

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 4055 of 2023

In

CP (IB) 2517 of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 and the Provisions of
the Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF

Mr. Nagendra Pratap Singh

A-100, Krishna Tower Kanda Colony
Sector-9, New Panvel. Maharashtra.

... Applicant

V/s.

Mr. Arun Kapoor

Resolution Professional of Monarch
Brookefields LLP

G-601, Army Co-operative Housing Society,
Sector- 9, Nerul (East), Navi Mumbai,
Maharashtra - 400706.

... Respondent

IN THE MATTER OF

M/s Capri Global Capital Ltd.

502, Tower-A, Peninsula Business Park,
Senapati Bapat Marg Lower Parel Mumbai,
Maharashtra.

... Financial Creditor

V/s.

M/s. Monarch Brookefields LLP

Survey No. 113/O Akurli, Village Panvel,
Raigarh, Maharashtra - 410206

... Corporate Debtor

Order delivered on :- 02.01.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant : Adv. Dheeney Patil a/w Milan

For the Respondent/RP : Adv. Amir Arsiwala

ORDER

Per: - Coram

1. The present Interlocutory Applicant is filed by the Applicant to condone the delay of 1158 days (i.e. 3 years and 90 days) in filing the proof of claim with the Respondent and to direct the Respondent/Resolution Professional to allow the claim amounting to Rs. 37 lakhs plus interest.
2. Brief facts necessary for disposal of the present Application are as follows:
 - a. Corporate Insolvency Resolution Process (CIRP) in M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide order of the Tribunal dated 03.08.2021 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (RP).

- b. IRP issued public announcement inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 and the last date for submission of the claim was 07.12.2019.
- c. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kumar was appointed as Resolution Professional (RP) of the Corporate Debtor. IRP/RP issued public announcement for initiation for Expression of Interest (EoI) and the Committee of Creditors (CoC) on 02.12.2021 approved a Resolution Plan and the same was filed before the Tribunal. The said Application for approval of Resolution Plan is pending for adjudication.
- d. On 10.03.2023, the Applicant filed his proof of claim for an outstanding sum of Rs. 37 lakhs plus interest towards the purchase (Flat No. 602) of the flat to be constructed by the Corporate Debtor under an agreement of sale dated 13.10.2015 registered with the Sub Registrar of Assurances.
- e. The Respondent rejected the claim of the Applicant on account of the delay and present status of Resolution Plan pending before the Tribunal. Hence, the present Application.

3. **Submissions of the Applicant:**

- a. The Applicant submitted that he was unaware of the initiation of CIRP against the Corporate Debtor and he was not following up with the Corporate Debtor after imposition of lockdown on account of Covid pandemic. Thereafter he had to visit his native place for medical emergency and when he came in the month of

January, 2023, he came to know about the CIRP and immediately filed the claim with the Respondent.

- b. In support of the submissions the Applicant relied upon the decision of the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Private Limited (2021) 9 SCC 657* and the decision of Hon'ble NCLAT in the case of *Puneet Kaur V. K. V. Developers Private Limited (2022) SCC Online NCLAT 245* to contest that only after the Resolution Plan is approved by the Adjudicating Authority all claims not forming part of the Resolution Plan would get extinguished and not upon approval of the Resolution Plan by CoC.

4. Submissions of the Respondent:

- a. The Respondent submitted that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC and an IA 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan which is pending. The Information Memorandum (IM) had been prepared on 26.07.2021 and the same was circulated to the potential Resolution Applicants on 29.05.2021. The Resolution Plans were submitted pursuant to the above IM.
- b. Since the IM was published way before the filing of claim by the Applicant, there was no occasion to incorporate the claim of the Applicant in the IM. The claim of the Applicant had not been recorded with any Information Utility or in the books of accounts of the Corporate Debtor.
- c. To buttress the contentions, the Respondent relied upon the

decisions laid down by the Hon'ble Supreme Court in the case of M/s R P S Infrastructure Limited v. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021) and Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta and Ors. ((2020) 8 SCC 534) wherein it was held that a Resolution Professional cannot be compelled to admit claims which are received after the approval of the Resolution Plan by the CoC.

- d. The Respondent further submitted that there are many claims received after the approval of the Resolution Plan and many Applications relating to such rejection of claim are pending before the Tribunal. Admitting the present Application would lead to several hydra heads popping up which would derail the implementation of the Resolution Plan.

Analysis and Decision:

5. We have heard the Counsel appearing for the parties and perused the records.
6. The Applicant claims to have paid the amount of Rs. 37 lakhs under a registered agreement for sale dated 13.10.2015. As per the above agreement, Rs. 34 lakhs had ben paid by cheque and Rs. 13 lakhs paid by way of cash at the time of execution of the agreement. The Applicant has not produced any other document to evidence payment of the above consideration. However, the Respondent contended that the claim of Applicant is neither reflected in the books of accounts of the Corporate Debtor nor recorded with any information utility.
7. It is observed that the IM was circulated to potential Resolution

Applicants on 29.05.2021 based on which the Resolution Applicants submitted their Resolution Plans. The claim of the Applicant, in the absence of records with the Corporate Debtor did not find a place in the IM.

8. It is also observed that many such belated claims are pending against the Corporate Debtor and admission of such claims has also possibility of derailing the Resolution Plan already approved by the CoC. In this context, it is relevant to observe that the Hon'ble NCLAT in the case of Mukul Kimar v. RPS Infrastructure (Company Appeal (AT) (Insolvency) No. 1050 of 2020) expressed that if new claims are entertained after approval of Resolution Plan by the CoC, 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 timebound manner to maximize the value, if such request of such claimant is accepted the purpose of IBC would be defeated. In the case of Essar Steel India Limited (Supra), it was 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 it uncertainty amounts payable by a prospective resolution applicant who successfully takes 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.
9. There are certain cases and certain circumstances where the Adjudicating Authority and the Hon'ble Appellate Authorities have increased the timelines for admission of claims. We do not think this

is one of such circumstances which warrants increase of timeline even at the risk of impacting the Resolution Plan pending approval before the Adjudicating Authority.

10. Considering the above, we are not inclined to condone the delay in filing the claim and hence the **IA 4055 of 2023 in CP(IB) 2517 of 2018** is **dismissed**.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)