocate

For Resolution Applicant : Mr. Arnab Dutta, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.
2. The present application has been filed by Dhandhanian Brothers Pvt. Ltd., one of the financial creditors of Vista Mining Private Limited, the corporate debtor against Mr. Soumitra Lahiri, Resolution Professional (RP) of the Corporate Debtor, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) praying to direct the Respondent to consider the claim filed by the Applicant on 24.12.2020.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the Applicant

3. On an application filed by Reliance Commercial Finance Limited the financial creditor, against Vista Mining Private Limited, the corporate debtor in underlying company petition bearing **CP (IB) No. 146/KB/2019** under section 7 of the Code, this Adjudicating Authority had admitted the corporate debtor into Corporate Insolvency Resolution Process (CIRP) on 25.02.2020.
4. On 29.02.2020, the Interim Resolution Professional (IRP) published the Public Announcement in Form A and invited the creditors of the corporate debtor to submit their proof of claim by 12.03.2020. However, due to ailing health and advent of Covid-19 pandemic and the subsequent lockdown imposed on 25.03.2020, the Applicant could not file the claim either before the IRP or the RP.
5. The Applicant reiterates that due to the lockdown and the social distancing norms imposed to prevent the spread of the virus, the entire operation of the Applicant was closed.
6. It was only on 02.11.2020 that the Applicant came to know of the publication of Form A. The Applicant on 24.12.2020 duly submitted its

proof of claim in Form C disclosing all the necessary documents through an email. A copy of the said email along with Form C, are annexed to the Application and marked as Annexure D (Colly) at pages 35 to 445.

7. On 26.12.2020, *vide* an email, the Respondent refused to consider the claim stating that the claim should have been filed ninety days from the date of commencement of CIRP. A copy of the said email is annexed to the Application and marked as Annexure E at page 446.
8. The Applicant had extended an inter corporate deposit of ₹25,00,00/- (Rupees twenty-five lakh only) to the corporate debtor in two tranches, *i.e.*, ₹12,00,000/- (Rupees twelve lakh only) on 02.04.2016 and a sum of ₹13,00,000/- (Rupees thirteen lakh only) on 04.04.2016.
9. The Respondent has published Form G only on 16.09.2020 and the last date of submission of Resolution Plan was 29.11.2020. No Resolution Plan has been finalised by the Committee of Creditors till the date of admission of claim of the Applicant.
10. On 16.12.2020, this Adjudicating Authority has excluded a period of 153 days and extended the CIRP period by further ninety days. As on the same date the Respondent had also received response from participants interested in submitting Expression of Interest (EoI). Therefore, consideration of claim of Applicant will not disturb the ongoing CIRP.
11. The delay in submitting the proof of claim is completely unintentional and without malice. The failure is not deliberate.
12. The Applicant has relied on *Suo Motu* Writ Petition (Civil) No. 3 of 2020 whereby the Hon'ble Supreme Court has extended the limitation period. It has also relied on various notifications issued by the Central as well as the State Government imposing and extending the imposition of lockdown.

13. The Applicant has also relied on *Twenty First Century Wire Roads Limited*, CA-727(PB)/2019 in CP(IB)-737(PB)/2018; *State Bank of India v. Surya Pharmaceuticals Limited*, CA-943(PB)/2019 in CP(IB)-904(PB)/PB and *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.*, CA-(IB) 1083(PB)/2019 and CA-184(PB)/2019 in CP(IB)- 1083(PB)/2018 for consideration of claim on merit. The Applicant further submits that in the light of the aforesaid judgements, timeline specified under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is only directory in nature.

Submissions of Mr. Vikram Wadehra, learned counsel for the Resolution Professional

14. The Respondent published the invitation for EoI in Form G first on 16.09.2020 and then on 05.11.2020. subsequent to this the Respondent made a final list of Prospective Resolution Applicants and issued the same on 05.12.2020.
15. The Applicant herein filed its claim with the Respondent on 24.12.2020 which was rejected by him through an email date 26.12.2020 on grounds that the ninetieth day from the commencement of CIRP was 25.05.2020, and the claim was filed after a delay of seven months from the expiry of ninety days.
16. Admittedly, the Applicant came to know about the initiation of CIRP on 02.11.2020, however, the claim was not filed by the Applicant until 24.12.2020. Further the present application has been filed after the period of one month from the rejection of claim by the Respondent.
17. On 30.12.2020 a Resolution Plan was submitted and the CoC initiated negotiations with the Resolution Applicant (RA). Upon receipt of this application, the Respondent informed the CoC in its fourteenth meeting held on 12.02.2021. However, on 26.02.2021, in its fifteenth meeting, the CoC put the Resolution Plan for vote. The voting was conducted between

28.02.2021 and 03.03.2021 and the Resolution Plan was approved by 82.45% of votes. Copy of Minutes of fifteenth CoC meeting is annexed with the affidavit in reply as Annexure A at pages 8 to 13.

18. The Respondent has already filed an application bearing IA No.368/KB/2021 for approval of Resolution Plan before the Adjudicating Authority.
19. The Applicant has not been diligent in filing its claim with the Respondent. In the facts and circumstances of this case, the claim is liable to be rejected and the present application filed is liable to be dismissed.

Submissions of Ms Ujjaini Chatterjee, learned counsel for the applicant, in reply

20. The direction to file affidavit in reply had been issued by this Adjudicating Authority on 25.03.2021 within two weeks and the matter was made returnable on 10.05.2021, however, the same has already been filed on 08.05.2021 in contravention of the direction of this Adjudicating Authority.
21. The Applicant reiterates that the reason for delayed submission of proof of claim was the lockdown that was imposed in the wake of Covid-19 and extended from time to time; due to the lockdown, the office of the Applicant had remained closed.
22. The Applicant further reiterates that the period of CIRP has been extended, therefore, the delayed submission of proof of claim does not cause any prejudicial effect on the CIRP.
23. Even though the final list of Prospective Resolution Applicant was issued on 05.12.2020, admittedly, no Resolution Plan was received on 24.12.2020, which is the date on which the claim had been filed by the Applicant. Upon rejection of the claim, the Applicant had requested the RP to reconsider the claim in the light of *Adel Landmark Ltd* judgment (*supra*). However, such request was not considered by the RP. The copies of email dated 24.12.2020 and 27.12.2020 are annexed as Annexure X-1 to the affidavit in rejoinder at pages 11 to 14.

24. The present application was listed on 09.02.2021 and the Resolution Plan had not been put to vote until 26.02.2021. In this regard the Applicant reiterates its reliance on *Twenty First Century Wire Rods Limited (supra)* and *Surya Pharmaceuticals Limited (supra)* for the proposition that till the time a Resolution Plan was being considered, a creditor's claim can be considered; the RP must consider such claim without rejecting the same on grounds of delay.
25. The Applicant reiterates its reliance on decision *Suo Motu Writ Petition (Civil) No. 3 of 2020* dated 23.03.2020 and its revival order dated 27.04.2021. in view of this the limitation in case of all the proceedings have been condoned as a result of ongoing pandemic.
26. The Applicant denies that it has not been diligent in submitting its claim with the RP. The RP has himself caused unnecessary delay in consideration of the claim of the Applicant, that had been filed even before the Resolution Plan was received by the RP.

Findings

27. We have heard the learned counsel appearing on both the sides and have gone through the records.
28. The CIRP against the corporate debtor in the present case had been initiated on 25.02.2020 and a public announcement concerning the same had been made by the IRP on 29.02.2020 fixing 12.03.2020 as the last date for submission of the claim.
29. The Applicant herein came to know of the CIRP on 02.11.2020 and filed a claim with the RP on 24.12.2020 which was rejected by the RP on 26.12.2020. The present application was filed on 27.01.2021 and the Resolution Plan was approved by the CoC on 26.02.2021. An application for approval of the Resolution Plan has also been filed by the RP and the same is pending consideration by this Adjudicating Authority.

30. The Applicant first submitted that due to ill health and outbreak of Covid-19 which resulted in lockdown being imposed from 25.03.2020, it failed to submit its claim with the IRP and then the RP. The Applicant later submitted that it was only on 02.11.2020 that it came to know about the CIRP of the corporate debtor. If it was only on 02.11.2020 that the Applicant came to know about the CIRP, a claim could definitely not have been filed by it before 02.11.2020, be the Applicant sick (*no document supporting which has been filed*) or the nation under lockdown (*that had been lifted in parts since at least 01.07.2020*).
31. Further, the Applicant came to know about the CIRP on 02.11.2020 but it filed its claim with the RP only on 24.12.2020, which is almost two months after it came to know about the CIRP. Nothing has been said in substantiation for this delay except that the Government of West Bengal had decided to extend certain lockdown measures on 31.08.2020 and 01.11.2020. However, it was only activities related to education and training institutions, cinema halls, entertainment parks, gathering and congregation that were prohibited by the Government of West Bengal.
32. This Adjudicating Authority was very much functional through video conference and has been taking up matters and deciding them during the said period; so was the RP. Nothing prevented the Applicant from filing its claim with the RP electronically along with the supporting documents. Therefore, we are not convinced about the reasons for being unable to file the claim with the RP, even after 02.11.2020 upto 24.12.2020.
33. It is also pertinent to note that the CoC has already approved a Resolution Plan in the present matter and the same is pending consideration by this Adjudicating Authority. A Resolution Plan is based on the Information Memorandum prepared by the RP after receiving and compiling the claims received from all the creditors. If at this stage, the claim of this Applicant is allowed, the information memorandum will have to be changed and, in

effect, the entire CIRP period will start again at the stage where it is about to end.

34. Further, allowing the Applicant's claim at such a belated stage, on grounds that do not sound too convincing, will not only be unfair to the other creditors who could not file their claim with the RP because of the delay but would also dilute the purpose of publication of Form A.
35. We are all aware that the CIRP is a time-bound process and if the Adjudicating Authority sets the clock back for the reason that the Applicant was not diligent enough in pursuing its claim, it will certainly go against the main objective of the Code.
36. It is apposite to recall that the timeline for submission of claims was introduced *vide* Notification No.IBBI/2018-19/GN/REG031 dated 03.07.2018 (w.e.f. 04.07.2018). Sub regulation (2) of regulation 12 before its substitution stood as follows-
- "12. A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee."*
- While we appreciate the submission of the Applicant that the timeline is only directory and not mandatory, it cannot mean that the directory provision of the Code can be used to contravene or defeat the very objective of the Code itself. Condonation of delay cannot be had just for the asking but is a discretion to be exercised for good and sufficient reasons. Otherwise, the whole purpose of the substitution to regulation 12(2) of the CIRP Regulations would be rendered nugatory.
37. It is also noted that the Applicant submitted that on 16.12.2020, the Adjudicating Authority had excluded 153 days and extended the CIRP period by a further ninety days and that the consideration of the Applicant's claim would not affect the CIRP. We, however, do not agree with this submission,

since the extended period is also nearing the end. Moreover, the possibility of other creditors approaching this Adjudicating Authority for their claims to be allowed on the same ground cannot be denied; this would turn an otherwise time-bound process into a never-ending process.

38. It is wrong on the part of the Applicant to submit that the RP has himself caused unnecessary delay in consideration of the claim of the Applicant that had been filed even before the Resolution Plan was received by the RP. The Applicant had filed the claim on 24.12.2020 and the RP had responded to it on 26.12.2020. Since it is not in the powers of the RP to condone the delay, it was the Applicant's duty to approach this Adjudicating Authority within reasonable time, especially in a case where the claim with the RP had been submitted by the Applicant's Advocate.
39. In this view of the matter, we are not inclined towards granting the prayer of the Applicant. The result is that **IA No.343/KB/2021 shall stand dismissed as devoid of merit.**
40. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
41. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

SR (LRA)

Rajasekhar V K Digitally signed
by Rajasekhar V K
Date: 2021.05.31
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Rajasekhar V.K.
Member (Judicial)

31.05.2021