

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

I.A-5019/2023
In
IB-113(ND)/2021

IN THE MATTER OF IB-113(ND)/2021: -

M/s. Vistra ITCL India Limited

..... Applicant/Operational Creditor

Versus

M/s. Ansal Urban Condominiums Private Limited & Ors.

..... Respondent/Corporate Debtor

AND IN THE MATTER OF IA 5019/2023: -

M/s. Knight Watch Security Private Limited

.....Applicant

Versus

Mr. Rajesh Ramani

Resolution Professional of the Corporate Debtor

.....Respondent

Order under Section 60(5) of the IBC, 2016

Order Pronounced On: 12.04.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Ankur Aggarwal and Mr. Nitin Sharma, Advs.
For the Respondent/ RP: Mr. Prabhas Bajaj, Mr. Shivanshu Kumar, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application is being filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 by the Applicant, i.e., M/s. Knight Watch Security Private Limited through Mr. Bhupender Kumar Kharbanda, Authorized Representative of the Applicant herein seeking directions to the Respondent/ Resolution Professional for

verification and admission of claim of the Applicant, being the Operational Creditor of the Corporate Debtor in the present company petition. The prayer in the application is as under:-

“It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow the present application under section 60 (5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016; and direct the Ld. Resolution Professional to entertain/accept the claim of the applicant as if it was filed within due date.”

2. The Corporate Debtor had engaged the security services of the Applicant, i.e., M/s. Knight Watch Security vide Agreement dated 01.12.2016. However, the Respondent did not pay the alleged outstanding due amount of Rs. 3,09,571/- (Rupees Three Lakh Nine Thousand Five Hundred Seventy One Only) which is pending since 01.05.2017 against providing the services of security guards.
3. The Brief facts leading up to the filing of the present application are as under:-
 - a) The Corporate Insolvency Resolution Process ("CIRP") in relation to the affairs of the Corporate Debtor was commenced by an order of this Hon'ble Tribunal in C.P IB No.113/2021 on 10.03.2022 and the Respondent herein was appointed as the Interim Resolution Professional of the Corporate Debtor and was later confirmed as the Resolution Professional of the Corporate Debtor.
 - b) Thereafter, on 14.03.2022, the Respondent made Public Announcement in Form A for intimation of initiation of CIRP of the Corporate Debtor. The Respondent vide the said Public Announcement invited claims for submission wherein the last date for submission of claims was 24.03.2022 as per the provisions of the IB Code, 2016. The said timeline was extended from time to time as per law.
 - c) On 05.07.2023, the Applicant herein being the Operational Creditor of the Corporate Debtor, filed its claim in Form B with the Resolution Professional on its official E-mail ID to the tune of Rs.3,09,571/- (Rupees Three Lakh Nine Thousand Five Hundred Seventy One Only). The Applicant had enclosed its

statement of account for the period between 31.03.2016 to 31.03.2018 along with Interest Calculation Sheet, showing outstanding amounts due to the tune of the claim amount.

- d) The Ld. Resolution Professional vide its email dated 11.07.2023, rejected the claim of the applicant company being beyond last date of filing claim i.e., 24.03.2022 which came to the knowledge of the applicant on 09.11.2022. Hence, the present application.
4. The Ld. Counsel for the Applicant submits that due to the non-payment of the outstanding dues by the Corporate Debtor, the Applicant filed a case on 20.04.2021 before the MSME, New Delhi having Diary No. 23666 and e-filing no. DL10D0004750/M/00006. The proceedings before MSME were initiated long before the commencement of the Insolvency Proceedings. The Applicant was pursuing the case before MSME and never knew that Insolvency Proceedings were pending before the Hon'ble Tribunal. As soon as, the Applicant came to know, the claim was filed with the Resolution Professional on 05.07.2023.
5. The Ld. Counsel for the Resolution Professional submitted that the Application has been filed against non-admission of the alleged operational claims by the Respondent, which was rejected on the ground of delay of more than 450 days from the last date of submission of the Claim and more than 360 days from the expiry of extended period of 90 days for the submission of claim by the Claimants. He has placed reliance on judgment of Hon'ble NCLAT in the case of **Deputy Commissioner, UTGST, Daman v. Rajeev Dhingra, IRP for Radha Madhav Corporation Ltd.**, Company Appeal (AT) (Insolvency No. 1340 of 2022 wherein it was categorically held that after the extended period of 90 days of the Insolvency Commencement Date, the Resolution Professional is not obliged to accept/admit the claim of the Applicant herein.
6. The Ld. Counsel for the Resolution Professional submits that by the time, the Applicant had filed its alleged operational claim, infact, the plans submitted by the Prospective Resolution Applicants were already discussed in length on various occasions by the members of Committee of Creditors. Subsequently,

the Resolution Plan submitted by M/s. One City Infrastructure Private Limited was approved by the CoC on 09.08.2023 and the Respondent has already filed application being IA No. 4863 of 2023 before this Adjudicating Authority for its approval.

7. Analysis and Findings

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Resolution Professional/Respondent.
- ii.** The main issue is that whether the Applicant's Claim was rightly rejected by the Resolution Professional vide E-mail dated 11.07.2023.
- iii.** It is an admitted position that the Applicant filed the claim with the Resolution Professional vide E-mail dated 05.07.2023. The Resolution Professional rejected the claim vide E-mail dated 11.07.2023 being a belated claim filed with a delay of 450 days. It is the settled principle of Law as held by the Supreme Court of India in **Essar Steel India Limited vs. Satish Kumar Gupta and Ors**, reported in 2019 SCC Online SC 1478 that *"any person who files claim belatedly cannot be allowed to avail an entry in the CIRP"*.
- iv.** Further, the Hon'ble Supreme Court in the case of **RPS Infrastructure Ltd. v. Mukul Kumar and Anr.**, reported in 2023 IN SC 816, wherein the Court has made the following observations:

"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.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel the Court cautioned against allowing claims after the resolution plan has been accepted by the COC."

- v. The contention of the Applicant that they were not aware of the CIRP Proceedings is not tenable in law and such delay in filing claim cannot be condoned.
- vi. In case, such belated claims are allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never reach resolution and the entire CIRP process will be delayed. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan submitted by M/s. One City Infrastructure Private Limited which is pending approval before this Adjudicating Authority.
- vii. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:
- i. The Application bearing **IA-5019/2023** filed by the Applicants is **dismissed**.
 - ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- No order as to costs.

-Sd-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**