

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II
(IB) 456(ND)/2018

IA/2377/2021

IN THE MATTER OF:

Pallavi Joshi Bakhru

Financial Creditor

Versus

Universal Buildwell Pvt. Ltd.

Corporate Debtor

AND IN THE MATTER OF:-

Sachin Solanki

S/o Mr. Azad Singh Solanki

R/o Flat No. 612, Chandan Wari

Apartments, Plot No. 8, Sector 10

Dwarka, New Delhi-110075

Applicant

Versus

Mr. Atul Kumar Kansal

Resolution Professional

Universal Buildwell Pvt. Ltd.

3rd Floor, SCO-61, Above Kotak Mahindra

Bank, Old Judicial Complex, Civil Lines

Gurgaon-122001

Respondent

IA/2029/2021

AND IN THE MATTER OF:

Sh. Karamvir

S/o Meer Singh

R/o House No. 120,

Block-C, Village Wazirabad,

Tehsil & District Gurugram

Haryana-122003

Applicant

Versus

Mr. Atul Kumar Kansal

Resolution Professional,

Universal Buildwell Pvt. Ltd.

3rd Floor, SCO-61, Above Kotak Mahindra

Bank, Old Judicial Complex, Civil Lines



Gurgaon-122001

Respondent

IA/2058/2021

AND IN THE MATTER OF:

**Sh. Prakash
S/o Shri Ram
R/o House No. 237-A,
Village Shikhopur,
Tehsil & District Gurugram
Haryana-122004**

Applicant

Versus

**Mr. Atul Kumar Kansal
Resolution Professional,
Universal Buildwell Pvt. Ltd.
3rd Floor, SCO-61, Above Kotak Mahindra
Bank, Old Judicial Complex, Civil Lines
Gurgaon-122001**

Respondent

Order delivered on: 23.07.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT: -

For the Applicant: Adv. Piyush Singh, Adv. Sinha for the Applicants in IA-2377/2021, Mr. Saurabh Gupta, Adv for Applicants in IA No. – 2029/2021 and 2058/2021 for Suspended Directors, Mr. Swapnil Gupta, Ms. Neelambika Singh, Adv. for RP, Mr. Atul Kansal in person, Adv. Ritesh Khare and Adv. Siddharth Sangal for SBI.

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. Since the facts and averments of all the 03 applications i.e. IA/2377/2021, IA/2029/2021 and IA/2058/2021, are almost common and the prayers made therein are similar, we would like to dispose off all three applications by this common order. For the sake of convenience, we shall take up the facts of IA/2377/2021 first.

IA/2377/2021:

2. This application is filed u/s 60(5) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), for seeking the following directions:

- "i. Pass appropriate directions to the Resolution Professional to accept and scrutinize the claim of the Applicant submitted in Form-CA;***
- ii. Pass a direction to condone the delay in submitting the claim form; and***
- iii. Pass any such order and further order as this Hon'ble Tribunal may deem fit in the interest of justice and in the facts and circumstances of the case."***

3. The facts mentioned in the application, in brief, are as follows:

- i. Corporate Insolvency Resolution Process (CIRP) has been initiated against the Corporate Debtor vide order



dated 03.07.2018 passed in IB 456/ND/2018 and Mr. Atul Kumar Kansal was appointed as Interim Resolution Professional of the corporate debtor, who was subsequently confirmed as Resolution Professional (RP).

- ii. The RP thereafter had issued public announcement in Form-A for submissions of claims of all creditors of Corporate Debtor. The last date of submissions of claims was 18.07.2018.
- iii. The applicant herein has purchased Unit No. 303, tower no. I, 3rd Floor from Corporate Debtor in its commercial complex namely "Universal Trade Tower". A builder buyer agreement dated 07.10.2011 was executed between the parties for the said sale of commercial unit for total sale consideration of Rs. 36,19,530/-, along with taxes. It is stated that the applicant has paid Rs. 45, 08,435/- to Corporate Debtor as sale consideration.
- iv. The applicant in 2017 sent a legal notice to corporate debtor for a refund of sale consideration money due to failure of corporate debtor in delivering possession of said Unit. Thereafter, the applicant approached the Permanent Lok Adalat (Public Utility Services), Gurgaon on 14.11.2017 and sought refund from



Corporate Debtor along with interest. In the meantime, CIRP was initiated against Corporate Debtor on 03.07.2018. The applicant withdrew his petition from Permanent Lok Adalat with a liberty to file proper application before the competent authority on 04.03.2021. Copy of the order dated 04.03.2021 has been placed on record.

- v. The applicant thereafter, filed its claim before Respondent (RP) vide e-mail dated 31.03.2021. It is submitted that the claim of applicant has not been accepted or rejected by RP till date. Copy of claim submission Form has been placed on record.

IA/2029/2021:

4. This application is filed u/s 60(5) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), for seeking following directions:

"i. To direct the Learned Resolution Professional of the Corporate Debtor - Universal Buildwell Pvt. Limited to accept the claim of Applicant herein and;

iii. Pass any other order which this Hon'ble Tribunal may deem fit in the eyes of equity, justice and good conscience."



5. The facts mentioned in the application are almost similar to the facts of IA/2377/2021 save and except as the following:

- i. It is submitted that the applicant herein has booked apartment in project “Universal Aura” in March 2011 and has paid almost 90% of the total consideration amount to the tune of Rs. 61,38,386/-.
- ii. Thereafter, the applicant filed its claim before RP in March 2021. It is submitted that the claim of applicant was rejected by RP for the reason that the claim is time barred and can only be accepted after approval of Adjudicating Authority. Form CA along with other claim related documents have been placed on record.

IA/2058/2021:

6. The facts mentioned in the application are almost similar to the facts of IA/2377/2021 save and except as the following:

7. The present application is filed u/s 60(5) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the “Code”), for seeking following directions:

“i. To direct the Learned Resolution Professional of the Corporate Debtor - Universal Buildwell Pvt. Limited to accept the claim of Applicant herein and;



ii. Pass any other order which this Hon'ble Tribunal may deem fit in the eyes of equity, justice and good conscience."

8. The facts mentioned in the application in brief are as follows:
- i. Corporate Insolvency Resolution Process (CIRP) has been initiated against the Corporate Debtor vide order dated 03.07.2018 passed in IB 456/ND/2018 and Mr. Atul Kumar Kansal was appointed as Interim Resolution Professional of the matter. Subsequently, he was confirmed as Resolution Professional (RP).
 - ii. It is submitted that the applicant herein has booked apartment in project "Universal Aura" in March 2011 and has paid almost 90% of the total consideration amount to the tune of Rs. 42,86,403/-.
 - iii. Thereafter, the applicant filed its claim before RP in March 2021, which was rejected by RP vide e-mail dated 12.03.2021 on the ground that Resolution Plan has already been filed for approval, hence claim will be accepted after approval from Adjudicating Authority. Form CA with other claim related documents has been placed on record.
9. We have heard Ld. Counsels for the Applicants of all the three applications and perused the averments made therein.
10. Ld. Counsel for the applicants referred to the averments made in their applications and submitted that their claims have been rejected



only on the ground that the Resolution Plan has already been approved by the Committee of Creditors and the applicants did not submit their claims within the time fixed for filing the claims.

11. On the other hand, Ld. Counsel for the R.P informed that the Resolution Plan was not only approved by the Committee of Creditors but also has been considered by this Adjudicating Authority and remitted back to the Committee of Creditors for consideration on certain points.

12. Before considering the submissions, at this juncture, we would like to refer to the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions] ("Essar Case") 2019 SCC Online SC 1478** in which the Hon'ble Supreme Court held that : *"a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor"* and it was further held that *"All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."*

13. The Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020, decided on 24.3.2021**, again considered this issue and in para 135, 135.1, 135.2 and 136 held that:

"135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an



application for corporate insolvency resolution process, the Adjudicating Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and call for submission of claims under Section 15. As per Section 15, the material information in the public announcement is to contain, inter alia, the last date for submission of claims, as may be specified. The IRP is enjoined with several duties under Section 18 and as per clause (b) thereof, he is to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof on or before the last date mentioned in the public announcement; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof on or before the ninetieth day of the insolvency commencement date. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency



resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In Essar Steel (supra), while dealing with the topic Extinguishment of Personal Guarantees and Undecided Claims, this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate. This Court, inter alia, held as under: -

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully



take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

135.2. It has not been the case of anyone that in the process in question, any of the requirements of Sections 13, 15 and 18 had not been complied with. It has also not been any body's case that any claim made by any fixed deposit holder within the stipulated time was not taken into account by IRP.

136. In the given fact situation and in view of the law declared by this Court, we find no justification for the directions contained in paragraph 125 of the order passed by NCLT. Those directions are required to be annulled.

Point F Objections of the financial creditor of subsidiary of the corporate debtor.”

14. On the basis of the decisions referred (Supra), we observe that Hon'ble Supreme Court in Jaypee case reiterated the decision of Essar Case and held that the claim, which was not submitted within the stipulated period cannot be taken into consideration.

15. In the light of the aforesaid decisions, when we consider the prayer of the applicants of all three applications, it is seen that all three applicants had filed their claims much after the approval of Resolution Plan by the Committee of Creditors. Now, the Plan has also been



considered by this Adjudicating Authority and remitted back to the Committee of Creditors for consideration on certain points.

16. Under such circumstances and in view of the decisions referred to Supra, we are of the considered view that the prayers of the applicants of all the three IAs are not liable to be accepted.

17. ***Hence, we find no merit in all the three applications filed by the applicants. The prayers made in all three applications are hereby rejected. Accordingly, all the three IAs IA/2377/2021, IA/2029/2021 and IA/2058/2021 stand DISMISSED. However, the applicants are at liberty to raise their claim before the Resolution Applicant as per the provision made in the Resolution Plan.***



- Sd -

(L.N. GUPTA)

Member (T)



- sd -

(ABNI RANJAN KUMAR SINHA)

Member (J)