

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 215

(IB)-1397(PB)/2019

**IA-109/2024, IA-4521/2023, IA-5623/2021
IA-3463/2020, IA-1727/2021, IA-5646/2022
IA -5783/2021, IA-5884/2021, IA-6019/2021
IA-44/2022, IA-2311/2022, IA-2812/2022
IA-966/2022, IA-3218/2022, IA-907/2023
IA-1758/2021, IA-2595//2022, IA-1607/2023
IA-2137/2023, IA-2246/2023, IA-1860/2023
IA-1861/2023, IA-2915/2023, IA-3168/2023
IA-4079/2023, IA-4219/2021, IA-1733/2021
IA-1735/2021, IA-3607/2022, IA-1732/2021
IA-548/2022, IA-5774/2022, IA- 5775/2022
IA-4269/2020, IA- 4268/2020, IA- 2201/2024
IA- 5778/2022, IA- 5765/2022**

IN THE MATTER OF:

Diamond Traexim Pvt Ltd

... Appellant/Petitioner

Versus

Indirapuram Habitat Centre Pvt. Ltd.

... Respondent

Under Section: 7 of (IBC) CIRP

Order delivered on 02.07.2024

CORAM:

**SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant

**: Adv. Jasmine Damkewala, Adv. Vaishali Sharma
Adv. Advait Joshi in IA-1733/2021, IA-
1735/2021, - Adv. Anshuj Dhingra and Adv. Ms.
Shubhangda Singh for Applicant in IA-
1860/2023 and IA-1861/2023, Adv. Dhruv
Gupta in IA 5884/2021, Adv. Varsha Banerjee in
IA-2311/2022, Adv. Akshay Chowdhary & Adv.
Sonali Madaan in IA-2137/2023 & IA-
2246/2023
Adv. Atul Singh Raghav, Adv. RK Gupta in IA-
3607/2022
Adv. Dhruv Dewan, Adv. Harsh Arora in IA-
3168/2023
Adv. Vipul Goel in IA-2201/2024,
Adv. Radhika Goel in IA-5765/2022**

- Adv. UK Singhal, Adv. Akshit Gupta in IA-2812/2022, IA-548/2022
Adv. Ram Kishan Saraf, Adv. Shyam Kishan Saraf in IA-907/2023, IA-4219/2021
Adv. Vivek Kumar in IA-268/2022, IA-4269/2022
- For the Respondent** : Adv. Bal Kishan Sharma for R-2 & 3 in IA-3463/2020
- For the RA** : Adv. Sumit Bindal a/w Ms. Mona Vij
- For the RP** : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Shaurya Shyam, Mr. Narendra K. Sharma (RP in person)
- For the KMB** : Adv. Sumant Batra, Adv. Abhishek Kumar, Adv. Nidhi, Adv. Sarthak Bhandari in IA-1758/2021, IA-4079/2023, IA-4561/2023

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-4079/2023: Ld. Counsel appearing for the Applicant could draw our attention to the order dated 21.03.2023 passed by the Principal Bench to espouse that he has the liberty to amend the IA-1758/2021. The relevant excerpt of the order reads thus:-

"In the meantime, Ld. Mr. Sumant Batra for the applicant has the liberty to amend the application commensurate with the prayer he made before us."

In view of the aforementioned order passed by the Principal Bench **the IA is allowed** and the IA-1758/2021 **is allowed to be amended**. The amended application is enclosed with IA-4079/2023 is taken on record.

Let the amended IA be uploaded against the record of IA-1758/2021 within one week.

As prayed by Ld. Counsel for the RP two weeks' time is granted for filing the reply to IA-1758/2021.

List the IA on 07.08.2024.

IA-1607/2023: The claim espoused in the application is that the Applicant should be treated as allottee qua Unit/Flat No. C-230 First Floor, C-230A First Floor, C-228 First Floor, and C-229 First Floor. Mr. Sumesh Dhawan, Ld.

Counsel appearing for the RP could draw our attention to the reply filed by him. According to him the aforementioned units are found allotted to different individuals except flat No. C-230A which does not exist.

The Ld. Counsel appearing for the Applicant could submit that once the Applicants could even receive rent from the tenants/lessee qua the aforementioned dwelling units and even TDS could be deducted, it is not understood that how they should not be treated as allottee qua the units. Such submission made on behalf of the Applicants create further doubt, as once according to RP the units C-230A, First Floor does not even exist, how anybody could occupy the same and pay rent. Nevertheless, it is stare decisis that the RP has to verify the claim of the claimants with reference to CRM data/books of accounts of the CD. It cannot be ruled out that as far as other documents are concerned, the same may be created by ex-management even on subsequent dates also, to pilfer the assets of the corporate debtor.

Even also in view of the order passed by the Hon'ble NCLAT in **Mr. Umesh Kumar vs. Mr. Narendra Kumar Sharma** (Company Appeal (AT) (Ins) No. 100 of 2024), due credence need to be given to verification conducted by the RP. Para 25 to 28 of the order reads thus:-

“25. In the present case, the Adjudicating Authority after considering in detail the entire facts and circumstances and material on record has rightly come to the conclusion that the claims submitted by the Appellant could not have been admitted in the CIRP of the Corporate Debtor. This inadequacy of documents to substantiate their claims by the Appellant has been noticed by the Adjudicating Authority in the impugned order which is as reproduced below:

"It is the stand of the RP that despite the opportunity, the Applicant could not produce any document to substantiate the services rendered by the Applicant to CD in terms of the aforementioned Consultancy Agreement.

We heard the rival submissions. Even now, we made efforts for twenty minutes to enable the Ld. Counsel for the Applicant to show any document to substantiate the plea of rendering service by the Applicant to CD in terms of the consultancy agreement, she could produce none. The documents to which our attention could be

drawn (on pages No. 155-159 of the application) are certain news reports regarding film promotions by certain actors. We are unable to appreciate how the media news regarding promotion of certain films could be accepted as the "media service" rendered by the Applicant to CD. Thus, we find no infirmity in the conclusion drawn by the RP from the book of accounts and balance sheets of the CD, that he could not find any media service rendered by the Applicant to the CD during the period for which the consultancy fees are claimed."

26. The IBC framework has endowed the RP with the cardinal responsibility as facilitator of the CIRP process. This obligates the RP to take reasonable care and diligence while performing his duties. That being so the RP is very much required to undertake appropriate verification and analysis of the claims filed. RP cannot afford to be unmindful of the fact that he is expected to assist in the CIRP process in a fair and objective manner in the best interest of all stakeholders. As an officer of the court vested with administrative powers, the RP is expected to conduct the CIRP process with fairness, diligence, forthrightness and highest sense of responsibility. It is quite clear from the sequence of events in the present facts of the case that the RP had been consistently pointing out that he is not in a position to verify the claims due to want of documents substantiating the claims.

27. Prima-facie, we do not find any incidence of wilful negligence, or deliberate stone-walling of the claims on the part of the RP in dealing with the claim preferred by the Appellant. We entirely agree with the Adjudicating Authority that the RP was well within his rights to exercise the discretion of seeking additional information from the Appellant and for which purpose he gave reasonable opportunity. The RP had made earnest and credible effort to verify the claims submitted by the Appellant and his conduct stands in sharp contrast to rather lacklustre effort by the Appellant in providing information to substantiate his claim. Thus, the bona-fide and fairness of the RP cannot be doubted. We are not inclined to agree with the obdurate stand taken by the Appellant that the RP was not entitled to seek access to further details. by scanning the Off code We do not find any error on the part of the Adjudicating Authority in affirming the conclusion drawn by the RP that the hindrance faced by him in deciding the claim of the Appellant was squarely on account of failure on the part of the Appellant to hand over proof of alleged services.

28. In the light of the above discussions, we do not find any cogent grounds which warrants any interference in the impugned order. The impugned order passed by the Adjudicating Authority, not suffering from any infirmities, is

hereby affirmed. The Appeal being devoid of merit is dismissed. No order as to costs.”

Also in **Pooja Mehra vs. Nilesh Sharma & Anr.** (Company Appeal (AT) (Insolvency) No. 1511 of 2023), Hon'ble NCLAT could view that once the unit claimed by the Applicant could be found allotted to a different person, the application by the homebuyer could not be entertained. The relevant excerpt of the order reads thus:-

“95. With respect to the status of Unit No. D2-601, it is claimed by the Appellant that RP has been taking contrary stand. It is claimed that no such submission of its allotment to another person was made before the Adjudicating Authority, but later on in written submissions – it has been stated that the unit already stands allotted to Mr. Ashok Kumar Sharma, whose claim was filed within time and stands admitted and therefore the said unit could not have been included in the list of unclaimed units. Appellant claims that this is a new pleading which was not their originally and has been raised for the first time in the written submission. It has relied upon judgement of Hon'ble Supreme Court in '**Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari & Ors.**' (2014) 5 SCC 312, wherein it was held that a party cannot be permitted to travel beyond its pleadings. Relevant part of the judgment has been re-produced as under:-

“9. This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that **no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration.** The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party.

Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.”

[Emphasis supplied]

96. In the instant case the status of the allotment of flats is based on the records and data available with the Corporate Debtor, which has been provided by the RP basis the CRM data. Even for arguments sake it is presumed that the RP had changed its pleading, it does not help the Appellant as per the facts of the instant case wherein the belated claim will not become a claim within the time. This judicial pronouncement of is not applicable to the case herein. The appellant will not get any support basis the judgment quoted by him.”

In any case, Ld. Counsel for the RP fairly submitted that the claim of the Applicant has been accepted as a financial creditor (collateral creditor). Once the expression used in the documents is collateral, the semblance should be that they need to be treated as secured creditors.

The application stands disposed of.

IA-1860/2023, IA-1861/2023: The Ld. Counsel for the Applicants namely Syndicate Steel Trader and Laxmi Steels viz., operational creditors espoused that the RP could not examine the claim of the Applicants with due application of mind and magnanimously, as the claim for interest raised by them could be nixed and even the claim for principal amount has not been accepted in full. Ld. Counsel appearing for the Applicant submitted that now in terms of the Judgment of Hon'ble NCLAT in **Mr. Umesh Kumar vs. Mr. Narendra Kumar Sharma** (Company Appeal (AT) (Ins) No. 100 of 2024), the RP is found entitled to conduct the CIRP process with fairness, diligence, forthrightness and higher sense of responsibility and in discharging such a duty, he is found entitled to carry the verification of the claim also. He further submitted that though the principal amount accepted by the RP is with reference to the books of accounts on record of the corporate debtor, but as far as the claim for interest is concerned, if there is any reflection to the effect in the invoices raised by the Applicants, the RP would accept the same and admit the claim of the Applicants. In view of the submissions made by the Ld. Counsel for RP **the applications are disposed of.**

IA-3607/2022: The prayer made in the captioned application is for issuance of direction to the RP to admit the claim of the Applicant as homebuyer, by condoning the delay. Ld. Counsel for the RP fairly admitted that as per the record of the RP the Unit No. GF 202H is allotted to the Applicant. In the wake, in view of the Judgment of Hon'ble NCLAT in **Puneet Kaur vs. K.V. Developers Private Limited & Ors.** (Company Appeal (AT) (Insolvency) No. 390 of 2022) the delay in filing the claim by the Applicant is condoned and the RP is directed to accept the claim of the Applicant.

The application stands disposed of. No cost.

IA-109/2024, IA-4521/2023, IA-5623/2021, IA-3463/2020, IA-1727/2021, IA-5646/2022, IA -5783/2021, IA-5884/2021, IA-6019/2021, IA-44/2022, IA-2311/2022, IA-2812/2022, IA-966/2022, IA-3218/2022, IA-907/2023, IA-1758/2021, IA-2595//2022, IA-2137/2023, IA-2246/2023, IA-2915/2023, IA-3168/2023, IA-4219/2021, IA-1733/2021, IA-1735/2021, IA-1732/2021, IA-548/2022, IA-5774/2022, IA- 5775/2022, IA-4269/2020, IA- 4268/2020, IA- 2201/2024, IA- 5778/2022, IA-5765/2022: As prayed by the Ld. Counsel for the RP, the hearing is deferred to 07.08.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)