

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT – IV**

**ITEM No.104**

**IA/4503/ND/2023, IA/286/ND/2023 IN IB/901/ND/2020**

**IN THE MATTER OF:**

Suraj Kumar Kaushal & Others	...	Applicant
Versus		
Sarvottam Realcon Pvt Ltd	...	Respondent

**Order under Section 7 of (IBC) CIRP.**

**Order pronounced on 18.10.2023**

**CORAM:**

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

**IA/4503/ND/2023 in IB/901/ND/2020 stands dismissed.**

**IA/286/ND/2023 in IB/901/ND/2020 stands dismissed.**

**Sd/-**

**DR. BINOD KUMAR SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

**COURT-IV**

**I.A.(IBC)/286/2023**  
**IN**  
**C.P.(IB)No.901/ND/2020**

**IN THE MATTER OF:**

**Rohit Saini**

**... Applicant**

**Versus**

**Mr. Sandeep Goel**  
**Resolution Professional**  
**M/s. Sarvottam Realcon Private Limited**

**... Respondent**

**IN THE MATTER OF:**

**Mr. Suraj Kumar Kaushal & Ors.**

**...Financial Creditor**

**Versus**

**M/s. Sarvottam Realcon Private Limited**

**...Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:18.10.2023**

**ORDER**

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

The instant interlocutory application is filed on behalf of Mr Rohit Saini ('applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

- a) Pass a direction to condone the delay of 544 days submitting the claim FORM-CA by Applicant:
- b) Direct the Resolution Professional/Respondent to accept the claim of Applicants as Financial Creditor of a total amount of INR 42,39,781/- along with 8% interest and include the name of the Applicant in the list of Financial Creditors;
- c) Direct the RP to provide the copy of Agenda and Minutes of all CoC Meetings of the Corporate Debtor till date;
- d) Any other order or relief as this Hon'ble Bench may deem fit and proper.

2. Briefly stated the facts of the present as averred by the applicant are that Corporate Insolvency Resolution Process was initiated against M/s. Sarvottam Realcon Private Limited ('Corporate Debtor') vide the Hon'ble Adjudicating Authority order dated 09.07.2021 and Mr. Sandeep Goel was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional of the Corporate Debtor. The Public Announcement inviting claims from the stakeholders of the Corporate Debtor was made on 14.07.2021 and the last date for submission of claim was 26.07.2021. However, the Applicant had submitted the claim in Form CA for an amount of Rs.42,39,781/- along with the documents to the Respondent vide e-mail dated 19.12.2022. The Respondent had rejected the claim of the Applicant vide e-mail dated 20.12.2022 stating time limit for submission of the above said claim has expired and resolution plans are placed for voting before the CoC and the RP is not in the position to verify and admit the claim of the applicant.

3. The Applicant submitted that for purchasing the flat in the Corporate Debtor's project, the Applicant had applied for a housing loan of Rs.45,00,000 from LIC Housing Finance and currently, the Applicant is facing recovery proceedings before the Debt Recovery Tribunal, Delhi which are initiated by the LIC Housing Finance Ltd for recovery of the loan amount disbursed directly into the account of the Corporate Debtor.

4. The Applicants submitted that the reason for the delay in filing the claim by the Applicants are that the Applicant was not aware that the insolvency proceedings are initiated against the Corporate Debtor. The Applicant had submitted the claim immediately when he becomes aware of the CIRP proceedings against the Corporate Debtor, therefore, delay in filing the claim with the Respondent is unintentional.
5. The Respondent had filed its reply and submitted that Public Announcement was made in accordance the Insolvency and Bankruptcy Code, 2016 read with Regulation 6(I) & 6(2) of the CIRP Regulations,2016 in Form-A inviting the Claims dated 14.07.2021 in the Business Standard (English & Hindi Edition) as well as on the IBBI Website wherein the last date for submission of proofs of claim was 26.07.2021. Further, it was submitted that the ex-management of the Corporate Debtor is not cooperating with the Respondent and had not provided the complete records and assets of the Corporate Debtor except Tally data and partial records, like ledgers, Statement of Accounts etc. despite follow up, therefore, the RP had collated the claims relying upon the claim documents submitted by the claimants and the available records of the Corporate Debtor through two way verification in the absence of complete records of CD.
6. The Respondent further submitted that the resolution plan submitted by M/s. Anugraham Builders has been approved by the COC in its 20<sup>th</sup> COC meeting held on 24<sup>th</sup> December, 2022 with 100% approval and an application bearing IA 387/2023 for the approval of the resolution plan is pending before this Hon'ble Adjudicating Authority.
7. It is further stated by the Respondent/RP that the applicant has filed his claim in FORM CA before the respondent/RP on 24.02.2023 via email belatedly after more than 528 days along with the documents in which various discrepancies were found and the claim was rejected by the respondent /RP vide reply email dated 20.12.2022 for the reasons that the Claim are filed after a delay of 528 days and the Resolution Plan(s) are placed before the CoC for approval. Also, the Respondent had pointed out

there are various discrepancies found in the documents provided by the applicant.

8. The Respondent states that the claim filed by the applicant is beyond 90 days as stipulated in Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016. Further, the Respondent submits that it is the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same, however, the Applicant in the present case had slept over his rights. The law helps the vigilant and not those who sleep over their rights. To support the contention, Respondent placed reliance on **Mukul Kumar v. M/s. RPS Infrastructure Limited [Company Appeal (AT) (Ins) No. 1050 of 2020 decided on 30.07.2021]**.
9. The Applicant had filed rejoinder and submitted that the claim cannot be rejected on the mere ground that the resolution plans have been placed before COC for voting whereas the respondent stated that the applicant had submitted the claim with incomplete records.
10. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply filed by the parties. The relevant documents annexed with the respective submissions and the judgements relied on have been examined in detail.
11. Adverting to the facts of the present case, the public announcement was made on 14.07.2021 wherein the last date for submission of the claim was 26.07.2021. The Committee of creditors had approved the resolution plan submitted by M/s. Anugraham Builders in its 20<sup>th</sup> COC meeting held on 24.12.2022. The application bearing I.A./387/2023 seeking approval of the resolution plan is filed before this Adjudicating Authority on 11.01.2023 and is pending for this Adjudicating Authority's Approval. The applicant had submitted their respective claim on 19.12.2022 via e-mail and the said claim was rejected by the Respondent on the ground of being belatedly filed on 20.12.2022.

12. Under the Scheme of CIRP, the purpose of making public announcement under Section 15 of the Code, 2016 read with Regulation 6 of CIRP Regulations, 2016 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 Prospective Resolution Applicant all relevant information to enable them to make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the Code, 2016. Therefore, the public announcement made by the RP would constitute deemed knowledge on the applicant herein.
13. This Adjudicating Authority vide its order dated 08.06.2023, had directed the Resolution Professional to file an affidavit based on the proposed Resolution Plan which has been approved by CoC whether it takes care of the interest of the applicant or not. Further. Learned Counsel for the applicant was also directed to pay 45,000/- as costs to the Resolution Professional which amount shall be spent and accounted for in the CIR process.
14. The Respondent had filed an affidavit dated 17.07.2023, in compliance of this Adjudicating Authority's order dated 08.06.2023 wherein it was stated that para 6.3 of Clause (ii) of the Resolution Plan as approved by the CoC and pending for this Hon'ble Adjudicating Authority approval provides that, "Post the approval of Resolution Plan by Committee of Creditors on the Approval Date, no claims shall be accepted by the Resolution Professional". Further, the Respondent had acknowledged the receipt of the cost of Rs.45,000/- from the applicant.
15. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides clear timeline 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:

**“12. Submission of proof of claims. –**

(1) xxxxxxx

(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) Xxxxx ”

\*\*\*\*\*

16. It transpires from the record of present case, that the applicants had submitted their claim after 544 days from the invitation of submitting claims through public notice on 14.07.2021,. 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 07.10.2021 (i.e., 90 days from the insolvency commencement date). It is an admitted fact that the COC had approved the resolution plan and the same is pending before this Adjudicating Authority much before the said claim was preferred by the applicants before the RP.
17. We are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if resolution professional is directed to entertain new claims, after the approval of resolution plan by COC, the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such belated claims of applicant is accepted at this stage the very purpose of IBC would be defeated.

18. When we look into the prayers made in the present application, it is clear that the substantial prayer in the application is for condonation of delay in filing the claim in Form CA and admission of the claim of the Applicant.
19. This Adjudicating Authority is duty bound to balance the rights of the other stakeholders who have approached the Resolution Professional on time as well as the interest of the Successful Resolution Applicant whose plan had been approved by the Committee of Creditors. If a large number of condonation of delay applications like the present one are entertained at this stage, the object of the Code, 2016 and its timeline will be adversely affected. It is pertinent to note that reversal of stages, affects progress, therefore, timely and duly taking steps by all stakeholders is material, otherwise, the process of CIRP will become an endless process.
20. This view is also supported by Hon'ble Supreme Court of India in most recent judgement in case of **M/s. RPS Infrastructure Limited vs. Mukul Kumar in Civil Appeal No. 5590 of 2021, judgement dated 11.09.2023**, wherein it was categorically held hereunder:
- “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.”
21. Resultantly, the present Interlocutory Application i.e., **I.A.(IBC)/286/2023 in C.P.(IB)No.901/ND/2020 stands dismissed. No orders to costs.**

**Sd/-**

**(DR.BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**