

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1082 of 2021**

**IN THE MATTER OF:**

**Punjab National Bank  
Having its Head Office at  
Plot No.4, Sector-1 0, Dwarka,  
New Delhi-110075  
and inter-alia, a Branch Office at  
Zonal Sastra at 11, Hemanta Basu Sarani,  
Third Floor, Kolkata-700001** **... Appellant**

**Vs.**

**Mr. Animesh Mukhopadhyay  
Address: Syndicon Enclave,  
25/1a/1, Naktala, Road,  
Kolkata700047,  
Mob: +91 9830107220  
Email: animesh[fca@yahoo.co.in](mailto:fca@yahoo.co.in)** **... Respondent**

**AND IN THE MATTER OF:**

**United Bank of India  
Having its Head Office. at 11,  
Hemanta Basu Sarani, Kolkata700001  
(Formerly known as 16,  
old Court House Street)  
Kolkata700001 and inter-alia  
carrying on its business at  
its branch office at Garia Branch,  
P-123, Raja S.C. Mullick Road,  
Kolkata-700084.** **... Financial Creditor**

**Vs.**

**M/s. Zenith Finesse (India) Private Limited  
Having its registered office at  
Century Tower, 2nd Floor,  
45, Shakespeare Sarani,  
Kolkata-700084** **... Corporate Debtor**

**Present:**

**For Appellant:** Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Nipun Sharma, Advocates.

**For Respondents:** Mr. Rishabh Banerjee, Mr. Pranay Agarwal, Ms. Ankita Baid, Advocates with Mr. Animesh Mukhopadhyay, RP in person for R-1.

Mr. Jishnu Saha, Sr. Advocate with Mr. Ishaan Saha, Mr. Sananda Ganguli, Advocates for R-2.

Mr. Om Narayan Rai, Mr. Mohit Seth, Advocates for Intervenor (SBI).

## **J U D G M E N T**

**(Date: 21.04.2022)**

**[Per.: Dr. Alok Srivastava, Member (Technical)]**

The present appeal is preferred by the Appellant 'Punjab National Bank' (in short 'PNB') against the order dated 14.12.2021 (hereafter called 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in I.A. No. 922/KB/2021 in CP (IB) No. 159/KB/2019, whereby the Adjudicating Authority has, inter alia, directed the Resolution Professional (in short 'RP') to complete the process of voting on the resolution plan under consideration before 22.12.2021 on the basis of the Committee of Creditors ('CoC' in short) as it exists on 14.12.2021.

2. The Appellant has stated that the Adjudicating Authority has passed the impugned order for completing the process of voting on the resolution plan in I.A. No. 922/KB/2021

without deciding the application bearing I.A. (IB) No. 1078/KB/2021 filed by the Appellant, inter alia, praying for acceptance of its claim against the Corporate Debtor 'M/s. Zenith Finesse India Private Limited', because the acceptance of the claim would change the composition/voting share in the CoC. Aggrieved by the said order which affects its rights in the Corporate Insolvency Resolution Process (in short 'CIRP'), the Appellant has filed this appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC').

3. In brief, the facts of the case as stated by the Appellant are that the CIRP of the corporate debtor Purple Advertising was initiated vide order of the Adjudicating Authority dated 20.11.2019. The period of 90 days for submission of claims was over on 29.12.2020 and the Appellant/PNB filed its claim vide email dated 05.03.2020 (claim filed by United Bank of India which was later merged into Punjab National Bank) to the RP in 'Form-C' relating to corporate guarantee given to United Bank of India by 'M/s. Zenith Finesse India Private Limited' for 'M/s Purple Advertising'. The said claim which was later forwarded by the Punjab National Bank on 08.03.2021 to the RP, was rejected on 18.03.2021 by the RP on the ground that the claim was filed after the stipulated period of 90 days for submission of claims. Thereafter, the Appellant/PNB obtained orders dated 08.04.2021 in I.A. No. 391 of 2021 from the Adjudicating Authority condoning the delay in filing of claim by PNB. Thereafter RP, vide email dated 10.04.2021, requested proof of claim from the Appellant which was submitted by the Appellant on 20.04.2021 whereas the period of 270 days of the CIRP expired on 12.04.2021. Upon rejection of the documents submitted in proof of claim as being beyond the time period of 270 days, the Appellant filed another application namely I.A. No. 1078 of 2021

before the Adjudicating Authority praying for direction to the RP to verify its claim and make the Appellant a member of the CoC. While this I.A. No. 1078 of 2021 was under consideration of the Adjudicating Authority, an order was passed in IA 912/2021 and IA 988/2021 on 14.12.2021 directing the CoC to consider the resolution plan submitted by Loka Properties Pvt. Ltd. and allowing exclusion of 245 days from the CIRP period. It also directed that the CoC, as it existed on 14.12.2021, should consider Loka Properties Pvt. Ltd.'s resolution plan which was subsequently approved in the 20<sup>th</sup> Meeting of CoC held on 24.12.2021.

4. The Appellant has claimed that the order of the Adjudicating Authority in I.A. No. 918 of 2021 and I.A. No. 922 of 2021 which was given for consideration of resolution plan in the CoC excluded its rightful position/status in the CoC as its claim was not considered by the RP and when it filed I.A. No. 1078/KB/2021 to condone the delay in submission of documents in support of its claim it was not decided in time by the Adjudicating Authority and the resolution plan was finalised by CoC.

5. We heard the arguments of all the parties in the appeal and also perused the record.

6. The Ld. Counsel for the Appellant has argued that a claim was filed by the United Bank of India (which was later merged into PNB) on 08.03.2020 which was rejected vide reply dated 18.03.2021 (at pg. 32 of the Appeal Paper Book) on the ground that it was filed after a period of 90 days from the date of initiation

of CIRP. He has further stated that thereafter the Appellant/PNB filed I.A. No. 391 of 2021 to seek condonation of delay which was approved by the Adjudicating Authority vide order dated 08.04.2021 (attached at pp. 25-26 of the Appeal Paper Book). Thereafter, on receipt of email dated 10.04.2021 from the RP asking the Appellant to submit proof of its claim, the Appellant submitted the requisite documents vide email dated 20.04.2021. Since the maximum period of CIRP of 270 days had expired on 12.04.2021 RP rejected the claim of the Appellant. He has further stated that in the meanwhile the Adjudicating Authority passed order dated 27.10.2021 in I.A No. 918/KB/2021 and I.A. No. 922/KB/2021 (attached at pp. 27-28 of Appeal Paper Book) whereby the Adjudicating Authority directed that the plan filed by the prospective resolution applicant to be considered by the CoC since the process of CIRP had not been concluded. The Appellant filed another I.A. No. 1078 of 2021 before the Adjudicating Authority (attached at PP 48 – 60 of the Appeal Paper Book) seeking direction to RP for verification of its claim and giving it the rightful place in the CoC with revised voting share. The Ld. Counsel for the Appellant has further argued that thereafter the CoC considered the resolution plan and approved it on 24.12.2021 which was submitted before the Adjudicating Authority for approval.

7. The Ld. Counsel for the Appellant has claimed that the Appellant exercised due diligence with utmost sincerity and obtained order for condonation of delay when its claim was rejected beyond the 90 days' period, and when the proof of its claim was submitted after an expiry of 270 days of the CIRP, the Appellant filed application bearing I.A. No. 1078/2021 for direction to RP for verification of its claim and according it proper voting share in the CoC. He has also claimed that despite his

due diligence and utmost sincerity in filing claim and obtaining condonation of delay, the RP has been remiss in not considering despite minor delays. In support of his argument, he has pointed out that United Bank of India (which was later merged into PNB) filed its claim on 05.03.2020 whereas the RP sent an email rejecting it on 18.03.2021. He has pointed out that the voting share of PNB is presently fixed at 20.56% whereas if its application I.A. No. 1078/KB/2021 is considered and approved and its claim revised consequently, its voting share would increase to 42.96%. He has concluded his arguments by saying that the claim of PNB should be considered for payment after condoning the delay in filing proof of claim as it is the debt owed to public sector bank.

8. The Ld. Counsel for the Respondent No. 1/RP has argued that the RP could not have admitted the claim of PNB as it was filed with delay and only after the Appellant/PNB obtained orders from the Adjudicating Authority regarding the condonation of delay, it was considered by the RP. He has added that the first condonation of delay of Appellant claim was received vide order dated 08.04.2021 of the Adjudicating Authority in I.A No. 391 of 2021, whereafter the RP sent an email to the Appellant on 10.04.2021 for submission of proof of Appellant's claim for verification. He has further added that since the Appellant submitted documents of proof on 20.04.2021 and the period of 270 days had expired on 12.04.2021, the RP could not consider the said documents submitted by the Appellant. Moreover, since the Appellant had filed I.A. No. 1078 of 2021 before the Adjudicating Authority seeking direction to the RP to verify his claim, he was awaiting the order of the Adjudicating Authority so that he could fairly consider the proof of claim submitted by the Appellant. In the meanwhile, since the Adjudicating Authority

passed an order on 27.10.2021 (In I.A No. 918/KB/2021 and I.A. No. 922/KB/2021), he was duty bound to comply with the said order and in accordance with the said order he put up for consideration the resolution plan submitted by the prospective resolution applicant' (Respondent No. 2) before the CoC. Thereafter, on the decision of the CoC in its meeting on 20.12.2021 considered the resolution plan submitted by Loka Properties Pvt. Ltd. and approved it after completion of voting on 22.12.2021 which is recorded in the minutes of the 20<sup>th</sup> meeting of the CoC. The RP thereafter, in accordance with the direction of the CoC submitted the resolution plan for approval before the Adjudicating Authority. The Ld. Counsel for the Respondent No. 1/RP has finally urged that he would have had no difficulty in considering the claim of the Appellant/PNB if he receives such orders in the I.A. No. 1078 of 2021 from the Adjudicating Authority.

9. The Ld. Sr. Counsel for the Respondent No. 2/Successful Resolution Applicant 'Loka Properties Pvt. Ltd.' has argued that its resolution plan was considered in the 20<sup>th</sup> meeting of CoC between 20.12.2021 to 22.12.2021 and approved by 79.44% voting share during this meeting. He has further argued that in such a situation his resolution plan which has been considered in a lawful manner in compliance of order dated 27.10.2021 which was not challenged by any party and has, therefore, achieved finality and hence there is no need to set aside the impugned order dated 14.12.2021.

10. The State Bank of India through its Ld. Counsel has filed an application vide diary No. 34560 dated 25.03.2022 for permission to intervene in the appeal which was granted and the

Ld. Counsel for State Bank of India was heard in the matter. He has argued that the claim filed by United Bank of India (which was later merged into PNB) was found deficient in documentary proof and therefore the RP could not process the claim of the Appellant. He has further submitted that the Appellant delayed the submission of relevant documents to the RP to such an extent that the maximum time of 270 days provided for CIRP also expired and thereafter the RP filed I.A. No. 918 of 2021 seeking an order of liquidation of the Corporate Debtor as no viable resolution plan could be obtained during the CIRP period. During the pendency of I.A. No. 918 of 2021 which was application for liquidation, one 'Loka Properties Pvt. Ltd.' filed an I.A. No. 922 of 2021 praying for consideration of its resolution plan which was heard by the Adjudicating Authority and thereafter the Adjudicating Authority passed order dated 27.10.2021 directing the CoC to consider the plan filed by the prospective resolution applicant 'Loka Properties Pvt. Ltd.'. He has argued that the said order dated 27.10.2021 was not challenged by any of the parties and hence it has attained finality. Therefore, the subsequent order dated 14.12.2021 which is in the nature of a follow-up order cannot be now assailed as it is an established legal principle that what act cannot be done directly cannot be done indirectly. He has cited the judgment of Hon'ble Supreme Court in the matter of **Edukanti Kistamma (Dead) through LRs Vs. S. Venkatareddy (Dead) through LRs, [(2010) 1 SCC 756]** in this regard to emphasise the point that once order dated 27.10.2021 has achieved finality the consequent order dated 14.12.2021 cannot be challenged. He has, hence, requested that the impugned order need not be interfered with and the process of insolvency resolution of the Corporate Debtor should be completed in accordance with the orders of the Adjudicating Authority.

11. We reproduce below a list of dates that would be useful in this judgment and will be relevant while discussing the chain of events:-

S. No.	Actives	Date	Reference
1.	CIRP Initiated on	20.11.2019	Pg. 7 of the appeal paper book
2.	Public announcement on	25.11.2019	Pg. 7 of the appeal paper book
3.	90 days for submitting claim over on	29.12.2020	Pg. 5 of the Reply filed by the RP
4.	Claim filed by United Bank of India (merged in PNB later)	08.03.2020	Pg. 7 of the appeal paper book
5.	Reply of RP rejecting the claim	18.03.2021	Pg. 8/32 of the appeal paper book
6.	Order of the Adjudicating Authority dated 08.04.2021 in I.A. No. 391 of 2021 of PNB seeking condonation of delay	08.04.2021	Pg. 91 – 92 of Reply of RP
7.	Email of RP asking for proof of claim from PNB	10.04.2021	Pg. 8/32 of the appeal paper book
8.	Proof submitted on	20.04.2021	Pg. 32 of the appeal paper book
9.	Period of 270 days expires on	12.04.2021	Pg. 8 of the appeal paper book/Pg. 93-103 of reply of RP.
10.	Deliberation in meeting of Financial Creditors on 26.11.2021 regarding verification of PNB's claim.	26.11.2021	Pgs.109-114, Reply of RP
11.	I.A. No. 1078 of 2021 filed by the PNB before the Adjudicating Authority	13.12.2021	Pg. 48-69 of appeal paper book.

	seeking direction to RP to verify its claim		
12.	Order of NCLAT	CA (AT) (Ins) No. 186 of 2021 – made SBI a member of CoC	Pg. 44 reply filed by the RP
13.	Date on which CoC approved the Resolution plan	24.12.2021	Pg. 141 of the 20 <sup>th</sup> CoC meeting filed in reply by the RP
14.	Voting percentage	IDBI-41.40% SBI-38.04% PNB-20.56% (abstained)	Pg. 141 of the 20 <sup>th</sup> CoC meeting filed in reply by the RP
15.	Date when Resolution Plan submitted before the Adjudicating Authority	27.10.2021 [(I.A. No. 918(KB) (for liquidation filed by the RP) and I.A. 922 (KB) of 2021)]	Pg. 27 of the appeal paper book
16.	Date when Resolution Plan filed before the Adjudicating Authority for approval	12.10.2021	Pg. 9 of the appeal paper book

12. We first look at the impugned order and prayer made by the Appellant/PNB in the appeal. The impugned order dated 14.12.2021 (attached at pp. 29 to 31 of the Intervention Application of State Bank of India filed vide diary No. 34560 dated 25.03.2022). I.A. No. 918/(KB)2021 is an application seeking order for liquidation of the Corporate Debtor and I.A. No. 922/KB/2021 is an application filed by the prospective resolution applicant 'Loka Properties Pvt. Ltd.' seeking exclusion

of certain time frame from the CIRP period and also a direction to the CoC to consider its resolution plan. The relevant part of this order is reproduced below:-

“7.

xxx xxx xxx xxx

*(c) We wish to make it clear that the CoC as existing today (14.12.2021) shall consider the resolution plan in respective of the fate of the application filed by PNB yesterday i.e. 13.12.2021 before this Adjudicating Authority.*

xxx xxx xxx”

13. It is noted that the Adjudicating Authority in vide impugned order dated 14.12.2021 recognised the fact that an application was filed by PNB regarding condoning delay in submission of proof of its claim as is evident in Para 7 (c) of the impugned order reproduced above, and ordered that the CoC, as it existed on 14.12.2021, shall consider the resolution plan of Loka Properties Pvt. Ltd. We, therefore, feel there is sufficient reason for the Appellant/PNB to be aggrieved since it had prayed for a position in the CoC with a higher voting share and carrying out of voting without deciding its IA No. 1078/2021 affects its interest. Therefore, it is well within its right to assail the impugned order through the present appeal. We are also of the view that even though the order of the Adjudicating Authority dated 27.10.2021 (which had stated that the plan filed by the prospective resolution applicant should be considered by the CoC) was not assailed and hence the order dated 14.12.2021 cannot be challenged does not preclude the Appellant from challenging the order dated 14.12.2021 as the consideration of

resolution plan by CoC without according Appellant a revised voting share is a valid ground for the Appellant to file this appeal.

14. To better appreciate the contention of the Appellant regarding his I.A. No.1078 of 2021 we look at the prayers contained therein which are as hereunder: -

*“(a) That your Lordship may graciously be pleased to kindly direct the RP to accept the claim by condoning the unintentional delay for ends of justice;*

*(b) Pass an order directing the RP of ‘M/s. Zenith Finesse India Private Limited’ to admit the claim of PNB erstwhile United Bank of India in respect of ‘M/s. Zenith Finesse India Private Limited’ as the corporate guarantor of ‘M/s Purple Advertising Services Pvt. Ltd.’ in the CIRP of ‘M/s. Zenith Finesse India Private Limited’;*

*(c) To pass such other or further order or orders, and/or direction or directions as to your owner may deem fit and proper”*

15. Thus, we note that the application I.A. No. 1078 of 2021 sought direction to the RP to accept its claim by condoning the unintentional delay on part of PNB. We also note that earlier the United Bank of India (which was later merged into PNB) filed its claim on 08.03.2020 and received a reply rejecting its claim on 18.03.2021. Since the claim was rejected on the basis of its submission after the 90 days’ period stipulated under Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Appellant obtained an order of the Adjudicating Authority in I.A.

No. 391 of 2021 dated 08.04.2021 for condonation of delay in submission of its claim. Thereafter, the RP sent an email dated 10.04.2021 seeking proof of claim from PNB which was submitted within 10 days on 20.04.2021 by the Appellant/PNB. The issue of acceptance of revised claim of PNB was considered in the meeting of Financial Creditors on 26.11.2021 and as SBI objected that since 270 days' period of CIRP had expired on 12.04.2021, the RP could not accept PNB's revised claim and the documents, hence the Appellant had to again approach the Adjudicating Authority through I.A. No. 1078 of 2021 seeking direction to the RP for verification of the proof submitted in support of its claim (refer to pg. 113 of the reply of RP).

16. A perusal of the impugned order makes it clear that the Adjudicating Authority first considered the application for liquidation filed by the RP on the ground that 270 days' period of CIRP had expired on 12.04.2021 and that there was no consensus amongst the members of the CoC for taking further exclusion or extension of the CIRP period, and additionally a resolution plan was under consideration of the CoC vide Adjudicating Authority's order dated 27.10.2021, the application for liquidation was disposed of as 'not pressed'. Thereafter, the Adjudicating Authority considered I.A. No. 922/KB/2021 filed by the one Loka Properties Pvt. Ltd., whose resolution plan was receiving consideration by the CoC, and proceeds to pass an order which can be seen in Paragraph 7(d) of the impugned order, whereby a total exclusion of 245 days has been given in the CIRP period. The relevant extract of the Impugned Order (attached at pp. 29 - 31 of the Intervention Application of SBI) in Paragraph 7 (d) allow exclusion as follows: -

*“7(d). The period of 104 days between 24.11.2020 and 08.03.2021, which is time spent in finally determining the application filed by the SBI for consideration of its claim by the Adjudicating Authority and by the Hon’ble NCLAT shall stand excluded from the CIRP time frame.*

*Further exclusion of 77 days due to second wave of Covid-19 between 13.04.2021 and 30.06.2021 shall also be excluded from the CIRP. Similarly, the time spent in considering the present application I.A.No. 918/KB/2021 for liquidation of the Corporate Debtor, i.e. between 12.10.2021 and 14.12.2021 when the application for liquidation was receiving considering the application will also be excluded from the CIRP time frame.”*

17. We note that the Adjudicating Authority gave this exclusion not on an application from the RP as there was no direction of the CoC for exclusion of any time period, but on an application made by the prospective resolution applicant, Loka Properties Pvt. Ltd, ostensibly in the interest of achieving a successful resolution of the Corporate Debtor.

18. The provision of prescribed time limit for completion of insolvency resolution process is included in Section 12 of the IBC, which is as hereunder:-

***“12. Time-limit for completion of insolvency resolution process.-***

*(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of*

*one hundred and eighty days from the date of admission of the application to initiate such process.*

*(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

*Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.*

*Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:*

*Provided also that where the insolvency resolution process of a corporate debtor is pending and has not*

*been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.”*

19. Further, Regulations 12 and 12-A of the CIRP Regulations, which relate to submission of proof of claims and updation of claim respectively, are as follows: -

**“12. Submission of proof of claims.-**

*(1) Subject to sub-regulation (2), a creditor shall submit 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”*

**xxx xxx xxx xxx**

**12-A. Updation of claim.-**

*A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.”*

20. We note that the United Bank of India had, vide email dated 05.03.2020 addressed to the RP Mr. Animesh Mukhopadhyay, communicated 'Form-C' (attached at pp. 21-22 of the appeal paper book) which was later rejected by the RP as being submitted beyond the time period of 90 days from the date of initiation of insolvency resolution. The Appellant thereafter obtained order dated 8.4.2021 from the Adjudicating Authority condoning delay in submission of the claim of PNB and submitted documents of proof of claim on 20.4.2021 by which time the 270 days' period of CIRP had expired. Hence the RP expressed inability to consider the proof of claim. Thereafter, on request of PNB to communicate the reasons for not considering the proof of its claim, the RP sent an email dated 1.12.2021 (attached at pp. 31-33 of Appeal Paperbook) communicating the reasons to PNB. Again in 19<sup>th</sup> CoC meeting on 10.12.2021 (minutes attached at pp. 41 of the appeal paper book) RP communicated to the Appellant that it will not be able to consider the proof of PNB's claim only after an order from the Adjudicating Authority. The relevant portion of this email is as follows:-

*“5. On 10<sup>th</sup> April, 2021, you replied that the documents would be furnishing the documents by 12<sup>th</sup> April 2021 morning.*

*6. Finally the documents were received over mail on 20<sup>th</sup> April 2021 i.e. after the CIRP got concluded.*

*In the above situation, as the verification of the claim could not be completed within the stipulated 270 days, hence the claim could not be admitted. Moreover, beyond the 270 days period, the power of reconstitution of CoC*

*by the RP is also not there unless the same is directed by the Hon'ble AA. Hence, the claim on the corporate guarantee issue of PNB has not been considered.*

*Thanking You,*

*Yours sincerely,*

*Animesh Mukhopadhyay*

*Resolution Professional*

*In the matter of Zenith Finesse (India) Pvt. Ltd.*

*IBBI Regn. No.:IBBI/IPA-001/IP-P00124/2017-18  
/10266.”*

21. On receiving this email PNB again raised this issue in the 19<sup>th</sup> CoC meeting on 10.12.2021 regarding acceptance of its claim in the matter of corporate guarantee on M/s Purple Advertising. Thereafter, on receiving no positive reply, PNB filed another I.A No. 1078 of 2021 on 13.12.2021 for condoning of delay in submission of claim. The Adjudicating Authority vide its order dated 14.12.2021 in I.A. No. 912/2021 and I.A. No. 988/2021 excluded a total time period of 245 days from the CIRP period, which included a time period of 104 days which was spent by Intervenor/SBI in litigation in pursuance of its claim. Thus, while the Adjudicating Authority for achieving the aims and objectives of the IBC for successful resolution of the corporate debtor, proceeds to pass order for exclusion a total time period of 245 days from the CIRP period, it is not clear why it could not consider I.A. No. 1078 of 2021 filed by PNB regarding condonation of delay in submission of documents. What is more surprising is that the Adjudicating Authority in Para 7(c) of its order dated 14.12.2021 records as follows which shows that it was aware that the said application of PNB was pending for consideration :-

*“7(c). We wish to make it clear that the CoC as existing today (14.12.2021) shall consider the*

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*resolution plan in respect of the fate of the application filed by PNB yesterday i.e. 13.12.2021 before this Adjudicating Authority.”*

22. Thus, it is apparent that while certain yardsticks of natural justice and achievement of objective of IBC were being considered in relation to the application of Loka Properties Pvt. Ltd. and SBI regarding consideration of its proposed resolution plan and exclusion of time period from CIRP period, no such opportunity was given to the Appellant which had been pursuing the matter of its revised claim quite diligently.

23. On the basis of aforesaid discussion and in the light of the claim of PNB, we feel that the delay hereby condone the delay in submission of documents as requested by PNB vide I.A No. 1078 of 2021.

24. The Ld. Counsel for the SBI (Intervener) has cited the Judgment of Hon'ble Supreme Court in the case of **Edukanti Kistamma (Dead) through LRs Vs. S. Venkatareddy (Dead) through Lrs, [supra]** to claim that if an original order has not been challenged and has become final, the subsequent order which is like a follow-up of the original order cannot be challenged. In the present case we find that this judgment can be distinguished on the basis that the original order dated 27.10.2021 of the Adjudicating Authority only directed the CoC to consider the resolution plan submitted by Loka Properties Pvt. Ltd. whereas the order dated 14.12.2021, which is challenged by the Appellant/PNB makes an observation that the CoC, as it exists on 14.12.2021, shall consider the resolution plan keeping the decision on I.A. 1078/2021 filed by the PNB pending.

25. Further, the Ld. Counsel for the SBI has also referred to the judgment of this Appellate Tribunal in the case of **Deputy Commissioner Division – VII Central GST, Ahmedabad South Vs. Kiran Shah, [CA (AT) (Ins) No. 328 of 2021]** in which this Appellate Tribunal has held that the RP is not duty bound to consider belated claims. We note that in the present case the delay in the filing of the belated claim has been condoned vide order dated 08.04.2021 of the Adjudicating Authority and again the Appellant/PNB has filed I.A No. 1078 of 2021 for condoning of delay in filing proof of its claim. Since this application has not been considered, we find that its consideration only can finally settle the matter of revised claim of PNB.

26. The delay of eight days in submission of proof of documents between 12.04.2021 and 20.04.2021 by PNB also pales in the light of Adjudicating Authority's order dated 14.12.2021 by which an exclusion of 245 days from the CIRP period, which is not on the application of CoC or RP but of the prospective resolution applicant. We feel that, in view of the fact that the exclusion of 245 days has been granted in the CIRP period, the benefit of condonation of delay should also be available to the Appellant/PNB.

27. On the basis of the above discussion, we are of the view that the delay in submission of proof of PNB's claim should be condoned. We, therefore, condone the delay which was prayed by the Appellant/PNB vide IA No. 1078/2021. We further direct the RP to consider the documents submitted by the Appellant/PNB as proof of its claim and revise its claim if the documents have merit. This action may be completed within the period of fifteen days from the date of this judgment. The CoC should, thereafter, consider the revised claim of PNB, if any, for

payment through the resolution plan by the Successful Resolution Applicant and obtain necessary approval. The resolution plan would thus stand revised only in so far as the revised claim (if any) of the Appellant/PNB is concerned. This entire exercise, including consideration of documents of proof of PNB's claim, should be completed within a period of forty-five days from the date of this judgment.

28. With the aforesaid directions we allow the appeal and dispose it of accordingly.

29. There is no order as to costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**New Delhi**

**21<sup>st</sup> April, 2022**

**/ SC /**