



**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-III**

I.A. No. 3999 of 2023

IN

C.P. No. 4359/2019

Filed by

Kalpana Shantilal Haria

3201, RA Residences, Dr. Babasaheb Ambedkar Road,

Near Dadar Fire Station, Dadar East, Mumbai 400014

.....Applicant

Vs.

Mr. Anshul Gupta,

Resolution Professional of M/s Vijay Group Realty LLP,

410, 4th Floor, Blue Rose Industrial Estate,

Near Metro Mall, Borivali East, Mumbai,

Maharashtra- 400066

.....Respondent

In the matter of

Mrs. Bhanu Navin Nisar

Having Registered Office at:

Haveli 19, Rajvilas Haveli Kothi,

CHSL, Soham Gardens, Manpada,

Thane (West), Mumbai 400610

.....Financial Creditor

Vs.

M/s Vijay Group Realty LLP

205, Marine Chambers, 2nd floor 43,

New Marine Lines, Churchgate, Mumbai 400020

.....Corporate Debtor



Order pronounced on: 25.10.2023

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)
SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

Appearance:

For the Applicant: Adv. Aniruth Purusothaman

For the Respondent: Adv. Ajinkya Kundukar

Per coram

ORDER

1. The above application filed by the applicant seeking following reliefs:

- i. *Taking into consideration overall facts of the case, this Hon'ble Tribunal may be pleased to admit the current Interlocutory Application and condone the delay in filing the claim by the Applicant before the Respondent.*
- ii. *This Hon'ble Adjudicating Authority be pleased to direct the Resolution Professional to admit the claim dated July 04, 2023.*
- iii. *In the alternative to prayer (b), this Hon'ble Adjudicating Authority be pleased to direct the Resolution Professional to consider and verify the Applicants claim afresh.*

2. Submissions of the Applicant are briefly extracted herein under:

- 2.1. The Corporate Debtor had approached the Applicant seeking financial assistance and the Applicant had lent and advanced



a sum of Rs. 75,00,000/- on March 09, 2018 with an interest at the rate of 18% per annum on the aforesaid principal amounts, from the date of disbursement i.e., March 09, 2018. The total outstanding dues every year is shown in the table below:

Date	Amount (in rupees)
April 10, 2018	75,64,687
April 15, 2019	88,50,000
April 15, 2020	1,02,00,000
April 15, 2021	1,15,50,000

2.2. The borrower had accepted the interest owed towards the borrowed sum being Rs. 75,00,000/- (Rupees Seventy-Five Lakh Only) towards the Applicant at the rate of 18% to the Applicant.

2.3. Corporate Insolvency Resolution Process ("CIRP") was initiated on 04.08.2021 against the Corporate Debtor and the Respondent was appointed as the Resolution Professional of the Corporate Debtor. Pursuant to which the Respondent issued Form-A inviting claims from the creditors of the Corporate Debtor. The latest Form-A was issued by the Respondent on August 16, 2021.



- 2.4. The Applicant remained unaware about the initiation of CIRP against the Corporate Debtor and also about any such publication made inviting claims from any creditors of the Corporate Debtor.
- 2.5. On being informed by a third party, the Applicant had filed its claim with the Respondent on July 03, 2023, for an amount of Rs. 1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand Only) inclusive of interest towards the principal amount borrowed by the Corporate Debtor.
- 2.6. The Applicant received an email dated 20.07.2023 from the Respondent stating that the claim submitted by the Applicant cannot be accepted due to delay and being after expiry of a period of 90 days from the date of CIRP, which is in contravention of the regulation 12(2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The Respondent in the same mail also stated that resolution plans have been received in the present case and therefore, the Respondent is in no position to consider the claim of the Applicant.



- 2.7. A reply mail was sent by the Applicant to the Respondent stating that on the date of the filing of their claim with the Respondent, proposed Resolution Plans neither were received by the respondent nor were they approved by the Committee of Creditors (“CoC”) members.
- 2.8. The Respondent is not an adjudicatory authority and has no right to reject the claim filed by a creditor, as held by the Hon’ble Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.** 2019 SCC OnLine SC 73.
- 2.9. Due to the imposition of a moratorium as per the provisions of the Insolvency and bankruptcy Code, 2016, the Applicant is prohibited from seeking recourse to any alternative body concerning his claim. Hence, the Applicant has chosen to bring their matter before this tribunal.
- 2.10. The Applicant also placed reliance on the decision of Hon’ble Supreme Court in the case of **State Tax Officer (1) Vs. Rainbow Papers Ltd. in Civil Appeal No. 1661 of 2020** and on the order passed by the **NCLT, Principal Bench, New Delhi in the case Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd.**



3. The Respondent filed affidavit in reply opposing the admission of this Application. The submissions of the Respondent in brief are extracted herein under:

3.1. The Applicant submitted their claim on July 04, 2023, in Form C for purported financial debt of Rs. 1,15,50,000/- (Rupees One Crore Fifteen Lakhs Fifty Thousand Only) and the Respondent vide email dated July 20, 2023, intimated the Applicant that the claim of the Applicant cannot be verified at this belated stage due to delay and latches by the Applicant in submitting their claim.

3.2. The public announcement clearly prescribes that all the claims were to be filed on or before August 27, 2021 and the conjoined reading of the Regulation 12(1) & 12(2), CIRP Regulations, it can be ascertained that the ninetieth day of the CIRP is the cut-off date for submission of claim.

3.3. The ninetieth day from the Insolvency Commencement Date ('ICD') in CIRP of the Corporate Debtor was admittedly on **November 2, 2021 (the 'Cut-Off Date')**, and the Applicant submitted their claim on July 4, 2023, which is Six Hundred &



Ten (610) days from the cut- off date and Seven Hundred (700) days from the Insolvency Commencement Date.

- 3.4. Neither the Code nor the Regulation provides for any provisions empowering the Resolution Professional and/or the Adjudicating Authority to condone any delay in filing the claim and the co-ordinate benches of the NCLT, the Hon'ble NCLAT and the Hon'ble Supreme Court have condoned the delay in filing of Claims only on those occasions where the delay is due to sufficient cause and/or where substantial grounds are made out as the cause of delay.
- 3.5. It is a trite law that even though the timelines provided in the Code are directory and not mandatory the same are to be strictly adhered to until and unless an exceptional case is made out for deviation from the said timelines. It is stated that the Adjudicating Authority has discretionary powers to condone the delay in submission of claim only where such delay is attributable to a sufficient cause. The Resolution Professional states that a judicial discretion must be exercised in a manner known to law. No exceptional circumstances and/or sufficient cause has been shown by the Applicant for the delay in lodging claims.



- 3.6. The CIRP is a time bound process where the entire process is to be completed within three hundred and thirty (330) days. The Resolution Professional states that if the claims are filed and accepted at this belated stage then the same will adversely affect the resolution of the Corporate Debtor.
- 3.7. The CIRP of the corporate debtor is at a very advanced stage where the members of CoC are actively considering the Resolution Plans. The members of CoC are negotiating with the prospective Resolution Applicant solely for the purpose of value maximization and the prospective Resolution Applicants are in the process to submit their final Resolution Plan.
- 3.8. The Ld. Counsel for the Respondent/Resolution Professional placed reliance on the decision of Hon'ble Supreme Court in the case of **RPS Infrastructure Ltd. Vs. Mukul Kumar and Anr. In Civil Appeal No. 5590 of 2021**. Ld. Counsel also placed reliance on the order passed by the Hon'ble NCLAT Chennai Bench in the case of **Mr. Toral Reathod Vs. Mr. Gopalsamy Ganesh Babu in Comp. Appeal (At)(CH)(Ins). No. 143 of 2023**.



3.9. In view of the foregoing, the Resolution Professional humbly states that the Application be rejected.

FINDINGS AND OBSERVATIONS

4. Heard the Learned Counsel appearing on both sides and perused the material available on record.
5. It is noted that the Resolution Professional/Respondent made the public announcement inviting the claims on 16.08.2021 and the last date for submission of the claim was 27.08.2021. Further as per the Regulation 12(1) & 12(2), the 90th day from CIRP is 02.11.2021 (The cut-off date.) However, the Applicant submitted claims before the Respondent on 03.07.2023 which is after the delay of 606 days from the cut-off date. Thereafter, the Resolution Professional sent an email to the Applicant rejecting the claim of the applicant on the ground that the claims have been received beyond the period prescribed under Regulation 12(2) of the IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016. He further informed that the resolution plans had already been received on 05.07.2023.
6. After rejection of the claim of the Applicant, the Applicant sent a letter to the Respondent. The relevant para of the said email are as follows:



“...In this regard, we would like to state that the Resolution Professional cannot reject a claim on the sole ground of delay in filing of claim, when so Resolution Plan has not been approved by the Committee of Creditor. For the said purpose reliance is placed upon the decision of the Hon’ble Supreme Court in the matter of “State Tax Officer V. Rainbow Papers Limited...”

7. Before arriving at our opinion, we have examined Regulation 12(2) of IBBI, (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (hereinafter referred as **“Regulations”**) as prevailing on the date of filing of the claim which has been relied upon by the Resolution Professional and is profitably reproduced below:

“12. Submission of proof of claims

(2) A creditor who fails to 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.”

8. The above Regulation clearly stipulates that a creditor may submit his claim with proof to the Resolution Professional before 90th day of the Insolvency Commencement Date. In the present case, CIRP commenced on 04.08.2021, the last date of the submission of the claim was 27.08.2021 and the 90th day of insolvency commencement date is 02.11.2021. The Applicant has submitted the claim on 03.07.2023. There is **delay of 675 days from the last date of the**

**submission of the claim and delay of 606 days from the cut-off**

date which is 90th days from the insolvency commencement date as provided under Regulation 12(2) of the Regulations. Therefore, even under Regulation 12(2) of Regulations the claim of the Applicant cannot be entertained.

9. The cases relied upon by the Applicant do not come to the help of the Applicant. The Adjudicating Authority, the Hon'ble NCLAT and the Hon'ble Supreme Court have condoned the delay in filing of claims only on those occasions where the delay has been explained with sufficient causes and where substantial grounds are made out. In this case, reason for delay has been explained as being unaware about the initiation of CIRP against the Corporate Debtor which, in the opinion of this Bench, is not sufficient ground to condone the delay. In this regard, it is important to refer and reproduce para 20 of the judgment of Hon'ble Supreme Court in the case of ***M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. in Civil Appeal No. 5590 of 2021*** wherein it has been observed as under:

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.



10. The Hon'ble Supreme Court in the above decision have observed and held that when public announcement is made of the CIRP through newspaper, this would constitute deemed knowledge on the appellant and in any case, the plea of not being aware of newspaper pronouncement is not the one which should be available to a commercial party. In the present case, the Applicant has given a loan of Rs. 75,00,000/- at the rate of 18% per annum. This goes to show that the Applicant is a commercial party as it is not a friendly loan extended to the Corporate Debtor without interest.
11. Accordingly, the plea taken by the Applicant being also a commercial party that he was not aware about the initiation of the CIRP against the Corporate Debtor cannot be considered as reasonable or sufficient cause or substantial ground to condone substantial **delay of 675 days from the last date of the submission of the claim and delay of 606 days from the cut-off date**. The applicant has failed to make out a case of reasonable or sufficient ground for condonation of delay.
12. The Applicant has relied upon the judgment of Hon'ble Supreme Court in the case ***State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No. 1661 of 2020*** wherein the Hon'ble Supreme Court in para 58 have held as under:



58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.

The above decision of Hon'ble Supreme Court does not come to the rescue of the Applicant as the same has been given in different set of facts and related to the claims of a Statutory Authorities which have peculiar working conditions. Further in the subsequent decisions including in the decision of ***M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr (supra)***, the Hon'ble Supreme Court have held that the IBC is a time bound process and unleashing of hydra-headed monster of undecided claims on the Resolution Applicant is avoidable.

13. The Applicant also relied upon the order passed by the NCLT, Principal Bench, New Delhi in the case of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd.*** wherein the Principal Bench have held that the claims of the Applicant shall not be rejected on the ground of delay. In this regard, it is stated that the said decision of Hon'ble Principal Bench is dated 06.06.2019 and it was in the initial stage of the law under IBC being evolving. On the aspect of delay, reliance has been placed by the Resolution Professional upon the order passed by the Hon'ble NCLAT, Chennai



Bench in the case of **Mr. Toral Reathod Vs. Mr. Gopalsamy Ganesh Babu in Comp. Appeal (AT)(CH)(Ins). No. 143 of 2023**

wherein the Hon'ble NCLAT Chennai Bench have held as under:

8. The main issue which arises in this Appeal is whether the Adjudicating Authority' was justified in rejecting the Condonation of Delay of 49 days in filing the 'Claim' together with the delay in filing the Application before the Adjudicating Authority".

9. A brief perusal of the material on record shows that the CIRP commenced on 21.03.2022, a public announcement was made on 25.03.2022, the last date for filing of the 'Claims' was 04.04.2022, the expiry of 90 days is 19.06.2022, whereas the Appellant' had filed the 'Claim' before the RP on 07.08.2022, which is indeed the 139th day of the commencement of the CIRP. The ground taken by the Counsel for the "Appellant that it was initially filed under 'Form- B' as an 'Operational Creditor which was rejected vide email communication dated 03.08.2022, and thereafter the Appellant' had resubmitted her 'Claim under Form-Con 07.08 2022, does not strengthen or substantiate her case as the timelines given under IBC are to be strictly adhered to and any latches on behalf of the "Appellant in filing, the 'Claim under a wrong category cannot be a substantial ground for condoning the delay. Moreover, keeping in view the aforementioned dates, it is clear that the actual time period of delay in submitting the Claim Form is 125 days. It is also significant to mention that the Appellant approached the "Adjudicating Authority", vide I.A.1522/22 with a further delay of 100 days, and the only reason that was given is that they were seeking 'legal advise, which the Adjudicating Authority has rightly



held is only a bald explanation and does not construe a sufficient cause for the delay”.

*10. Counsel for the Appellant placed reliance on ‘Puneet Kaur (Supra), in support of his case that the NCLAT Principal Bench condoned the delay of the Homebuyers in filing their ‘Claims’. The facts in that matter are distinguishable as the case relates to Homebuyers where there were Builder Buyer Agreements (‘BBA’) and it was held that rightfully some provisions in the Plan/submission of Claims are to be made for the genuine Homebuyers. This decision is not applicable to the facts of this case. Had there been a substantial ground, the case of ‘**N. Balakrishnan Vs. M. Krishnamurthy**’, could have been applied to the matter on hand. But the fact of the matter is that the Appellant has given no substantial grounds to condone the delay. IBC is a time bound process. Which has been repeatedly held by the Hon’ble Supreme Court in a catena of Judgements and at the cost of repetition, the explanation given by the “Appellant’ herein is neither substantial nor can be construed as a ‘sufficient cause.*

14. Clearly, condonation of delay is not right of the Applicant but has to be considered in each case based on the facts and circumstances of each case and only if delay is explained by sufficient cause/ substantial ground then the delay can be condoned. In other words if sufficient cause / substantial ground to condone the delay is not made out, the same cannot be condoned as IBC is a time bound process. In the instant case, the applicant has given explanation of delay as he being not aware of the CIRP proceeding of the Corporate



Debtor which is neither substantial ground nor can constitute a sufficient cause.

15. There is another reason for rejection of the present application. In this case, the request of the Resolution Plan has already been made and as per the facts stated, Resolution Plans have been received which are under active consideration of the CoC and the CoC is in talks and negotiations with the resolution applicants for maximization of the value. At this stage, if any additional claims are allowed to be admitted that too after substantial delay beyond the period provided under Regulation 12(2) of the Regulations, then it will adversely affect the process of Resolution and it may have the effect of derailing it which goes against the objective of the Insolvency and Bankruptcy Code.

16. The claim of the Applicant also suffers from the doctrine of laches. The traditional meaning of the word laches is the negligence to follow one's legal duty. It is derived from the Latin word '**laxare**' which means to lose. In legal sense, laches means failure to assert or observe one's legal right or privilege. The doctrine is based on the Latin Maxim **Vigilantibus Non Dormientibus Aequitas Subvenit** which means that "*Equity aids the vigilant, not the ones who sleep over their rights*". Accordingly, the Courts will not help



people who sleep over their rights and help only those who are aware and vigilant about their rights.

17. In the case of **Tilokchand Motichand Vs H.B. Munshi**, judgment was delivered by Hon'ble **M. Hidayatullah**, C.J. , wherein it was held that:

“the aggrieved party should move the court at the earliest and explain satisfactorily the reason for delay and that courts need to take discretion from case to case”.

18. Also, in the case of **Gian Singh v. High Court of Punjab and Haryana**, the Court rejected their contentions stating that there were no valid reasons for justifying the delay of eleven years and therefore their petitions were dismissed.

19. In the instant case, it is noticed that the loan was given in the year 2018 @ 18% interest per annum. The Applicant neither received the interest amount after the period 2018 nor received back the principal loan amount. This bench made a pointed query to the Applicant whether any reminder/notice was sent for the payment of the due amount or any proceedings were initiated against the Corporate Debtor during the period from 2018 to 2023. No action whatsoever was taken by the Applicant to recover back its loan amount with



interest except filing of claim before the Resolution Professional on 04.07.2023. Therefore, such stale claims cannot be allowed to be entertained by this Bench on account of doctrine of laches also.

20. In view of the above facts, this bench is of the considered view that the Applicant ought to have been vigilant enough to find out that the Corporate Debtor was undergoing CIRP and should have filed his claim in due time accordingly. Therefore, the above Application filed by the Applicant is liable to be rejected.

21. Accordingly, the above Application is **rejected and **stands disposed off.****

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)

//RKS//

Sd/-

LAKSHMI GURUNG

Member (Judicial)