

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No.104

New IA-2508/2023 New IA-2490/2023

In

IB-401(ND)/2017

IN THE MATTER OF:

Mr. Deepak Khanna

Vs.

M/s. Earth Infrastructure Ltd.

.....APPLICANT/PETITIONER

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 03.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Adv. Nikhil Kumar Jha, Adv. Milan Negi

In New IA-2490/2023

Adv. Nishant Solanki Adv. Syed Sarfaraz Karim

In I.A. 2508/2023

ORDER

New IA-2490/2023:-

This application has been filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking a direction to the Resolution Professional to consider the claim filed by the Applicant as Financial Creditors in a class.

It is seen from the records that the CIRP was commenced on 06.06.2018. The public announcement was made on 12.06.2018. The last date of submission of claims was 12.09.2018. We further note that the Resolution Plan in the present case was approved by this Adjudicating Authority vide order dated 08.06.2021. The Applicant filed its claim on 16.04.2023. It is submitted by the Learned Counsel appearing for the Applicant that the order dated 08.06.2021 passed by this Adjudicating Authority approving the Resolution Plan was set aside by Hon'ble NCLAT vide order dated 31.01.2023 and therefore, the Applicant has filed its claim before the Resolution Professional on 16.04.2023 after the order was passed by Hon'ble NCLAT. The Applicant submitted that fresh Form G inviting the Expression of Interest from Prospective Resolution Applicants is being issued

and the CoC is yet to consider the Resolution Plan after the passing of order by Hon'ble NCLAT and therefore the claim of the Applicant should be considered. The Applicant further relied upon a judgment dated 01.06.2022 passed by Hon'ble NCLAT in the case of Puneet Kaur versus KV Developers Private Limited in Company Appeal No. 390 of 2022 and submitted in view of the ratio laid down in the said case, the Applicant's claim should be considered by the Resolution Professional.

Having heard the submissions made by the Learned Counsel appearing for the Applicant and perused the documents, we are of the considered view that the Applicant did not take any steps for filing claims at the first instance i.e. before the order approving the Resolution Plan was set aside by Hon'ble NCLAT and no cogent reasons has been assigned by the Applicant for not filing a claim within the stipulated time. The Applicant having filed its claim at a very belated stage, we do not consider it appropriate to entertain the present application and therefore the same is **dismissed**.

New IA-2508/2023:-

This application has been filed by the Applicant under Section 60(5), 70 and 73 of IBC, 2016 seeking the following prayers: -

“A. Allow the present application direct the Respondent No. 5/ Successful Resolution Applicant to give 8 flats with the said specification in terms of the agreement dated 04.04.2012 entered into by the Applicants with Corporate Debtor and Aurochem.

B. Punish the Directors/Respondent Nos. 2 to 4 for contravening the provisions under Section 70 and 73 of the Insolvency and Bankruptcy Code, 2016.”

Having heard the submissions made by the Learned Counsel appearing for the Applicant and perused the contents of the application, we are not inclined to entertain the present application. Therefore, the said application is **dismissed**

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)