

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA No. 4154 of 2023

In

CP (IB) No. 2517(MB) of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the N.C.L.T. Rules, 2016

IN THE MATTER OF

1. Ms. Sneha Kore, and

2. Mr. Nipun Kore,

Both residing at: Plot No. 1963, 1964, Savitri
Nivas, Nivrutti Colony, near Ram mandir,
Kolhapur, Maharashtra-416 113.

... Applicants

V/s.

Mr. Arun Kapoor

Resolution Professional of Monarch
Brookefields LLP

G-601, Army Co-operative Housing Society,
Sector- 9, Nerul (East), Navi Mumbai,
Maharashtra - 400706.

... Respondent

IN THE MATTER OF

M/s. Capri Global Capital Ltd.

502, Tower-A, Peninsula Business Park,
Senapati Bapat Marg Lower Parel Mumbai,
Maharashtra.

... Financial Creditor

V/s.

M/s. Monarch Brookefields LLP

Survey No. 113/O Akurli, Village Panvel,
Raigarh, Maharashtra - 410206

... Corporate Debtor

Order delivered on: - 24.04.2024.

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances (Hearing in Hybrid Mode):

For the Applicant (in VC Mode) : CA. Udayraj Patwardhan.

For the Respondent/RP : Counsel Mr. Amir Arsiwala.

ORDER

Per: - Coram

1. The present Interlocutory Applicant is filed by the Applicants praying for directions to the Respondent to consider and admit the claim of the Applicants and to set aside the rejection order of the Respondent vide e-mail dated August 28, 2023. The claim of the Applicant that was rejected by the Respondent is INR 93,16,601.92/-, which was filed on August 25, 2023.
2. Brief facts necessary for disposal of the present Application are as follows:

- a. Corporate Insolvency Resolution Process (CIRP) against M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide Order of the Tribunal dated 27.09.2019 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (IRP).
- b. IRP issued a public announcement on 24.11.2019 in Form 'A' inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the last date for submission of claim was 07.12.2019.
- c. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kapoor was appointed as Resolution Professional (RP) of the Corporate Debtor. The erstwhile IRP issued a public announcement dated 25.02.2021 for inviting Expression of Interest (EoI) from prospective resolution applicants. After receiving resolution plan from the prospective resolution applicants, two plans were considered and put to vote and the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of CoC. Hence, the Respondent filed an I.A. No. 70/2022 for approval of a Resolution Plan before the Tribunal. The said Application for approval of Resolution Plan is pending adjudication before this Hon'ble Tribunal.
- d. On 25.08.2023, the Applicants filed their proof of claim electronically in Form CA for an outstanding sum of Rs. 93,16,601.92, out of which the principal sum is of Rs. 35,00,000/- arising in respect of the purchase of the Flat (viz. Flat No. 1104, 11th Floor, Wing-Arizona, in the project known

as “Monarch Brookfields”, situated at Plot No. 03, Sector 20, Kalamboli, Navi Mumbai) and the remainder of the claim is in respect of Parking, Maintenance and other charges, compensation and costs as awarded by the Hon’ble Maharashtra Consumer Disputes Redressal Commission vide Order dated September 23, 2019 in Consumer Complaint No. CC/18/837.

- e. The Respondent rejected the claim of the Applicant vide E-Mail dated August 28, 2023 on the following terms:

“We refer to your claim submitted to the undersigned vide email dated August 25, 2023.

In view of your claim, we hereby inform you that the Resolution Plan has been approved by members of the Committee of Creditors and the same has been filed by the undersigned before the Hon’ble NCLT, Mumbai Bench on 2 December 2021.

Since the resolution plan has already been filed with the Hon’ble NCLT, we are not in the position to admit your claim.”

- f. Being aggrieved by the rejection of his claim, the Applicant herein has filed this application before the Hon’ble Tribunal impugning the rejection of claim by the Respondent.

3. **Reply of the Respondent:**

- a. It is an admitted position that the Applicants had received a letter from the erstwhile IRP dated 23rd June, 2020 requesting them to file a claim in accordance with the provisions of the Code. Yet, no claim was filed despite the Applicants having received this letter.
- b. The erstwhile interim resolution professional had taken out an advertisement for inviting claims on 24th November, 2019. The

period of 90 days for submission of claim as required under Regulation 12 of the CIRP Regulations, 2016 came to an end on 22nd February, 2020. Admittedly, the Applicants did not submit their claim before 18th November, 2021. Therefore, the claim submitted by the Applicants was thoroughly belated and could not have been processed or placed in the information memorandum or be made known to the potential resolution applicants. The acceptance of the claim of the Applicants would have derailed the CIRP of the Corporate Debtor and would have defeated the objectives of the Code.

- c. The Company Petition No. 2517/2018 was admitted against the Corporate Debtor on 27th September, 2019. The erstwhile IRP in accordance with Regulation 6 of the CIRP Regulations, 2016 published a public notice dated 24.11.2019 in one regional language and in one English language newspaper for inviting claims and the said public notice was also displayed on the website of the Corporate Debtor. Therefore, it is deplorable as to how the Applicants contend that they were unaware of the present CIRP process.
- d. The CoC had already approved the Resolution Plan submitted by Planet Builders and Developers in the 13th CoC meeting held on 15th November, 2021 and only minor changes were required to be incorporated by the Prospective Resolution Applicant before 18th November, 2021. Therefore, the 13th CoC meeting was adjourned to 19th November, 2021 from 15th November, 2021. While, the Respondent has fullest sympathy for the Applicants, but the admission of their claim at this belated stage would upset the entire

CIRP process as admission of their claim at this belated stage would jeopardise the approved resolution plan and would in-turn defeat the interests of all other homebuyers who dutifully and diligently submitted their claims. Hence, the Respondent prays that the instant application be dismissed with exemplary costs on the Applicants.

4. **Submissions on behalf of the Applicant:**

- a. Counsel for the Applicant submits that the Applicant came to know about the CIRP of the Corporate Debtor only in the month of August, 2023. The Applicant took some time to scout and engage the professionals dealing in insolvency and bankruptcy laws and soon thereafter, the Applicant filed his claim on August 25, 2023 with the Respondent.
- b. Counsel for the Applicant has relied upon the judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd (2022 SCC Online NCLAT 245) wherein it was held that extinguishment of claims take place only upon approval of the resolution plan by the Adjudicating Authority and not otherwise. To buttress his submissions, Ld. Counsel drew our attention to Para 27 of the judgment wherein the Hon'ble NCLAT had held that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor ought to have been included in the Information Memorandum and the Resolution Applicant ought to have taken note of the said liabilities and

should have appropriately dealt with them in the resolution plan. The Hon'ble NCLAT further held that non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution. Hence, the Counsel for the Applicant asserts that even if the Applicant's claim was not filed within time, his claim should have been considered and included in the Information Memorandum prepared by the RP, more so when the claim against the Corporate Debtor has been adjudicated by the Hon'ble State Consumer Disputes Redressal Commission, Maharashtra upon the complaint filed by the Applicant vide CC/18/838 under the provisions of the Consumer Protection Act, 1986.

- c. As regards the outer time limit of filing the claim within 90 days of the insolvency commencement date under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, Counsel for the Applicant submits that the said time limit is directory and not mandatory in nature. In this regard, Counsel for the Applicant has relied upon the Judgment of Hon'ble Supreme Court of India in State Tax Officer v/s. Rainbow Paper Ltd (Civil Appeal No. 1661 of 2020).
- d. Learned Counsel for the Applicants has contended in his written submissions that the respondent's reliance on the judgment of RPS Infrastructure Ltd v/s. Mukul Kumar is wholly misplaced. According the learned counsel, in that case, the Hon'ble Supreme Court while addressing the delay of 287 days, emphasized the appellant's commercial entity status and its responsibility to stay vigilant regarding the Corporate Debtor's

CIRP. Whereas, the facts and circumstances of the present case under consideration are different. The learned Counsel for the Applicant submits that the Applicants herein are not the commercial parties, but are rather commoners and farmers residing in Kolhapur, which is far away from Mumbai i.e. the place of business of the Corporate Debtor. Counsel for the Applicants contends that the Applicants were completely unaware of the public announcement published in Mumbai newspapers with very limited circulation and the same is in violation of Regulation 6 of the CIRP Regulations.

5. **Submissions of the Respondent:**

- a. The Respondent submitted that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC in its 13th meeting held on 15th November, 2021 and 19th November, 2021 and an I.A. No. 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan, which is currently pending. The Information Memorandum (IM) had been prepared on 26.07.2021 and the same was circulated to the prospective Resolution Applicants on 29.05.2021. The Resolution Plans were submitted pursuant to the above IM.
- b. Since the IM was published way before the filing of claim by the Applicant, there was no occasion to incorporate the claim of the Applicant in the IM. The claim of the Applicant had not been recorded with any Information Utility or in the books of accounts of the Corporate Debtor.

- c. To buttress the contentions, the Respondent relied upon the decisions laid down by the Hon'ble Supreme Court in the case of M/s R.P.S Infrastructure Limited v. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021) and Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta and Ors. ((2020) 8 SCC 534) wherein it was held that a Resolution Professional cannot be compelled to admit claims which are received after the approval of the Resolution Plan by the CoC.
- d. The Respondent further submitted that there are many claims received after the approval of the Resolution Plan and many Applications relating to such rejection of claim are pending before the Tribunal. Admitting the present Application would lead to several hydra heads popping up which would derail the implementation of the Resolution Plan.

Analysis and Decision:

6. We have heard the Counsel appearing for the parties and perused the records.
7. On perusal of the application of the Applicant, we find that admittedly the Applicant had lodged his claim before the Respondent on August 25, 2023 which came to be rejected by the Respondent on August 28, 2023. It is also not in dispute that Public Announcement in Form A was made by the erstwhile IRP on 24.11.2019 and the last date for submission of claims as per the aforesaid public announcement was 07th December, 2019. Thus, there is an unexplained delay of 1357 days

or 3 years, 8 months and 18 days. No explanation has been offered by the Applicant about the delay in lodging the claim before the Respondent. The Applicant states in his application that he became aware about the CIRP of the Corporate Debtor in the month of August, 2023. However, in our opinion, this is not a satisfactory explanation as the public announcement concerning the CIRP of the Corporate Debtor was made on 24.11.2019. In our considered view, the Public Announcement of the CIRP of Corporate Debtor made through newspapers u/s 15 of the Code constitutes deemed knowledge on the Applicant and therefore, ignorance of CIRP cannot be pleaded as a justifiable excuse for delay in filing the claim.

8. Counsel for the Applicant submits that since the Applicants are residing in Kolhapur, the Applicants cannot be expected to know about the CIRP of the Corporate Debtor when the public announcement regarding the same was published in the newspapers in Mumbai with very limited circulation. According to the learned counsel, such publication is in violation of Regulation 6 of the CIRP Regulations. However, we are unagreeable with the aforesaid submission. As per Regulation 6(2)(b)(i) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the public announcement shall be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the Corporate Debtor and any other location where in the opinion of the interim resolution professional, the Corporate Debtor conducts material business operations. Thus, it is not mandatory to make an announcement in the newspapers having wide circulation across the state or country or across the location where the Applicants reside. In

the present case, the Public Announcement of the CIRP of the Corporate Debtor has been made in the two newspapers viz. Financial Express and Mumbai Lakshadeep on 24.11.2019 which are in circulation at the place/location where the registered office of the Corporate Debtor is situate. Therefore, the plea of the Applicants that the public announcement was made in breach of Regulation 6 (supra) cannot be accepted. Further, the plea that since the Applicants reside far away from Mumbai, therefore they cannot be expected to know of the CIRP is equally untenable as once the public announcement is made under Section 15 read with Regulation 6 (supra), it shall be deemed to be communicated to the creditors of the Corporate Debtor (including the Applicants herein) under proviso to Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. On perusal of records, we find that the Agreement for Sale is undated and unregistered. The Applicants have not annexed the copy of Demand Draft dated January 17, 2013 to show that they have made the payment of Rs. 35,00,000/- to the Corporate Debtor towards the sale consideration for purchase of the flat. The Applicants claims to have paid Rs. 10,85,750/- in cash to the Corporate Debtor towards, *inter-alia*, the consideration of a parking slot for four wheeler and one time maintenance, however, no receipt or any other document evidencing the payment(s) made in cash have been placed on record by the Applicant. Further, we also find that the 'Receipt' annexed by the Applicant at 'Annexure-3' to the Application is undated, the said Receipt does not contain any reference to the Demand Draft dated January 17, 2013 and name of the place and names and signature of the witnesses in the said Receipt are also blank. The Respondent has

contended in his Affidavit-in-Reply that the claim of Applicant is neither recorded in the books of accounts of the Corporate Debtor nor recorded with any information utility. Therefore, the Respondent had no reason to incorporate the purported claim of the Applicant into the Information Memorandum at any point of time.

10. Further, we find that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC in its 13th meeting held on 15th November, 2021 and 19th November, 2021 and an I.A. No. 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan, which is currently pending. CIRP is a process which is required to be completed in a time bound manner for achieving the purpose of value maximisation for all creditors. The Resolution Plan cannot go back and forth thereby making CIRP an endless process.

11. Counsel for the Applicant has relied upon the following precedents in support of his submissions:

- i. Judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd. (2022 SCC Online NCLAT 245);
- ii. Order dated 03.03.2023 of NCLT in Company Appeal No. 9 of 2022 in CP(IB) No. 2517/MB/2018;
- iii. Judgment of the Hon'ble Supreme Court in the case of State Tax Officer v/s. Rainbow Paper Ltd (Civil Appeal No. 1661 of 2020);
- iv. Order dated 06.06.2019 in CA Nos. 1083(PB)/2019 & 1084(PB)/2019 of the Hon'ble NCLT, Principal Bench;

- v. Order dated 06.08.2018 of the Hon'ble NCLT, Kolkata Bench in CA(IB) Nos. 273, 629 & 671 of 2018 in CP(IB) No. 699/KB/2017;
- vi. Order dated 16/06/2022 of the Hon'ble NCLT, Indore Bench in IA No. 99(MP)/2022.

12. In view of the law laid down by the Hon'ble Supreme Court in RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. vide Judgment dated September 11, 2023 in Civil Appeal No. 5590 of 2021, the precedents of NCLT and NCLAT, which have been relied upon by the Counsel as above, are prior to the judgment of RPS Infrastructure Ltd (supra) and hence, those precedents cannot be applied or considered anymore to condone the delay where the claim has been filed after the approval of the resolution plan by the CoC even though the plan is not approved by the Adjudicating Authority. Prior to the judgment of Hon'ble Apex Court in RPS Infrastructure Ltd (supra), there were divergent views on whether the claim can be admitted after the approval of resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code. In some of the cases, including the precedents relied upon by the Applicant, the Adjudicating Authority as well as the Appellate Authority under the Code, taking a lenient view, were inclined to condone the delay in admitting the belated claim of the claimant even if the same was filed after the approval of the resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code on the reasoning that the resolution plan becomes final only upon its approval by the Adjudicating Authority u/s 31 of the Code and therefore, there was some room left to accommodate the belated claims by the creditors/claimants, which were filed after the

approval of resolution plan but prior to its approval by the Adjudicating Authority u/s 31 of the Code.

13. While in some other cases, such as Mukul Kumar v. RPS Infrastructure Ltd. (Judgment dated 30th July, 2021 in Company Appeal (AT) (Insolvency) No. 1050 of 2020), the Hon'ble NCLAT had held as follows: “34. *With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated.*”. This matter went in appeal before the Hon'ble Supreme Court of India and the law in this regard, as discussed below, has now been settled by the Hon'ble Apex Court.

14. The Hon'ble Supreme Court has observed in the judgment of Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. reported in (2020) 8 SCC 534 as follows: “*A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate,*

as has been pointed out by us hereinabove.”

15. The Hon'ble Supreme Court in M/s. RPS Infrastructure Ltd v/s Mukul Kumar & Anr. (neutral citation: 2023 INSC 816) has observed as under:

“21. The mere fact that the Adjudicating Authority has yet not approved 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.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

16. Counsel for the Applicant seeks to distinguish the judgment of RPS Infrastructure Ltd. (supra) on facts by submitting that in the said case, RPS Infrastructure Ltd was a commercial party and therefore, they ought to have known the CIRP; whereas in the present case, the Applicants are not a commercial party and hence, the law laid down in RPS Infrastructure Ltd would not apply to the facts of the instant case. We are unable to agree with the aforesaid contention. The only issue before the Hon'ble Apex Court in RPS Infrastructure Ltd. (supra) was whether the claim pertaining to an arbitral award, which is in appeal under Section 37 of the said Act, is liable to be included at a belated stage – i.e. after the resolution plan has been approved by the COC. In the said case, even though the Corporate Debtor was a party

to the arbitration proceedings, yet the Appellant therein (i.e. RPS Infrastructure Ltd) was required to lodge its claim before the IRP/RP of the Corporate Debtor. However, since the claim was filed after the resolution plan had been approved by the CoC, the Hon'ble Apex Court dismissed the appeal and upheld the impugned NCLAT Order. The Hon'ble Supreme Court observed that in any case the plea of not being aware of newspaper pronouncements is not the one which should be available to a commercial party. However, in our considered view, the Hon'ble Apex Court's judgment in the aforementioned case should not be interpreted to mean that if the claimant is a non-commercial entity, then the plea of not being aware of newspaper pronouncements should be available in order to condone the delay in filing the claim. This interpretation of the judgment of the Hon'ble Supreme Court of India in RPS Infrastructure Ltd. (supra) is thoroughly misconceived as also untenable.

17. Even though the Corporate Debtor was a party to the consumer case filed by the Applicants, the same does not dispense the Applicants from the obligation of filing their claim before the Respondent or the erstwhile IRP, in a time bound manner. It is not open to the Applicants to contend that since the consumer case (in which the Corporate Debtor was a party) was awarded in favour of the Applicants, the Respondent should have been aware and included the claim of the Applicants in the list of creditors even if the Applicants had not submitted their claim in time.
18. Hence, after having due regard to the law settled by the Hon'ble Supreme Court, as discussed above, we are of the considered view that the claim of the Applicant cannot be entertained at such a belated stage

where the resolution plan has been unanimously approved by the Committee of Creditors and the same is pending for the approval of the Adjudicating Authority. At this stage, we cannot allow to unleash the hydra-headed monster of undecided claim(s) on the successful resolution applicant. Even otherwise, the Applicant has no good case on merits. Further, the Applicants have failed to offer any satisfactory explanation to condone their delay in filing the claim before the Respondent. Hence, on all counts, the present application is liable to be dismissed.

19. In the facts and circumstances of the case and in view of the aforesaid discussions, we are not inclined to condone such a long, unjustified and unreasonable delay of 1357 days on the part of the Applicants in filing their claim before the Respondent and hence, **we hereby dismiss IA No. 4154 of 2023** with no order as to costs.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)