

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 4090 OF 2023**

IN

CP(IB) NO. 532 (MB)/2018

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016*

In the matter of:

Mini Punjab Catering India Pvt Ltd

...Applicant

Versus

Mr. Anish Niranjana Nanavaty,

The Resolution Professional of

V Hotels Ltd.

...Respondent

In the matter between

Asset Reconstruction Company (India) Ltd

...Financial Creditor

v/s.

V Hotels Ltd.

...Corporate Debtor

Order pronounced on 30.11.2023.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (Hearing in physical mode)

For the Applicant: Ms. Nikita Abhayankar, Ld. Counsel.

For the Respondent: Mr. Shiraj Khambete, Ld. Counsel.

ORDER

Per: Coram

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IB Code') impugning the rejection of his claim by the Respondent, who is the Resolution Professional ('RP') of the Corporate Debtor, and seeking necessary directions from the Adjudicating Authority to the Respondent to admit the claim of the Applicant, and thereby inclusion of the Applicant's claim in the List of Creditors and consequent directions to the Committee of Creditors ('CoC') for considering the claim of the Applicant at the time of finalising the resolution plan.
2. The averments made by the Applicant in its application and as argued by the Learned Counsel for the Applicant are briefly stated as under:
 - i. The Corporate Debtor and Maple Leaf Enterprises LLP ('Maple') entered into an MoU dated May 04, 2017 under which the Corporate Debtor outsourced to Maple, the business of holding marriage functions, conferences, exhibitions, events, film shootings and also carrying out the decor and catering services for such events and providing other services incidental and related to such events ("Business of Maple") at Tulip Star Hotel, which is a property of the Corporate Debtor ("MOU-I").
 - ii. Further to the understanding reached between the Corporate Debtor and Maple, Maple sought to further outsource/sub-contract catering services

on an exclusive basis. Accordingly, Maple approached the Applicant expressing its desire to hire their services exclusively for the customers who would avail the services of Maple. Maple represented to the Applicant that Maple is entitled to conduct its Business and have been permitted to do so under the aforesaid MoU-I.

- iii. In pursuance thereof, the Applicant and Maple entered into another MoU dated June 05, 2017 ("MOU-II") for appointing the Applicant for providing exclusive non-vegetarian catering services. As per the terms of the MOU-II and as per the prevailing customary practices, the Applicant agreed to pay a deductible deposit amount of Rs. 3,00,00,000 / - and the same was paid in the manner specified as under:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Date of RTGS</u>	<u>Amount (INR)</u>
1.	Maple Leaf Enterprises LLP	May 30, 2017	1,50,00,000/-
2.	V Hotels Limited	August 01, 2017	1,50,00,000/-
		TOTAL	3,00,00,000/-

- iv. During the subsistence of the aforesaid MoUs, the present Company Petition was admitted vide an Order dated May 31, 2019 and a moratorium was imposed in respect of the Corporate Debtor as per the IB Code. Soon thereafter, the Applicant was prevented from conducting its business at the property of the Corporate Debtor. The Applicant has been providing and supplying essential goods and services to the Corporate Debtor since the commencement of catering business at its premise being Tulip Star Hotels. The non-vegetarian food and banquet which has been outsourced by the Corporate Debtor to Maple and further

to the Applicant is an essential service under the IB Code which is required to keep the business of the Corporate Debtor at Tulip Star Hotel going on. The said business has been outsourced exclusively to the Applicant for last several years which has generated lot of revenue for the Corporate Debtor. The aforesaid details were duly informed by the Applicant to the Respondent, being the Resolution Professional of the Corporate Debtor vide their letter dated September 23, 2019. Further to the same, the Applicant requested the Respondent to instruct the concerned staff at Tulip Star Hotel not to prevent the Applicant from conducting business of the premises. The Respondent has failed to provide any response whatsoever to the aforesaid letter dated September 23, 2019.

- v. Soon thereafter, a national lockdown was imposed on account of the unprecedented Covid pandemic and the hospitality industry took the first hit. Subsequently, as market started to improve and business was slowly but steadily coming to normalcy, the Applicant once again sought to follow up with the Respondent in respect of the deductible security deposit in the custody of the Respondent, at least to the amount of Rs. 1,50,00,000/-, but to no avail.
- vi. Having no other choice, the Applicant finally filed its claim as per Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before the Respondent vide an email dated September 8, 2022. The Respondent raised certain queries in respect of the claim so raised by the Applicant vide an email dated November 22, 2022. The said queries of the Respondent were duly responded to by the Applicant through their Advocates vide an email dated November 30, 2022. Thereafter, for a

substantial period, there was no further response of the Respondent to the claim filed by the Applicant. In view thereof, the Applicant through their Advocates addressed another email dated February 13, 2023 requesting the Respondent to inform the status of the claim filed by them. Having received no response to the said email dated February 13, 2023 either, the Applicant through their Advocates addressed another reminder letter dated February 23, 2023 to the Respondent once again requesting the Respondent to provide an update to the Applicant on the claim filed by them.

- vii. The Respondent finally responded to the aforesaid email and letter of the Applicant seeking an update on the claim filed by the Applicant vide an email dated March 02, 2023 merely stating that the claim details are as per the link provided thereunder. The said link led to a file titled 'List of Creditors as of March 14, 2023. Upon perusal of the same, the Applicant came across the acknowledgement of the claim filed by them at Annexure 5 of the said document. However, no amount was admitted against the same. Moreover, the Respondent even failed to attribute any reasons whatsoever in that regards for rejecting the claim of the Applicant.
- viii. The Applicant humbly submits that the Respondent has not provided any reasons whatsoever, for such rejection of the claim of the Applicant under the CIRP of the Corporate Debtor and has acted in utter disregard to the right of the Applicant to file the claim. The Applicant further submits that as an Interim Resolution Professional, it is the duty of the IRP to at least admit all Claims and later decide the allocation as per the waterfall mechanisms. However, the IRP has acted in sheer contravention to the procedure and duties as laid down in the IB Code. The Applicant states that the Applicant is a creditor to the Corporate Debtor under the

provisions of the IB Code and is therefore, entitled to file a Claim under Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. However, the IRP without considering the correspondences and concerns raised by the Applicant, arbitrarily rejected the Claim of the Applicant.

- ix. The IRP also erred in taking account of the fact that the Applicant has been providing essential services to the Corporate Debtor in order to keep the business of the Corporate Debtor as ongoing. However, the IRP in utter disregard whimsically, arbitrarily and without any application of mind, rejected the Claim of the Applicant. The Applicant is entitled to file its Claim in the ongoing CIRP as per the provisions of the IB Code. Therefore, the Applicant was compelled to, approach this Hon'ble Tribunal under the present Application.

3. Reply of the Respondent

The Respondent has filed his Preliminary Reply vide Affidavit dated 27th July, 2023. The pleadings and submissions of the Respondent are briefly covered hereunder:

- i. Asset Reconstruction Company (India) Limited (“**ARCIL**”) filed Company Petition (IB) No. 532/IBC/NCLT/MB/MAH/2018 under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’ for the sake of brevity) r.w Rule 4 of IBBI (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor, which was admitted by this Hon’ble Tribunal vide Order dated 31.05.2019 (“Admission Order”) and the Respondent herein was appointed as the Interim Resolution Professional (“**IRP**”).

- ii. Pursuant to the appointment, the IRP proceeded to issue a public announcement of the initiation of the CIRP and called for submissions of claims u/s 15 of the Code. The public announcement was issued on 05.06.2019 and the last date of submission of claims along with necessary supporting documents was fixed on 18.06.2019. Pursuant to the claims received and verification of claims, the IRP constituted the Committee of Creditors ('CoC') comprising of financial creditors of the Corporate Debtor. Thereafter, at the 01st CoC meeting held on 03.07.2019, the IRP was appointed as the Resolution Professional ('RP').

- iii. The Corporate Debtor had entered into a Memorandum of Understanding ('MoU') dated 04.05.2017 with Maple Leaf Enterprises LLP ('Maple Leaf') for managing certain business of the Corporate Debtor including (but not restricted to) providing decoration and catering services for conducting events. As per the terms of the said MoU, for the right to carry out such business, Maple Leaf was required to pay a minimum guarantee amount of INR 20 crores, amongst other payments, to the Corporate Debtor. Maple Leaf, thereafter, entered into an MoU dated 05.06.2017 with the Applicant, appointing the Applicant to exclusively manage the non-vegetarian catering services and ancillary catering services related thereto. The Corporate Debtor is not a party to the MoU dated 05.06.2017.

- iv. As per Clause 6 of the MoU dated 05.06.2017, the Applicant was to pay Maple Leaf, a deductible deposit of INR 3,00,00,000/- (Rupees Three Crores only) in lieu of Maple Leaf appointing the Applicant as a provider of exclusive non-vegetarian catering services. The Applicant deposited

Rs. 1.5 crores with Maple Leaf, and deposited the balance Rs. 1.5 crores with the Corporate Debtor on behalf of Maple Leaf. This deposit by the Applicant with the Corporate Debtor was in fact recorded in the books of accounts of the Corporate Debtor as having received on behalf of Maple Leaf.

- v. In the meanwhile, Tulip Star Hotels Limited challenged the admission order before the Hon'ble NCLAT vide Company Appeal (AT) (Ins.) No. 627 of 2019. The Hon'ble NCLAT allowed the appeal on 11.12.2019 and set aside the admission order. The NCLAT Order was challenged by ARCIL before the Hon'ble Supreme Court on 24.12.2019 in Civil Appeal Nos. 84-85 of 2020. The Hon'ble Supreme Court vide Order dated 01.08.2022 was pleased to allow the appeals and set aside the NCLAT Order. Pursuant thereto, the RP issued an Addendum dated 03.10.2022 to Public Announcement dated 06.06.2019 for submission of claims. A time period of 14 days was provided to creditors for submitting their claims and accordingly, the last date for submission of claims was 17.10.2022.
- vi. The Applicant had submitted the claim as per Form F vide e-mail dated 08.09.2022. The claim was filed on the basis that the Applicant had deposited INR 1.50 crores with the Corporate Debtor. The Respondent had sought additional details and documents from the Applicant vide E-mail dated 22.11.2022 in order to verify its claim. However, the Respondent was not satisfied with the explanations, details and justification given on behalf of the Applicant by its lawyers via email on 30.11.2022. On 20.01.2023, the Respondent published a list of creditors

with updated claims of the creditors indicating the acceptance or rejection of claims by various creditors. This list clearly indicated that the claim of the Applicant had been rejected. The Respondent communicated vide email dated 02.03.2023, whereby the list of creditors dated 20.01.2023 was shared with the Applicant.

- vii. The claim was rejected on 20.01.2023. The list of creditors was published on the Corporate Debtor's and IBBI's websites. However, the instant application was filed belatedly on 12.05.2023 after an inordinate delay of 112 days from the date of rejection of claim. No justification has been given for such massive delay and the Application has also not sought any condonation of delay. Furthermore, the CoC has already approved the resolution plan during the pendency of application on 22.06.2023. Hence, the Application is liable to be dismissed on this ground alone.
- viii. Even otherwise, on merits, the claim of the Applicant was rightly rejected as there existed no contractual relationship of any kind whatsoever between the Applicant and the Corporate Debtor and the payment was made by the Applicant to the Corporate Debtor only on behalf of Maple Leaf. The Corporate Debtor was not privy to the MoU dated 05.06.2017 executed between Maple Leaf and the Applicant. Therefore, in the absence of any direct legal or contractual relationship between the Applicant and the Corporate Debtor regarding the claim of Rs. 3 crores filed by the Applicant; the claim was rightly rejected by the Respondent. Further, Maple Leaf filed its claim in Form B with the Respondent on 17th October, 2022. Hence, the instant application should be dismissed as there is no merit in the claim of the Applicant against the Corporate

Debtor. If at all any claim lies with the Applicant, it would be against Maple Leaf for the refund of security deposit in accordance with the MoU dated 05.06.2017.

- ix. In the case of M/s. RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. *Civil Appeal No. 5990 of 2021*, the Hon'ble Supreme Court has held that even if the plan has not been approved by the Adjudicating Authority, the plan cannot go back and forth for admitting further claims after the plan is approved by the CoC. The Court also relied upon the case of the Committee of Creditors of Essar Steel India Ltd v/s Satish Kumar Gupta & Ors., (2020) 8 SCC 534 to caution against allowing the claims after the resolution plan has been accepted by the CoC. Hence, in view of the findings of the Hon'ble Apex Court, it is clear that the said purported claim cannot be admitted now since the resolution plan has already been accepted and approved by the CoC unanimously. Hence, the instant application is liable to be dismissed.

FINDINGS

4. We have heard the learned Counsels for the Applicant and the Respondent and we have carefully gone through the pleadings and the documents and materials placed on record.
5. Counsel for the Applicant submits that the Applicant has paid a refundable security deposit of Rupee Three Crores, out of which an amount of Rs. 1.50 crores have been paid to the Corporate Debtor. The Ld. Counsel for the Applicant submits that since the benefit of the aforesaid amount has been directly availed by the Corporate Debtor, the Corporate Debtor is liable to pay

the entire sum of Rs. 3 crores to the Applicant towards the refundable security deposit. The Applicant filed its claim of Rs. 3 crores before the Respondent vide e-mail dated 08th September, 2022. However, the said claim was rejected by the Respondent vide email dated 02.03.2023 without assigning any reason thereof. On the other hand, the Counsel for the Respondent submitted that the claim of the Applicant was rightly rejected, as there can be no claim of the Applicant against the Corporate Debtor because (i) there existed no contractual relationship of any kind whatsoever between the Applicant and the Corporate Debtor; and (ii) the payment of Rs 1.50 crore that was made by the Applicant to the Corporate Debtor was on behalf of Maple Leaf Enterprises LLP (hereinafter referred to as “Maple Leaf”). The Counsel for the Respondent during his oral submissions relied upon the doctrine of privity of contract and submitted that the contracts are only binding on the parties to the contract and that no third party can enforce the contract or be sued under it. The Ld. Counsel for the Respondent substantiated his assertion by pointing out to the fact that the claim of the Applicant was based upon an MoU dated 05.06.2017 executed between the Applicant and Maple Leaf, to which the Corporate Debtor is not privy. The Counsel for the Respondent stated that the Corporate Debtor had recorded this transaction in its books as “*amount paid by Mini Punjab on behalf of Maple Business Conducting*”. The Counsel for the Respondent further submits that when there exists no agreement/contract/MoU or any arrangement of any manner between the Applicant and the Corporate Debtor, the Applicant cannot claim any such amount from the Corporate Debtor. Hence, the Learned Counsel for the Respondent states that the Respondent had rightly rejected the claim of the Applicant and the same needs no interference from this Hon’ble Tribunal.

6. The Learned Counsel for the Respondent during his course of submissions pointed out to the fact that the CoC has already approved the resolution plan during the pendency of application on 22.06.2023. In this regard, the Learned Counsel for the Respondent relied upon the judgment of the Hon'ble Supreme Court of India in M/s. RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. (Civil Appeal No. 5990 of 2021) to buttress his submission that even if the resolution plan has not been approved by the Adjudicating Authority, the plan cannot go back and forth for admitting further claims after the plan is approved by the CoC. Hence, on this ground alone, the present application deserves to be dismissed.

7. We have examined the aforesaid submissions and perused the record. It is clear that there is no contract/agreement/arrangement between the Applicant and the Respondent. On perusal of Para 9 and 10 of the Application of the Applicant, we find that as per the terms of MoU-II dated 05.06.2017 entered into between the Applicant and Maple Leaf Enterprises LLP ("Maple Leaf"), the Applicant had paid a sum of Rs. 1.50 crores to the Maple Leaf on May 30, 2017 and another sum of Rs. 1.50 crores to the Corporate Debtor on August 01, 2017, both towards the deductible deposit. Thus, the payment of INR 1,50,00,000/- (Rupees One Crore and Fifty Lakhs Only) was made by the Applicant to the Corporate Debtor only on behalf of Maple Leaf with whom the Applicant had executed an MoU dated 05.06.2017 referred-to-above. Further, the Corporate Debtor was not privy to the MoU-II dated 05.06.2017 executed between the Applicant and the Maple Leaf. Therefore, there is no direct liability of the Corporate Debtor towards the Applicant. Maple Leaf has also filed its claim of Rs. 6,12,73,333/- (Rupees Six Crores, Twelve Lakhs, Seventy-Three Thousand, Three Hundred and Thirty-Three only) with the

Respondent vide Form B dated 17th October, 2022 for refund of security deposit and the same has been fully admitted by the Respondent and duly reflected in the List of Operational Creditors of the Corporate Debtors as on January 20, 2023. If at all any amount is due to the Applicant towards the deductible deposit of Rs. 3 crores, it would be against Maple Leaf for the refund of security deposit in accordance with the MoU dated 05.06.2017 and no liability for the same can be fastened upon the Corporate Debtor in the absence of any agreement/MoU between the Applicant and the Corporate Debtor. Hence, we find that the rejection of claim of the Applicant by the Respondent is fully justified in law as the claim of the Applicant has no legs to stand on its merit so far as the Corporate Debtor is concerned.

8. On perusal of the Para 26 of the Affidavit-in-Reply dated October 05, 2023 filed by the Respondent, we find that the Committee of Creditors ('CoC') has already approved the resolution plan during the pendency of application on 22.06.2023. The Counsel for the Respondent has relied upon the judgments of the Hon'ble Apex Court in *M/s. RPF Infrastructure Ltd v/s Mukul Kumar & Anr.* (Judgment dated September 11, 2023 in Civil Appeal No. 5990 of 2021) and *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors.* reported in (2020) 8 SCC 534, to submit that since the resolution plan has already been approved, the claim of the Applicant cannot be entertained anymore any further. However, we respectfully disagree with the aforesaid contention of the Ld. Counsel and state that the ratio of the aforesaid precedents do not apply to the factual matrix of this case for the simple reason that in this case, the claim of the Applicant was filed in time within the time limit stated in the Addendum to the Public Announcement and the resolution plan has been approved when the instant application was pending adjudication

before the Adjudicating Authority, whereas in the aforementioned precedents, the claim of the creditor was rejected on the ground of delay on the part of claimants in filing their claims, as by the time when the claims were lodged, the resolution plan had already been approved by the CoC.

9. In view of the above discussion, we are of the considered opinion that this application deserves to be dismissed and it is ordered accordingly. hence, we pass the following orders:

ORDER

- i. **I.A. No. 4090 of 2023 is hereby dismissed** with no order as to costs.
- ii. The Applicant shall be at liberty to pursue its claim against Maple Leaf Enterprises LLP before a competent legal forum in accordance with law.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)