

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

IA 487 of 2020 in CP(IB) 172/NCLT/AHM/2018

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 29.09.2020**

Name of the Company: Kotak Mahindra Bank Ltd
V/s
COC of Jaihind Projects Ltd & Ors

Section 60(5) IBC & rule 11 and 155 along with 420
of Co.Act,2013

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

ORDER

(Through Video Conferencing)

Ms. Nilu K. Vaidankar, Learned Lawyer, is present.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**



**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 29th day of September, 2020.

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

I.A. No. 487 of 2020
in
CP(IB) No. 172 of 2018

In the matter of:

Kotak Mahindra Bank Limited

... Applicant

Versus

Committee of Creditors of
Jaihind Projects Limited & Ors.

... Respondent

Order delivered on 29th September, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

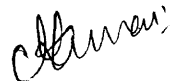
Appearance: Advocate Ms. Nilu K. Vaidankar for the Applicant.

ORDER

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

1. The instant application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") with prayer for review of order dated 19.03.2020 passed by the Hon'ble Bench and for appropriate directions.





2. The facts of the case is/are herein under:

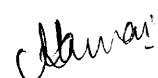
2.1 CP(IB) No. 172 of 2018 was filed by Operational Creditor viz. SKE Projects Limited, under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor viz., Jaihind Project Limited, which was admitted on 02.11.2018 by this Adjudicating Authority and Mr. Premnarayan Ramanand Tripathi was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 Vide order dated 23.01.2019, Mr. Parthiv Parikh was appointed as the Resolution Professional (hereinafter referred as "RP") and vide order dated 19.03.2020, the Resolution Plan submitted by the Committee of Creditors (hereinafter referred as "CoC) was approved by the Adjudicating Authority.

2.3 It is stated by the Applicant that he is a secured creditor/financial creditor under the rights accrued to them under the Deed of Assignment dated 29.03.2019, wherein L&T Finance has assigned to and in favour of Kotak Mahindra Bank Limited, all credit facility along with underlying security created in respect of hypothecated Assets by the Corporate Debtor.

2.4 The Applicant further stated that L&T Finance Limited (Original Lender/Assignor) and Corporate Debtor has entered into and executed several Loan and other agreements for availing loans facilities. The Directors of the Corporate Debtor has also signed a Deed of Guarantee against all loan agreements. The agreement so entered into stipulates that the Corporate Debtor shall be punctual in making payments and





in case of any default, L&T Finance Limited was entitled to repossess/take possession of secured assets/ security by recalling the entire loan outstanding under the Loan agreement.

2.5 The Corporate Debtor after making payments of few instalments, failed to make payment for the subsequent instalments. After repeated reminders, the Corporate Debtor chose not to make the payment for the remaining instalments. Consequent upon which, L&T Finance Limited invoked the arbitration clause. During the pendency of the arbitration proceedings, Corporate Debtor approached L&T Finance Limited and entered into a Settlement. Accordingly, they executed a Memorandum of Settlement dated 30.09.2015, admitting their financial liability towards L&T Finance Limited of Rs. 25,97,55,260/- (Rupees Twenty Five Crores Ninety Seven Lakhs Fifty Five Thousand Two Hundred and Sixty Only) as on 06.08.2015 along with interest and the consent award was passed on 25.03.2016 by the Ld. Arbitrator.

2.6 The Applicant further stated that the Corporate Debtor committed default in execution of Memorandum of Settlement and so, L&T Finance Limited filed an execution proceeding before the Hon'ble Bombay High Court, wherein the Corporate Debtor was made party and notice was issued by the Hon'ble High Court. Thereafter, vide order dated 04.06.2018, Corporate Debtor was restrained from alienating, parting with possession or creating any third party rights with respect to any of their properties or assets except in the ordinary and

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usual course of Corporate Debtor, without prior permission the Court.

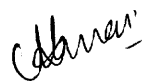
2.7 The Applicant alleged the IRP/RP, stating that he should have taken prior permission of the Court as stated in order dated 04.06.2018 while dealing with properties of the Corporate Debtor. He further stated that the above mentioned proceeding is still pending before the Hon'ble High Court for replacing the Applicant with L&T Finance Limited in view of the Assignment deed dated 29.03.2019.

2.8 The Applicant stated that he has intimated the Corporate Debtor regarding the said assignment deed vide letter dated 28.05.2019. However, neither the Corporate Debtor nor the IRP/RP informed the Applicant about the initiation of CIRP against the Corporate Debtor. It was only in the last week of April 2020 that the Applicant came to know about the initiation of CIRP against the Corporate Debtor.

2.9 After becoming aware about the initiation of CIRP, the Applicant submitted his claims vide email dated 15.06.2020. However, vide email dated 23.06.2020, the RP informed the Applicant that the Resolution Plan has already been passed by the Adjudicating Authority vide its order dated 19.03.2020 and accordingly. The office of the RP has become *functus officio*.

2.10 Thus, under above stated circumstances, Applicant was unable to submit his claims within the stipulated time before the IRP/RP and is requesting for condoning the delay in filing the claims.





3. Heard the Applicant and also seen the records. For the sake of convenience, the list of events is herein under:

DATE	EVENT
30.09.2015	Memorandum of Settlement
25.03.2016	Award passed
22.01.2018	Notice issued to Corporate Debtor by Hon'ble High Court of Bombay
04.06.2018	Order passed in Execution proceeding
02.11.2018	CIRP was initiated against the Corporate Debtor
29.03.2019	Deed of Assignment between L&T Finance Limited and Kotak Mahindra Bank Limited was signed
19.03.2020	Resolution Plan was passed by NCLT Ahmedabad
15.06.2020	Applicant submitted his claim via email to RP

4. It is the matter of record that on 02.11.2018, the Adjudicating Authority passed an order admitting the application filed under Section 9 of the IB Code against the Corporate Debtor and public announcement was made in compliance of the provision of the IB Code inviting claims from the creditors/stakeholders, if any, or as the case may be. It is also a matter of record that the

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Corporate Debtor owes liability towards L&T Finance Limited and the same has been assigned to Kotak Mahindra Bank Limited (present Applicant). In view of that, when Kotak Mahindra Bank Limited has taken the liability, it is his prime duty of follow up with the Corporate Debtor in the view of the consent award passed by the Arbitrator based on the Memorandum of Settlement dated 30.09.2015. Hence, taking the plea that the Applicant had no knowledge of CIRP cannot be believed upon since Applicant has purchased the liability from L&T Finance Limited.

5. Further, it is also not a believable story that the Applicant is sitting idle from 25.03.2016, when the Arbitral Court passed consent award, till filing of the instant application as the amount which is assigned by L&T Finance Limited is not a small amount which can be ignored or neglected. Also, all of sudden after more than 4 years, the Applicant wakes up and justifies that he has no knowledge with regard to the initiation of CIRP by the Adjudicating Authority. Admittedly, the Applicant had made repeated reminders during the period i.e. 2016-2020, and it is but natural that while making a demand, the Corporate Debtor was under suspension in view of the admission order passed by this Adjudicating Authority. So, the plea of lack of knowledge taken by the Applicant is not maintainable.

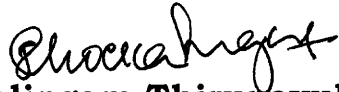
6. On perusal of the record, it is found that the Applicant has approached the IRP on 18.04.2020, where the Resolution Plan was already passed on 19.03.2020. Under such circumstances,

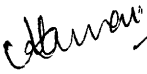




when the IRP/RP has already been discharged, definitely he will show his inability to accept the claim. Furthermore, the instant application is filed on 14.08.2020 on such a belated stage when the Corporate Debtor has already been acquired by the successful Resolution Applicant in due process of Law. Hence, the total process cannot be reversed as there is no such provision under the IB Code. Moreover, the CIRP was completed in a time bound manner.

7. It is pertinent to mention herein that as per the legal principle of Contract Act i.e. "Caveat emptor", it is the Applicant's/ Buyers' duty to be aware of his responsibilities. Mere plea of ignorance or playing blame game will not aid in reaping the desired results. Further, in number of cases, the Courts have taken the view that Insolvency Resolution is a time bound process and it needs to be completed within the stipulated period.
8. Under the above facts and circumstances, the claim made by the Applicant is not maintainable and hence, is rejected.
9. Accordingly, the instant IA stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)