

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

Item No. 9

(IB)-449(PB)/2019 filed under
Section 7 of IBC, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016.

In the matter of M/s. Piyush Colonisers Ltd. & Ors.

Oriental Bank of Commerce

...Applicant/ Petitioner

V/s

M/s. Piyush Colonisers Ltd. & Ors.

...Corporate Debtor

SECTION:

Under Section 7 of IBC, 2016 CIRP

Order delivered on 12.03.2020

Coram:

**SHRI CH. MOHD. SHARIEF TARIQ
HON'BLE MEMBER (JUDICIAL)**

**SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant/ RP : Mr. Shaunak Kashyap, Ms. Nistha Gupta,
Mr. Mohd. Hamza, Advocates.

ORDER

IA-1772(PB)/2020 filed in (IB)-449(PB)/2019

1. Learned Counsel for the Applicant/Resolution Professional (hereinafter referred as "RP") is present. It has been submitted that during the CIRP initiated against the Corporate Debtor viz. *Piyush Colonisers Ltd.*, 90 days' period got completed on 29.12.2019 and thereafter some of the home-buyers have filed claims, as on 25.02.2020, who are 66 in numbers and claims have been admitted. Now, a clarification is sought with regard to Sub-regulation (3)

of Regulation 12 of the CIRP Regulations, 2016. For the sake of easy reference Regulations 8, 8A and 12 are reproduced as follows:

“8. Claims by financial creditors

(1) A person claiming to be a 13[financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof] to the interim resolution professional in electronic form in Form C of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of -

(a) the records available with an information utility, if any; or

(b) other relevant documents, including -

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been 14[paid]; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

8A. Claims by creditors in a class.

(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.

(2) The existence of debt due to a creditor in a class may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents, including any-

(i) agreement for sale;

(ii) letter of allotment;

(iii) receipt of payment made; or

(iv) such other document, evidencing existence of debt.

(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.]

12. Submission of proof of claims.

(1) Subject to sub-regulation (2), a creditor shall submit 20[claim with proof] on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is [a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

2. The sub-regulation (2) of Regulation 12 of CIRP Regulations provides that 'creditor can file claim within 90 days of the Insolvency Commencement date, whereas sub-regulation (3) of Regulation 12 provides that where the creditor in sub-regulation (2) is a financial creditor under Regulation 8 he shall be included in the committee from the date of admission of such claims. In other words, sub-regulation (3) of Regulation 12 provides that the financial creditors referred to in Regulation 8(1) shall be included in the committee from the date of admission of such claims but such inclusion shall not affect the validity of any decision of committee made prior to such inclusion. But, sub-regulation (3) of Regulation 12 did not refer to Regulation 8A due to which the right of the financial creditors belonging to a class of creditors will get affected. In other words, in the event the claims of the class of creditors are admitted they could not be included in the committee from the date of admission of such claims.

In view of the above, it is deemed fit to seek the clarification from the IBBI, in relation to the above noted aspect. The issues are framed as follows:

(a) Whether the claim of the Financial Creditor other than Financial Creditors belonging to a class of creditors is to be admitted after the expiry of ninety days, reckoning from the date of commencement of the

CIRP and he shall be included in committee from the date of admission of such claim? If yes, then;

(b) Whether the concession being enjoyed by the Financial Creditor other than the Financial Creditors belonging to a class of creditors is not available to the Financial Creditors belonging to a class of creditors, if so, Why?

3. A copy of this Order shall be sent by the RP along with the copy of the application to the IBBI for seeking clarification at the earliest possible opportunity.

List the matter on 15.04.2020.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

12.03.2020
Aarti Makker