IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

IA No. 1982 of 2021

in

CP (IB) 3562/MB/2018

Under Section 60 (5) of the I&B Code, 2016

In the matter of

Pravin Electricals Private Limited

...Operational Creditor

v/s

Ahinsa Buildtech Private Limited

....Corporate Debtor

AND

In the matter of

Dr. Amit Upadhyay

....Applicant

Vs

Vijay Pitambar Lulla,

Resolution Professional of

Ahinsa Buildtech Private Limited

...Respondent

Order reserved on: 06.01.2022.

Order Pronounced on: 24.03.2022.

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Mr. Arjun Padhiyar, Advocate.
For the Respondent: Mr. Chaitanya Nikte, Advocate i/b. Mr. Vijay Lulla, RP.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The Appellant has filed the present application under Section 60 (5) of the Insolvency and Bankruptcy Code 2016 (hereinafter Code) read with Regulation 8A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 against the Respondent Resolution Professional to admit the claim of the Appellant as Financial Creditor in a claim in the matter of Ahinsa Buildtech Private Limited.

Brief Facts:

2. The Corporate Debtor i.e. Ahinsa Buildtech Private Limited was admitted into Insolvency vide order dated 04.11.2019.

3. The Applicant, on 19.01.2012, booked a flat bearing Flat no. 205, on 2^{nd} Floor, in Building A, Orbit Residency Park, Sakinaka, Kurla-Andheri Road, Andheri (East) Mumbai-400072.

4. The Applicant was issued a letter of allotment by Orbit Corporation Limited. However, the Applicant submitted that the aforesaid project has been taken over by the Corporate Debtor from Orbit Corporation Limited. The Applicant has paid an amount of Rs. 58,95,428/- towards the purchase of the said Flat.

5. The amount paid by the Applicant was acknowledged by the Corporate Debtor in the letter dated 10.07.2015. The copies of the letter/ correspondence between the Appellant was annexed with the Application.

6. Post initiation of CIRP of Corporate Debtor, the Applicant being a Financial Creditor filed its claim in Form- CA, on 04.08.2021.

7. The Respondent-RP sought certain documents to substantiate the Applicant's claims vide Email dated 05.08.2021. The Respondent stated that vide an Email dated 06.08.2021, the RP rejected the claim of the Applicant herein.

<u>Written submissions by Resolution Professional:</u>

8. The RP pointed out that the claim was time barred as the claim was filed beyond the period of 90 days. Further, no substantial documents were attached with the claim and the claim was stated to be disputed as per records. It is pointed out that in the year 2012, the Applicant requested to transfer his allotment in favour of 3rd party viz Ritu Malik and surrender his original allotment letter. In the year 2017, the Applicant claimed that Ritu Malik was not interested and therefore, again the allotment letter should be issued in his name. He has annexed a NOC which bears the stamp of High Court of Mumbai. However, it appears that NOC is a part of the larger document which has not been produced on record. The Applicant has not produced the original allotment letter and therefore the claim filed by the Applicant cannot be accepted as Home Buyer.

9. The Corporate Debtor was admitted into CIRP on 04.11.2019. Pursuant to the public announcement on 13.11.2019, the CoC was constituted. The Resolution plan was put for voting on 29.08.2021 and two weeks prior to the Resolution plan being put for voting, the claim of Applicant was received at this stage. RP further pointed out that at this stage it was not possible to accept the claim as the Resolution Plan

was in negotiation with CoC for 6 months. The Claim of Applicant was received after 638 days of initiation of CIRP.

10. The Resolution Professional further relied on Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 "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. The extended period for submission of claims with proof was 90 days from the date of initiation of CIRP. This period expired on 02nd February, 2020. The applicant failed to submit his claim within the time stipulated by the Code and submitted form CA on 04.08.2021, which is almost 18 months after the 90 days period and that also without supporting documents to substantiate his claim such as allotment letter, payment receipts, Registered Agreement and any other document that the applicant was provided with.

11. The claim of the Applicant cannot be admitted by the Respondent in view of the order of the NCLAT dated 30th July, 2021 in the matter of Mukul Kumar Vs M/s. RPS Infrastructure Ltd, which states that "The Legislation has not provided any discretion to RP for admitting the claim after the extended period" and further states that if such a practice allows, keeping abeyance the stipulated period, that too after extended time period of 90 days, in that event it would be difficult to complete the CIRP process which has to be completed in a time bound manner.

12. The Resolution Professional as mandated by the Code had published Form G on 3rd March 2020 and the last date for submission of resolution plan was 17th March 2020, which was extended due to Covid-19 pandemic which hit the country and thereafter the Respondent received 3 Resolution Plans and of which Resolution Plans of two Resolution Applicants namely Kabra and Associates and Consortium of

Sanjay Saxena, Mazarali Thakur and M/s. Marrtcon India Pvt. Ltd. were shortlisted and they were at the final stage of approval, when the incomplete claim of the Applicant was received.

13. It is submitted that the CoC had already approved the Resolution Plan through e-voting conducted on 29th August, 2021 to 03rd September, 2021 for Financial Creditors in a class (flat buyers), flat buyers having a voting share of 93.69% voted in favour of the Resolution Plan and in the e-voting conducted on 06th September, 2021 to 13th September, 2021 for Financial Creditors the CoC members having a voting share of 81.36% voted in favour of the resolution plan.

14. Even otherwise, the claim given by the Applicant to the Resolution Professional was incomplete as it lacked documents and details which the Resolution Professional had communicated to the Applicant also and therefore the claim could not be accepted even on that count.

<u>Findings:</u>

15. The question which arises for consideration is whether the claim of the Applicant can be entertained as it was filed with delay of 638 days after initiation of CIRP and whether the claim is based on substantial proof of allotment letter issued by the Corporate Debtor?

16. Upon perusal of the application and written submissions filed by the RP and hearing both the sides, this Bench at the outset is of *the prima facie* opinion that such a claim filed after a period of 638 days of initiation of CIRP ought to be dismissed on the ground of delay. The Code mandates filing of a claim in pursuance of public announcement under Regulation 12 (2) of IBBI of the Regulations within 90 days. The last date of submission of claim was 02.02.2020. However, the Applicant filed the claim Form-CA only on 04.08.2021.

17. In the given circumstances, this Bench concludes that the RP has rightly rejected the claim on two grounds, namely lack of documents and on the ground of delay of 638 days in filing the claim. Further, this Bench is conscious of the fact that Resolution Plan has been approved by the CoC with 81.36% voting and that if the claim is allowed at this stage, it amounts to setting the clock back. It is a settled principle of law that such belated claims cannot be entertained.

18. In view of the aforesaid, the IA 1982 of 2021 is **dismissed**.

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	SUCHITRA KANUPARTHI
Member (Technical)	Member (Judicial)