(2023) 04 NCLT CK 0029

In the National Company Law Tribunal

Case No : IA Nos. 1290, 1291, 1292, 1293 Of 2022 In CP (IB) No.315/Chd/Hry/2019

Vijay Kumar S/o Purushotam Dass Vs Vikas WSP LTD ?

Date of Decision : 19-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 13, 15, 18, 18(1)(b), 25(e), 60(5)
National Company LawTribunal Rules, 2016 — Rule 11, 32
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 7, 12, 12(2)

Citation : (2023) 04 NCLT CK 0029

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

Bench : Division Bench

Advocate : Nikhil Goyal, G S Sarin

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No. 1290/22, 1291/2022, 1292/2022 and 1293/2022

1. The following applications, IA Nos. 1290/22, 1291/2022, 1292/2022 and 1293/2022 relating to claims filed by Operational Creditors are taken up together, being interconnected and interrelated:

2. The present applications are being filed by Mr Vijay Kumar, (Applicant in 1290/2022); Mr Sunil Kumar, (Applicant in 1291/2022); Mr Raj Kumar, (Applicant in 1292/2022); Mr Amit Kumar, (Applicant in 1293/2022); against Vikas WSP Limited (herein referred to as Resolution Professional/Respondent) under Section 60(5) of Insolvency and Bankruptcy Code, 2016 and Regulation 12 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 32 and Rule 11 of the NCLT Rules.

3. It is prayed by the applicant to condone the delay of 119 days in submitting the proof of claim before the Resolution Professional of the Corporate Debtor and

further direct the RP to process the claims of the applicant as per due process on merits.

4. The brief facts as submitted in the four applications are that:-

i. Applicants are running the business manufacturing of oil and gums split and are regularly supplying goods to the corporate debtor.

ii. The applicants have filed civil suits for the recovery against the corporate debtor before the Hon'ble Civil Judge, Senior Division, Charkhi Dadri which is mentioned below:-

Applicant

Civil Suit No.

Amount (in Rs.)

Mr. Vijay Kumar (in IA No. 1290/2022)

CS/276/2018

Rs.22,11,717/-

Mr Sunil Kumar (in IA No.1291/2022)

CS/280/2018

Rs.13,28,024/-

Mr Raj Kumar (in IA No.1292/2022)

CS/274/2018

Rs.16,03,416/-

Mr. Amit Kumar (in IA No.1293/2022)

CS/277/2018

Rs.14,28,179/-

iii. The applicant came to know about the initiation of CIRP proceedings against the Corporate debtor on 12.08.2022 through the counsel appearing for the respondent/corporate debtor in CS No.280/2018 and the copy of the interim order dated 12.08.2022 is attached as Annexure-A2 of the application.

iv. The applicants have filed their claim in requisite Form B under Regulation 7 under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 30.08.2022.

v. The Resolution Professional for the Corporate Debtor has rejected the claim by email dated 31.08.2022 on the ground that the claim was filed belatedly i.e. after the last date mentioned in the public announcement and even after 90 days of insolvency commencement date which fall on 3.05.2022.

vi. It is averred that the applicants missed the public announcement of the CIRP due to the continuous participation by the counsel for the corporate debtor in the civil suit even after the initiation of the CIRP and applicant came to the know about CIRP on 12.08.2022.

vii. The claim has been filed with a delay of 119 days from the period of limitation of submission of proof of claim and the delay is bona fide. The Resolution Plan has not been approved by the Creditors on the date of filing of the claim.

5. The respondent has filed its reply in all applications by Diary Nos.02306/2, 02308/2 , 02309/2 and 02310/2 all dated 25.01.2023 stating that the CIRP was initiated on 02.02.2022 and the last date for submission of claims as per public announcement is fixed as 16.02.2022. As per Regulation 12(2), the creditors who fails to submit the claim with proof within the time stipulated in the public announcement may submit the claim on or before 90th day. The insolvency proceedings are time-bound proceedings and the purpose of the Code is to ensure speedy resolution of the corporate debtor. It is further submitted that Tribunals have condoned the delay even after the period of 90 days in the recent orders/judgments citing that Regulation 12(2) is merely directory.

6. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

7. In the present case, the applicants have also filed civil suits for the recovery of their respective amounts before the competent Civil Court. However, applicants have filed their claims as operational creditors in the prescribed Form B on 30.08.2022 (Annexure R3 of replies) i.e. after the last date of submission of claims and also beyond the prescribed period of 90 days as per Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional has rejected the claims of the applicant on the next date by email dated 31.08.2022 on the ground that the same were filed belatedly without putting the same before CoC for consideration.

8. In this connection, a reference has been made to the decision of the Hon'ble NCLAT in the matter of Sumat Kumar Gupta, RP, M/s Vallabh Textiles Company Ltd. Vs. M/s Vardhman Industries Ltd. In Company Appeal (AT)(Insolvency) No. 762 of 2022 dated 27.07.2022, wherein the Hon'ble NCLAT, inter alia, considered the issue of whether the Appellant/Resolution Professional made serious efforts in properly verifying the claim submitted before him by the Financial Creditor including classifying the debts into financial and operational debts and has observed as under:-

"20. Section 18 of the IBC lays down the various duties of the IRP in respect of handling claim proposals. Section 18(1)(b) lays down that IRP shall "receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15." As regards the role of the Resolution Professional in this regard, Section 25(e) of the IBC lays down that he shall "maintain an updated list of claims." The Resolution Professional while examining claims is therefore expected to act in a manner which inspires confidence in the Financial Creditor so as to ensure the credibility of the insolvency process. In the present matter, therefore, the question before us is therefore whether a Resolution Professional is competent to decide or reject the claims of the Financial Creditor by himself without presenting the complete facts before the CoC on the admissibility of the claims. This aspect has already been settled by the Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd. & Anr.' Vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018 wherein it held that Resolution Professional has no adjudicatory power and that he is "really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the Adjudicating Authority." The Resolution Professional has been vested with administrative as opposed to quasi-judicial power. In view of the above, the Appellant/Resolution Professional by summarily rejecting the belated claims at his own level without presenting the complete facts to the CoC has misconstrued his role, duties, and responsibilities." (emphasis supplied)

9. In view of the facts of the present case, where the claims have been summarily rejected without putting up the same before the COC, the Resolution Professional is directed to consider the claims in these IAs on merits and put up the same before the COC as the RP has no adjudicatory power to decide the admissibility of a claim on his own. The COC's decision on the admissibility or otherwise of the claim be intimated to this Bench on an affidavit within three weeks of this order to be considered by this Bench at the time of the approval of the Resolution Plan.

10. The Resolution Professional is directed to consider the above claims within three weeks of this order and place on record the compliance of this order on affidavit in IA No. 1538/2022 pertaining to the approval of the Resolution Plan.

11. In view of the aforesaid discussions, IA No.1290/22, 1291/2022, 1292/2022 and 1293/2022 are allowed with the aforesaid directions and are disposed of accordingly.

