



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**Interlocutory Application No.5048/ND/2023**

**IN**

**Company Petition No. (IB)-901/ND/2020**

**(Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules 2016)**

**IN THE MATTER OF:**

**Kotak Mahindra Bank Limited  
(Assignee of PNB Housing Bank)**

**... Applicant**

**Versus**

**Mr. Sandeep Goel  
Resolution Professional  
M/s. Sarvottam Realcon Private Limited**

**... Respondent**

**IN THE MATTER OF:**

**Mr. Suraj Kumar Kaushal & Ors.**

**...Financial Creditor**

**Versus**

**M/s. Sarvottam Realcon Private Limited**

**...Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**SH. ATUL CHATURVEDI,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For Applicant in IA No.5048 : Mr. Abhishek Anand, Mr. Mohak Sharma & Mr. Shikhar, Advs

For the RP : Mr. Sandeep Goel -RP along with Mr. Mayank Singhal, Adv

**Order Delivered on: 21.11.2023**



## ORDER

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

The instant interlocutory application is filed on behalf of M/s. Kotak Mahindra Bank Limited ('applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-


- a) Allow the present application; and
- b) Condone the delay of 738 days in filing claim before the Respondent being the Resolution Professional;
- c) Issue appropriate directions to the Respondent to verify/admit the claim of Applicant to tune of Rs. 96,36,136.82/- (Indian Rupees Ninety-Six Lakh Thirty-Six Thousand One Hundred Thirty-Six and Eighty Two Paise Only) in stipulated Form-CA as an allottee of the Corporate Debtor; and
- d) Consequently, direct the Respondent to make the claim of Applicant as part of the Resolution Plan submitted before this Hon'ble Adjudicating Authority for approval in view of Judgements of the Hon'ble Supreme Court in Jaypee Kensington (Supra) and Vistra ITCL (supra);
- e) Pass any other or such further order which this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.

2. Briefly stated the facts of the present case as averred by the applicant are that Mr. Atul Jaidka and Ms, Mamta Jaidka ('borrowers') had taken credit facility from M/s. PNB Housing Finance Limited ('assignor') for the purchase of Flat No. A-1004, 10, Tower-A in a housing society developed by M/s. Sarvottam Realcom Private Limited ('Corporate Debtor'). The borrowers account maintained with M/s. PNB Housing Finance Limited was declared as Non-Performing Asset on 31.08.2017 and Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 07.09.2017. Furthermore, M/s. PNB Housing Finance Limited ('assignor') had by way of an assignment deed dated 04.03.2023 had transferred all the rights, title interest in the debt along with all the underline security



erein to M/s. Kotak Mahindra Bank Limited ('assignee' or 'corporate debtor').  
The applicant after the assignment, had collated all the legal information and data and in month of July, 2023, it came to the knowledge of the applicant that CIRP was going on against the Corporate Debtor in respect of which the borrower had booked the unit.

3. The applicant further submitted that the Corporate Insolvency Resolution Process was initiated against M/s. Sarvottam Realcon Private Limited ('Corporate Debtor') vide the Hon'ble Adjudicating Authority order dated 09.07.2021 and Mr. Sandeep Goel was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional of the Corporate Debtor. The Public Announcement inviting claims from the stakeholders of the Corporate Debtor was made on 14.07.2021 and the last date for submission of claim was 26.07.2021. However, the Applicant had submitted the claim in Form CA on 03.08.2023 for an amount of Rs. 96,36,136.82/-- along with the documents to the Respondent vide e-mail dated 03.08.2023. The Respondent had rejected the claim of the Applicant vide e-mail dated 07.08.2023 stating that an application has already been filed under Section 30(6) of the Code,2016 for approval of the Resolution Plan of the Corporate Debtor
4. We have heard the submissions made by the Ld. Counsel for the Applicant and the Respondent and have meticulously gone through the documents produced on record. The issue before this Adjudicating Authority is, "whether the Respondent's action of rejecting the claim of the Applicant on the ground that the same is filed highly belatedly is valid?"
5. A brief perusal of the material on record shows that the CIRP against the Corporate Debtor was commenced on 12.01.2022, public announcement inviting the claims from creditors was made on 09.02.2022, wherein the last date for filing of the 'Claim' was 22.02.2022, however, the Respondent had not received claim from the Applicant. The Resolution Plan was approved by CoC in its 5<sup>th</sup> CoC Meeting dated 01.02.2023 with 88.30% voting in favour and the application

 aring I.A/1309/2023 seeking approval of Resolution Plan was filed before this Adjudicating Authority on 15.02.2023 whereas the Applicants had filed the 'Claim' before the Respondent on 03.08.2023, which is indeed highly belated not only from the due date of filing the claim, but even from the date of approval of Resolution Plan by the Committee of Creditors.

6. Under the Scheme of the Code, once an application is admitted for CIRP and IRP is appointed, the IRP is required to make a Public Announcement. The purpose of making public announcement under Section 15 of the Code, 2016 read with Regulation 6 of CIRP Regulations, 2016 is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Prospective Resolution Applicant all relevant information to enable them to make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the Code, 2016. Therefore, the public announcement made by the RP would constitute deemed knowledge on the applicant herein.
7. Further, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides clear timeline under Regulation 12(1) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

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

*(1) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*

*Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for*



*resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:*

*Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.*

(2) xxxxxx

(3) Xxxxx ”

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8. It transpires from record of instant case that the applicant had submitted its claim on 03.08.2023 after a delay of 738 days from the last date of submitting claims as mentioned in the Public Announcement. It is an admitted fact that the COC had approved the resolution plan and the same is pending before this Adjudicating Authority much before the said claim was preferred by the applicants before the Resolution Professional.
9. The ground taken by the Applicant that the Applicant was not aware of the initiation of CIRP against the Corporate Debtor and also got to know in the month of July, 2023 pursuant to the due diligence conducted after the assignment of debt from the borrower, does not strengthen or substantiate their case as the timelines given under IBC are to be strictly adhered to and any latches on behalf of the `Applicant` in filing its `Claim` before the Respondent cannot be a substantial ground for condoning the delay. Moreover, keeping in view the aforementioned dates, it is clear that the actual time period of delay in submitting the said Claim Form is highly belated.
10. This Adjudicating Authority is duty bound to balance the rights of the other stakeholders who have approached the Resolution Professional on time as well as the interest of the Successful Resolution Applicant whose plan had been approved by the Committee of Creditors. If a large number of condonation of delay applications like the present one are entertained at this stage, the object of the Code, 2016 and its timeline will be adversely affected. It is pertinent to note that reversal of stages affects progress, therefore, timely and duly taking steps by all stakeholders is material, otherwise, the process of CIRP will become an endless process.



This view is also supported by Hon'ble Supreme Court of India in most recent judgement in case of **M/s. RPS Infrastructure Limited vs. Mukul Kumar in Civil Appeal No. 5590 of 2021, judgement dated 11.09.2023**, wherein it was categorically held as hereunder:

“The mere fact that the Adjudicating Authority has yet not approve the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”

12. In view of the above, the **I.A./5048/ND/2023, being devoid of merits, stands dismissed.**

**Sd/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (T)**

**Sd/-**  
**(MANNI SANKARIAH SHANMUGA SUNDARAM)**  
**MEMBER (J)**