

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

**I.A.No.734/KB/2022
In
C.P.(IB) No.295/KB/2021**

*An application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016*

In the matter of:

Rajneesh Sharma, the Administrator, SREI Infrastructure Finance Limited

....Applicant

-Versus-

Candor Kolkata One Hi-Tech Structures Private Limited

....Respondent

Date of Hearing : 26/09/2022

Date of pronouncing the order: 05/12/2022

Appearances (via Video Conferencing/ Physical):

Mr.Jishnu Chowdhury , Adv. : For Applicant in Cont.A/ 13/2022

Mr.Aakash Bajaj,Adv. :

Ms.Shreya Singh,Adv.

:

Mr. Jishnu Saha, Sr. Adv : For Administrator SREI

Mr. Soumyajit Mishra, Adv :

Mr. Jayabrata Mukherjee, Adv : For Applicant in IA 1055/2022

Mr. Rahul Poddar, Adv : For Applicant in IA 1065/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

ORDER

Per Rohit Kapoor, Member (Judicial):

1. The instant application has been filed by Reserve Bank of India through its administrator seeking clarification of order dated 30 June 2022 passed by this Tribunal in IA 86 of 2022 in CP 295 of 2021.
2. During the course of his submissions, learned counsel for applicant has drawn our attention to paragraph 11 and 12 of this application while pressing for the relief as sought in this application.
3. Ld. Senior Counsel appearing for applicant during the course of his submissions in support of averments contained in para 11 and 12 referred to above, has taken us to para 6.3 of order dated 30 June 2022 passed by the said adjudicating authority and the same is reproduced hereinafter:

*6.3- “The Administrator has passed its decision on the claim of the Applicant by presiding over issues that have to be dealt with in a judicious manner. The function of the Administrator are similar to that of the Resolution Professional and it is a well settled proposition that the duty of the Resolution Professional is to **collect, collate and admit** the claims of the creditors. The Administrator does **not have the power to adjudicate upon the claims**”.*

4. From the pleadings of the parties and arguments made by learned Counsel, the question that arises for answer is what the word ‘**collate**’ Section 18, sub-section (1) (b) of IBC 2016 means. While considering this aspect, before proceeding further, we may straightaway refer to an order passed by the Hon’ble NCLAT, Principal Bench, New Delhi in **Ome Prakash Verma v. Amit**

Jain & Anr,¹ relevant paragraphs of which are reproduced hereinafter:

We have heard the learned Counsel for the parties and perused the record.

6. We may first notice the statutory scheme with respect to Corporate Insolvency Resolution Process. We need to first notice the duties and functions of the Resolution Professional. [Section 18](#), sub-section (1) (b) enumerates that one of the duties of the Interim Resolution Professional is to receive and collate all the claims submitted by creditors to him. [Section 25](#), sub-section (2)(e) oblige the Resolution Professional to maintain an updated list of claims. The Regulations have been framed namely - The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 8 provides the manner of submission of claims by Financial Creditors. Regulation 10 deals with 'Substantiation of claims', which is as follows:

"10. Substantiation of claims.

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim."

¹ Company Appeal (AT) (Insolvency) No. 827 of 2020 decided on 4th January, 2022

7. Next important Regulation to be looked into is Regulation 12, which deals with 'Submission of proof of claims'. Regulation 12 is as follows:

"12. Submission of proof of claims.

(1) Subject to sub-regulation (2), a creditor shall submit proof of claim on or before the last date mentioned in the public announcement.

(2) A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, Company Appeal (AT) (Insolvency) No. 827 of 2020 5 may submit such proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.

(3) Where the creditor in sub-regulation (2) is a financial creditor, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion."

8. Regulation 13 deals with 'Verification of claims'. We may also notice Section 60 of the IB Code. [Section 60](#), sub-section (2) & (5), which are relevant are as follows:

"60(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution

process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before the National Company Law Tribunal.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(a) any application or proceeding by or against the corporate debtor or corporate person;

b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

9. When we look into the Regulation and Section 60 of the IB code as above, it is apparent that as per Section 18 of the IB Code, one of the duties of Interim Resolution Professional is to receive and collate all the claims submitted by the creditors to him. Similarly, the Regulations empowers the Resolution Professional to call for such other evidence or clarification as he deems fit from the creditors for substantiating the whole or part of the claim. Regulation 12, sub-

*regulation (3) uses the expression 'submission of proof of claims'. Resolution Professional has to thus receive and collate all the claims, call for such other evidence, ask for any information from the creditors to substantiate their claims. Regulation 13(b) provides for 'verification of claims'. **The above duties and functions are administrative in nature while accepting, collating and verifying the claim, the Resolution Professional is to be prima-facie satisfied that claim, which is submitted by a creditor is made out from the documents submitted.** The Resolution Professional does not enjoy the adjudicatory functions.*

Emphasis supplied.

5. While answering the issue raised in present IA, it is significant to refer to Regulation 10, 12, 13 and 14 of The Regulations have been framed namely - The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, herein after mentioned as Regulations, deals with:

- i. Substantiation of claims by IRP or RP (Reg 10)*
- ii. Submission of claim of proof by creditor to IRP or RP (Reg 12),*
- iii. Verification of claims by IRP or RP (Reg 13) and*
- iv. Determination of amount of claims by IRP or RP (Reg 14).*

6. Therefore, we are of the view, collation of claims by resolution by IRP or professional is not merely an empty formality. He is not merely compiling the information or calculate it and spiral bind it

while collating claims. In terms of regulation 10, he has been vested with the responsibility to call for evidence that may be required or any clarification that may be appropriate, necessary or mandatory for substantiation of claims by its maker. Further, while collating claims in terms of regulation 12 the creditor is required to submit *claim with proof* to resolution professional. It is significant to note the word '**proof of claim**' has been substituted with words **claim with proof** by virtue of notification dated 4 July 2018 issued by IBBI. Regulation 13 deals with verification of every claim by resolution professional. It needs to be noted further, as per Regulation 14, resolution professional is vested with authority to determine the amount of claim on the basis of information available with him.

7. Suffice it to say, above regulations empower an IRP or Resolution professional with an obligation to determine amount of a claim on the basis of proof and other factors as mentioned in the above referred Regulations. And while determining the claims he has been authorized to check the veracity of a claim and thereupon accept it, accepted partly or determine it nil. It is true, resolution professional has no authority to adjudicate, however, he has been vested with authority by law to determine a claim on the basis of evidence, proof etc. as referred to in Regulations indicated above. Thus, we are of the view, the task of collation entrusted in terms of section 18 of IBC 2016 to resolution professional definitely includes due application of mind by him in terms things to be factored as provided in Regulations while according his satisfaction regarding correctness of a claim. And this is with a definite purpose of not to admit frivolous or fallacious claim/s. While saying so, we seek to refer and rely on paragraph 9 of above order passed by Hon'ble NCLAT, reproduced herein above.

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8. Needless to say, the claims of non-applicant herein have to conform to judicious adjudication as mentioned in para 6.3 of the order dated 30.06.2022 as well as vouch to what has been observed in para 6 and 7 herein above. It is reiterated that the Administrator does not have the power to adjudicate upon the claims.
9. An IRP or RP while *collating* claim/s is not expected to admit a claim which requires proof to substantiate or evidence to support it and in terms of regulations 10 & 11. And as per regulation 14, it will be a merely determination of a claim by IRP or RP who is qualified to perform such tasks. And therefore, it may be termed as “Expert determination’ which has not attained finality as it is subject to approval by CoC. Whereas, in adjudication, there is an element of finality. As per Oxford dictionary, *adjudication means the process of making an official decision about who is right when two groups or organizations disagree; the decision that is made.* In process of determination by IRP or RP there are no two contesting parties as in case of Adjudication.
10. Thus, a claim which is unsubstantiated or not supported by requisite details or documents is required to be dealt accordingly. IRP or RP cannot admit a claim just on the askance of it by a creditor.
11. In view of the above observations, this application is **disposed of**.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 5th day of December, 2022

FA(LRA)