BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 656 of 2020 in CP(IB) 98 of 2020

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.02.2021

Name of the Company: Capfloat Financial Servies Pvt. Ltd.
V/s
Kiran Shah RP for
Vicor Stainless Pvt. ltd.

Section 60(5) IBC,2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 19th day of February, 2021

AB

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court-2

IA 656 of 2020 in
CP (IB) No.98/9/NCLT/AHM/2020

In the matter of:

M/s. Capfloat Financial Services Pvt. Ltd.
(Zen Lefin Pvt. Ltd.
& known as Capital Float)
407, Satellite Gazebo
B Wing, Fourth Floor
Next to Solitaire Corporate Park
Chakla, Andheri East
Mumbai-400 093 .... Applicant

Versus

Mr. Kiran Shah
Resolution Professional of
M/s. Vicor Stainless Private Limited
608, Sakar-I
Near Gandhigram Railway Station
Opp.Nehru Bridge
Ashram Road, Ahmedabad
Gujarat-380 009 ....Respondent

Order delivered on 19th February, 2021.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:
Mr. Jaimin R. Dave, Advocate for the Applicant.
Mr. Kiran Shah, Resolution Professional / Respondent.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)

1. The instant application is filed by Mr. Sajiv Sankara Pillai, the authorized signatory of M/s. Capfloat Financial Services Pvt. Ltd.

(hereinafter referred to as 'Applicant'), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, with following prayers:-

a) To allow the present Interlocutory Application;

b) To direct the Respondent to admit the claim of applicants and include them in Committee of Creditors; and

c) Pending the hearing and final disposal of this application, this Tribunal may be pleased to direct the Respondent to give all the notices of meeting of Committee of Creditors to the applicant herein and permit them participation in meetings of Committee of Creditors and exercise their voting rights.

2. The applicant in his application has averred that this Tribunal passed an admission order in CP (IB) 98 of 2020 on 12.03.2020 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor Company, viz., M/s. Vicor Stainless Private Limited, and appointed Interim Resolution Professional.

3. That, after admission of the main petition, Government of India declared national lockdown, due to Covid-19 Pandemic, from 25.03.2020, the said lockdown was extended from time to time. The office of the applicant is situated at Maharashtra, Mumbai.

4. That the applicant submitted that he got the knowledge of initiation of CIRP against the corporate debtor somewhere around 20/21st August 2020, immediately upon acquiring the knowledge from the trade circles about such order, the applicant prepared Form-C (claim form for financial creditor) and submitted its claim for a sum

of Rs.66,47,271.92 as on 12.03.2020 before the respondent /RP (in Form-C) on 22.08.2020, which came to be rejected by the RP on 25.08.2020 on the ground that the last date for submission of claim was 16.08.2020. The applicant has also annexed copy of the claim, Form-C, submitted before the RP as well as email received from the RP. It is stated that the RP has no authority to reject the claim submitted by the creditor(s) and further alleged that the action of the respondent is bad, illegal and contrary to law, because there was delay of only six (6) days.

5. The applicant has reproduced Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which came to be inserted during the lockdown, which read as under:-

> "40C. Special provision relating to time-line.
>
> *Notwithstanding the time-lines contained in these regulations, but subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process".*

6. Further, the applicant relied upon judgments passed by the Hon'ble Principle Bench, Delhi, wherein the Bench has consistently directed resolution professional to consider the claim of the creditors that are filed beyond the prescribed period of ninety (90) days under Regulation 12(2) of CIRP Regulations.

7. That in case of Twenty First Century Wire Rods Ltd. (IB-737/PB/2019), vide order dated 01.05.2019 and 20.05.2019, the Hon'ble Principle Bench, Delhi directed resolution professional to consider a claim of two creditors viz., AMA Agencies Pvt. Ltd. as well as Noble Resources Ltd.

8. That in case of Edelweiss Asset Reconstruction Co. Pvt. Ltd. vs. Adel Landmarks Ltd. the Hon'ble Principle Bench, Delhi, went one step further and held as follows:

> *"The rejection of claim on the ground of delay is not sustainable because the provisions has been held to be director.... We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory".*

9. That the resolution professional does not have any adjudicatory role and it cannot reject the claim of a creditor. It is further stated that in Swiss Ribbon vs. Union of India, the Hon'ble Supreme Court has held that

> *"58.... It is clear from a reading of these Regulations that the resolution professional is given administrative as opposed to quasi-judicial powers. In fact, even when the resolution professional is to make a determination under Regulation 35A, he is only to apply to the Adjudicating Authority for appropriate relief based on the determination..."*

10. On receipt of notice, RP, Mr. Kiran Shah appeared and denied the statement and allegation made in the application so filed by the applicant. It is submitted that the applicant has misconceived the period of lockdown and on the garb of the same is seeking reliefs. It is submitted that nationwide lockdown declared by the Government of India (Central Government) was started from 25.03.2020 up to 31.05.2020. However, the applicant has mentioned the date of conclusion of lockdown as 08.06.2020 started from 22.03.2020. The RP submitted that due to Covid-19 pandemic and nationwide lockdown, the Interim Resolution Professional as per minutes of the first meeting of the CoC, considered the claims of the creditors up to 12.06.2020. Even if the extended period of 90 days as envisaged in the provisions of the Sub Regulation (2) of Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as the lockdown period of 68 days in terms of the provisions of the Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 is considered, then even, it has been extended up to 16.08.2020, and claims of the creditors of the corporate debtors up to 16.08.2020 were accepted.

11. It is a matter of record that the applicant has submitted its claim in Form-C on 22.08.2020 and the same was rejected by the RP on the ground that the claim is filed not only after the stipulated period but after the maximum period for the receipt of the claims from the creditors of the corporate debtor. The applicant has also suppressed the fact that vide mail dated 25.08.2020 RP had duly mentioned that the period of lockdown was

also considered for mentioning the last date of receipt of the claims by the opponent beyond which the applicant had submitted its claim owing to which the said claim was rejected. The such action of the RP was taken in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

12. It is further submitted that the said provisions are also applicable as on the date of the rejection of the claim and none of the said provisions are held to be unconstitutional and / or void owing to which the RP is duty bound to take into account the said provisions for the compliance and cannot neglect the same. It is submitted that the corporate debtor has never admitted the claim of the applicant nor the applicant has furnished any proof to that effect in support of the claim.

13. The said rejection of the claim of the applicant has been done taking into consideration the interest of all the creditors / stakeholders (and not only the present applicant). In the event of acceptance of any claim at such belated stage would cause prejudice to the other claimants as that would be

after consideration of the extended period of 90 days and the lockdown period. If such a practice is allowed, keeping abeyance the stipulated period that too after extended time period of 90 days and further 68 days of national lockdown period, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting Resolution Plan(s), the Resolution Applicants may avoid to file the Resolution Plan(s).

14. Heard learned lawyer for the applicant as well as the RP, also seen the record.

15. It is a matter of record that the main petition, i.e. CP (IB) 98 of 2020, was admitted on 12.03.2020 and IRP was appointed, who invited claim(s) by making public announcement in Form-A and the last date for submission of claims were mentioned as 31.03.2020. However, considering the spread of Covid-19 and situation of national lockdown, the claims of the creditors were being accepted up to 12.06.2020. Even if the lockdown period as well as 90 days is excluded, it will come to 16.08.2020. However, the applicant has submitted its claim on 22.08.2020, much beyond the stipulated time as well as extended period of 90 days and 68 days of lockdown period.

16. During the course of argument, the RP submitted that the opponent has

never admitted the applicant as financial creditor nor the applicant has furnished any proof to that effect to substantiate his claim.

17. On perusal of the record, it is found that the applicant has annexed only Form-C showing the amount of claim. However, the applicant has not annexed the copy of the relevant documents, such as loan agreement, loan sanction letter and statement of account, balance sheet / financial statement, etc., in support of its claim as financial creditor, along with the instant application.

18. The applicant has cited various case laws of the Hon'ble Principal Bench, there is no dispute with regard to those case laws. However, each case has its own merits, based on the facts and circumstances of the case.

19. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC. At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Utility (IU). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that if the claims of the different creditors are being accepted in a phase manner, that too after the stipulated time so provided for submitting claims, in that event, the Resolution Plans can never get materialized, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted that too without any supporting documents, then the Resolution Applicants have to

make corrections in their plans, that apart, RP has to make corrections in the IU and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Further, if the Resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan / infusion of money, which practically take a longer time and by the time they would complete all these processes, the period of CIRP will be over.

20. It is also pertinent to mention herein that this is not an isolated claim, there are as many as 6-7 applications pending for adjudication, who have filed their claims before the RP in much belated stage and now they have approached before this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. Those applications are IA 840 of 2020, IA 841 of 2020, IA 842 of 2020, IA 843 of 2020, IA 844 of 2020, IA 904 of 2020 and IA 905 of 2020 all these IAs are filed at belated stage in CP (IB) 98 of 2020, having same issues. If these applications are allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plans, as it will be a burden with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IU. Thus, under such situation, the corporate debtor may be pushed for liquidation.

21. The Hon'ble NCLAT, in the matter of ***Binani Industries Limited vs. Bank of Baroda & Anr.*** held that *"the objective of the I&B Code is Resolution. The purpose of resolution is for maximization of value of the assets of the*

'Corporate Debtor' and thereby for all creditors. It is not maximization of value for 'stakeholders' or 'a set of stakeholders' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is 'resolution'. The second order objective is "maximization of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interest. This order of objective is sacrosanct". The performance of the Code in terms of these objectives will ultimately show up in overall growth of the economy of the country. Based on the above objective, time is an important factor in the resolution process to preserve the value of the assets of the corporate debtor. The Code lays down 180 days for completion of CIRP. It permits one-time extension of up to 90 days to be granted by the Adjudicating Authority in deserving cases only. In order to reduce the time for resolution, the Code envisages a competitive industry of IUs who would hold an array of information about all firms.

22. The Hon'ble Supreme Court in the matter of ***ArcelorMittal India Private Limited vs. Satish Kumar Gupta & Ors***, unequivocally held that " *the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible"*.

23. However, in the instant matter, the RP allowed not only further 90 days but has also allowed another 68 days of lockdown period so as to facilitate all the creditors to file their claims.

24. In the above backdrop, we found that there is no merit in the instant application, hence, the same is dismissed.

25. No order as to costs.

Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)

Manorama Kumari
Adjudicating Authority &
Member (Judicial)

Sudha