

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 747 of 2020 in CP(IB) 98 /NCLT/AHM/ 2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.03.2021**

Name of the Company: Assistant Commissioner,CGST
V/s
Kiran Shah RP For Vicor Stainless Pvt Ltd

IA For Challenging Order by RP Rejecting Claim on
Ground of Delay.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

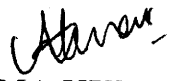
(through video conferencing/physical)

None appeared on behalf of the parties.

The order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 10th day of March, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**IA 747 of 2020
in
CP (IB) No.98 of 2020**

In the matter of:

Assistant Commissioner,
Division-VII, CGST,
Ahmedabad South

.... Applicant

Versus

Vicor Stainless Private Limited

.... Respondent

Order delivered on 10th March, 2021

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:

Applicant: Mr. Nikunt Raval, Advocate

Respondent: Mr. Kiran Shah, FCA

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application by the Assistant Commissioner, CGST with following prayers:-

A. The Hon'ble Court be pleased to admit and allow the application

B. The Hon'ble Court be pleased to direct the opponent to accept the claim of the Applicant.

C. The Hon'ble Court may be pleased to grant any other relief as the court considers appropriate.

Chockalingam

Manorama

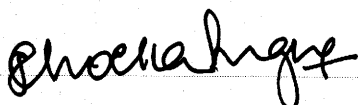
2. The facts of the case are stated herein:

2.1 CP (IB) 98 of 2020 was admitted on 12.03.2020 by this Adjudicating Authority under Section 9 of the IB Code for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, viz., M/s. Vicor Stainless Private Limited and Interim Resolution Professional (hereinafter referred as "IRP") was appointed.

2.2 In pursuance of the said admission order, IRP issued a public announcement for inviting the claims from the stakeholders and the last date for submission of claims was fixed as 31.03.2020.

2.3 The Applicant submitted that the Applicant came to know about the CIRP against the Corporate Debtor on 28.07.2020. Thereafter, Applicant initiated necessary procedure to collect information, orders and returns to ascertain the claim and accordingly, filed his claim before the RP on 04.09.2020 vide email in Form B along with necessary returns/ orders substantiating the Applicant's claims. However, the claim so submitted was not within the stipulated time, which was 16.08.2020. It is further submitted that the claim so filed by the Applicant was rejected by the RP on 05.09.2020 on the ground of delay in filing his claim.

3. On receipt of notice, RP, Mr. Kiran Shah appeared and denied the statements and allegations made by the Applicant in the





application. The RP, in person, submitted that due to Covid-19 pandemic and nationwide lockdown, claim of the Creditors were considered upto 12.06.2020. The same is reflected from the minutes of the First CoC meeting. Even if the extended period of 90 days as envisaged in the provisions of the Sub Regulation (2) of Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as the lockdown period of 68 days in terms of the provisions of the Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 is considered, then even, it has been extended up to 16.08.2020, and claims of the creditors of the Corporate Debtor were accepted up to 16.08.2020.

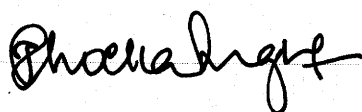
4. It is a matter of record that the Applicant has submitted its claim in Form-B on 04.09.2020 and the same was rejected by the RP on the ground of delay in filing his claim. Such action of the RP was taken in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution

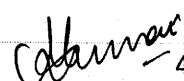




Process for Corporate Persons) Regulation, 2016.

5. It is further submitted that the said provisions are also applicable as on the date of the rejection of the claim and none of the said provisions are held to be unconstitutional and / or void owing to which the RP is duty bound to take into account the said provisions for the compliance and cannot neglect the same.
6. The said rejection of the claim of the Applicant has been done taking into consideration the interest of all the creditors / stakeholders (and not only the present Applicant). In the event of acceptance of any claim at such belated stage would cause prejudice to the other claimants as that would be after consideration of the extended period of 90 days and the lockdown period. If such a practice is allowed, keeping abeyance the stipulated period that too after extended time period of 90 days and further 68 days of national lockdown period, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s).
7. Heard learned lawyer for the Applicant as well as the RP, also seen the record. It is a matter of record that the main petition, i.e. CP

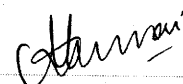


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(IB) 98 of 2020, was admitted on 12.03.2020 and IRP was appointed, who invited claim(s) by making public announcement in Form-A and the last date for submission of claims were mentioned as 31.03.2020. However, considering the spread of Covid-19 and situation of national lockdown, the claims of the creditors were being accepted up to 12.06.2020. Even if the lockdown period as well as 90 days is excluded, it will come to 16.08.2020. However, the Applicant has submitted its claim on 04.09.2020, much beyond the stipulated time as well as extended period of 90 days and 68 days of lockdown period.

8. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC on or before 08.03.2021 (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Utility (IU). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that if the claims of the different creditors are being accepted in a phase manner, that too after the stipulated time so provided for submitting claims, in that event, the Resolution Plans can never get materialized, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted that too without any supporting documents, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make

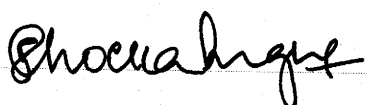


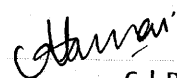


corrections in the IU and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Further, if the Resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan / infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over.

9. It is also pertinent to mention herein that this is not an isolated claim, there were as many as 7-8 applications wherein the order is pronounced regarding the claims being filed before the RP in much belated stage and they have approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. Those applications are IA 840 of 2020, IA 841 of 2020, IA 842 of 2020, IA 843 of 2020, IA 844 of 2020, IA 904 of 2020 and IA 905 of 2020 all these IAs are filed at belated stage in CP (IB) 98 of 2020, having same issues. If such applications are allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plans, as it will be a burden with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IU. Thus, under such situation, the Corporate Debtor may be pushed for liquidation.

10. The Hon'ble NCLAT, in the matter of **Binani Industries Limited vs. Bank of Baroda & Anr.** held that "the objective of the I&B





Code is Resolution. The purpose of resolution is for maximization of value of the assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for 'stakeholders' or 'a set of stakeholders' such as creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is 'resolution'. The second order objective is "maximization of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interest. This order of objective is sacrosanct". The performance of the Code in terms of these objectives will ultimately show up in overall growth of the economy of the country. Based on the above objective, time is an important factor in the resolution process to preserve the value of the assets of the corporate debtor. The Code lays down 180 days for completion of CIRP. It permits one-time extension of up to 90 days to be granted by the Adjudicating Authority in deserving cases only. In order to reduce the time for resolution, the Code envisages a competitive industry of IUs who would hold an array of information about all firms.

11. The Hon'ble Supreme Court in the matter of **Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors**, unequivocally held that "the entire time period 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 ensure a timely resolution process for a CD 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

Chauhan

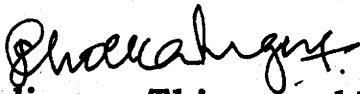
Chauhan

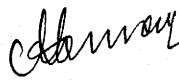
adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible".

12. However, in the instant matter, the RP allowed not only further 90 days but has also allowed another 68 days of lockdown period so as to facilitate all the creditors to file their claims.

13. In the above backdrop, we found that there is no merit in the instant application. Hence, the same is dismissed.

14. No order as to costs.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)

Shreya