

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

IA 2059/MB/C-I/2021

In

CP (IB) 3025/MB/C-I/2019

Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016

In the Application of

IA 2059/MB/C-I/2021

Punjab National Bank Limited

Zonal SASTRA Centre, 18th Floor, Market Tower (E),
Cuffe Parade, Mumbai - 400005.

...Applicant

Versus

- 1. Mr. Anish Nanavaty, Resolution Professional**
Deloitte Touche Tohmatsu India LLP, Indiabulls Finance
Centre, Tower-3, 27th Floor, Senapati Bapat Marg,
Elphinstone Road (W), Mumbai-400013
- 2. Reliance Communications Infrastructure Limited**
H Block, 1st Floor, Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710.

...Respondents

In the matter of

CP (IB) 1095/MB/C-I/2017

State Bank of India

...Financial Creditor

Versus

Reliance Communications Infrastructure Limited

...Corporate Debtor

Order Delivered on 08.09.2023

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Applicant : Mr. Shyamdhara Upadhyay, Advocate.
For the Respondent : Mr. Rishab Jasani, Advocate.

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. The present application IA 2059/MB/C-I/2021 is moved by Punjab National Bank being their claims rejected by the Resolution Professional of the Corporate Debtor. Seeking relief under Section 60(5) of Insolvency and Bankruptcy Code, 2016 to set aside the order dated 06.08.2021 passed by the Respondent No. 1 after condoning the delay in submitting the Form C proof of claim of the Applicant.

Brief facts/submissions of the Applicant:

2. It is the case of the Applicant that erstwhile United Bank of India had granted facilities to Reliance Communication Limited amounting to 500 Crores consisting of Term Loan of Rs.250 Crore and Non-Fund (LC/BG) of Rs.250 Crore. The said limits were also secured by 1st Pari Passu charge on all present, future, plant and machinery, tower, assets, optical fiber cable, capital

work in progress of Reliance Communication Infrastructure Limited.

3. The Applicant relied upon the following documents to substantiate its claim:
 - i. Sanction Letter dated 28.06.2013 and 04.02.2016
 - ii. Term Loan Agreement dated 28.06.2013
 - iii. Letter issued by Axis Trustee Services Limited dated 07.02.2014
 - iv. Letter issued by Axis Trustee Services Limited dated 23.05.2017 confirming the Applicant's name in the status of secured borrowing availed by the Corporate Debtor.
 - v. RoC Certificate evidencing the mortgage charge created on 05.02.2014.
 - vi. Balance Confirmation and Security Letter dated 13.04.2017.
4. Further it is submitted that in the month of August 2019 Government of India announced that United Bank of India merger with Punjab National Bank. The merger of United Bank of India took effect from 01.04.2020. On account of said merger the entire file pertaining to United Bank of India got transferred to Punjab National Bank. Due to the shifting inadvertently the files pertaining to above case got misplaced and the Applicant

failed to submit the claims before Respondent No. 1 within time.

5. We heard the counsel and perused the records.
6. It is the case of the Applicant that claim was submitted on 03.08.2021, CoC voted on Resolution Plan on 30.08.2021. Further, it is noted that Resolution Professional invited for claims on 28.10.2019 and as per Regulation 12(2) of the CIRP Regulation, 2016 the maximum time for submission of claim is before 90th day of the Insolvency commencement date (i.e. 24.12.2019). It is noted that the CIRP was initiated on 25.09.2019 and the Resolution Plan was filed for Approval of this Tribunal on 31.08.2021.
7. We have perused the afforested facts in view of the ratio laid down by the Hon'ble NCLAT in the matter of *Puneet Kaur Vs. K V Developers Private Limited & Ors. in Company Appeal (AT) (Insolvency) No. 390 of 2022* held that:

“27. In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. 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. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan.”

8. Thus, the Hon’ble NCLAT has held that the Resolution

Professional ought to have included the liabilities in information memorandum if said liabilities are reflected in the books of accounts, even though claims have not been filed in timely manner.

9. Therefore, the Resolution Professional is directed to verify claim of the Applicant from the books of accounts of the Corporate Debtor, as on the date of initiation of CIRP against the Corporate Debtor. If the claim is verified from the books of accounts of the Corporate Debtor, the Resolution Professional is directed to proceed in accordance with the judgment of the Hon'ble NCLAT in Puneet Kaur (supra). In the event, the claim is not corroborated from the financial statements of the Corporate Debtor, the Resolution Professional can reject the claim.
10. With the aforesaid direction the present **IA No. 2059 of 2021 in CP(IB) 3025 of 2019** is stand disposed of as allowed.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
08.09.2023

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)