

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-2905/2021 IN

CP/IB/4469/(MB)/2019

Under Section 7 of the IBC, 2016

In the matter of

Aarif Ahsan Khan

...Applicant

V/s.

Jayesh Sangharjka

Resolution Professional/
...Respondent

In the matter of

Idbi Trusteeship Services Limited

...Financial Creditor

Versus

Ornate Spaces Private Limited

...Corporate Debtor

Order delivered on: **02.05.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Mr. Amit Singh a/w Ms. Shivani
Deshmukh i/b Abhay Nevagi and
Associates, Adv.

For the Respondent(s)/RP:

Mr. Nausher Kohli a/w Mr. Devesh Juvekar, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Chintan Gandhi and Ms. Anjali Dhoot i.b Rajani Associates for the RP.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application filed by Mr. Aarif Ahsan khan u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 11 of the National Company Law Tribunal Rules 2016, praying condonation of the delay of 413 days in filing claims before Respondent and direction to the Respondent to accept the claim of the applicant, a financial Creditor, in Corporate Insolvency Resolution process of the Corporate Debtor.
2. The applicant states that he was allotted Flat No. 2907 and Flat No.3007 vide a Memorandum of Understanding executed with the Applicant by the Corporate Debtor on 9 December 2018 and 04.01.2020. A letter of provisional allotment was also issued on 18, August 2018 to the Applicant for flat No.2907 and another of provisional allotment was issued on 27 March 2018 to the Applicant for Flat No.3007. On 4 January 2020, the Acknowledgment receipt given by the Corporate Debtor along with email and bank statements of Applicant. The total amount paid i.e. Rs.4,38,00,000/- towards both the allotments were duly acknowledged in the said MOUs.

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3. The Applicant submits that 90 days period for submission of claim expired on 29.06.2020 and he submitted his claim on 18.11.2021, thus there is a delay of 413 days. The Applicant relies on Regulation C of the Insolvency and Bankruptcy (Insolvency Resolution process for Corporate Persons) Regulations, 2016 and Hon'ble Supreme Court decision in the case of *GPR Power Solutions private Limited Vs. Mr. Supriyo Chaudhuri & Ors.* It is further stated that *the hon'ble Supreme Court held that the limitation period shall stand extended considering the orders passed by the Hon'ble Supreme Court in Suo Motu Writ petition (Civil) No.3 of 2020. In the matter of GPR Power (Supra), the CIRP was advertised on February 11, 2020 and claims were invited by IRP. Resolution Plan was approved by CoC on June 21, 2020. GPR power filed its claim but RP refused to accept the claim on January 14, 2021. On March 11, 2021, GPR Power filed application before NCLT Kolkata seeking condonation of delay in filing claim. By an order dated July 9, 2021, the said application was rejected by NCLT, Kolkata and even NCLAT rejected the appeal filed by the GPR Power by its order dated September 15, 2021. The Hon'ble supreme Court sets aside the order passed by NCLT, Kolkata Bench and NCLAT on the ground that the NCLT ought not to have rejected the claims as the orders passed by Hon'ble Supreme Court in wake of COVID 19 pandemic were still in force. This judgment is squarely applicable in the present case.*
4. The Applicant has also filed written submission dated 24.02.2022 and a revised written submission dated 24.03.2023 and has distinguished *Supreme Court in the matter of Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta* and the decision of Hon'ble NCLAT in the case of *Harish Polymer Product Versus George Samuel and another* as relied by RP contending that the facts in its cases are not identical. It is further submitted that the Corporate Debtor has received the money and even the Resolution Plan has taken into account the claim of the applicant under the head 'claims not received'.

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5. Per contra the RP vide its reply dated 04.01.2022 has stated that if such practice is allowed it would be difficult to complete the CIRP process, which has to be completed in time bound manner. He further states that the Hon'ble *Supreme Court in the matter of Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta*, unequivocally held that the entire time 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 ensue a timely resolution process for a corporate debtor 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".
 6. We have heard both counsel and perused the material on record. We find that Regulation 40C of IBBI Insolvency Resolution process for Corporate Persons Regulation, 2016 was inserted to address covid related difficulties faced by people at large. Further, the Hon'ble Apex Court decision in case of *GPR Power (Supra)* is later in time and deals with covid related difficulties. This bench also note that the approval of resolution plan was pending before adjudication authority when the claim was filed.
 7. The Hon'ble NCLAT in case of *Puneet Kaur, through her Attorney Amrit Pal Singh v. K V Developers Private Limited & Ors. Company Appeal (AT) (Insolvency) No. 390 of 2022* held at Para 15 that "*Non-submission of claim within the time prescribed is a common feature in almost all project of real estate. But as law exists today, they cannot be included in the List of Creditors and that too after approval of Plan by CoC. We, thus, do not find any ground to interfere with order of the Adjudicating Authority rejecting their Application for admission of their claim. However, their claims need to be dealt in a manner, which we shall deal in later part*

of this judgment". It further held at Para 18 that "*extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC*". Finally, the Hon'ble NCLAT held at Para 27 that "*However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration*".

8. Following the decision of the Hon'ble NCLAT in case of Puneet Kaur (Supra), this Bench is of considered view that the Resolution Professional has not committed any error in rejecting the claim of the appellant on the ground of the applicant's claim having been filed the claim after approval of the resolution plan by CoC. However, it is also held that in decision that the liabilities of the Corporate Debtor get extinguished upon approval of plan by the Adjudicating Authority u/s 31 of the Code, hence, the corporate debtor owed such sums to the Corporate Debtor on the date of approval of Resolution Plan. This Bench further notices that the Hon'ble NCLAT in the said decision has also held that the Resolution Professional is mandated to

include all 'liabilities' of the Corporate Debtor in the Information Memorandum and should have included these liabilities reflected in the financial statements and books of accounts of the Corporate Debtor. In the present case, this Bench finds that the Resolution Applicant as well as CoC is aware of claim of the applicant. However, this Bench directs the Resolution Professional to confirm inclusion of their claims and obtain an addendum to the Resolution Plan, which may be placed before the CoC for consideration. Further, the Resolution Professional shall determine the amount of claim of the applicant after considering the directions in paragraph 13 of this bench order even date in IA-1927/2021.

9. Having said so, this Bench finds that Edelweiss Investment Adviser Limited is classified as Financial Creditor under the class of home buyers, this bench feels no hesitation in holding that the applicant ought to be classified as home buyers as facts in both the matters are identical.
10. In view of this, the present application is **disposed of** with the aforesaid directions. Accordingly, IA-2905/2021 is partly **allowed and disposed of** accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

SVR/02.05.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)