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

IA 131 of 2022 and IA 262 of 2022
In
CP(IB) 2517 (MB)2018

Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF

IA 131 of 2022

Big Venture India Pvt. Ltd.

302, Third Floor, Kalpvruksha Ratanshi Hirji Bhojraj Road, Mulund (W), Mumbai - 400080.

... Applicant

V/s.

Mr. Arun Kapoor

Resolution Professional of the Corporate Debtor

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

... Respondent

IA 262 of 2022

Mr. Navin K Patel

Ash Building, B Wing, Building No. 22, Flat No. 1003, Regency Estate CHS, Dombivli (E), Kalyan, Thane- 421203.

... Applicant

V/s.

Mr. Arun Kapoor
Resolution Professional of the Corporate Debtor
G-601, Army Co-operative Housing Society, Sector- 9, Nerul (E), Navi Mumbai, Maharashtra- 400706.

...Respondent

IN THE MATTER OF

Capri Global Capital Ltd.

... Financial Creditor

V/s

Monarch Brookfield LLP

... Corporate Debtor

Order delivered on: - 15.01.2024.

Coram:
Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

IA 131 of 2022 and IA 262 of 2023

For the Applicant (through VC) : Adv. Nikita Abhyankar

For the Respondent/RP : Adv. Vidit Divya Kumat

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. By way of this order, we intend to dispose of IA Nos. 131 of 2022 and 262 of 2022 which have been filed by the aforementioned Applicants against the Respondent, who is the Resolution Professional of the Corporate Debtor, on being aggrieved by the rejection of their respective claims.

2. Brief facts of IA No. 131 of 2022 as under:

    (a) The Applicant is an Operational Creditor of the Corporate Debtor wherein the Applicant has a claim to the tune of Rs. 3,42,62,249/-. Accordingly, the Applicant filed his claim before the Respondent, being the Resolution Professional of the Corporate Debtor. However, the said claim came to be rejected by the Resolution Professional for want of limitation and lack of documents to substantiate the claim. Being aggrieved by the same, the Applicant has preferred the present Application.

    (b) The Applicant is a company incorporated under the Companies Act, 1956 and deals with contract work for construction and other work related to construction. In that regards, the Applicant gave a proposal for the construction of civil work with material at the site of the corporate debtor for its project and pursuant to the same, the Applicant was awarded with the construction of civil work at the said project vide its Work Order dated December 15, 2010. The

Applicant regularly raised invoices upon the Corporate Debtor. However, sometime in around 2015, the Corporate Debtor started defaulting in his payment against the invoices raised by the Applicant. Thus, as per the Ledger of the Corporate Debtor maintained by the Applicant, the Ledger Account showed an outstanding balance of Rs. 3,36,91,726/-.

(c) After the Applicant's rigorous follow-ups with the Corporate Debtor regarding payments, the Corporate Debtor gave the Applicant a cheque bearing No. 636879 dated 31.01.2016 for an amount of Rs. 3,42,62,249 including the principal amount of Rs. 3,36,91,726 along with the interest on delayed payment thereupon. The Applicant deposited the said cheque in the month of March, 2016. The said cheque bounced with a remark "Account Dormant" on March 16, 2016.

(d) The Applicant chose not to sue the Corporate Debtor owing to the good relations. However, the Applicant addressed a letter dated March 08, 2019 to the Corporate Debtor to clear the outstanding payment.

(e) In the meantime, some in the year 2018 one Capri Global Capital Ltd. being the Financial Creditor herein also filed the captioned Company Petition against the Corporate Debtor u/s 7 of the IB Code, 2016. The said company petition was admitted vide order dated 27.09.2019 passed by this Tribunal and CIRP was initiated.

(f) Subsequently, upon gaining knowledge of the same the Applicant filed a claim as per Form B, dated 14.07.2021 before Mr. S. Gopalakrishnan, the then Resolution Professional of the Corporate Debtor. Till September, 2021 the Applicant received no communication whatsoever from the Resolution Professional in terms of the admission of the claim. It was only on 20.09.2021 when the Respondent herein, for the first time addressed an email to the Applicant requesting to provide any acknowledgment of debt by the Corporate Debtor for the period preceding for last three financial years from the Insolvency Commencement Date.

(g) By an inadvertent error and for reasons beyond the knowledge of the Applicant, the said email from the Applicant went into the Spam Folder of the Applicant's email and hence the same went unnoticed by the Applicant. Two months later the Respondent addressed another email dated 19.11.2021 wherein the Respondent stated that he had requested the certain information vide an earlier email and that in the absence of receipt of such information, the Respondent outrightly rejected the claim of the Applicant.

(h) As soon as the Applicant gained knowledge of the said email dated 19.11.2021, the Applicant made efforts to locate the aforementioned letter dated 08.03.2019 and sent the same to the Respondent vide an email dated 09.12.2021. However, without taking cognizance of the said letter dated 08.03.2019, the Respondent addressed another email dated 10.12.2021 to the Applicant stating that the CIRP period was over and hence the claim of the Applicant cannot be admitted at the belated stage.

3. **<u>Reply filed by the Respondent/Resolution Professional in IA No. 131/2022:</u>**

a. The grievance of the Applicant is that its claim as an Operational Creditor, as filed in Form B dated 14.07.2021, stood rejected both by the erstwhile Resolution Professional as well as the Respondent after substitution. In this regard, it is submitted that the claim of the Applicant cannot be verified, admitted and collated, as it is neither supported by adequate documentation nor is due and payable as on the Insolvency Commencement Date i.e. 27.09.2029.

b. The Applicant has produced at Exhibit I to the application an email dated 19.11.2021, sent by the RP to it through which RP has rejected the Applicant's claim after considering all material on record. As noted therein, RP had sought information and supporting documents from the Applicant under cover of an email dated 20.09.2021 which has been annexed to the present Application as Exhibit H. RP had sought details as to whether the Corporate Debtor had provided any confirmation of debt at any point of time within three years preceding the Insolvency Commencement Date.

c. The reason this information was sought is that the documents which have been produced by the Applicant thus far show that its claim is time barred. As per the ledger produced by the Applicant at Exhibit C to the present application, the invoices claimed to be in default were raised by the Applicant between the 01st April, 2012 and the 04th January, 2013. It is submitted that it is now well-settled law that the period of limitation for recovery of each invoice is separate. On this basis, it is clear that in its entirety, the claim of the Applicant is time barred, as the period of limitation to recover those amounts would have expired between the 01st April, 2015, and the 04th January, 2016.

d. Even assuming that the period of limitation is to be computed from the date of last invoice, the period of limitation to seek recovery of the amounts allegedly due under the aforesaid invoices got over on the 4th January, 2016, itself. As such, it is not open to the Applicant to seek to recover those alleged dues as on the Insolvency Commencement Date of 27th September, 2019.

e. In the present Application, the Applicant has sought to contend that the suspended partners and managers of the Corporate Debtor gave several oral assurances from time to time that the amount is due and payable and will be paid expeditiously. Unfortunately, however, on the basis of these oral assurances., the Respondent/RP could not have admitted the claim whose role is restricted to collating and verifying the claims only on the basis of clear documentary evidence. There is absolutely no proof that any such assurances were given by the members or managers of the Corporate Debtor. In fact, the Applicant has also not put forth any concrete details about these alleged admissions and assurances.

f. The Applicant seeks to rely upon a cheque issued by the Corporate Debtor dated the 31st January, 2016, in an amount of Rs. 3,42,62,249/- (Rupees Three Crores Forty-Two Lakhs Sixty-Two Thousand Two Hundred and Forty-Nine only) as an acknowledgement for the purpose of extending the period of limitation to recover the amount claimed by it. In this regard, it must be submitted that the aforesaid cheque which was issued by the Corporate Debtor may not amount to an admission as required under the provisions of the Limitation Act, 1963. Without prejudice to this contention, the issuance of this cheque still cannot be considered to be an admission of liability as it was not made within the original period of limitation for recovering the alleged debt.

g. For all of these reasons, it is submitted that the claim of the Applicant is barred by limitation and cannot be admitted or verified. Even otherwise, as has been stated on various occasions, the Applicant has failed to provide sufficient documents to prove its claim. In fact, there are absolutely no documents on record showing that the Corporate Debtor accepted the invoices raised by the Applicant or that the work had actually been completed by it.

4. Brief facts of I.A No. 262 of 2022 as under:

a. The Applicant is an Operational Creditor of the Corporate Debtor wherein the Applicant has a claim to the tune of Rs. 3,02,50,646/- (Rupees Three Crore Two Lakhs Fifty Thousand Six Hundred Forty-Six Only). Accordingly, the Applicant filed his claim before the Respondent, being the Resolution

Professional of the Corporate Debtor. However, the said claim came to be rejected by the Resolution Professional for want of limitation and lack of documents to substantiate the claim. Being aggrieved by the same, the Applicant has preferred the present Application.

b. The Applicant deals with contract work for excavation, PCC foundation work, plinth work, plaster work, and other construction related work.

c. In that regards, the Applicant gave a proposal for construction of civil work with material at the site of the Corporate Debtor for its project comprising of Ground + Podium + 14 upper floors situated at Kalamboli, Navi Mumbai ("said project") vide letter dated February 12, 2012.

d. Pursuant to the same, the Applicant was awarded with the construction work for excavation, PCC foundation, plinth work, plaster work etc. at the said project vide its Work Order dated February 27, 2012.

e. Pursuant to the said Work Order dated February 27, 2012, the Applicant also commenced the work assigned to him and accordingly regularly raised invoices upon the Corporate Debtor. Between the period from 2012 to 2014, the Corporate Debtor regularly made payment to the Applicant against the invoices raised by the Applicant. As such, as on August 5, 2014, the Applicant had an outstanding amount of Rs. 3,02,50,646/- (Rupees Three Crores, Two Lakhs, Fifty Thousand, And Six Hundred Forty-Six Only) payable by the

Corporate Debtor.

f. Further to the same the Applicant issued a Demand Notice dated August 5, 2014 to the Corporate Debtor, through its parent entity, thereby claiming the aforementioned outstanding amount of Rs. 3,02,50,646/-. The Petitioner thereafter regularly followed up with the Corporate Debtor seeking repayment of the outstanding amount. However, for a substantial period of time, the Corporate Debtor continued to give false hopes and assurances.

g. Having left with little choice, the Applicant once again issued another Demand Notice to the Corporate Debtor on August 30, 2016 once again demanding the Corporate Debtor to forthwith disburse the amounts due and payable to the Corporate Debtor. Thus, as per the Ledger of the Corporate Debtor maintained by the Applicant, the Ledger Account showed an outstanding balance of Rs. 3,02,50,646/-.

h. Pursuant thereto, and in view of the cordial relations maintained with the Corporate Debtor, the Applicant regularly followed up with the Corporate Debtor as to when the Corporate Debtor may release the outstanding payment of the Applicant. The Corporate Debtor time and again told the Applicant that the Corporate Debtor is under financial stress and that he did not have the funds available to clear the outstanding payment of the Applicant. Additionally, the Corporate Debtor only continued to give false assurances to the Applicant that he shall endeavor to clear the pending dues of the Applicant at the earliest.

i. However, for a very long period of time the Corporate Debtor failed to disburse any amount whatsoever to the Applicant. Being frustrated by the conduct of the Corporate Debtor, the Applicant demanded that the Corporate Debtor ought to forthwith release the payments due to the Applicant and that the outstanding books of the Applicant ought to be cleared at the earliest.

j. Further to the same, the Applicant, in the year 2019 also addressed a legal notice to the Corporate Debtor seeking recovery of the balance amount of Rs. 3,02,50,646/-. The Applicant is unable to trace the said legal notice issued to the Corporate Debtor since the office of the Applicant was shut for a long time during the Covid period. Be that as it may, the Applicant has also issued another Demand Notice dated January 22, 2019 to the Corporate Debtor, once again seeking a recovery of the aforementioned amount.

k. In the meantime, sometime in the year 2018, one Capri Global Capital Ltd., being the Financial Creditor herein also filed the captioned Company Petition against the Corporate Debtor under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("BC" or "Code"). The said Company Petition came to be admitted vide an Order dated September 27, 2019 passed by this Hon'ble Tribunal and Corporate Insolvency Resolution Process was initiated in terms of the Corporate Debtor.

l. Subsequently, upon gaining knowledge of the same, the Applicant filed a claim as per Form B, dated July 14, 2021 before one Mr. S. Gopalakrishnan, the then Resolution

Professional of the Corporate Debtor.

m. Till September, 2021, the Applicant received no communication whatsoever from the Resolution Professional in terms of the admission of the claim. It was only on September 20, 2021 when the Respondent herein, for the first time addressed an email to the Applicant requesting to provide any acknowledgement of debt by the Corporate Debtor for the period preceeding for last three (3) financial years from the Insolvency Commencement Date.

n. By an inadvertent error and for reasons beyond the knowledge of the Applicant, the said email from the Applicant went into the Spam Folder of the Applicant's email and hence the same went unnoticed by the Applicant.

o. To the utter shock and surprise of the Applicant, two (2) months later the Respondent addressed another email dated November 19, 2021 wherein the Respondent stated that he had requested certain information vide an earlier email and that in the absence of receipt of such information, the Respondent outrightly rejected the claim of the Applicant.

p. As soon as the Applicant gained knowledge of the said email dated November 19, 2021, the Applicant made efforts to locate the aforementioned Demand Notice dated January 22, 2019 and sent the same to the Respondent vide an email dated December 15, 2021.

q. However, without taking cognizance of the said letter dated January 22, 2019, the Respondent addressed another email on the same day, i.e. on December 15, 2021 to the Applicant stating that the CIRP period was over and hence the claim of the Applicant cannot be admitted at the belated stage.

r. In view of the same, it is only prudent that the Respondent be directed to consider the claim of the Applicant and upon verification, admit the same as an Operational Debt due and payable to the Applicant.

5. Reply filed by the Respondent/Resolution Professional:

a. The grievance of the Applicant is that his claim as an Operational Creditor, as filed in Form B dated the 14th July, 2021, stood rejected both by the erstwhile Resolution Professional as well as by the Respondent herein after substitution. In this regard, the Respondent humbly says and submits that the claim of the Applicant cannot be verified, admitted, and collated, as it is neither supported by adequate documentation nor it is due and payable as on the Insolvency Commencement Date, i.e. the 27th September, 2019.

b. It is the case of the Applicant that he was engaged by the Corporate Debtor for construction of civil work for the project of the Corporate Debtor, under a Work Order dated 27th February, 2012. As per the case being put forth by the Applicant, he provided various services during the financial years 2012-13 and 2013-14. It is the case of the Applicant that an amount of Rs. 3,02,50,646/- (Rupees Three Crores, Two Lakhs Fifty Thousand Six Hundred and Forty-Six only) was due and payable to him by the Corporate Debtor.

c. The Applicant has produced at Exhibit I to the application an email dated the 19th November, 2021, sent by the Respondent by which the claim of the Applicant came to be rejected after considering all material on record. The Respondent had sought information and supporting documents from the Applicant under cover of an email dated 20th September, 2021 which has also been annexed to the present application as Exhibit H. The Respondent had sought details as to whether the Corporate Debtor had provided any confirmation of debt at any point of time within three years preceding the Insolvency Commencement Date.

d. The reason this information was sought is that the documents which have been produced by the Applicant thus far show that his claim is time barred. As per the ledger produced by the Applicant at Exhibit E to the present application, the invoices claimed to be in default were raised by the Applicant between the 01st April, 2012 and 03rd May, 2013. It is submitted that it is now well-settled law that the period of limitation for recovery of each invoice is separate. On this basis, it is clear that the claim of the Applicant in its entirety is time barred, as the period of limitation to recover those amounts would have expired between 01st April, 2015, and 03rd May, 2016.

e. In the present Application, the Applicant has sought to contend that the suspended partners and managers of the Corporate Debtor gave several oral assurances from time to time that the amount is due and payable and will be paid expeditiously. Unfortunately, however, the Respondent cannot proceed on the basis of these oral assurances as the Respondent being a Resolution Professional, is not a judicial or quasi-judicial authority and his role is restricted to collating and verifying the claims only on the basis of clear documentary evidence. There is absolutely no proof that any such assurances were given by the members or managers of the Corporate Debtor. In fact, the Applicant has also not put forth any concrete details about these alleged admissions and assurances.

f. Even assuming that the period of limitation would start from the last invoice, it is clear that the claim of the Applicant became time barred on the 03rd May, 2016. The Applicant has sought to rely on a "Demand Note" to suggest that the Corporate Debtor had acknowledged the outstanding amount. The Applicant has sought to produce three such "Demand Notes". A careful perusal of these "Demand Notes", however, would show that the Corporate Debtor has not acknowledged the demand being made thereunder but has simply signed the notes in acknowledgement of their receipt. Further, there appears to be some discrepancy as the ledger account produced by the Applicant indicates that the last "Demand Note" to have been generated on the 26th August, 2016. However, the Demand Note produced by the Applicant at Exhibit D bears the date of 30th August, 2016, and appears to have been received by the Corporate Debtor on 04th September, 2016. It is clear that these "Demand Notes" cannot be relied upon as they are neither an acknowledgement of debt in writing, nor do they appear to be genuine.

g. It is the case of the Applicant that the Respondent ought to have taken into account the document provided by him under cover of his email dated the 15th December, 2021. However, this email was received after the CIRP of the Corporate Debtor came to an end with the submission of a resolution plan to this Adjudicating Authority. It is the case of the Applicant that he was not able to take note of my email dated the 19th November 2021, as the same was mistakenly delivered to the "spam" folder of his email inbox. It is humbly submitted that the Respondent cannot be held responsible for this nor can the CIRP of the Corporate Debtor be brought to a grinding halt due to this.

h. For all of these reasons, it is submitted that the claim of the Applicant is barred by limitation and cannot be admitted or verified. Even otherwise, as has been stated on various occasions, the Applicant has failed to provide sufficient documents to prove his claim. In fact, there are absolutely no documents on record showing that the Corporate Debtor accepted the invoices raised by the Applicant or that the work had actually been completed by him.

Findings:

6. We have heard the submissions of the Ld. Counsels and perused the records.

7. It has been contended by the Counsel for the Applicant that the RP has wrongly rejected the claim of the Applicant on the ground of limitation. The Counsel for the Applicant has further contended that

the RP has no adjudicatory powers and therefore, the rejection of the claim on the part of the RP is clearly illegal and unjustified. The Counsel for the Applicant has further argued that even if the debt has become time barred, it does not get extinguished and only the remedy to realize the same through a court of law gets barred. The Counsel for the Applicant has contended that it is a settled proposition of law that limitation simply bars the remedy and not the right. The Counsel for the Applicant has further urged that the Respondent/RP be directed to review its order and admit the claim.

8. On the other hand, the Counsel for the RP has argued that the RP has rightly rejected the claim as it was time barred. The Counsel for the RP has further argued that as per the provisions of Section 238A of IB Code, 2016, the provisions of the Limitation Act, 1963 are applicable to the IBC proceedings. In these circumstances, any claim which is hit by the law of limitation cannot be entertained and merely because the RP has no adjudicatory powers, it cannot be said that he is under an obligation to collate and admit all claims placed before him irrespective of the fact as to whether the same are within time or not.

9. We have weighed the contentions raised by the Counsel for the parties and have minutely gone through the records.

10. It is not disputed even by the Applicant of IA 131 of 2022 that the claim lodged by it is time barred. In the Application, it is stated that the claim pertains to some contract of civil work allotted to the Applicant by the Corporate Debtor vide work order dated 15.12.2010. It is further stated that as per the Ledger of the Corporate Debtor there was an outstanding due of Rs. 3,36,91,726/- in the year

2015, thereafter a cheque dated 31.01.2016 was issued by the Corporate Debtor which was deposited with the bank by the Applicant in March, 2016 and was returned dishonoured. The claim as per Form-B was filed by the Applicant before the RP on 14.07.2021. Therefore, apparently the claim is time barred.

11. It is further not disputed by the Applicant of IA 262 of 2022 that the claim of Rs. 3,02,50,646/- pertains to some construction of civil work carried out by the Applicant for the Corporate Debtor which was awarded vide work order dated 27.02.2012. It has further been claimed in the Application itself that a sum of Rs. 3,02,50,646/- was outstanding as on 05.08.2014. Thereafter, a demand notice was issued on 05.08.2014 itself and another demand notice was issued on 30.08.2016 and final legal notice was also got issued by the Applicant on 22.01.2019. It is thus evident that the debt became due on 05.08.2014 and as per the law of limitation, a claim could have been filed in respect of the claim within a period of three years from 05.08.2014. Therefore, when the claim was filed with the RP, it had become time barred.

12. Now the question arises whether the RP has a power to reject a claim on the ground of limitation. In this regard, we are of the considered view that undisputedly the provisions Section 238A clearly provide that provisions of the Limitation Act, 1963 are applicable to the proceedings or appeals before the Adjudicating Authority/NCLT. If the provisions of the Limitation Act are applicable to the proceedings under the IB Code, 2016, it would be paradoxical to say that the RP is under an obligation to admit even the time barred debts. It is well settled that when a debt becomes time barred, the right to remedy

also gets barred though the right itself does not get extinguished. While amending the IB Code, 2016 to make the law of limitation applicable by introducing Section 238A, the intent of the legislature could not have been to give a new lease of life to debts which have already become time barred.

13. So far as the question of the RP having no adjudicatory powers is concerned, the same would come into play when there is some dispute with regard to the fact as to whether a particular claim/debt is time barred or not. If on the face of it, a claim is time barred and no dispute is raised with regard to limitation, in that case, in our considered view, the RP can always refuse to entertain the claim on the ground of limitation. In the instant case also, it is not the case of the Applicant that the claim is not time barred. Therefore, the Applicant cannot be heard harping that since the RP has no adjudicatory powers, he could not have rejected the claim on the ground of limitation when it is not even disputed by the Applicant that the debt is time barred. We are further of the considered view that if there is a dispute whether if particular debt is time barred or not, in the absence of having any adjudicatory powers, the RP can always seek directions from the Adjudicating Authority before taking a final call on the fate of such claim.

14. Even otherwise the contention of the Applicant is considered as correct, in that eventuality a very queer situation would arise as the RP will admit the claim even if the same is time barred as he has no adjudicatory powers and if the Corporate Debtor goes into liquidation, at the stage of liquidation, the Liquidator will reject the same claim as he enjoys adjudicatory powers under the Code. Such a

situation must not have been envisaged by the legislature while drafting the Code nor has it been the intention of the legislature that even the time barred claims can be admitted in the CIRP.

15. As a result of above discussion, we hold that the RP was justified in rejecting the claim on the ground of limitation when it was not even disputed by the Applicant that the debt was time barred. Accordingly, the **IA 131 of 2022 and IA 262 of 2022** are hereby **dismissed** as being devoid of any merit.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

ANKIT