



Appearances:

For the Applicant : Mr. Rashmin Khandekar, Advocate
For the Respondent : Mr. Shyam Kapadia, Adv. Mr. Nirav Shah
and Adv. Mr. Jash Shah i/b DSK Legal

ORDER

Per: H.V. Subba Rao, Member (Judicial)

1. The Application is filed by **D.S. Kulkarni and Company** through its Authorized Representative Mrs. Hemanti Kulkarni, seeking direction from this Tribunal that claim of the Applicant in terms of the particulars of claim in Form CA and Form F (“Annexure D”) be admitted and thereafter, the Applicant be classified as a Financial Creditor at par with the Homebuyers.
2. The Applicant further seeks that the rejection of claim by the Resolution Professional be declared as bad in law.

Submissions on behalf of the Applicant

3. The Corporate Debtor was admitted into CIRP *vide* order dt 26.09.2019, by this Bench and Mr. Manoj Kumar Agarwal came to be appointed as an IRP. The Applicant submits that the total amount owed by the Corporate Debtor is approx. to the tune of Rupees 500



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Crores. It is the Applicant's contention that it being the sister concern of the Corporate Debtor in the usual course of business has engaged in various transactions with the Corporate Debtor. In support of the same the Applicant has place reliance on MoU dated. 13.04.2013, executed between the Applicant and the Corporate Debtor by virtue of which it was agreed that for a consideration for Rs. 300 Crore Corporate Debtor shall allot units which were to be constructed in the township situated at Fursungi, Village, Haveli District, Pune. The Applicant has annexed Ledger Statements of the Corporate Debtor, pertaining to the period of 01.04.2017 to 31.03.2018, reflecting the name of the Applicant. Further, it is submitted that in the year 2017, various criminal cases were registered against the key personnel of DSK Group including i.e. Authorized Signatory, Mrs. Hemanti Kulkarni, the Applicant herein. Pursuant to the said cases Mrs. Hemanti, Kulkarni, was behind the bars.

4. In addition to the above, the properties of the DSK Group were attached by EOW. Accordingly, the Applicant had limited access to documents.
5. It is the Applicant's submission that the Authorized Signatory came to be released on Bail on 18.11.2022 and the CIRP proceedings against the



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Corporate Debtor commenced on 26.09.2019. Therefore, she has been behind the bars for the majority of the CIRP Period.

6. In the aforesaid circumstances the Applicant through the daughter in law of the Authorized representative i.e. Hemanti Kulkarni, filed the Claim before the IRP in FORM CA for the advances against the tenements and rent along with interest being Rs. 464, 19, 99, 032/- and in FORM F for collateral security of 3 properties provide by the Applicant to the Corporate Debtor amount to Rs. 27,78, 80,000/-
7. The Applicant submitted the above-mentioned claim *vide* email dt. 09.10.2019. The RP replied to the said email *vide* its email dt. 14.10.2019, seeking documents in support of the claim. The Applicant submits that the officers of the Applicant visited the office of the RP and personally provided all documents as requested. However, The RP rejected the said claim on the ground that no supportive documents were received. It is the Applicant's contention that, it had annexed MoU and Ledger statements supporting the claim; hence, rejection of the claim by the RP is *ex facie* erroneous.
8. The Applicant has vide Additional Affidavit dated 14.03.2023 placed on record ledger statement of the Applicant from 01.04.2013-



31.03.2015 and 01.04.2015 and 30.06.2016 and bank statements of the Applicant from 01.04.2013 to 31.03.2016.

Submissions on behalf of the Respondent:

9. The Respondent issued a Public Notice dated 30.09.2019 calling upon the Creditors of the Corporate Debtor to submit their claims on or before 09.10.2019. It is not disputed that the Applicant herein has submitted its claim on 09.10.2019.
10. The Respondent vide email dated 14.10.2019 informed the Applicant that further documents and necessary information in support of its claim will be necessary to verify the claim. The relevant extract of the email dated 14.10.2019 reproduced hereinbelow:

“The claims of the related parties are subject to verifications and needs to be substantiated further. Request you to please provide additional documents for the same like bank statements from where the amounts are transferred to the company, registered agreements stating that the purpose for which advances are given, board resolution copies and any other legal documents for the claims made.”

11. The Respondent addressed an email dated 13.11.2019 to the Applicant informing that they have not received any supporting documents.



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Thereafter the Applicant on 03.03.2021 submitted their revised claims. The Respondent once again vide email dated 28.05.2021 requested the Applicant to provide all relevant and supporting documents and also informed that he cannot admit its claim in absence of proper and complete documents to substantiate its claim.

12. In the aforesaid circumstances, the Respondent submits that due to lack of sufficient information and documents it was constrained to reject the claim.
13. The Committee of Creditors (“CoC”) approved the Resolution Plan of the Corporate Debtor on 13.08.2021. The Resolution Professional has filed IA No. 1950 of 2021 approval of the plan on 24.08.2021. The present Application is filed by the Applicant on 21.02.2023 after an enormous delay. The Respondent has placed reliance on the judgement of Hon’ble NCLAT in *Mukul Kumar vs RPS Infrastructure Limited* wherein it was held as under:

“34. With the aforesaid, 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 new claims are entertained 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 the Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated.”

14. The Ld. Counsel appearing for the Respondent has also placed reliance on CoC of Essar Steel Limited vs Satish Kumar Gupta and Ors wherein the Hon’ble Apex Court has held that a successful resolution applicant cannot be faced with ‘undecided claims’ after the Resolution Plan has been accepted, as this would result in hydra heads popping up.
15. The Respondent submits that if the Applicant has managed to file its claim in 2019 and thereafter revised claim in 2021 while being jail, it could have provided documents in support of the claim too. Therefore, the Respondent submits that there is delay of 3.5 years in submission of documents and if at this stage the claims were to be entertained, it would result in delay in completion of CIRP process.

Findings/Observations:

16. Heard Adv. Rashmin Khandekar appearing for the Petitioner and Mr. Shyam Kapadia, counsel appearing for the Respondent/Resolution Professional.



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17. As mentioned earlier the present application is filed by M/s DS Kulkarni and Co. through its authorized representative, Mr. Hemant Kulkarni. The applicant M/s D.S. Kulkarni & Co. is a group company of Corporate Debtor. Mr. Hemant Kulkarni is a related party against whom another application bearing I.A. No. 2022 of 2021 is filed by the Resolution Professional for cancellation of certain transactions undertaken by Mr. Hemant Kulkarni with the Corporate Debtor.
18. The main grievance of the petitioner is that the Resolution Professional has rejected their claim on the ground that the applicants have not submitted the relevant documents in support of their claim even though they have filed their claim before the Resolution Professional well within time.
19. The reasons assigned by the Petitioner in not submitting the alleged documents to the Resolution Professional is that the authorized representative Mrs. Hemanti Kulkarni along with other directors of DSK group and key personnel of DSK group are in jail till they get bail on 18.11.2022. Therefore, the petitioner filed the above I.A. seeking directions to the Resolution Professional to consider their claim and to classify them as financial creditor at par with the homebuyers.



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20. Mr. Kapadia, counsel appearing for the Resolution Professional vehemently opposed the above submissions of the applicant and invited the attention of this tribunal to trail of emails exchanged between the Resolution Professional and the concerned officials of the applicant company down from 09.10.2019 to 28.05.2021 which were filed by Resolution Professional along with affidavit in reply. Thus, the Resolution Professional submits that the concerned officials of the company are in continuous contact with him in relation to furnishing the required documents for processing their claim. He seriously disputed the contention of the applicant that they could not submit the required documents to the Resolution Professional due to languishing in jail.
21. Be that as it may, the CIRP order was passed by this Tribunal against the Corporate Debtor on 26.09.20219 and the Resolution Plan has been duly approved by the COC on 13.08.2021 and was submitted before the Adjudicating Authority for its approval which is also reserved for order.
22. In this regard, it is appropriate to mention here that the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1050 of 2020 in the matter of Mukul Kumar Vs. M/s RPS Infrastructure Ltd. set aside



the order passed by the Adjudicating Authority in similar circumstances with the following observations at para 34 of the order:

34. With the aforesaid, 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 new claims are entertained 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 request of claimant is accepted the purpose of IBC would be defeated. Hon'ble Supreme Court in the case of CoC of Essar Steel India Ltd. (Supra) held as under:-

88. 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



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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. 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, the NCLAT judgment must also be set aside on this count.

23. After hearing the RP and upon perusing the above emails, this tribunal is of the considered opinion that above plea of the applicant is not able to submit the documents to the Resolution Professional in time due to their languishing in jail is purposefully invented to explain the delay. As rightly contended by the RP, nothing prevented the officials of applicant company from submitting the documents even though the petitioner is in jail. It is also appropriate to observe here that the petitioner company is asking for admission of their claim relates out of a transaction which has taken place in the year 2013-14 with the Corporate Debtor and whereas the CIRP order was passed against the Corporate Debtor in 2019. Therefore, this tribunal did not find any illegality or irregularity



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committed by the RP in rejecting the claim of the applicant and the actions of the RP is in consonance with the above law laid down by the Hon'ble NCLAT. It is also not desirable and advisable to entertain claims of this nature specially when the resolution plan is pending for approval before this Tribunal.

24. For the aforesaid reasons, this tribunal is of the view that there is no merit in the above application and the same is liable to be rejected. Accordingly, the above application is rejected.
25. In above terms Application bearing **IA No. 722/MB/C-I/2023** is thus **disposed of as dismissed**.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

31.03.2023

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)