NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

27.05.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.361 of 2024

Ms. Vandana Garg **...Appellant**
Resolution Professional of
Raguleela Builders Private Limited

Vs

Mysore Petro Chemicals Limited **...Respondent**

(Arising out of Order dated 18.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Court No.-V, Mumbai) in I.A. No. 2725/2022 in C.P. (IB) No. 498(MB)/2021)

For Appellant: Mr. Rajiv Kumar Pandey, Mr. Aalok Jain, Advocates
For Respondent: Ms. Ronita Bhattacharya, Advocate

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This appeal is preferred by the Resolution Professional of the corporate debtor, in which he challenges the Order of the Adjudicating Authority dated 18.12.2023 allowing an application in I.A. 2725 of 2022 filed by the respondent herein for considering its claim of ₹ 5,20,22,000/- based on the Order of the Maharashtra

Real Estate Regulatory Appellate Authority (for brevity would be referred to as RERAA). The RERAA has directed the CD to pay the respondent herein ₹5,20,22,000/-.

The Facts

2. The material facts are:

a) On 02.07.2015, the respondent had entered into an agreement for the purchase of a commercial unit with the CD. As per the agreement the unit was to be handed over to the respondent on 30.09.2015. The respondent has fully paid the consideration payable for the office unit to be purchased. The CD, however, did not deliver the unit as agreed upon.

b) The respondent, therefore, preferred a complaint with the RERA and vide its order dated 08.10.2020, the RERA dismissed the said complaint of the respondent. Challenging the said Order, on 17.12.2020, the respondent preferred an appeal to RERAA. Notice was ordered. According to the respondent, a notice was sent to the promoter of the project, the corporate debtor to be, through speed post, was served on it on 19.12.2020.

c) While the appeal preferred by the respondent was pending before the RERAA, CIRP commenced against the promoter of the project, vide the Order of the Adjudicatory Authority dated 04.10.2021. With that moratorium under Sec.14 of the Code came into force, IRP replaced the Board of the Corporate Debtor.

d) The IRP issued public notice inviting claims. The last date for preferring the claim was 05.11.2021. And the last date for filing belated claims in terms of Regulation 12 of the IBBI (CIRP) Regulations was 19.01.2022.

e) Be that as it may, on 30.06.2022, the RERAA allowed the appeal preferred by the respondent and directed the corporate debtor to pay a sum of. ₹5,28,22,000/- with interest at the rate of State Bank of India's highest Marginal Cost Lending Rate plus 2% on the amount paid by the Respondent Company. On the following day, i.e., on 01.07.2022, the respondent e-mailed the appellant and informed them about the compensation ordered by the RERAA, and requested the appellant, the RP of the CD, to guide it to prefer the claim, and followed it with a reminder on 12.07.2022. Eventually, on 19.07.2022, the respondent preferred its claim in Form B.

f) The respondent, however, did not receive any information on the claim it had preferred, hence it moved the Adjudicating Authority with I.A.2725 of 2022 seeking a direction that its claim be considered. On 29.09.2022, the Adjudicating Authority passed an interim order and directed the appellant to consider the respondent's claim.

g) Subsequent thereto, on 20.10.2022, the appellant rejected the claim of the appellant on two scores: (i) that the Order of the RERAA awarding compensation to the respondent was passed during the moratorium; and (b) that the claim was belated. (Regulation 13(1B) of the CIRP Regulation, enabling filing of claims till 7 days prior to the CoC voting on the resolution plan, came into effect only on 18.09.2023).

3. On 18.12.2023, the Adjudicating Authority has passed the final order in I.A.2725 of 2022 admitting the Claim of the respondent. It held: (i) that the respondent's claim was not belated; and (ii) that the CD was bound by the judgement of the RERAA.

Arguments

4.1 The learned counsel for the appellant submitted:

a) The foundation of the claim of the respondent is an ex parte Order of the RERAA, dated 30.06.2022. However, this Order was passed after the moratorium was clamped under Sec.14 pursuant to the CD's admission to CIRP vide the order of the Adjudicating Authority dated 04.10.2021. Law is settled vide the ratio in ***P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.*** [(2021) 6 SCC 258] and ***Real Estate Regulatory Authority Vs M/s D.B. Corp Ltd.*** [CA (AT) (Ins) No. 1172-1173 of 2022, dated 08.12.2023] where it has been held that any proceedings held during the period of moratorium is void and are incapable of creating enforceable rights.

b) If the Order passed initially by RERA is considered, it discloses that the respondent's complaint has been the delay on the part of the CD in handing over possession of the office premises purchased. However, this complaint was dismissed by the RERA on 08.10.2020, on the ground that the delay in delivery was due to the delay in obtaining the Occupancy Certificate from the authorities. And, the agreement

between the respondent and the CD provided for such a contingency, which binds the respondent herein, which the RERA had taken note of.

c) The next aspect is that on the admission of the CD to CIRP, the appellant duly issued a public notice through paper publication dated 21.10.2021 and invited claims from the creditors to be submitted by 05.11.2021. It was submitted that publication in newspapers in terms of Regulation 6 constituted a deemed notice to all creditors, including the respondent, terms of the dictum in ***M/s RPS Infrastructure Ltd. Vs Mukul Kumar & another*** [(2023) 10 SCC 718]. But the appellant has filed its claim only on 19.07.2022 with a delay of about 198 days. By that time, the Information Memorandum had already been finalized and circulated to Prospective Resolution Applicants, and therefore entertaining such belated claims would derail the CIRP process.

d) Another aspect that flows directly from the effect of the public notice is that when the respondent has notice about the commencement of the CIRP and the moratorium on continuing with its appeal. However, the respondent not only suppressed the commencement of the CIRP but also continued serving notices on the erstwhile management of the CD instead of its Resolution Professional. Its effect is that the RP has been kept in the dark about the proceedings before the RERAA. This aspect has to be appreciated in the context of the fact that the erstwhile management of the CD has been least helpful in sharing the

information and, the appellant was constrained to initiate a proceeding against them under Sec.19 IBC.

e) The appellant had acted with utmost diligence, hence no adverse inference can be drawn against him. Reliance was placed on ***M/s RPS Infrastructure*** *(supra).*

4.2 Concluding the arguments, the learned counsel submitted that the Adjudicating Authority, however, has erred in relying on the judgement in ***Power Grid Corporation of India Ltd. Vs Jyoti Structures Ltd***. [2017 SCC OnLine Del 12189 : (2018) 246 DLT 485] and disregarding the later judgment of the Hon'ble Supreme Court in ***P. Mohanraj case*** [(2021) 6 SCC 258]. In the process, the Adjudicating Authority has also overlooked the overriding effect of Sec.238 of the Code.

5. Per contra, the learned counsel for the respondent contended:

a) The respondent had instituted its appeal to the RERAA as early as December 2020, much prior to the commencement of CIRP against the Corporate Debtor on 04.10.2021. The notice of the appeal was duly served on the Corporate Debtor through multiple notices, e-mails, and reminders regarding the hearing dates were also issued. Despite such service, neither the corporate debtor nor the RP chose to appear before RERAA, therefore the CD is bound by the judgment dated 30.06.2022 passed therein.

b) On the aspect that the Order of the RERAA, as it was passed during the subsistence of moratorium, in ***ABG Shipyard Liquidator Vs Central Board of Indirect Taxes & Customs*** [(2023) 1 SCC 472], the Hon'ble

Supreme Court has held that any adjudicatory proceedings may continue during moratorium and that only recovery is prohibited. Therefore, the order passed by the RERAA is valid and binding upon the Corporate Debtor as well as the RP.

c) So far as the allegation that the claim was preferred belatedly is concerned, the respondent could not have filed its claim prior to the adjudication of the proceedings before the RERAA, since the claim crystallised only upon the order dated 30.06.2022 directing payment of interest to the Respondent. Immediately thereafter, the Respondent informed the RP by email dated 01.07.2022 and sought guidance for filing its claim under the Code, and subsequently filed its claim in Form B on 19.07.2022 at the earliest possible opportunity. Hence, there was no delay attributable to the Respondent in lodging its claim.

d) At any rate, Sections 18, 25 and 29 of the IBC read with Regulation 36 of the CIRP Regulations create a statutory obligation on the IRP or the RP, as the case may be, to collect and collate all claims against the corporate debtor and to keep itself apprised of all pending litigation involving the CD. The Information Memorandum was also required to disclose all material litigation and disputes concerning the CD. Consequently, the RP cannot evade its statutory responsibility by contending that it lacked information regarding the proceedings before RERAA. Indeed, these provisions taken along with Regulation 14(2) statutorily obligate an IRP or a RP to revise admitted claims whenever additional information comes to light. It was submitted that the CIRP framework itself contemplates revision and up-dation of claims during

the CIRP process, therefore rejection of the Respondent's claim solely on the ground of delay is contrary to the scheme of the Code and Regulations.

e) At any rate, the timeline fixed for collation of claims is only directory as held in ***State Tax Officer Vs Rainbow Papers Limited*** [(2023) 9 SCC 545] and hence, claims cannot be rejected merely on account of delay where the resolution plan has not attained finality. Indeed, where a claim is discernible from the records of the corporate debtor, and the resolution plan has not been approved, then a delay in submitting the claim cannot be held against the creditor of the corporate debtor.

f) So far as the application of Sec.238 of the Code goes, in ***Pioneer Urban Land and Infrastructure Ltd. Vs Union of India*** [AIR 2019 SC 4055], it is held that the remedies under the RERAA and the IBC are concurrent and complementary in nature, and hence there exists no inconsistency warranting the invocation of Section 238 of the Code.

g) The appellant did not challenge the interim Order of the Adjudicating Authority, dated 29.09.2022, and had considered the Claim. Having considered the claim, which, according to the appellant, was preferred belatedly, the argument that the claim was belatedly filed loses much of its sheen. Indeed, the appellant is estopped from contending about the delay in preferring the claim.

Discussion & Decision

6.1 The core issue, which is critical to the outcome of this appeal, is about the maintainability of the Claim, which undisputably is founded on an Order of the

RERAA passed during the operation of the moratorium. It instantly relegates the alleged failure of the respondent to notify the appellant about the pendency of its appeal before the RERAA to insignificance. After all, even if the RP had been notified about the appeal, given the fact that Sec.14(1)(a) of the code prohibits '*the continuation of pending suits or proceedings against the corporate debtor including execution of the judgement, decree or order in any court of law, tribunal or beneficial interest therein",* the Order of the RERAA will necessarily come under the scanner of the Code. The idea behind moratorium, as contemplated under Sec.14, is to freeze the assets and liabilities of the CD during CIRP for optimizing the value of the assets of CD to enable a successful resolution process and pay off the liabilities of the CD out of the proceeds of the resolution process in the manner contemplated under Sec.53 of the Code. In ***ABG shipyard case*** [(2023) 1 SCC 472], the Hon'ble Supreme Court has observed (paragraph 38), "*Section 14 of the IBC prescribes a moratorium on the initiation of CIRP proceedings and its effects. One of the purposes of the moratorium is to keep the assets of the corporate debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute.*"

6.2 Turning to the effect of the moratorium in ***P. Mohanraj case*** [(2021) 6 SCC 258], the Supreme Court has held that the moratorium operates absolutely on all pending suits or proceedings (though the Court drew a distinction between suit and proceedings) and they will come to a standstill. This view was later followed in ***Anjali Rathi & Others Vs Today Homes & Infrastructure Pvt., Ltd., & others*** [(2021 SCC OnLine SC 729]. However, the respondent has contended that the Order of the RERAA is not invalidated in terms of the dictum

in ***ABG Shipyard case*** [(2023)1 SCC 472]. In that case, the Supreme Court has held that while the Customs Officials may assess or determine the quantum of customs duty payable by the CD during the period of moratorium, it may not still be permissible for it to take steps to recover the same during moratorium, and that issuance of any demand notices during the subsistence of moratorium is hit by Sec.14 of the Code. The judgement in ***ABG Shipyard case*** is set to the facts of that case, but what is significant is that Sec.14 does not permit or enable creation of any new liability against the corporate debtor from the date of commencement of CIRP, except those which are enabled by the Code to be treated as CIRP costs.

6.3 If the case of the respondent is tested on the plane of this legislative philosophy on which Sec.14 of the Code is set, it would render ineffective the Order of the RERAA passed during the moratorium, creating a new liability on the CD. Necessarily, no claim based on the Order of the RERAA can be maintained.

7. If the claim is not maintainable, then it does not matter whether it is filed within time or belated. Therefore, we do not propose to deal with that issue.

8. Having stated thus, there is another angle to the issue of the respondent's entitlement to a claim. Admittedly, the respondent invested in a built-up commercial space and claims to have paid the entire sale consideration of ₹12,93,60,000/-. If the RP has replaced the Board of the CD, and if he is aware of the projects that the CD had undertaken, then it will not be difficult for the resolution professional to ascertain and identify the allottees and the amounts they had paid. It may be that when, on 21.10.2021, the RP issued a public notice

in terms of Sec.15, Regulation 6A of the IBBI(CIRP) Regulations was not there, but when the RP is required to prepare a list of assets and liabilities of the CD in discharge of his duty under Sec.18(1), will it not be appropriate for him to include investments innocently and bona fide made even though they may not have preferred a claim? On going through the reply of the RP to the application of the respondent herein before the Adjudicating authority, he has not disputed the claim of allotment made to the respondent. Indeed, the fact that RERA and RERAA have considered the complaint of the respondent establishes that an allotment indeed has been made by the corporate debtor. In our opinion, RP should have realized that IBC is neither designed as a statute for the divestiture of individual rights, nor is it fashioned as an expropriatory statute. On the other hand, IBC is keen to recognize every right to claim a debt, which it defines as debt, even though it holds no promise to any creditor that the debt due to him will be paid. Here we are at the point of recognizing the right of the respondent at least to the money it has invested for the purchase of a commercial unit from the Corporate Debtor. In that sense, a claim is but a notice to the resolution professional that the corporate debtor is liable to repay a debt to a certain creditor. But if that debt could be ascertained without a formal claim, would it not be appropriate and fair for the RP to ascertain the same and seek the one to whom the debt is due from the corporate debtor? We consider that ideally, the appellant, as a resolution professional, even as he rejected the claim made by the respondent, still could have investigated and accepted the claim based on

the original investment made by the respondent for the purchase of the commercial unit in lieu of the claim the respondent had made.

9. In conclusion, we dispose of the appeal with a direction to the resolution professional to verify if the respondent had made any payment of consideration to the corporate debtor as claimed by it and to include its claim.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

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