

(2023) 02 NCLT CK 0048

In the National Company Law Tribunal

Case No : IA(I.B.C) 1058 Of 2022

?Ram Murti Batta Vs C & C TOWERS LIMITED & Anr ?

Date of Decision : 21-02-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 15, 29, 31(1), 60(5)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 36(4)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2023) 02 NCLT CK 0048

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Nitin Kant Setia

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. These applications i.e., IA Nos.1055/22, 1056/22, 1057/22, 1058/22, 1059/22 & 1243/22 have been filed by allottees and retail investors of Corporate Debtor aggrieved by the decision of Resolution Professional refusing to entertain their belated claims as Financial Creditors of the Corporate Debtor. There is no dispute over the fact that the applicants have filed their claims beyond the timelines prescribed by the Code. These applications, being on identical and interrelated facts, are taken up together for proper adjudication.

IA No. 1055/2022

In the present application, the applicant is seeking direction against the respondent that to treat the applicants at par with the secured financial creditor and directions be issued to the respondent to pay an equal percentage of money corresponding to the debt due to the applicant as is being paid to other similarly situated financial creditors. Further, direction to the respondent to accept the claim of the applicant.

2. It is submitted that the CIRP against the corporate debtor has been admitted by this Adjudicating Authority vide order dated 10.10.2019. The Resolution Plan of respondent No.2 was approved by the CoC on 11.05.2021 with a 68.21% voting share. The applicant being an allottee of a real estate project, has been allotted a commercial space by the corporate debtor on 25.04.2012 for total consideration of Rs.27,45,000/-. The applicant had paid a total sum of Rs.9,60,750/- against the allotment letter dated 25.04.2012. Pursuant to the above allotment, nothing was paid by the corporate debtor and is still in default in paying the financial debt owed to the applicants. In this regard, the applicant has filed a complaint before Real Estate Regulatory Authority, Punjab, vide Complaint ADC No.15712020, filed in March 2020, and the same would not be continued on account of the moratorium declared in the present matter.

3. It is further submitted that the applicant has filed its claim before the Resolution Professional in Form-CA dated 15.07.2021. To the above claim, the Resolution Professional rejected the same vide email dated 08.03.2022 on the ground that there is a delay in filing the claim and the same could not be admitted. Further, the Resolution Professional refused to share any information with regard to the dues of the applicant formed part of the Information Memorandum.

4. The respondent Resolution Professional has filed its reply vide diary No.01608/2 dated 12.10.2022 wherein, it is stated that the CIRP has been admitted vide order dated 10.10.2019 of this Adjudicating Authority. The IRP made the public announcement inviting claims from the creditors of the corporate debtor on 12.10.2019, and the last submission of claim was 24.10.2019 in terms of Section 15 of the Code read with Regulation 6 of the CIRP Regulations.

5. It is submitted by the Resolution Professional the applicant submitted the claim vide email dated 10.08.2021, which is not only after the approval of the resolution plan dated 30.04.2021 read with addendum dated 23.04.2021 and clarification dated 30.04.2021 submitted by MDPL but even after filing of IA No.331 of 2021 by the Resolution Professional for approval of the Resolution Plan of MDPL for the corporate debtor before this Adjudicating Authority. The Resolution Professional vide email dated 08.03.2022 duly apprised the applicant that the last date of submission of the claim as per the public announcement was 24.10.2019 and the 90th day from the Insolvency Commencement day had already expired on 08.01.2020.

6. The Resolution Professional has submitted that in terms of Section 29 of the Code and Regulation 36(4) of CIRP Regulations, the information contained in the IM is confidential in nature and can be made available to the members of the CoC after obtaining an undertaking of confidentiality and thus, cannot be shared with the applicant.

7. The respondent Resolution Professional has relied on the judgment of Hon'ble

NCLAT in the matter of Mukul Kumar Vs. M/s RPS Infrastructure Ltd. Company Appeal (AT) (Insolvency) No.1050 of 2020 & in the matter of Harish Polymer Product Vs George Samuel bearing Company Appeal (AT) (Insolvency) No.420 of 2021. Further on, the decision of Hon'ble Supreme in the case titled Pioneer Urban Land and Infrastructure & Anr. Versus Union of India & Ors. (2019 (8) SCC 416 and Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. (2022) 1 Supreme Court Cases 401 and further in Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta 2019 SCC Online SC 1478. Therefore, the claim of the applicant is belated and cannot be considered by the Resolution Professional in view of the pendency of the application for the approval of the resolution plan before this Adjudicating Authority.

8. The respondent No.2/Resolution Applicant has filed its reply vide Diary No. 01608/01 dated 18.01.2023, wherein a stance similar to Resolution Professional has been taken. XXXXXX XXXX XXXX

IA No. 1056/2022

9. The present application is based on similar facts as in IA. No. 1055/2022. In the instant application, the applicant has been allotted Unit No. 55 vide allotment letter dated 03.01.2014. The corporate debtor is still in default in paying the financial debt owed to the applicant.

10. The respondent No.2/Resolution Applicant has filed its reply vide Diary No. 01609/01 dated 18.01.2023, wherein a stance similar to Resolution Professional has been taken.

IA No. 1057/2022

11. The present application is based on similar facts as in IA. No. 1055/2022. In the instant application, the applicant has been allotted Unit No. 26 for total consideration of Rs. 37,75,000/- vide allotment letter dated 04.10.2010, out of which Rs. 12,51,250/- has been paid to the corporate debtor. The corporate debtor is still in default in paying the financial debt owed to the applicant.

12. The respondent No.2/Resolution Applicant has filed its reply vide Diary No. 01621/2 dated 18.01.2023, wherein a stance similar to Resolution Professional has been taken.

IA No.1058/2022

13. The present application is based on similar facts as in IA. No. 1055/2022. In the instant application, the applicant has been allotted Unit No. 20 for total consideration of Rs. 27,45,000/- vide allotment letter dated 21.10.2010, out of which Rs. 9,60,750/- has been paid to the corporate debtor. The corporate debtor is still in default in paying the financial debt owed to the applicant.

14. The respondent No.2/Resolution Applicant has filed its reply vide Diary No. 01647/2 dated 18.01.2023, wherein a stance similar to Resolution Professional

has been taken.

IA No. 1059/2022

15. The present application is based on similar facts as in IA. No. 1055/2022. In the instant application, the applicant has been allotted Unit No. 24 for total consideration of Rs. 10,75,000/- vide allotment letter dated 05.10.2012, out of which Rs. 6,02,500/- has been paid to the corporate debtor. The corporate debtor is still in default in paying the financial debt owed to the applicant.

IA No. 1243/2022

16. The present application has been filed by the applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of NCLT Rules, 2016, seeking direction against the respondent to set aside the rejection of the applicant's claim by the Resolution Professional vide email dated 03.08.2022.

17. It is submitted that in the year 2016-17, the corporate debtor in connivance with M/s. Karvy Realty, devised a scheme to raise additional finance for individual retail investors, including the applicants herein, all of whom were clients of M/s. Karvy Private Wealth.

18. It is submitted that on 25.05.2018, due to severe delay in repayment of the assured returns under the buyback schemes, the promoter of the corporate debtor issued an apology letter to the applicants on the letter head of the parent company, i.e. M/s. C&C Constructions Ltd. ("CCCL/Parent Company").

19. It is averred that the applicant preferred application under Section 7 of the Code titled Vinod Kumar Aggarwal & Ors. vs C & C Towers Limited bearing CP(IB) No. 207/Chd/Hry/2019. The same has been disposed of by this Adjudicating Authority as CIRP proceedings have been admitted against the corporate debtor vide order dated 10.10.2019 in CP(IB) No. 105/Chd/Hry/2019.

20. The applicants were informed by M/s. Karvy Realty that they will take care of the filing of the claim before the Resolution Professional, but they have not received any update, and the applicants got to know that their claims do not form part of the total claims as admitted by the Resolution Professional, on the pretext of M/s. Karvy Realty not submitted the forms before respondent-Resolution Professional. However, the Resolution Professional vide email dated 03.08.2022 rejected the claims of the applicant on the ground that the same are belated and delayed.

21. The respondent-Resolution Professional, has filed its reply vide diary No. 02314/01 dated 12.10.2022, wherein it is stated that the respondent received the claim form from the applicants vide email dated 25.07.2022. The Resolution Professional vide email dated 03.08.2022 duly apprised the applicants that the last date of submission of the claim as per the public announcement was 24.10.2019, and the 90th day from the Insolvency commencement date had already expired on 08.01.2020. Further, the claims of the applicant are belated

and delayed. The respondent has made similar averments as in the above IA No. 1055/2022.

22. We have heard the learned counsel for the applicant and respondent and carefully perused the record available.

23. The issue before us is whether, after approval of the Resolution Plan on 11.05.2021 by the CoC, the claim of the applicants stood extinguished. In this context, the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited* MANU/SC/0273/2021 : (2021) 9 SCC 657 while dealing with the above question, concluded in paragraph 102.1 and held that once Resolution Plan is approved by the Adjudicating Authority, the claims as provided in the Resolution Plan shall stand frozen, and all such claims, which are not part of Resolution Plan shall stand extinguished. Paragraph 102.1 is as follows:

"102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

24. It is thus clear that the extinguishment of the claim of the Applicants shall happen only after approval of the Plan by the Adjudicating Authority. Further, all the documents pertaining to allottees/retail investors are on the record of the Corporate Debtor, and the Interim Resolution Professional/Resolution Professional does take charge also of all the records of the Corporate Debtor, and there is no reason for not collating the claims of such allottees/retail investors whose claims are reflected from the records of the Corporate Debtor, including their payments and allotment.

25. When the allotment letters have been issued to the allottees, payments have been received, there are allottees, and there is an obligation on the part of real estate Company to provide possession of the houses/commercial units along with other attached liabilities. The liability towards those allottees who have not filed their claim exists and is required to be included in the Information Memorandum. Here, reliance is placed on the decision of Hon'ble NCLAT in the matter of *Puneet Kaur and Ors. Vs. KV Developers Private Limited and Ors. Company Appeal (AT) (Insolvency) Nos. 390, 391, 392, 393 and 394 of 2022* Decided On: 01.06.2022

In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the

claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. However, we are of the view 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 Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan." XXXXXX

(Emphasis Supplied)

26. In view of the aforementioned discussion, we dispose of these Applications with the following directions:

(1) The Resolution Professional shall provide all details of allottees/Retail investors along with their claims as reflected in the record of the Corporate Debtor, who had not filed their claims, including the Applicants to the Resolution Applicant within a period of one month from today.

(2) The Resolution Applicant shall prepare an addendum on the basis of information as submitted by Resolution Professional and place the same before the CoC within a further period of one month.

(3) The CoC shall consider the addendum in its meeting, and the decision of the CoC on the Information Memorandum and addendum, along with revised Form H, be placed before the Adjudicating Authority. The CoC shall take the decision in its meeting within a period of one month from the date of submission of the addendum by the Resolution Applicant.

(4) The same addendum be placed on record before this Adjudicating Authority to be tagged to the Resolution Plan filed in IA No. 331/2021, pending for approval as of date.

27. In the result, the above applications i.e., IA Nos.1055/22, 1056/22, 1057/22, 1058/22, 1059/22 & 1243/22, are allowed and disposed of accordingly.