

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/77/9/AMR/ 2021	Admitted	9 of IBC	Pattabhi Enterprises Vs Blue Park Sea foods Private Limited
	IA(IBC)/434/2023	U/sec-60(5) of the IBC 2016 R/w. Rule 11 & 13 of the NCLT Rules 2016.	Viswanadhuni Lakshmi Narayana & Kolaparthi Sri Lakshmi Aparna (Managing Partners of M/s Sai Ayyappa Aqua Traders) Vs Rajesh Chillale, RP and M/s Blue Park Sea foods Private Limited
	IA(IBC)/435/2023	U/sec-60(5) of the IBC 2016 R/w. Rule 11 & 13 of the NCLT Rules 2016.	Cunuputi Satyanarayana Vs Rajesh Chillale, RP and Blue Park Sea Foods Private Limited
	IA(IBC)/436/2023	U/sec-60(5) of the IBC 2016 R/w. Rule 11 & 13 of the NCLT Rules 2016.	Viswanadhuni Narayanamma & Viswanadhuni Venkata Satyanarayana (Proprietors of M/s Sahithi Sea Foods & Marine Exports) Vs Rajesh Chillale, RP of Blue Park Sea Foods Private Limited
	Contempt Application (IBC)/3/2023	U/s 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Mr. Hemanth Naga Kumar Nereka (Suspended Director) Vs. Rajesh Chillale (RP) & State Bank of India (in the matter of M/s Blue Park Seafoods Private Limited)
	IA(IBC)/223/2023	60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Bay Fresh Inc Vs. Rajesh Chillale, RP of M/s. Blue Park Seafood Pvt. Ltd.
	IA(IBC)/154/2023	60(5) of IBC	Mr. M. Pitchaiah and Ms. M. Padmaja (managing partners of Sai Ayyappa Aqua Traders - Operational Credit) Vs. Mr. Rajesh Chillale, RP and Blue Park Sea Foods Private Limited

ORDER

IA(IBC)/434/2023:

Mr. Bendi Raviteja, Ld. Counsel for the Respondents present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. IA(IBC)/434/2023 is dismissed as disposed of and recorded vide separate sheets.

IA(IBC)/435/2023:

Mr. Bendi Raviteja, Ld. Counsel for the Respondents present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. IA(IBC)/435/2023 is dismissed as disposed of and recorded vide separate sheets.

Sd/-

Sd/-

IA(IBC)/436/2023:

Mr. Bendi Raviteja, Ld. Counsel for the Respondents present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. IA(IBC)/436/2023 is dismissed and disposed of as recorded vide separate sheets.

Contempt Application (IBC)/3/2023:

Mr. A.G. Sathyanarayana, Ld. Counsel for the Applicant and Mr. Bendi Raviteja, Ld. Counsel for R1 present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. Contempt Application (IBC)/3/2023 is dismissed as disposed of and recorded vide separate sheets.

IA(IBC)/223/2023:

Mr. Bendi Raviteja, Ld. Counsel for the Respondent present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. IA(IBC)/223/2023 is dismissed as disposed of and recorded vide separate sheets.

IA(IBC)/154/2023:

Mr. Bendi Raviteja, Ld. Counsel for the Respondents present. Mr. Rajesh Chillale, Ld. RP present in person. Orders pronounced. IA(IBC)/154/2023 is allowed and recorded vide separate sheets.



**SANJAY PURI
MEMBER (TECHNICAL)**



**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

**IA(IBC)/434/2023 in
CP(IB) No.77/9/AMR/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rules 13 of the
National Company Law Tribunal (Adjudicating Authority) Rules, 2016*

In the matter of M/S. Blue Park Sea Foods Private Limited:

1. Viswanadhuni Lakshmi Narayana, Managing Director
of M/s. Sai Teja Aqua Traders,
D.No.5-43, Meena Vari Street,
Mente Vari Thota,
Bhimavaram - 534 201,
West Godavari District, A.P.

....1st Applicant

2. Kolaparthi Sri Lakshmi Aparna, Partner
of M/s. Sai Teja Aqua Traders,
D.No.5-4-12, Meena Vari Street,
Mente Vari Thota,
Bhimavaram - 534 201,
West Godavari District, A.P.

....2nd Applicant

Versus

1. Mr.Rajesh Chillala,
Resolution Professional of
M/s.Blue Park Sea Foods Private Limited,
B-713, Western Plaza,
OUHS Darga,
Hyderabad - 500 009.

....1st Respondent

2. M/s.Blue Park Sea Foods Private Limited,
5-85, Kurumaddali,
Pamarru Village,
Pamarru Mandal,
Krishna District,
Andhra Pradesh - 521 157.

....2nd Respondent

Sd/-

Sd/-

Date of Order: 03.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri.Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr.Konala Sekhar, Advocate

For the Respondent : Mr.Bendi Raviteja, Advocate

Per : Sri Rajeev Bhardwaj, Hon'ble Member(Judicial)

ORDER

1. Against the rejection of the claim by the Resolution Professional of M/s.Blue Park Sea Foods Private Limited (hereinafter referred as **Corporate Debtor/CD**) vide letter dated 17.11.23, Mr.Viswanadhuni Lakshmi Narayana, Managing Director and Mrs.Kolaparthi Sri Lakshmi Aparna, Partner of M/s. Sai Teja Aqua Traders filed the present Application seeking the following reliefs : -
 - i) Set-aside Resolution Professional letter dated 16.11.2023 communicated on 17.11.2023 in which the RP expressed his inability to admit the claim dated 17.11.2023 filed by the Operational Creditors.
 - ii) That the debt to the Operational Creditor is not time barred in terms of the Limitation Act, 1963 and the right to claim is still alive.
 - iii) Condone the delay in filing the claim by the Operational Creditors.
 - iv) Issue orders directing the Resolution Professional to admit the Operational Creditors claim.

Sd/-

Sd/-

v) Pass such other order or orders which this Authority may deem fit and proper in the circumstances of the case.

2. The Applicants claim to have provided prawns/raw material to the tune of Rs.1,75,85,074/- to the CD. The total debt amount with interest comes to Rs.3,43,67,866/-.

3. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD on 26.10.2022 on the application filed under Section 9 of the IBC by M/s.Pattabi Enterprises. Thereupon, the Applicants filed claim in Form B under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**hereinafter referred as "CIRP Regulations"**) on 17.11.2023 for an amount of Rs.3,43,67,866/- on the date of commencement of insolvency process. However, the Respondent No.1/RP expressed his inability to admit the claim on the following grounds:

- i) Inability to establish whether the debt to M/s.Sai Teja Aqua Traders still survives since issued invoice bills made by the Corporate Debtor towards the debt in terms of the Limitation Act, 1963.
- ii) Delay in filing of the claim after expiry of 90 days from the date of public announcement. The public announcement was made on 28.12.2022 and M/s.Blue Park Sea Foods Private Limited was initiated on 26.10.2022 and the last date for submission of claim is 24.01.2023. The Operational Creditors claim should have been filed on or before 24.01.2023 within 90 days, whereas the claim was filed on 17.11.2023.
- iii) The above issues are legal in nature and as such the Resolution Professional is not competent to adjudicate the claim.

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Date of Order:03.04.2024

4. It is averred that there is a delay of only 241 days in filing the claim, which was on account of lack of knowledge, health issues etc. Moreover, it is also immaterial because the CD has already acknowledged the debt during the limitation period in view of Section 18 of the Limitation Act. When delay is not due to the negligence and inaction on the part of Operational Creditor, the delay is to be condoned and the Application is to be accepted.
5. The Respondent No.1 by filing the reply has contended and contested the averments of the Application by submitting that the claim was to be filed on or before the last date mentioned in the public announcement and in default thereof, the claim with proof was to be filed upto the date of issue of Request for Resolution Plan (RFRP) under Regulation 36 or 90 days from the CIRP commencement date. However, the claim was submitted by the Applicants on 17.11.2023 after a delay of 241 days.
6. As the Applicants furnished the claim after inordinate delay and there was also no proof supporting the claim which is clear from the ledger account statements (**Annexure 1** - page Nos.08-12 of the Counter) showing that no amount is due to the Applicant No.1 by the CD.
7. Further, the claim cannot be filed after the approval of the Resolution Plan by the CoC. It is clarified that before the submission of the claim by the Applicants on 16.11.2023, the CoC has already approved the Resolution Plan, which is pending for approval in IA No.407 of 2023. Moreover, the Applicants have also filed claim in writing in Form B of IBBI (First Track Insolvency Resolution Process of Corporate Person)

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Regulations, 2016 instead in Form B of IBBI (Insolvency Resolution Process of Corporate Person) Regulations, 2016. A reference has also been made to the Judgement dated 11th September, 2023 of the Hon'ble Supreme Court of India in the matter of *RPS Infrastructure Limited versus Mukul Kumar and another, Civil Appeal No.5590 of 2021* stating that new claims cannot be considered once the Resolution Plan is approved by the CoC.

8. We have heard learned counsel for both the parties and have also gone through the entire record.
9. Indisputably, M/s.Pattabhi Enterprises filed CP(IB) 77/9/AMR/2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s.Blue Park Sea Foods Private Limited, which was admitted vide order dated 26.10.2022. The Applicants filed the claim before the Respondent No.1 on 17.11.2023, but the same was rejected because of delay and further it was not substantiated from the record.
10. Under the IBC, there are two stages at which claims can be filed by the creditors of the Corporate Debtor. One is under Chapter II of the IBC before the IRP/RP and another is under Chapter III before the Liquidator.
11. The Word 'Claim' has been defined under section 3(6) IBC which means a right to payment and a right to remedy for a breach of contract, whether or not such right is reduced to judgment, fixed, disputed, undisputed, matured, un-matured, legal, equitable, secured, or

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unsecured. Hence, it is the right to payment which will underline the concept of claim.

12. Under section 18(1)(b) IBC, a duty has been cast upon the Insolvency Resolution Professional (IRP) to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15.
13. Section 15(1)(c) IBC read with Regulation 6(2)(ba) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that claim(s) are to be submitted within **fourteen** days of appointment of Interim Resolution Professional. Further Regulation 12(2) of CIRP Regulations says that, a creditor who fails to submit claim within fourteen days can submit the claim, on or before the **Ninetieth** day of the Insolvency Commencement Date.
14. After receiving the claims, the IRP/RP under Regulation 13(1) of the CIRP Regulations is required to verify the claims within seven days from the last date of receipt of claims.
15. After the collations of all the claims and determination of the financial position of the CD, the IRP/RP shall in view of section 21 IBC constitute Committee of Creditors.
16. The Hon'ble Supreme Court in *Greater Noida Industrial Development Authority versus Prabhjit Singh Soni and Ors. Civil Appeal Nos. 7590-7591 of 2023 (Arising out of Diary No. 3628 of 2023)*, decided

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Date of Order:03.04.2024

On: 12.02.2024 has explained the procedure to be followed by the IRP/RP while admitting the claims:

21. Once a claim is submitted with proof under any of the Regulations (i.e., Regulations 7, 8, 8-A, 9 and 9-A), the IRP or the RP, as the case may be, as per Regulation 13, has to verify the claim, as on the insolvency commencement date, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it in terms of Regulation 12 A

22. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any, the logical conclusion derivable from the provisions analysed above would be that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory and not mandatory. What is important is, the claim must be supported by proof.

23. On collation of claims received against the CD, the IRP has to constitute a COC. As per Section 21 (2) of the IBC, subject to other provisions of Section 21, the COC must comprise all financial creditors of a CD. Under Section 22 of the IBC, the COC appoints an RP in its first meeting. It may, however, resolve to appoint the IRP as the RP, subject to confirmation by the Board.

30. What is clear from the provisions of the IBC and the Regulations noticed above is, that the RP is under a statutory obligation to collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the CD. The data so collated forms part of the information memorandum. Based on that information, the resolution applicant(s) submit(s) plan. In consequence, even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD. A fortiori, if a claim is submitted by an operational creditor claiming itself as a financial creditor, the claim would have to be accorded due consideration in the category to which it belongs provided it is verifiable.

Own emphasis

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Date of Order:03.04.2024

17. The last date for submitting the claims as per the public announcement was 09.11.2022. In terms of Regulation 12(2) of the CIRP Regulations, the 90th day was 24.01.2023. The RFRP was issued on 07.02.2023 and therefore the Applicant, at the most were required to file the claims on or before 07.02.2023. The Applicants submitted the claims on 17.11.2023. There is delay of 241 days in filing the claim and as such the Respondent No.1 rejected the claims filed by the Applicant No.1. By the time the claim was submitted by the Applicants, the CoC has already accepted the Resolution Plan and an IA No. 407 of 2023 has been filed before this Authority for the approval of the Resolution Plan.
18. CIRP is a time bound process and this has been emphasized in a catena of landmark judgements including *M/s. Innoventive Industries Ltd. versus ICICI Bank (2018) 1 SCC 407* and *Arcelor Mittal India Private Limited versus Satish Kumar Gupta (2019) 2 SCC 1* that the legislative fiat of timeliness in the conduct of CIRP needs to be adhered to by all the parties as closely as possible.
19. Filing of ~~new~~ claims after the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval is to be disallowed. If the claim is allowed to be admitted in such circumstances, it would derail and defeat the very object of the IBC. Hon'ble Supreme Court Judgment in *M/s. RPS Infrastructure Ltd. versus Mukul Kumar & Anr.(2023) 10 SCC 718* has taken the view that after approval of the plan by the CoC, the claims cannot be entertained. It has been held:

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Date of Order:03.04.2024

"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."

20. To the same effect is the decision of the Hon'ble NCLAT in *Harish Polymer Product versus George Samuel RP for Jason Dekor Private Limited, Company Appeal (AT) (Insolvency) No. 420 of 2021, decided on 18.06.2021.*

21. Even the so called supply of goods etc is also not reflected in the books of account of the parties and to the contrary, in the ledger account of the CD no amount is due to the Applicant No.1. Here, we may refer to the decision of the Hon'ble NCLAT in *Shabeena Ashrad & Anr. versus Nilesh Sharma Company Appeal (AT) 581 of 2021, decided on 17.11.2021.* The relevant paragraph is reproduced below for reference:

'The Payments claimed to be made by the Petitioners/Appellants for one Mr. Rohit were not supported with any of the entries in the Books of Account' of the Corporate Debtor then I.A. No. 2771 of 2020 filed by the Applicants/Appellants seeking issuance of direction to the Resolution Professional of the Corporate debtor accept the claim in full filed by the Applicants is not maintainable and in fact the Adjudicating Authority had pertinently proceeded to observe in the impugned order that RP had admitted the claim of Rs. 15,75,279/- after allowing interest 8% on Rs. 15,29,057/- which was rightly calculated, which was not arbitrary in nature and no direction can be issued to the Resolution Professional etc. We are in complete agreement

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with the view taken by the Adjudicating Authority' in dismissing the application. Looking at from the angle, the Appeal sans merits'.

22. As a result, there is no merit in the present **IA(IBC)/434/2023 in CP(IB) No.77/9/AMR/2021** and accordingly, the same is dismissed.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)
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RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

**IA(IBC)/435/2023 in
CP(IB) No.77/9/AMR/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rules 13 of the
National Company Law Tribunal (Adjudicating Authority) Rules, 2016*

In the matter of M/S. Blue Park Sea Foods Private Limited:

Mr.Gunuputi Satyanarayana,
S/o Mr/.Yarayya, Aged 47 years
Prawn Business, currently residing at
D.No.17-3-28, Gannabathula Vari Street,
Bhimavaram - 534 202,
West Godavari District, Andhra Pradesh

....Applicant

Versus

1. Mr.Rajesh Chillala,
Resolution Professional of
M/s.Blue Park Sea Foods Private Limited,
B-713, Western Plaza,
OUHS Darga,
Hyderabad - 500 009.

....1st Respondent

2. M/s.Blue Park Sea Foods Private Limited,
5-85, Kurumaddali,
Pamarru Village,
Pamarru Mandal,
Krishna District,
Andhra Pradesh - 521 157.

....2nd Respondent

Date of Order: 03.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri.Sanjay Puri, Hon'ble Member (Technical)

Sd/L

Sd/L

Date of Order: 03.04.2024

Counsel/Parties present:

For the Applicant : Mr.Konala Sekhar, Advocate
For the Respondent : Mr.Bendi Raviteja, Advocate

Per : Sri Rajeev Bhardwaj, Hon'ble Member(Judicial)

ORDER

1. Against the rejection of the claim by the Resolution Professional of M/s.Blue Park Sea Foods Private Limited (hereinafter referred as **Corporate Debtor/CD**) vide letter dated 17.11.2023, Mr.Gunuputi Satyanarayana (hereinafter referred as the **Applicant**) filed the present Application seeking the following reliefs : -
 - i) Set-aside Resolution Professional letter dated 16.11.2023 communicated on 17.11.2023 in which the RP expressed his inability to admit the claim dated 16.11.2023 filed by the Operational Creditors.
 - ii) That the debt to the Operational Creditor is not time barred in terms of the Limitation Act, 1963 and the right to claim is still alive.
 - iii) Condone the delay in filing the claim by the Operational Creditors.
 - iv) Issue orders directing the Resolution Professional to admit the Operational Creditors claim.
 - v) Pass such other order or orders which this Authority may deem fit and proper in the circumstances of the case.
2. The Applicant claims to have provided prawns/raw material to the tune of Rs.85,10,965/- to the CD. The total debt amount with interest comes to Rs.1,87,24,123/-.

Sd/-

Sd/-

Date of Order: 03.04.2024

3. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD on 26.10.2022 on the application filed under Section 9 of the IBC by M/s.Pattabi Enterprises. Thereupon, the Applicant filed claim in Form B under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**hereinafter referred as “CIRP Regulations”**) on 16.11.2023 for an amount Rs.1,87,24,123/- on the date of commencement of insolvency process. However, the Respondent No.1/RP expressed his inability to admit the claim on the following grounds:
- i) Inability to establish whether the debt to Mr.Sunuputi Satyanarayana still survives since issued invoice bills made by the Corporate Debtor towards the debt in terms of the Limitation Act, 1963.
 - ii) Delay in filing of the claim after expiry of 90 days from the date of public announcement. The public announcement was made on 28.12.2022 and M/s.Blue Park Sea Foods Private Limited was initiated on 26.10.2022 and the last date for submission of claim is 24.01.2023. The Operational Creditors claim should have been filed on or before 24.01.2023 within 90 days, whereas the claim was filed on 16.11.2023.
 - iii) The above issues are legal in nature and as such the Resolution Professional is not competent to adjudicate the claim.
4. It is averred that there is a delay of only 242 days in filing the claim, which was on account of lack of knowledge, health issues etc. Moreover, it is also immaterial because the CD has already acknowledged the debt during the limitation period in view of Section 18 of the Limitation Act. When delay is not due to the negligence and inaction on the part of Operational Creditor, the delay is to be condoned and the Application is to be accepted.

Sd/-

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5. The Respondent No.1 by filing the reply has contended and contested the averments of the Application by submitting that the claim was to be filed on or before the last date mentioned in the public announcement and in default thereof, the claim with proof was to be filed upto the date of issue of Request for Resolution Plan (RFRP) under Regulation 36 or 90 days from the CIRP commencement date. However, the claim was submitted by the Applicant on 16.11.2023 after a delay of 242 days.
6. As the Applicant furnished the claim after inordinate delay and there was also no proof supporting the claim which is clear from the ledger account statements (**Annexure 1** - page Nos.08-12 of the Counter) showing that no amount is due to the Applicant by the CD.
7. Further, the claim cannot be filed after the approval of the Resolution Plan by the CoC. It is clarified that before the submission of the claim by the Applicant on 16.11.2023, the CoC has already approved the Resolution Plan, which is pending for approval in IA No.407 of 2023. Moreover, the Applicants have also filed claim in writing in Form B of IBBI (First Track Insolvency Resolution Process of Corporate Person) Regulations, 2016 instead in Form B of IBBI (Insolvency Resolution Process of Corporate Person) Regulations, 2016. A reference has also been made to the Judgement dated 11th September, 2023 of the Hon'ble Supreme Court of India in the matter of *RPS Infrastructure Limited versus Mukul Kumar and another, Civil Appeal No.5590 of 2021* stating that new claims cannot be considered once the Resolution Plan is approved by the CoC.

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Date of Order: 03.04.2024

8. We have heard learned counsel for both the parties and have also gone through the entire record.
9. Indisputably, M/s.Pattabhi Enterprises filed CP(IB) 77/9/AMR/2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s.Blue Park Sea Foods Private Limited, which was admitted vide order dated 26.10.2022. The Applicant filed the claim before the Respondent No.1 on 16.11.2023, but the same was rejected because of delay and further it was not substantiated from the record.
10. Under the IBC, there are two stages at which claims can be filed by the creditors of the Corporate Debtor. One is under Chapter II of the IBC before the IRP/RP and another is under Chapter III before the Liquidator.
11. The Word 'Claim' has been defined under section 3(6) IBC which means a right to payment and a right to remedy for a breach of contract, whether or not such right is reduced to judgment, fixed, disputed, undisputed, matured, un-matured, legal, equitable, secured, or unsecured. Hence, it is the right to payment which will underline the concept of claim.
12. Under section 18(1)(b) IBC, a duty has been cast upon the Insolvency Resolution Professional (IRP) to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15.

Sd/-

Sd/-

13. Section 15(1)(c) IBC read with Regulation 6(2)(ba) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that claim(s) are to be submitted within **fourteen** days of appointment of Interim Resolution Professional. Further Regulation 12(2) of CIRP Regulations says that, a creditor who fails to submit claim within fourteen days can submit the claim, on or before the **Ninetieth** day of the Insolvency Commencement Date.
14. After receiving the claims, the IRP/RP under Regulation 13(1) of the CIRP Regulations is required to verify the claims within seven days from the last date of receipt of claims.
15. After the collations of all the claims and determination of the financial position of the CD, the IRP/RP shall in view of section 21 IBC constitute Committee of Creditors.
16. The Hon'ble Supreme Court in *Greater Noida Industrial Development Authority versus Prabhjit Singh Soni and Ors. Civil Appeal Nos. 7590-7591 of 2023 (Arising out of Diary No. 3628 of 2023), decided On: 12.02.2024* has explained the procedure to be followed by the IRP/RP while admitting the claims:
 21. Once a claim is submitted with proof under any of the Regulations (i.e., Regulations 7, 8, 8-A, 9 and 9-A), the IRP or the RP, as the case may be, as per Regulation 13, has to verify the claim, as on the insolvency commencement date, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it in terms of Regulation 12 A

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Date of Order: 03.04.2024

22. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any, the logical conclusion derivable from the provisions analysed above would be that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory and not mandatory. What is important is, the claim must be supported by proof.

23. On collation of claims received against the CD, the IRP has to constitute a CoC. As per Section 21 (2) of the IBC, subject to other provisions of Section 21, the CoC must comprise all financial creditors of a CD. Under Section 22 of the IBC, the CoC appoints an RP in its first meeting. It may, however, resolve to appoint the IRP as the RP, subject to confirmation by the Board.

30. What is clear from the provisions of the IBC and the Regulations noticed above is, that the RP is under a statutory obligation to collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the CD. The data so collated forms part of the information memorandum. Based on that information, the resolution applicant(s) submit(s) plan. In consequence, even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD. A fortiori, if a claim is submitted by an operational creditor claiming itself as a financial creditor, the claim would have to be accorded due consideration in the category to which it belongs provided it is verifiable.

Own emphasis

17. The last date for submitting the claims as per the public announcement was 09.11.2022. In terms of Regulation 12(2) of the CIRP Regulations, the 90th day was 24.01.2023. The RFRP was issued on 07.02.2023 and therefore the Applicant, at the most were required to file the claims on or before 07.02.2023. The Applicant submitted the claims on 16.11.2023. There is delay of 242 days in filing the claim and as such

Sd/-

Sd/-

Date of Order: 03.04.2024

the Respondent No.1 rejected the claims filed by the Applicant No.1. By the time the claim was submitted by the Applicant, the CoC has already accepted the Resolution Plan and an IA No. 407 of 2023 has been filed before this Authority for the approval of the Resolution Plan.

18. CIRP is a time bound process and this has been emphasized in a catena of landmark judgements including *M/s.Innoventive Industries Ltd. versus ICICI Bank (2018) 1 SCC 407* and *Arcelor Mittal India Private Limited versus Satish Kumar Gupta (2019) 2 SCC 1* that the legislative fiat of timeliness in the conduct of CIRP needs to be adhered to by all the parties as closely as possible.
19. Filing of new claims after the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval is to be disallowed. If the claim is allowed to be admitted in such circumstances, it would derail and defeat the very object of the IBC. Hon'ble Supreme Court Judgment in *M/s. RPS Infrastructure Ltd. versus Mukul Kumar & Anr.(2023) 10 SCC 718* has taken the view that after approval of the plan by the CoC, the claims cannot be entertained. It has been held:

"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."

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20. To the same effect is the decision of the Hon'ble NCLAT in *Harish Polymer Product versus George Samuel RP for Jason Dekor Private Limited, Company Appeal (AT) (Insolvency) No. 420 of 2021, decided on 18.06.2021.*

21. Even the so called supply of goods etc is also not reflected in the books of account of the parties and to the contrary, in the ledger account of the CD no amount is due to the Applicant. Here, we may refer to the decision of the Hon'ble NCLAT in *Shabeena Ashrad & Anr. versus Nilesh Sharma Company Appeal (AT) 581 of 2021, decided on 17.11.2021.*

The relevant paragraph is reproduced below for reference:

'The Payments claimed to be made by the Petitioners/Appellants for one Mr. Rohit were not supported with any of the entries in the Books of Account' of the Corporate Debtor then I.A. No. 2771 of 2020 filed by the Applicants/Appellants seeking issuance of direction to the Resolution Professional of the Corporate debtor accept the claim in full filed by the Applicants is not maintainable and in fact the Adjudicating Authority had pertinently proceeded to observe in the impugned order that RP had admitted the claim of Rs. 15,75,279/- after allowing interest 8% on Rs. 15,29,057/- which was rightly calculated, which was not arbitrary in nature and no direction can be issued to the Resolution Professional etc. We are in complete agreement with the view taken by the Adjudicating Authority' in dismissing the application. Looking at from the angle, the Appeal sans merits'.

22. As a result, there is no merit in the present IA(IBC)/435/2023 in CP(IB) No.77/9/AMR/2021 and accordingly, the same is dismissed.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Vinod

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

**IA(IBC)/436/2023 in
CP(IB) No.77/9/AMR/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rules 13 of the
National Company Law Tribunal (Adjudicating Authority) Rules, 2016*

In the matter of M/S. Blue Park Sea Foods Private Limited:

1. M/s.Sahiti Sea Foods & Marine Exports
Represented by Mrs.Viswanadhuni Narayanamma,
D.No.5-4-12, Meena Vari Street,
Mente Vari Thota,
Bhimavaram - 534 201,
West Godavari District.

....1st Applicant

2. Mr.Vishwanadhuni Venkata Satyanarayana,
D.No.5-4-12, Meena Vari Street,
Mente Vari Thota,
Bhimavaram - 534 201,
West Godavari District.

....2nd Applicant

Versus

1. Mr.Rajesh Chillala,
Resolution Professional of
M/s.Blue Park Sea Foods Private Limited,
B-713, Western Plaza,
OUHS Darga,
Hyderabad - 500 009.

....1st Respondent

2. M/s.Blue Park Sea Foods Private Limited,
5-85, Kurumaddali,
Pamarru Village,
Pamarru Mandal,
Krishna District,
Andhra Pradesh - 521 157.

....2nd Respondent

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Date of Order: 03.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri.Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr.Konala Sekhar, Advocate
For the Respondent : Mr.Bendi Raviteja, Advocate

Per : Sri Rajeev Bhardwaj, Hon'ble Member(Judicial)

ORDER

1. Against the rejection of the claim by the Resolution Professional of M/s.Blue Park Sea Foods Private Limited (hereinafter referred as **Corporate Debtor/CD**) vide letter dated 17.11.2023, M/s.Sahiti Sea Foods & Marine Exports (hereinafter referred as the **Applicant No.1**) filed the present Application seeking the following reliefs: -
 - i) Set-aside Resolution Professional letter dated 17.11.2023 communicated on 17.11.2023 in which the RP expressed his inability to admit the claim dated 17.11.2023 filed by the Operational Creditors.
 - ii) That the debt to the Operational Creditor is not time barred in terms of the Limitation Act, 1963 and the right to claim is still alive.
 - iii) Condone the delay in filing the claim by the Operational Creditors.
 - iv) Issue orders directing the Resolution Professional to admit the Operational Creditors claim.
 - v) Pass such other order or orders which this Authority may deem fit and proper in the circumstances of the case.

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2. The Applicant No.1 claims to have provided prawns/raw material to the tune of Rs.2,45,48,211/- to the CD. The total debt amount with interest comes to Rs.4,96,61,346/-.
3. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD on 26.10.2022 on the application filed under Section 9 of the IBC by M/s.Pattabi Enterprises. Thereupon, the Applicants filed claim in Form B under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**hereinafter referred as “CIRP Regulations”**) on 17.11.2023 for an amount of Rs.4,96,61,346/-on the date of commencement of insolvency process. However, the Respondent No.1/RP expressed his inability to admit the claim on the following grounds:
 - i) Inability to establish whether the debt to M/s.Sahiti Sea Foods & Marine Exports still survives since issued invoice bills made by the Corporate Debtor towards the debt in terms of the Limitation Act, 1963.
 - ii) Delay in filing of the claim after expiry of 90 days from the date of public announcement. The public announcement was made on 28.12.2022 and M/s.Blue Park Sea Foods Private Limited was initiated on 26.10.2022 and the last date for submission of claim is 24.01.2023. The Operational Creditors claim should have been filed on or before 24.01.2023 within 90 days, whereas the claim was filed on 17.11.2023.
 - iii) The above issues are legal in nature and as such the Resolution Professional is not competent to adjudicate the claim.
4. It is averred that there is a delay of only 241 days in filing the claim, which was on account of lack of knowledge, health issues etc. Moreover, it is also immaterial because the CD has already

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acknowledged the debt during the limitation period in view of Section 18 of the Limitation Act. When delay is not due to the negligence and inaction on the part of Operational Creditor, the delay is to be condoned and the Application is to be accepted.

5. The Respondent No.1 by filing the reply has contended and contested the averments of the Application by submitting that the claim was to be filed on or before the last date mentioned in the public announcement and in default thereof, the claim with proof was to be filed upto the date of issue of Request for Resolution Plan (RFRP) under Regulation 36 or 90 days from the CIRP commencement date. However, the claim was submitted by the Applicants on 16.11.2023 after a delay of 241 days.
6. As the Applicant No.1 furnished the claim after inordinate delay and there was also no proof supporting the claim which is clear from the ledger account statements (**Annexure 1** - page Nos.08-12 of the Counter) showing that no amount is due to the Applicant No.1 by the CD.
7. Further, the claim cannot be filed after the approval of the Resolution Plan by the CoC. It is clarified that before the submission of the claim by the Applicants on 17.11.2023, the CoC has already approved the Resolution Plan, which is pending for approval in IA No.407 of 2023. Moreover, the Applicants have also filed claim in writing in Form B of IBBI (First Track Insolvency Resolution Process of Corporate Person) Regulations, 2016 instead in Form B of IBBI (Insolvency Resolution Process of Corporate Person) Regulations, 2016. A reference has also

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been made to the Judgement dated 11th September, 2023 of the Hon'ble Supreme Court of India in the matter of *RPS Infrastructure Limited versus Mukul Kumar and another, Civil Appeal No.5590 of 2021* stating that new claims cannot be considered once the Resolution Plan is approved by the CoC.

8. We have heard learned counsel for both the parties and have also gone through the entire records.
9. Indisputably, M/s.Pattabhi Enterprises filed CP(IB) 77/9/AMR/2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s.Blue Park Sea Foods Private Limited, which was admitted vide order dated 26.10.2022. The Applicant No.1 filed the claim before the Respondent No.1 on 17.11.2023, but the same was rejected because of delay and further it was not substantiated from the record.
10. Under the IBC, there are two stages at which claims can be filed by the creditors of the Corporate Debtor. One is under Chapter II of the IBC before the IRP/RP and another is under Chapter III before the Liquidator.
11. The Word 'Claim' has been defined under section 3(6) IBC which means a right to payment and a right to remedy for a breach of contract, whether or not such right is reduced to judgment, fixed, disputed, undisputed, matured, un-matured, legal, equitable, secured, or unsecured. Hence, it is the right to payment which will underline the concept of claim.

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12. Under section 18(1)(b) IBC, a duty has been cast upon the Insolvency Resolution Professional (IRP) to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15.
13. Section 15(1)(c) IBC read with Regulation 6(2)(ba) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that claim(s) are to be submitted within **fourteen** days of appointment of Interim Resolution Professional. Further Regulation 12(2) of CIRP Regulations says that, a creditor who fails to submit claim within fourteen days can submit the claim, on or before the **Ninetieth** day of the Insolvency Commencement Date.
14. After receiving the claims, the IRP/RP under Regulation 13(1) of the CIRP Regulations is required to verify the claims within seven days from the last date of receipt of claims.
15. After the collations of all the claims and determination of the financial position of the CD, the IRP/RP shall in view of section 21 IBC constitute Committee of Creditors.
16. The Hon'ble Supreme Court in *Greater Noida Industrial Development Authority versus Prabhjit Singh Soni and Ors. Civil Appeal Nos. 7590-7591 of 2023 (Arising out of Diary No. 3628 of 2023)*, decided **On: 12.02.2024** has explained the procedure to be followed by the IRP/RP while admitting the claims:

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21. Once a claim is submitted with proof under any of the Regulations (i.e., Regulations 7, 8, 8-A, 9 and 9-A), the IRP or the RP, as the case may be, as per Regulation 13, has to verify the claim, as on the insolvency commencement date, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it in terms of Regulation 12 A

22. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any, the logical conclusion derivable from the provisions analysed above would be that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory and not mandatory. What is important is, the claim must be supported by proof.

23. On collation of claims received against the CD, the IRP has to constitute a COC. As per Section 21 (2) of the IBC, subject to other provisions of Section 21, the COC must comprise all financial creditors of a CD. Under Section 22 of the IBC, the COC appoints an RP in its first meeting. It may, however, resolve to appoint the IRP as the RP, subject to confirmation by the Board.

30. What is clear from the provisions of the IBC and the Regulations noticed above is, that the RP is under a statutory obligation to collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the CD. The data so collated forms part of the information memorandum. Based on that information, the resolution applicant(s) submit(s) plan. In consequence, even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD. A fortiori, if a claim is submitted by an operational creditor claiming itself as a financial creditor, the claim would have to be accorded due consideration in the category to which it belongs provided it is verifiable.

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17. The last date for submitting the claims as per the public announcement was 09.11.2022. In terms of Regulation 12(2) of the CIRP Regulations, the 90th day was 24.01.2023. The RFRP was issued on 07.02.2023 and therefore the Applicant, at the most were required to file the claims on or before 07.02.2023. The Applicant No. 1 submitted the claims on 17.11.2023. There is delay of 241 days in filing the claim and as such the Respondent No.1 rejected the claims filed by the Applicant No.1. By the time the claim was submitted by the Applicant No. 1, the CoC has already accepted the Resolution Plan and an IA No. 407 of 2023 has been filed before this Authority for the approval of the Resolution Plan.
18. CIRP is a time bound process and this has been emphasized in a catena of landmark judgements including *M/s. Innoventive Industries Ltd. versus ICICI Bank (2018) 1 SCC 407* and *Arcelor Mittal India Private Limited versus Satish Kumar Gupta (2019) 2 SCC 1* that the legislative fiat of timeliness in the conduct of CIRP needs to be adhered to by all the parties as closely as possible.
19. Filing of new claims after the Resolution Plan has already been approved by the CoC and which is pending before the Adjudicating Authority for approval is to be disallowed, if allowed to be admitted, in such circumstances, it would derail and defeat the very object of the IBC. Hon'ble Supreme Court Judgment in *M/s. RPS Infrastructure Ltd. versus Mukul Kumar & Anr.(2023) 10 SCC 718* has taken the view that after approval of the plan by the CoC, the claims cannot be entertained. It has been held that :

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"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."

20. To the same effect is the decision of the Hon'ble NCLAT in *Harish Polymer Product versus George Samuel RP for Jason Dekor Private Limited, Company Appeal (AT) (Insolvency) No. 420 of 2021, decided on 18.06.2021.*

21. Even the so called supply of goods etc is also not reflected in the books of account of the parties and to the contrary, in the ledger account of the CD no amount is shown due to the Applicant No.1. Here, we may refer to the decision of the Hon'ble NCLAT in *Shabeena Ashrad & Anr. versus Nilesh Sharma Company Appeal (AT) 581 of 2021, decided on 17.11.2021.* The relevant paragraph is reproduced below for reference:

'The Payments claimed to be made by the Petitioners/Appellants for one Mr. Rohit were not supported with any of the entries in the Books of Account' of the Corporate Debtor then I.A. No. 2771 of 2020 filed by the Applicants/Appellants seeking issuance of direction to the Resolution Professional of the Corporate debtor accept the claim in full filed by the Applicants is not maintainable and in fact the Adjudicating Authority had pertinently proceeded to observe in the impugned order that RP had admitted the claim of Rs. 15,75,279/- after allowing interest 8% on Rs. 15,29,057/- which was rightly calculated, which was not arbitrary in nature and no direction

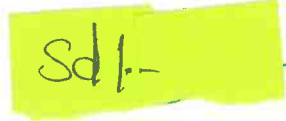
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can be issued to the Resolution Professional etc. We are in complete agreement with the view taken by the Adjudicating Authority' in dismissing the application. Looking at from the angle, the Appeal sans merits'.

22. As a result, there is no merit in the present **IA(IBC)/436/2023 in CP(IB) No.77/9/AMR/2021 and accordingly, the same is dismissed.**



SANJAY PURI
MEMBER (TECHNICAL)
Vinod



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

Cont. A. No. 3 of 2023 in
I.A. No. 132/2023 in
CP (IB) No.720/9/HDB/2019

Under Section 60(5) of IBC, 2016 r/w section 425 of
Companies Act & Rule 11 of the NCLT Rules, 2016.

In the matter of M/s. Blue Park Sea Foods Pvt. Ltd.

Between:

Mr. Hemanth Naga Kumar Nerella
(Suspended Director),
5-85, Kurumaddali, Pamarru Mandal,
Krishna District, Andhra Pradesh.

.. Applicant

A n d

1. Mr. Rajesh Chillale,
(Resolution Professional of Corporate Debtor),
B-713, Western Plaza, OU, HS Darga,
Hyderabad- 500008,
Email: cirp.bluepark@gmail.com

2. State Bank of India,
(Sole Member of CoC),
Stressed Assets Management Branch-I (SAMB-I),
5-9-76, 2nd & 3rd Floor, Prabhat Towers,
Opp. Amaravathi LHO, Chapel Road,
Gunfoundary, Hyderabad.
Rep. by its Authorised Officer.

..Respondents

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Sd/-

Date of Order: 03.04.2024

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)
Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. AG Sathyanarayana
For the Respondent No. 1 : Mr. Bendi Ravi Teja
For the Respondent No. 2 : Mr. M.L. Ganesh

Per: [Rajeev Bhardwaj, Member (Judicial)]

ORDER

1. The present application is filed by Mr. Hemant Naga Nerella (Suspended Director) of M/s. BLUE PARK SEA FOODS PRIVATE Ltd. (**hereinafter referred as Corporate Debtor/CD**) under section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with section 425 of the Companies Act 2013 & Rule 11 of the NCLT, seeking to initiate contempt proceedings against the Respondent No.1 (Resolution Professional of CD) and Respondent No.2 (Sole member of CoC) for their wilful and deliberate disobedience of the order dated 26.07.2023 passed in I.A. No. 132 of 2023 in CP(IB) No. 77/9/AMR/2021 by this Adjudicating Authority.

2. Petitioner's Case:

2.1. The Petitioner is the Suspended Director of the Corporate Debtor, M/s. Blue Park Sea foods Pvt Ltd against which CIRP was initiated. Respondent No.1

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was appointed as Resolution Professional in the 1st CoC meeting and Respondent No. 2 is the sole member of Committee of Creditors (CoC).

- 2.2. On December 28, 2022, Respondent No.1 issued an invitation for Expression of Interest (EOI). The Petitioner, via email on January 13, 2023, asserted the MSME status of M/s. Blue Park Sea foods Pvt Ltd and requested necessary documents for EOI submission, which the RP provided. Despite being an MSME, the Petitioner was denied the opportunity to submit a resolution plan by Respondent No.1 due to non-payment of the EMD amount. Thus, disregarding exceptions for MSMEs under clauses 'c' & 'h' of section 29A and section 240 A of IBC. In this regard, the Petitioner filed IA/132/2023 to consider their resolution plan, which was granted by this Adjudicating Authority in an order dated July 26, 2023, directing the RP to place the Petitioner's plan before the CoC.
- 2.3. Despite this Authority's specific order, the RP rejected the Petitioner's resolution plan suo moto. Additionally, the RP sought a revision of the plan from the Petitioner and rejected the same on flimsy grounds through mail dated 14.10.2023, without presenting it to the CoC for consideration. The Petitioner relied upon the decisions of the Hon'ble NCLAT in *Comp. App. (AT) (Ins.) No. 371 of 2022, Sharavan Kumar Vishnoi vs. Upma Jaiswal & Ors.* and *CA(AT) INS No. 565 of 2023, Epitome Components Pvt. Ltd. vs Divyesh Desai & Anr.*, to support their contention.
- 2.4. Regulation 36A (2) of the CIRP Regulations, 2016, mandates the RP to publish Form-G. However, in this case, the RP failed to upload Form-G on

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the IBBI website, constituting a gross violation and further in the minutes of the 9th, 10th, and 11th CoC meetings held on 08.08.2023, 18.09.2023, and 10.10.2023, respectively, the RP did not reconstitute the PRA list by adding the Petitioner's name. The CoC also remained silent and did not consider this Authority's order. These actions of the RP are deemed arbitrary, willful, and a deliberate disobedience towards the impugned order in IA/132/2023.

3. Respondent No. 1 & 2's Case:

- 3.1. Both the respondents deny the Petitioner's contention of wilful disobedience regarding compliance with the order in IA/132/2023. They submitted that during the 9th CoC meeting on August 8, 2023, the RP with CoC's consent, opened the sealed envelope containing the Petitioner's resolution plan and briefed its contents to the CoC. The CoC directed Respondent No.1 to submit the plan along with compliance evaluations. The RP evaluated the plan for compliance, shared findings with the CoC on August 17, 2023, and then with the Petitioner on September 8, 2023. The Petitioner submitted clarifications on September 18, 2023. During the 10th CoC meeting on September 20, 2023, it was noted that the plan was non-compliant due to ineligibility of Petitioner under section 29A of IBC. Further, clarifications were sought from the Petitioner, who responded on September 23, 2023.
- 3.2. Subsequently, on September 26, 2023, Respondent No. 1 sent an email requesting for the submission of the final resolution plan by September 29, 2023, considering compliance with the IBC, Regulations, Request for Resolution plans (RFRPs), and the observations of the CoC/RP mail dated

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September 8, 2023. Consequently, the Applicant submitted the final resolution plan on September 29, 2023, and fresh due diligence concerning the final Resolution plan was circulated to the CoC on October 7, 2023.

- 3.3. During the 11th CoC meeting held on October 10, 2023, Respondent No. 1 informed the CoC about several deviations from the Request for Resolution Plan (RFRP) in addition to those under the IBC. Subsequently, Respondent No. 1 asked the CoC whether they were willing to amend or ease the non-compliant clauses of the RFRP concerning the resolution plan submitted by the Petitioner. The CoC, in exercise of their commercial wisdom, decided against modifying or relaxing the RFRP clauses. It is noted that the Petitioner participated in all CoC meetings, attended and signed the attendance sheet, as evident from the minutes of the CoC meetings. Further there is no willful disobedience on part of Respondent No.1 in complying with the order passed by this Authority.
- 3.4. The Respondent No.1 further averred that the present application being a Contempt Petition, the jurisdiction of contempt cannot expand the scope of relief sought in the main proceedings, specifically in I.A. (IBC) No. 132 of 2023. In support of his contention, the Respondent No.1 relied upon the judgment of the Honorable Supreme Court in *Sudhir Vasudeva v. M. George Ravi Shekaran, (2014) 3 SCC 373*.
4. We have heard both the learned counsels and have also gone through the entire records

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5. The order, which is the subject of contempt, was passed by this Authority on July 26, 2023, in I.A. No. 132 of 2023, the relevant part of the order is as below:

"Hence, in view of the above, I deem it fit to allow the application and R1 is directed to place the Resolution Plan submitted by the Applicant before the CoC for its consideration. Accordingly, IA(IBC)/132/2023 is disposed of."

6. In the context of Contempt proceedings, there is no specific provision in IBC like section 425 under the Companies Act, which says:

"425. Power to punish for contempt - The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that-

*(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf."*

7. On bare reading of the above-mentioned provision and relying upon the decisions in *Shailendra Singh versus Nisha Malpani (2021) ibclaw.in 528 NCLAT; Mahesh Kumar Panwar versus M/s Mega Soft Infrastructure Pvt. Ltd. and Ors. (2019) ibclaw.in 331 NCLAT; C. Vinod Hayagriv and Ors. versus C. Ganesh Narayan and Ors., Contempt Case (AT) No. 13 of 2023 in Company Appeal (AT) No. 65 of 2019, decided on 09.08.2023 and Registrar NCLT and Ors. versus Manoj Kumar Singh, IRP Palm Developers Pvt. Ltd.,*

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Contempt Petition No. CA/11/2021 in Company Petition No. 894/ND/2019, decided on 17.01.2022, inference can be drawn that this Authority has the similar powers as the High Court in matters of contempt and can follow the procedure prescribed under Contempt of Courts Act 1971.

8. Section 2(a) & 2(b) of the Contempt of Courts Act, 1971 defines the contempt as under:

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

9. Non-compliance with the order of this Authority constitutes civil contempt, for which two elements need to be established, namely: ---

- i. Disobedience of any judgment, decree, directions, orders or other process of Court.*
- ii. Disobedience or breach must be wilful, deliberate and intentional.*

10. Thus, the main aspect of civil contempt, as defined in section 2(b) of the Contempt of Courts Act, 1971, is the intentional disregard of orders issued by this Authority, known as "**wilful**" **disobedience**. The presence of this willingness is crucial to establish a charge under the Act and the same was affirmed in the case of *Anil Ratan Sarkar & Ors. versus Hirak Ghosh & Ors., AIR 2002 SC 1405*. Similarly, in the case of *Indian Airports Employees'*

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Union versus Ranjan Chatterjee (1999) 2 SCC 537 Hon'ble Supreme Court held that:

7. It is well settled that disobedience of orders of Court, in order to amount to 'Civil Contempt' under Section 2(b) of the Contempt of Courts' Act, 1971 must be 'wilful' and proof of mere disobedience is not sufficient. S.S. Roy v. State of Orissa and Ors. AIR 1960 SC 190. Where there is no deliberate flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt Ashok Kumar Singh and Ors. V .State of Bihar and Ors. 1992 CriLJ 284.

11. The Hon'ble Supreme Court in the case ***Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204: (2015) 3 SCC (L&S) 311*** discussed about the parameters for the initiation of contempt proceedings in paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)

'11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities...

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is indication of one's state of mind. "Wilful" means

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*knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct. ***"*

*15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. ****

12. In the backdrop of the law discussed above, it is to be examined whether Respondent No.1 deliberately disregarded the order issued by this Authority in I.A. No. 132/2023. Upon review of Annexure 5-7 of the Application, it is evident that Respondent No.1, in the presence of the Petitioner, conducted the 9th, 10th, and 11th CoC meetings held on 08.08.2023, 20.09.2023, and 10.10.2023, respectively. During these meetings, the Petitioner's resolution plan was presented before the CoC. Subsequently, the CoC sought clarifications on various eligibility criteria in accordance with regulations, RFRPs, and clauses 'c' & 'h' under section 29A & 240 A of IBC.

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13. Then, the Petitioner submitted a revised final resolution plan on September 29, 2023, which was presented to the CoC on October 7, 2023. Additionally, during the 11th CoC meeting, Respondent No. 1 sought the CoC's input on modifying or relaxing the non-compliant clauses of the RFRP concerning the revised resolution plan submitted by the Petitioner. The CoC, exercising their commercial wisdom, opted against modifying or relaxing the RFRP clauses and subsequently rejected the revised resolution plan.
14. Based on the observations and findings discussed above, it is evident that the Respondents had neither an intention to disregard the impugned order passed nor they lowered the prestige and dignity of this Authority. Therefore, initiating contempt proceedings is unwarranted, and accordingly, there is no merit in the present application.
15. As a consequence the present application is dismissed without costs.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

**IA(IBC)/223/2023 in
CP(IB) No.77/9/AMR/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rules 13 of the
National Company Law Tribunal (Adjudicating Authority) Rules, 2016*

In the matter of M/S. Blue Park Sea Foods Private Limited:

Ms.Bay Fresh Inc,
3760, Seaton Dr,
Suwanee,
GA – 300024-6656,
USA

....Applicant

V e r s u s

Mr.Rajesh Chillala,
Resolution Professional of
M/s.Blue Park Sea Foods Private Limited,
5-85, Karumaddali, Pamarru Manda,
Pamarru, Krishna District,
Andhra Pradesh – 521 157.

....Respondent

And in the matter of:

M/s.Pattabhi Enterprises,

....Operational Creditor

V e r s u s

M/s.Blue Park Sea Foods Private Limited,
5-85, Kurumaddali,
Pamarru Village, Pamarru Mandal,
Krishna District,
Andhra Pradesh - 521 157.

....Corporate Debtor

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Date of Order: 03.04.2024

Date of Order: 03.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial) Shri. Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. Y. Suryanarayana, Advocate
For the Respondent : Mr. Bendi Raviteja, Advocate

Per : Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

ORDER

1. The present Application has been filed by M/s. Bay Fresh Inc (**hereinafter referred as Applicant/Financial Creditor**) under Section 60(5) of the IBC read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:
 - a) To direct the Respondent to admit the Applicant's claim of USD 532,000 (amounting to Rs. 4,35,38,880/- in Indian Rupees) in full and classify the Applicant as Financial Creditor.
 - b) To direct the Respondent to re-constitute the Committee of Creditors by including the Applicant as a Member of the Committee of Creditors with voting rights to the debt amount.
 - c) To pass such other order or orders which this Adjudicating Authority may deem fit in the interest of justice.

- 2 a) The case of the Applicant is that it is engaged in the business of selling private labelled products including sea foods and also dealt with consignment sale of various vendors to sell their products in the United States, while M/s. Blue Park Sea Foods Private Limited (**hereinafter referred as Corporate Debtor/CD**) is engaged in the business of manufacturing and export of high quality, affordable sea food products.

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- b) The Corporate Debtor went into Corporate Insolvency Resolution Process (CIRP) as per the order dated 26.10.2022 in the application filed under Section 9 of IBC by M/s.Pattabhi Enterprises against the Corporate Debtor.
- c) The Applicant made advance payment of USD 365,000 to the Corporate Debtor on different dates for the supply of sea food containers.
- d) Both the parties entered into an agreement on 04.04.2018 to convert the advance amount of USD 350,000 into an interest bearing loan. The Corporate Debtor also executed Promissory Note on 05.04.2018 making a promise to pay the said amount with interest.
- e) In view of the agreement dated 04.04.2018 and the Promissory Note executed on 05.04.2018, the Applicant is a financial creditor under the IBC and therefore it filed claim in Form- C on 23.01.2023 for an amount of USD 532,000 inclusive of interest, i.e., amounting to Rs.4,35,38,880/-.
- f) In response to the claim filed by the Applicant, the Corporate Debtor sent e-mail dated 26.01.2023 for furnishing additional documents which were submitted vide e-mails dated 01.02.2023 and 07.02.2023.
- g) One of the Directors of the suspended board of the Corporate Debtor, i.e., Mr.Hemanth Nerella sent an e-mail dated 07.02.2023 acknowledging the claim submitted by the Applicant as correct.
- h) The Applicant has also sent e-mails dated 13.02.2023 and 18.02.2023 regarding the claim. The authorized representative of the Applicant, i.e., Mr.Naga Vinod Yalamarthy also met the Respondent on 18.03.2023 in respect of the claim.
- i) Thereafter, e-mails dated 22.03.2023 and 23.03.2023 were sent to the Respondent asking for updation of the claim on the IBBI website. Then the claim of the Applicant was classified as "Other than Financial and

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Operational Creditors” instead of Financial Creditor. However, the request of the Applicant to consider the Applicant as Financial Creditor was not acceded to. The Corporate Debtor also sent an e-mail dated 04.04.2023 stating that there are no proper documents to consider the claim of the Applicant as financial debt.

j) Thus, it is asserted that the claim of the Applicant should be considered as that of a Financial Creditor and as a result the Corporate Debtor is also duty bound to re-constitute the CoC by including the Applicant as the Financial Creditor.

3(a) The case of the Respondent is that advance provided by the Applicant falls within the definition of operational debt because it relates to the supply of goods and services from the Corporate Debtor. This is covered within the definition of Sections 5(21) and 5(5) of IBC. The amount was given for the supply of containers and it was also never disbursed against the consideration for time value and money.

(b) Any subsequent agreement between the parties will not change the nature of the contract between the parties.

(c) As per the Books of accounts of the Corporate Debtor, it is shown that M/s. Bay Fresh INC owes the Corporate Debtor an amount of Rs.6,61,31,762.21. However, this entry is not substantiated with the books of accounts and therefore any claim that contradicts the books of accounts cannot be admitted as claim.

(d) It is also submitted that in view of Section 18(f) of IBC, the Resolution Professional is supposed to take control and custody of any asset over which the Corporate Debtor has ownership rights and which is recorded in the Balance Sheet of the Corporate Debtor etc. There is no reference

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of the amount advanced by the Applicant to the Corporate Debtor in the books of accounts and thus, it would be detrimental to admit the claim against the Corporate Debtor's interest.

4. We have heard learned counsels for both the parties and have also gone through the entire records.
5. The prayer of the Applicant is two folds:
 - a) Treat the Applicant as Financial Creditor of the claim amounting to Rs.4,35,38,880/- and
 - b) Reconstitute the Committee of Creditors (CoC) by including the Applicant as its Member.
6. The genesis for the aforesaid prayers is the claim of the Applicant that it advanced an amount of USD 356,000 to the Corporate Debtor for the supply of sea food containers which the latter failed to deliver. Then both the parties entered into an agreement on 04.04.2018 to convert the advance amount into an interest bearing loan and the Corporate Debtor further promised to pay this said amount by executing Promissory Note on 05.04.2018.
7. On the basis of the said transaction, the question arises as to whether the amount was paid in the capacity as Financial Creditor or Operational Creditor. Initially, the amount was paid as advance to the Corporate Debtor for the supply of sea food containers, which in itself clearly indicates that the debt is operational in nature.

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8. It is pertinent to peruse the definitions of terms ‘operational creditor’ and ‘operational debt’ as defined under Sections 5(20) and 5(21) of the IBC, respectively, which form the genesis of the issue at hand:

“operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”

“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”

9. Here, we also refer to the decision in ***Budhpur Buildcon Pvt. Ltd versus Mr. Abhay Narayan Manudhane Company Appeal (AT) (Ins) No.589 of 2021*** wherein the Hon’ble NCLAT has explained in detail the nature of a financial debt. The relevant para of the judgement is extracted below

All the above citations reflect one thing categorically and clearly that there must be a disbursement of fund by the Creditor to the Debtor purely in the form of release of fund as a “borrowing” and must have a “time value of money”. The method may be different but the nature must be borrowing and in extended terminology even the liability in respect of guarantee is also covered. There must be a “Financial Debt” which is owed by the other side i.e. the Debtor. It should be amply clear that the CD owe the “Financial Debt” to the Creditor. There is a difference between the levy of liquidated damages or penal interest for default and the financial debt per se. Hence, we cannot borrow unrelated concept from unrelated judgments to prove that wherever a word “interest” is there it means corresponding to a “Financial Debt” and we accordingly confirm that “Financial Debt” will always carry an interest towards time value of money. However, interest per se in any business contract cannot be termed to make the “debt” as a “Financial Debt”, if it is in the nature of liquidated damages or in the nature of penal interest, which is a result of compensation for breach of contract which is stipulated for penalty. Hence, while examining the case, whether the Appellant is a Financial Creditor or not we are now arriving at a conclusion based on above said discussions both on law & on facts and the citations produced by the parties, some of which have been explicitly cited as above

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reveals that the Appellant is not a "Financial Creditor" and hence, we are upholding the order of the Adjudicating Authority.

10. The Hon'ble NCLAT in its judgment dated November 10, 2022 in the matter of *Chipsan Aviation Private Limited versus Punj Lloyd Aviation Limited [Company Appeal (AT) (Ins) No. 261 of 2022]* held that an advance paid towards availing of service falls within the definition of operational debt in terms of Section 5(21) of the Insolvency and Bankruptcy Code, 2016, even if there was no privity of contract between the parties.
11. Hon'ble Supreme Court in *Consolidated Construction Consortium Limited versus Hitro Energy Solutions Private Limited (2022) SCC OnLine SC 142* has held that advance payment for goods and services is an operational debt.
12. There is also decision of the coordinate bench in the matter of *Mr. Santosh Mate (Prop. of Mahalaxmi Traders) vs. M/s Satyam Transformers Private Limited CP (IB) No. 253 of 2023 NCLT Mumbai* that the conversion of an operational debt into financial debt through an agreement is invalid and impermissible as it would defeat the very objective of IBC and have the effect of rewriting it.
13. Accordingly, any attempt of conversion of operational debt into financial debt through an agreement does not satisfy the legal ingredients of a 'financial debt' under IBC as there is no disbursement of money against the time value of money. It is also important to note that there is no provision under IBC which allows or permits the transfer of operational debt into financial debt.

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14. Hence, the advance amount for supply of goods or services is operational debt as outlined in section 5(21) of the IBC. The Applicant can't change the character of transaction by further entering into different contract to treat the amount already advanced for the supply of goods as loan.
15. In view of the aforesaid discussions, we are of the considered opinion that if the claim filed by is true, the Applicant will be Operational Creditor and not Financial Creditor. However, the said claim is still pending as indicated vide e-mail dated 04.04.2023 by the Respondent and the said e-mail is extracted below:

"Dear M.s Saritha Reddy,

*Please refer to my mail dated 12.03.2023, wherein we have informed you that the promoters of the CD have not submitted the relevant documents to correctly assess the nature and quantify the debt. Necessary non-cooperation application has been filed with NCLT for appropriate directions.
as far as documents submitted by you.*

- 1. The Audited books of accounts of the CD for the FY 2020-21 show no amounts payable to bay fresh. (if the suspended management provides necessary clarifications and necessary ledger statements and proper notes how these amounts are accounted for. we can accordingly verify the claim)*
- 2. The amounts were advanced wayback in 2018 there is no confirmation of outstanding by the CD in any of the years.*
- 3. The bank transfers were for USD 365000, but the debt has been documented (as financial) for Rs. USD 350000 with no reason. (the debts are in operational nature)*
- 4. As per the document dated 04.04.2018 & the ledger statements provided by you, though you are referring to this as a financial debt, the nature seers to be an operational debt. (the advance payments were subsequently converted into interest bearing loan).*

RP cannot collate and verify disputed claims. hence we have put it in claims under verification. We have acknowledged your claim and the claim is under verification & the same has been accordingly mentioned in the Information Memorandum that has been shared with the Prospective Resolution Applicants."

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Date of Order: 03.04.2024

16. Thus, the claim of the Applicant is still under verification stage. It has also been mentioned in Para Nos.16 and 17 of the Counter that the transactions are not reflected in the books of account of the Corporate Debtor.
17. In view of aforesaid circumstances, the Resolution Professional has to decide whether the claim is to be entertained or not. Until a decision is taken by the Resolution Professional, the present Application is premature, but one thing is clear that if nature of the transaction as referred above is true, the amount advanced will be operational debt and not financial debt.
18. With the above observations, the **IA(IBC)/223/2023 in CP(IB) No.77/9/AMR/2021 is hereby dismissed** as being premature and the Resolution Professional is directed to consider the claim filed by the Applicant as per law.


SANJAY PURI
MEMBER (TECHNICAL)
Vinod


RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

**IA(IBC)/154/2023 in
CP(IB) No.77/9/AMR/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with Rules 13 of the
National Company Law Tribunal (Adjudicating Authority) Rules, 2016*

In the matter of M/S. Blue Park Sea Foods Private Limited:

1. Mr.Mutakana Pitchaiah, Managing Partner of
M/s.Sai Ayappa Aqua Traders,
D.No.24-12-17, Peddadavari Street,
Sreerampuram, Bhimavaram.
Present Address: Gayatri Nest, Flat No.402,
Vamsikrishna Nagar, Bhimavaram - 534 202,
West Godavari District.
2. Mrs.Mutakana Padmaja, Partner of
M/s.Sai Ayappa Aqua Traders,
D.No.24-12-17, Peddadavari Street,
Sreerampuram, Bhimavaram.
Present Address: Gayatri Nest, Flat No.402,
Vamsikrishna Nagar, Bhimavaram - 534 202,
West Godavari District.

....Applicants

Versus

1. Mr.Rajesh Chillala,
Resolution Professional of
M/s.Blue Park Sea Foods Private Limited,
B-713, Western Plaza,
OUHS Darga, Hyderabad - 500 009.
2. M/s.Blue Park Sea Foods Private Limited,
5-85, Kurumaddali,
Pamarru Village, Pamarru Mandal,
Krishna District,
Andhra Pradesh - 521 157.

....Respondents

Sd/-

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Date of Order: 03.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri.Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr.Konala Sekhar, Advocate

For the Respondent : Mr.Bendi Raviteja, Advocate

Per : Sri Rajeev Bhardwaj, Hon'ble Member(Judicial)

ORDER

1. Against the rejection of the claim by the Resolution Professional of M/s.Blue Park Sea Foods Private Limited (hereinafter referred as **Corporate Debtor/CD**) vide letter dated 23.03.2023, Mr.Mutakana Pitchaiah, Managing Partner and Mrs.Mutakana Padmaja, Partner of M/s.Sai Ayappa Aqua Traders filed the present Application seeking the following reliefs :

- i) Set-aside Resolution Professional letter dated 26.03.2023 communicated on 27.11.2023 in which the RP expressed his inability to admit the claim dated 26.03.2023 filed by the Operational Creditors.
- ii) That the debt to the Operational Creditor is not time barred in terms of the Limitation Act, 1963 and the right to claim is still alive.
- iii) Condone the delay in filing the claim by the Operational Creditors.
- iv) Issue orders directing the Resolution Professional to admit the Operational Creditors claim.

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- v) Pass such other order or orders which this Authority may deem fit and proper in the circumstances of the case.
2. The Applicants claimed to have advanced a sum of Rs,16,99,19,982/- towards prawns/raw material supplied debt. The total amount including interest comes to Rs.22,76,92,775/-.
3. The Corporate Debtor confirmed the balance amount as on 31.05.2021 and further also issued eleven (11) cheques amounting to Rs.5,17,51,649/- drawn on State Bank of India in the year 2022 and all these cheques were dishonoured due to lack of sufficient funds in the account of the Corporate Debtor.
4. The Corporate Insolvency Resolution Process (CIRP) was initiated against the CD on 26.10.2022 on the application filed under Section 9 of the IBC by M/s.Pattabhi Enterprises. Thereupon, the Applicants filed claim on 26.03.2023 for an amount of Rs.22,76,92,775/- in Form B under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**hereinafter referred as “CIRP Regulations”**). However, the Respondent No.1/RP expressed his inability to accept the claims on the following grounds:
- i) Inability to establish whether the debt to M/s.Sai Ayyappa Aqua Traders still survives since issue of invoice bills by the Corporate Debtor towards the debt in terms of the Limitation Act, 1963.
 - ii) Delay in filing of the claim after expiry of 90 days from the date of public announcement. The public announcement was made on 28.12.2022 and M/s.Blue Park Sea Foods Private Limited was initiated on 26.10.2022 and the last date for submission of claim

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is 24.01.2023. The Operational Creditors claim should have been filed on or before 24.01.2023 within 90 days, whereas the claim was filed on 26.03.2023.

iii) The above issues are legal in nature and as such the Resolution Professional is not competent to adjudicate the claim.

5. It is averred that there is a delay of only 90 days in filing the claim, which was on account of lack of knowledge, health issues etc. Moreover, it is also immaterial because the CD has already acknowledged the debt during the limitation period in view of Section 18 of the Limitation Act. When delay is not due to the negligence and inaction on the part of Operational Creditor, the delay is to be condoned and the Application is to be accepted.
6. The Respondent No.1 by filing the reply has contended and contested the averments of the Application by submitting that the claim was to be filed on or before the last date mentioned in the public announcement, i.e., 09.11.2022 or as per Regulation 12(2) of the CIRP Regulation on or before 90 days to insolvency commencement date, i.e., 24.01.2023. Therefore, the claim was to be filed before 24.01.2023, but the same was filed on 26.03.2023.
7. The Respondent No.1 has also relied upon the decision of the Hon'ble Supreme Court in the matter of *Mukul Kumar versus RPS Infrastructure Limited* decided on 30.07.2021 wherein it was held that the RP is not obliged to accept the claim after the commencement date of the CIRP.

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8. We have heard learned counsel for both the parties and have also gone through the entire records.
9. Indisputably, M/s.Pattabhi Enterprises filed CP(IB) 77/9/AMR/2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s.Blue Park Sea Foods Private Limited, which was admitted vide order dated 26.10.2022. M/s.Sai Ayyappa Aqua Traders filed claim before the Respondent No.1 on 26.03.2023, but the same was rejected because of delay and further it was not substantiated from the record.
10. Under the IBC, there are two stages at which claims can be filed by the creditors of the Corporate Debtor. One is under Chapter II of the IBC before the IRP/RP and another is under Chapter III before the Liquidator.
11. The Word 'Claim' has been defined under section 3(6) IBC which means a right to payment and a right to remedy for a breach of contract, whether or not such right is reduced to judgment, fixed, disputed, undisputed, matured, un-matured, legal, equitable, secured, or unsecured. Hence, it is the right to payment which will underline the concept of claim.
12. Under section 18(1)(b) IBC, a duty has been cast upon the Insolvency Resolution Professional (IRP) to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15.

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13. Section 15(1)(c) IBC read with Regulation 6(2)(ba) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that claim(s) are to be submitted within **fourteen** days of appointment of Interim Resolution Professional. Further Regulation 12(2) of CIRP Regulations says that, a creditor who fails to submit claim within fourteen days can submit the claim, on or before the **Ninetieth** day of the Insolvency Commencement Date.
14. After receiving the claims, the IRP/RP under Regulation 13(1) of the CIRP Regulations is required to verify the claims within seven days from the last date of receipt of claims.
15. After the collations of all the claims and determination of the financial position of the CD, the IRP/RP shall in view of section 21 IBC constitute Committee of Creditors.
16. The Hon'ble Supreme Court in *Greater Noida Industrial Development Authority versus Prabhjit Singh Soni and Ors. Civil Appeal Nos. 7590-7591 of 2023 (Arising out of Diary No. 3628 of 2023), decided On: 12.02.2024* has explained the procedure to be followed by the IRP/RP while admitting the claims:
 21. Once a claim is submitted with proof under any of the Regulations (i.e., Regulations 7, 8, 8-A, 9 and 9-A), the IRP or the RP, as the case may be, as per Regulation 13, has to verify the claim, as on the insolvency commencement date, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it in terms of Regulation 12 A

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22. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any, the logical conclusion derivable from the provisions analysed above would be that the Form in which a claim is to be submitted under the CIRP Regulations 2016 is directory and not mandatory. What is important is, the claim must be supported by proof.

23. On collation of claims received against the CD, the IRP has to constitute a CoC. As per Section 21 (2) of the IBC, subject to other provisions of Section 21, the CoC must comprise all financial creditors of a CD. Under Section 22 of the IBC, the CoC appoints an RP in its first meeting. It may, however, resolve to appoint the IRP as the RP, subject to confirmation by the Board.

30. What is clear from the provisions of the IBC and the Regulations noticed above is, that the RP is under a statutory obligation to collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the CD. The data so collated forms part of the information memorandum. Based on that information, the resolution applicant(s) submit(s) plan. In consequence, even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD. A fortiori, if a claim is submitted by an operational creditor claiming itself as a financial creditor, the claim would have to be accorded due consideration in the category to which it belongs provided it is verifiable.

Own emphasis

17. In view of law as discussed above, the case of the Applicants is to be appreciated. The last date for submitting the claim was 24.01.2023, but the Applicant furnished the claim on 26.03.2023, i.e., after a delay of 58 days. It is settled law that the provisions relating to filing of the claim are directory and not mandatory. When the claim was filed by the Applicant, the resolution plan was still to be approved by the CoC,

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therefore the decision of the Hon'ble Apex Court in *Mukul Kumar versus RPS Infrastructure Limited* supra is not applicable.

18. When timeline fixed for consideration of the claim is only directory and the delay is short, the delay in submitting the claim can be condoned as the Applicant has made out a case for the grant of such relief. Accordingly, the prayer to condone the delay in filing the present Application is allowed.
19. The second point raised by the Resolution Professional for rejection of the claim is that it is uncertain whether debt to the Applicant still survives since 31.05.2021. The Applicant has relied upon various invoices starting from 15.04.2019 to claim that the Corporate Debtor has not paid for the material supplied to it. If we see the continuity of raising bills and further that the Corporate Debtor has confirmed the debt vide Balance Letter dated 23.06.2023 and issued eleven (11) cheques for an amount of Rs.5,17,51,649/- in the year 2022 to the Applicant, the claim if it is true, survives. Therefore, the Resolution Professional is required to collate the claim with the contemporaneous record like books of account of the Corporate Debtor and the Applicant.
20. As a result, IA(IBC)/154/2023 in CP(IB) No.77/9/AMR/2021 is allowed and the Resolution Professional is directed to consider the claim in view of the aforesaid observations.


SANJAY PURI
MEMBER (TECHNICAL)
Vinod


RAJEEV BHARDWAJ
MEMBER (JUDICIAL)