

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

I.A. No. 3991 of 2023

IN

C.P. (IB) No. 1389/MB/2020

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

Filed by:

Paresh Govindbhai Hirpara & Anr.

...Applicants

v/s.

Mr. Prabhat Jain, Resolution Professional
of Vikas Procon Pvt. Ltd.

...Respondent

In the matter of:

Tejendrakumar Patel

...Operational Creditor

v/s.

Vikas Procon Pvt. Ltd.

...Corporate Debtor

Order Pronounced on: 06.12.2023

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant

:

Mr. Pulkit Sharma a/w Mr. Rohan
Aarwal i/b MS. Yashvi, Ld. Counsel
for the Applicant

For the Respondent : Mr. Akshay Petkar i/b Mr. Pratik
Pandey, Ld. Counsel for the
Respondent

ORDER

1. The instant Application has been filed by Mr. Paresh Govindbhai Hirpara (“**Applicant No. 1**”) & Mr. Yagnesh Ponkia (“**Applicant No. 2**”; *jointly referred to hereinafter as “Applicant/ Applicants”*) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**”) seeking admission of the Claim filed by the Applicant in relation to the Corporate Debtor and, condonation of delay in filing such claims as against the Resolution Professional for the Corporate Debtor (“**Respondent**”) for a principal amount of INR 40,00,000/- (Rupees Forty Lakhs only).

Submissions on behalf of the Applicant

2. The Applicant Nos. 1 and 2 are admittedly the Home-buyers/ Shop-owners in respect of the Development Project floated by Vikas Procon Pvt. Ltd. (the “**Corporate Debtor**”) in C.P. (IB) No. 1389/MB-IV/2020. The said Corporate Debtor was admitted into Corporate Insolvency Resolution Process (“CIRP”) *vide* Order *dated* 19.04.2023 under Section 9 of the IBC, 2016 by this bench and accordingly; Mr. Vinod Radhakrishnan Nair, having Registration Number IBBI/IPA-001/IP-P-01352/2018-2019/12083, was appointed as the Interim Resolution Professional of the Corporate Debtor.
3. The Applicant submits that the Corporate Debtor is the owner of the Property being Final Plot No. 37, having area of 8650 sq. meters, Village: Parvat, District Surat (“**Property**”). The Corporate Debtor made representation to the Applicants in 2017 that it was developing a Project on

the said property in respect whereof, a Brochure and Typical Floor plan was shared.

4. The Applicant submits that based on the representations of the Corporate Debtor, the Applicant No. 1 entered into an Agreement with the Corporate Debtor, thereby agreeing to purchase a Shop being Shop No. G-34, admeasuring an area of 1,560 sq. ft. at the rate of INR 4,900/- per sq. ft. (hereinafter “**Shop**”) for a total price of INR 76,44,000/- (Rupees Seventy-six lakhs, Forty-four thousand only). Consequently, the Corporate Debtor issued a booklet to the Applicant wherein the Shop Number was mentioned, which the latter admits, reflected the agreement between the parties for purchase of the Shop. The Applicant further submits that it was assured to the Applicant that a definitive agreement shall be executed in favour of the Corporate Debtor with the Applicant in due course.
5. The Applicant submits that, based on the representations of the Management of the Corporate Debtor, a sum of INR 40,00,000/- (Rupees Forty lakhs only) was transferred to the Corporate Debtor by Applicant No. 2 towards the purchase of the Shop. Admittedly, Applicant No. 2 is the Brother-in-law of Applicant No. 1.
6. The Applicant submits that despite passage of significant time, the Corporate Debtor did not commence any meaningful work in the Project. Pursuant to which, the Applicant No. 1 and other allottees of the Project filed a common comprehensive criminal complaint against the Corporate Debtor and its Directors *dated* 19.03.2019. Additionally, the Sub-inspector of Limbayat Police Station filed an Affidavit *dated* 16.04.2019 before the Hon’ble Sessions Court, Surat, stating that the Directors of the Corporate Debtor have committed serious fraud and that this issue requires a detailed investigation.

7. The Applicant submits that the Applicant No. 1, in his personal capacity, filed another Complaint *dated* 25.07.2022 against the Corporate Debtor wherein the former reiterated the aforesaid issue(s) along with receipts of the Bank Transfer amounting to INR 40,00,000/-. Upon repeatedly persisting with the Corporate Debtor to execute a Formal Agreement for sale of the Shop, the Applicant No. 1 entered into a notarised agreement *dated* 01.09.2022 recording the Agreement for Sale of the Shop by the Corporate Debtor in favour of the Applicant. The Applicant places further reliance on the ledger entries of the Corporate Debtor under the sub-heading '*Advance against VTH*' to claim that the monies given by the Applicant were treated as advance for sale of the Shop in the said Project.
8. The Applicant submits that it was not aware of the Corporate Debtor being admitted into CIRP and that it never came across any publications of the Corporate Debtor being in CIRP in any popular or widely circulated Newspapers thereby making it impossible for the Applicant to have any knowledge of the same. On inquiring about the same, the Applicant No. 2 filed the claim before the Interim Resolution Professional in Form C *dated* 09.06.2023. Pursuant to this, the Respondent Resolution Professional *vide* E-mail *dated* 03.07.2023 called upon Applicant No. 2 to file its claim in an appropriate format and to provide the detailed particulars and documents to support its claim. The Applicant No. 2 *vide* its email *dated* 08.07.2023 forwarded the Agreement entered into between Applicant No. 1 and the Corporate Debtor along with the Police complaints filed in the name of Applicant No. 1. In response thereto, the RP *vide* its E-mail *dated* 10.07.2023 called upon Applicant No. 2 to issue a translated and clear copy of the said Agreement which the latter supplied *via* E-mail *dated* 20.07.2023.
9. The Applicant submits that the Respondent Resolution Professional *vide* E-mail *dated* 30.07.2023 advised the Applicant to file a fresh claim-form in

FORM CA and *vide* a subsequent E-mail, called upon the Applicant to produce relevant documents to establish Applicant No. 1's relation with the Applicant No. 2. Accordingly, the Applicant No. 1 filed a revised Claim Form *dated* 31.07.2023 and enclosed a series of supporting documents therein. The RP *vide* E-mail *dated* 03.08.2023 contended that the name of the Claimant and payment details are not matching, and thereby called upon Applicant No. 1 to submit a revised claim. Accordingly, the Applicant filed a Joint Claim Form *dated* 10.08.2023.

10. The Applicant submits that the RP *vide* E-mail dated 11.08.2023 rejected the claim of the Applicants on the ground of delay beyond a period of 90 (ninety) days in filling the claim. The Applicants therefore seek condonation of delay in filling of the Claim and induction as a member of the Committee of Creditors. Hence, the present Application.

Submissions on behalf of the Respondent

11. The Respondent *viz.* Resolution Professional for the Corporate Debtor submits that this Tribunal *vide* Order *dated* 22.06.2023 appointed the Respondent herein as the Resolution Professional of the Corporate Debtor, and that he received handover of the requisite documents and information from the Interim Resolution Professional as on 29.06.2023 and thereby submits that the allegation of delay by the Applicant is unsubstantiated.
12. The Respondent submits that the averments raised by the Applicant regarding no knowledge of the Corporate Debtor being in CIRP are unsubstantiated, as the erstwhile IRP caused publication of the public announcement in FORM-A *dated* 22.04.2023 in Four widely-circulated newspapers in the region of Mumbai, Surat and Ahmedabad.

13. The Respondent submits that the claim in FORM-C submitted by Applicant No. 2 *dated* 09.06.2023, does not enclose within itself any document substantiating the underlying transaction i.e. disbursement of debt of INR 40,00,000/- and that the Claimant therein relies solely on a Bank statement in respect of payment of a sum of INR 40,00,000/- in four equal instalments. This, as the Respondent submits, was pointed out to Applicant No. 2 *vide* E-mail *dated* 03.07.2023.
14. The Respondent submits that the Applicant's contentions are misrepresentations of the communication between Applicant and the Respondent RP, as the latter at no instance neither offered any kind of assurance to the Applicant herein, whether directly or indirectly, to the effect of 'Admission of claims by virtue of receipt (only) of the translated and legible copy of the Agreement', nor has in any manner expressed his opinion or comment in respect of the eligibility of the claim so filed. The Respondent additionally submits that the bonafide suggestions made by him are wrongly depicted to be a misguidance.
15. The Respondent submits that the submission of claim in FORM-CA *dated* 31.03.2023 was done in the name of Applicant No. 1, thereby changing the Claimant itself. Further, the Respondent submits that the said FORM-CA did not enclose within itself any documentary evidence thereby failing to substantiate any payment executed by the Applicant No. 1 i.e. claimant in FORM-CA in favour of the Corporate Debtor.
16. The Respondent submits that the Agreement *dated* 01.09.2022, which has been relied upon in the said Claim Form between the Applicant No. 1 and the suspended members of the Board of Corporate Debtor, neither has any mention of Applicant No. 2 being involved in the said transaction in any capacity of a 'party', nor any particulars regarding payment in respect of the

said 'consideration' against the property being executed, nor does it bear any signature or seal or stamp affixed in behalf of the Corporate Debtor thereby indicating towards the authenticity of the acknowledgement by the officers of the Corporate Debtor of such pending dues.

17. The Respondent submits that pursuant to the rejection of claim filed by Applicant No. 1 in FORM-CA as afore-stated, the Applicants herein submitted their claim *vide* a 'Joint Claim Form' in FORM-CA *dated* 10.08.2023. This, as per the Respondent RP, is beyond the ninetieth-day limit with regards to submission of claims from the date of commencement of CIRP, as prescribed under sub-regulation 2 of Regulation 12 in IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. The Respondent further places reliance on the following two material irregularities in the 'Joint Claim Form' *dated* 10.08.2023 in FORM-CA as compared to, the Claim Form *dated* 09.06.2023 in FORM-C:

S. No.	Claim Form in FORM-C <i>dt.</i> 09.06.2023	Joint- Claim Form in FORM-CA <i>dt.</i> 10.08.2023
01	Submitted in the name of Applicant No. 2.	Submitted in the name of Applicants jointly as 'an entity'.
02	Describes the underlying transaction in nature of 'debt' / 'loan'.	Describes the underlying transaction in nature of 'consideration' amount.

The Respondent RP therefore contends that in light of the aforesaid irregularities, the two Claim Forms are absolutely separate as the former claim form can not be considered as a continuation of the latter and that the allegations raised by the Applicants are devoid of merit.

Findings

18. Heard the Learned Counsel(s) for the Applicant(s) and the Respondent.
19. Upon perusal of the record files, we are of the considered view that the Resolution Professional has scrutinized the present claim-form(s) on merits.
20. We are in-principle agreement with the Resolution Professional that, with regards to both the 'Joint Claim Form' dated 10.08.2023 in FORM-CA and the Agreement dated 01.09.2022, there is no documentary evidence to substantiate any payment executed by the Applicant No. 1 ('Claimant' in FORM-CA) whatsoever so as to constitute a 'Claim' as defined under section 3(6) of the IBC, 2016.

ORDER

21. This Adjudicating Authority in any view of the matter, is not inclined to entertain the present application for the claim amount of INR 40,00,000/- (Rupees Forty Lakhs only).
22. Resultantly, the present application viz. I.A. 3991/2023 in Company Petition (IB) No. 1389/MB/2020 stands dismissed.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.12.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
