

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT-V**



**I.A. No. 4099 of 2024**

**IN**

**C. P. No. 715/IB/C-V/2021**

[Under Section 60(5) of the  
Insolvency and Bankruptcy Code,  
2016]

**1. Mehek Lucky Pamnani**

A 401, Shiv Parwati CHS Ltd.  
14<sup>th</sup> Road, Khar, Mumbai, 400052  
And presently Residing at: 3 Raymond Court,  
Brighton East, Melbourne Victoria 3187

**.....Applicant no. 1**

**2. Lucky Vashdev Pamnani**

A 401, Shiv Parwati CHS Ltd.  
14<sup>th</sup> Road, Khar, Mumbai, 400 052  
And presently Residing at: 3 Raymond Court,  
Brighton East, Melbourne Victoria 3187

**.....Applicant no. 2**

**Vs**

**1. Amit Vijay Karia**

Resolution Professional of  
Siddhi Raj Housing Pvt Ltd.  
Ground Floor, Rajpiple  
Opp. Standard Chartered Bank,  
linking Road Santacruz West  
Mumbai 400 054

**.....Respondent no. 1**

**2. RKG Fund-1,**

A scheme of RKG Trust, having their address at  
C-4/9, Ground Floor, Vasant Vihar,  
New Delhi – 110057

**..... Respondent no. 2**



**IN THE MATTER OF**

**Capacite Infraprojects Limited**

*... Operational Creditor*

**Vs**

**Siddhi Raj Housing Project Private Limited**

*... Corporate Debtor*

**Order pronounced on: 02.07.2025**

**Coram:**

Hon'ble Shri Sushil Mahadeorao Kochey, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

For the Applicant : Pythagoras Legal

For the Respondent: Adv. Amir Arsiwala

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1. The I.A. No. 4099/2024 has been filed by Mehek Lucky Pamnani & Anr (hereinafter referred to as **Applicants**) against Amit Vijay Karia & Anr. (**Respondents**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) seeking reliefs as stated below:

- a. *That this Hon'ble Tribunal be pleased to set aside the Impugned Email dated July 12,2024 of the Respondent.*
  - b. *That this Hon'ble Tribunal be pleased to condone the delay of a period of 423 days from the date of the public announcement and a period of 347 days as per Regulation 12 of the CIRP. Regulations in submitting the Claim Form CA.*



- c. *That this Hon'ble Tribunal be pleased to direct the Respondent to admit the claim of the Applicant's as filed in the Claim Form CA and further to include the Applicants' claim in the list of creditors.*
- d. *That in the event this Hon'ble Tribunal is inclined to grant prayer (c), then this Hon'ble Tribunal be pleased to direct the Respondent to intimate the successful resolution applicant of the inclusion of the Applicants' claim as homebuyers in respect of the Subject Flat.*
- e. *That pending the hearing and final disposal of the present LA, this Hon'ble Tribunal be pleased to direct the Respondent to provide the Applicants with a copy of the resolution plan submitted in respect of the Corporate Debtor and approved by the committee of creditors.*
- f. *That pending the hearing and final disposal of the present LA, this Hon'ble Tribunal be pleased to stay the proceedings in respect of any application that the Respondent may have filed under section 31 of the IBC in respect of approval of the resolution plan approved by the committee of creditors of the Corporate Debtor.*
- g. *For ad interim reliefs in terms of prayer clauses (e) and (f) above.*
- h. *For such other orders as may be necessary in the interest of justice.*

**Brief Facts and submission as per the Application:**

2. The Corporate Insolvency Resolution Process (**CIRP**) was initiated against Siddhi Raj Housing Project Private Limited (**Corporate Debtor**) vide this Tribunal's Order dated 02.05.2023 in CP (IB)/715/MB/2021. The Corporate Debtor was developing a building named 'Altus' constructed on land admeasuring 4080.3 sq. m. bearing CS No. 1/464 of the Lower Parel Division situated at Delisle Road (also known as Budhkar Marg), Lower Parel, Mumbai – 400 013.



3. The Applicants have purchased Flat No 1302 (duplex) admeasuring 221.94 sq. m. carpet area on the 13<sup>th</sup> and 14<sup>th</sup> floor in wing A of the building named 'Altus' from the Corporate Debtor pursuant to the Sale Agreement. The Applicants agreed to pay a total sale consideration of ₹11,00,00,000/- (Rupees Eleven Crores only) for the subject flat. The Sale Agreement records the receipt of ₹11,00,016/- on 8th August 2018 as part payment. The Applicants availed a housing loan of ₹5,00,00,000/- (Rupees Five Crores only) from Piramal Capital and Housing Finance Limited, sanctioned vide sanction letter dated 29th December 2018, for the purpose of purchasing the said flat and on December 31, 2018 Piramal Capital Housing Limited disbursed an amount of Rs 4,50,00,000/- (Indian Rupees Four Crore and Fifty Lakhs only) towards the subject flat. Accordingly, the Applicants have, in aggregate, paid a sum of ₹4,61,00,016/- (Rupees Four Crores Sixty-One Lakhs and Sixteen only) towards the purchase of the said flat.
4. In 2018 applicants relocated to Melbourne, Victoria, Australia. In later half of June 2024, the applicants received information that Corporate Debtor was admitted into Corporate Insolvency Resolution Process. Thereafter, the Applicant submitted the Claim Form CA on July 12, 2024 to the Respondent. Upon receipt of the claim, the Respondent replied by an email ("Impugned Email") rejecting the Claim Form CA on the ground that the Claim Form CA was received after 347 days of the last date for the submission of the claim and the Respondent further advised the Applicants to approach the Tribunal for appropriate reliefs, including condonation of delay. The Applicants were also informed by way of the impugned email that on June 19, 2024 the committee of creditors have approved the resolution plan in respect of the Corporate Debtor.
5. The Applicants, residing in Melbourne, Australia, have filed the present Interlocutory Application seeking condonation of delay in submitting their claim in Form CA. They submit that they had no knowledge of the commencement of CIRP against the Corporate Debtor, as the public



announcement inviting claims was published solely in local newspapers in Mumbai. Owing to their residence abroad, they were unable to access or become aware of the said announcement in a timely manner.

6. The Applicants placing reliance on judgement of Hon'ble NCLAT in **Puneet Kaur v. K.V. Developers P. Ltd., 2022 SCC OnLine NCLAT 245** submitted that claim of the homebuyers who could not file their claim but the claims are reflected in the records of the CD, ought to have been included in the information memorandum, the Successful Resolution Applicant (SRA) ought to have taken note of liabilities. Therefore, making it an exception for individual homebuyers. Accordingly, the Applicants pray that the IA filed by them be allowed.

**Submission of the Respondent No.-1**

7. The Respondent No 1 submits that the present application is not maintainable, as the Applicant seeks relief under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for condonation of delay in submitting Claim Form CA dated July 12, 2024. In terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a creditor who fails to submit a claim within the time specified in the public announcement may, at the most, submit such claim up to the date of issuance of the request for resolution plans or within ninety days from the insolvency commencement date, whichever is earlier.
8. It is submitted that there is a delay of 423 days from the last date of the public announcement, and a delay of 347 days beyond the extended period permissible under Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In view of the said delay, the rejection of the Applicants' claim vide email dated 12th July 2024, is lawful being time-barred under the applicable provisions.



9. It is also submitted that allowing the Applicants' claim at this stage would be contrary to the time-bound insolvency framework envisaged under the IBC and would undermine the sanctity of the CIRP process. Such relief is expressly barred by the principles laid down by the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*, (2022) 1 SCC 401 and *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, which mandate strict adherence to the prescribed timelines and prohibit consideration of belated or undecided claims post-approval of the resolution plan.

**Submission of the Respondent No.-2**

10. The Successful Resolution Applicant ('SRA'/Respondent No.2) was allowed to be impleaded in this case vide order dated 03.09.2024.
11. Respondent No. 2 submits that Respondent No. 1 was appointed as the interim resolution professional of the Corporate Debtor and thereafter confirmed as Resolution Professional by the Committee of Creditors (CoC) on 1<sup>st</sup> June, 2023. On 5<sup>th</sup> May 2023, as required under the CIRP Regulations, Public Announcement (Form A) was published in two newspaper, viz. the Free Press Journal in English Language and Navakal in Marathi language. To which several claims were received from various creditors and list of creditors was prepared and Respondent No 1 filed a report with Tribunal on 25<sup>th</sup> may 2023. The final updated list of creditors was prepared and uploaded on 11<sup>th</sup> June 2024.
12. On 30<sup>th</sup> June 2023, in the 2<sup>nd</sup> CoC meeting the draft advertisement of Expression of Interest (Form G) and timeline for submission for Resolution Plan was approved, the members of CoC also analyzed the eligibility criteria for Prospective Resolution Applicant (PRAs). On 28<sup>th</sup>



July 2023, in 3rd CoC meeting, the members of the CoC approved the Request for Resolution Plan (RFRP) and Evaluation matrix. There after the members of CoC approved the Resolution Plan submitted by Respondent No 2 in the 14<sup>th</sup> meeting of CoC dated 19<sup>th</sup> June,2024.

13. Respondent No 1 on 24<sup>th</sup> June 2024 has filed IA No. 43 of 2024, inter alia praying for the approval of Resolution Plan and is pending for adjudication before the Tribunal.
14. Reliance was place on the judgment of Hon'ble Supreme Court in the case of **RPS Infrastructure Ltd. V. Mukul Kumar, (2023) 10 SCC 718** and it was accordingly submitted that the present IA should be dismissed.

### **Observations & Findings**

15. We have heard the Ld. Counsel for the parties and perused the documents available on record. In the present Application, the Applicants essentially seeks to admit their claim form CA, which was filed with a delay of 423 days from the date of the public announcement and a delay of 347 days as per Regulation 12 of the CIRP Regulations.
16. It is noted that the applicants have purchased the Flat No. 1302 admeasuring 221.94 sq m. carpet area on the 13<sup>th</sup> and 14<sup>th</sup> floor in Wing A of building named 'Altus', situated at Delisie Road (Budhkar Marg), Lower Parel, Mumbai, vide sale agreement dated 20.08.2018. The total agreed sale consideration was Rs 11,00,00,000/- (Indian Rupees Eleven Crores only) out of which the sale agreement records receipt of Rs 11,00,016/- dated 08.08.2018. A housing loan of Rs 5,00,00,000 (Indian Rupees five crore only) was sanctioned by Piramal Capital and Housing Finance Ltd. On 29.12.2018 and a disbursement of Rs 4,50,00,000/- (Indian Rupee four crore fifty lakhs only) was made by the lender on



31.12.2018. Thus, the total amount paid to the Corporate Debtor towards the subject flat stands Rs 4,61,00,016/-.

17. In 2018, the Applicants had relocated to Melbourne, Australia and were unaware of the initiation of CIRP against the Corporate Debtor, which came to be known in June 2024. Upon becoming aware, the Applicants submitted their claim in Form CA on 12.07.2024. Such claim filed was rejected by Respondent-1 via impugned email citing a delay of 423 days from the date of the public announcement and a period of 347 days as per Regulation 12 of the CIRP Regulations. The Applicants were further informed via the impugned email that the committee of creditors have already approved the resolution plan on 19.06.2024.
18. Respondent-1 on 05.05.2023, as required under CIRP regulation, made a public announcement and Form A was published in two newspapers. There after the list of creditors prepared on claims received and a report is filed with the tribunal. Further a final list of updated creditors was prepared and uploaded on 11.07.2024.
19. It is also noted that, the CoC on 19<sup>th</sup> June 2024, in its 14<sup>th</sup> meeting have approved the Resolution Plan and Respondent-1 has filed an IA No. 43 of 2024, for the approval of Resolution Plan and is pending for adjudication before the Tribunal.
20. It is also a fact of the case that SRA was impleaded as respondent in the case vide order dated 03.09.2024 and on that day the Ld. Counsel for the SRA sought time to seek specific instructions with respect to the claim of the Applicant. Further Ld. Counsel of the RP informed the bench that the name of and amount of the Applicants was part of the MIS in the virtual data shared with all PRAs. Accordingly, it is observed that the virtual Data Room was duly made accessible to the prospective Resolution Applicant (PRAs), who were provided with the necessary details to access, subject to the execution of non-disclosure/



confidentiality undertaking. It is further noted that the latest annual financial statements forming part of the Information Memorandum are provided for the financial years ending March 31, 2018 and March 31, 2019. Considering that the Applicant had purchased the flat vide sale agreement on 20.08.2018, the said transaction ought to have been reflected in the Financial statement for the year 2018-19. Consequently, PRAs did have complete knowledge of fact of Applicants' agreement for purchase of the flat and payment of Rs. 461,00,016/-.

21. Under the circumstances the rejection of the claim of the Applicants by the Respondent No.1 is though justified on technical grounds of delay and claim having been received after the approval of Resolution Plan by the CoC, however, such rejection is not found to sustainable keeping in view the facts of the case. Since the Respondent No.1 was aware of such claim of the Applicants he had included and reflected in the Information Memorandum/ Virtual Data Room prepared for the purposes of the Resolution of the Corporate Debtor as well as the Prospective Resolution Applicants including the Successful Resolution Applicant and Respondent No.2 herein was also fully aware of the Applicant's claim. It is further not the case of the Respondent No.2, that it has not factored the Applicant's claim in the Resolution Plan submitted, which has been subsequently approved by the CoC.
22. In the judgement of ***Puneet Kaur v. K.V. Developers Pvt. Ltd., 2022 SCC OnLine NCLAT 245***, the Hon'ble NCLAT has held that delay in filing a claim may be condoned if the liability is duly reflected in the books of account of the Corporate Debtor and is verifiable. It is observed that even where the claim was not filed within the prescribed period under Regulation 12 of the CIRP Regulations, the Resolution Professional may be directed to consider such claims, provided they are supported by credible documentary evidence and the name of the creditor is reflected in the records forming part of the Information Memorandum. The



resolution applicant may, in such cases, be required to file an addendum to the resolution plan for reconsideration by the Committee of Creditors.

23. The Respondents relying on the decision of Hon'ble Supreme Court in the case of **Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401** have emphasized on the filing of claim within the stipulated time as the process of Resolution being time bound. In this regard it is stated that the said Judgment of the Hon'ble Supreme Court inter alia refers to the Judgment in the case of **Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531: (2021) 2 SCC (Civ) 443**. In this case the Hon'ble Supreme Court held as under:

*“..... that a Resolution Applicant cannot be made to suddenly encounter undecided claims after the Resolution Plan submitted by him has been accepted and in the scheme of the Code, all claims must be submitted to, and decided by, the Resolution Professional so that the Resolution Applicant could proceed on a fresh plate”.*

In this case it is an admitted fact that the liability corresponding to the claim of the applicants was disclosed to the Prospective Resolution Applicants even though the Applicants had not filed any claim within the statutory prescribed period. Accordingly, neither the claim of the applicants could be considered as undecided nor it could be considered that the Resolution Applicants have suddenly encountered such claim of the Applicants. Accordingly, and to that extent the facts of the present case are different.

24. The Respondent no.2 has also placed reliance on the Judgment of Hon'ble Supreme Court in the case of **RPS Infrastructure Ltd. V. Mukul Kumar, (2023) 10 SCC 718**.

(a) In para 20 of this judgement, it has been observed as under:



*“20. If we analyse the aforesaid plea, it is quite obvious that Respondent 1 did what could be done to procure the corporate debtor’s record by even moving an application under section 19 of IBC. That it was not fruitful is a consequence of the corporate debtor not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not.”*

In the facts of the present case there is no dispute to the aspect that the Applicant’s transaction was very much there in the records of the Corporate Debtor and so much so, liability corresponding to the claim of the applicants was disclosed to the Prospective Resolution Applicants.

(b) Further in para 22 of the aforesaid judgement, Hon’ble Supreme Court has held as under:

*22. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.”*

In this para, the Hon’ble Supreme Court held that the publication in the newspaper would amount to knowledge of the commercial party. However, in the present case the applicant herein are individual home buyers and not commercial entity. Further they are located in Melbourne, Australia whereas the publication was in the local newspaper and therefore such publication cannot amount to deemed knowledge of the Applicants. However, there is nothing produced by RP on record to show that the Applicants were personally communicated about the process of the CIRP.



(c) Furthermore, in Para 24 of the above judgement, Hon'ble Supreme Court has held as under:

*“24. We have thus come to the conclusion that NCLAT’s impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”*

However, as mentioned above, in the present case the Prospective Resolution Applicant were disclosed the liability corresponding to the claim of the Applicants and under the circumstance there is no case of unleashing the hydra-headed monster of undecided claims on the Resolution Applicant.

Accordingly, it can be seen that the facts of the present case are different to the extent mentioned above.

25. In view of the facts and circumstances of the case and discussion hereinabove, we consider it appropriate to condone the delay in filing of the claim by the applicants herein and direct the RP to consider the claim after due verification in accordance with procedure and law.
26. Accordingly, **IA 4099 of 2024** is **allowed** and **disposed of**.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Sd/-

**Sushil Mahadeorao Kochey**  
**Member (Judicial)**