

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II**

**(IB)-17 (ND)/2019
IA/4534/2020**

IN THE MATTER OF:

**M/s Ample Infrastructure Pvt. Ltd.
Through its Director
Mr. Rakesh Mehra
D-995, New Friends Colony,
New Delhi-110025**

...Applicant/ Petitioner

VERSUS

1. M/s Intellicity Business Park Pvt. Ltd.

Through its Resolution Professional

Mr. Sarvesh Kashyap,

Reg. No. IBBI/IPA-002/IP-N00127/2017-18/10296

Shop No - 7, DDA Market,

E-Block, East of Kailash,

New Delhi- 110065

....Respondent/Corporate Debtor

2. Mr. Sarvesh Kashyap,

Reg. No. IBBI/IPA-002/IP-N00127/2017-18/10296

Shop No - 7, DDA Market,

E-Block, East of Kailash,

New Delhi- 110065

...Respondent/Resolution Professional

Section: Rule 11 of the NCLT Rules, 2016

Order delivered on: 11.06.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. L. N. GUPTA, MEMBER (TECHNICAL)

PRESENT:

Mr. Atul Sharma, Advocate with Ms. Renuka Iyer Advocate for SSR Townships/Resolution Applicant, Mr. Raghavendra M Bajaj and Mr. Agnish Aditya, Advocates for Applicant in IA 4534/2020, Ms. Tania, Advocate for R1 and R4 and Advocate Mr. Sameer Rastogi, Advocate for RP



ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

The present application is preferred on behalf of the Financial Creditor under Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs: -

- a. Allow the present Application and direct the RP to accept the claim filed by the Applicant/ Financial Creditor;
- b. Pass any such order/ order (s) that this Tribunal may deem fit and proper in the interest of justice.

2. The brief facts leading to filing of the instant application are as follows:

- a. That the Applicant/ Financial Creditor had booked two units being Unit A-46 and A-12 in the project of the Corporate Debtor.
- b. Though the units were booked and allotted in March, 2013 and booking amount was also paid, the Builder Buyer Agreement ("BBA") came to be executed on 03.10.2013. Accordingly, the parties entered into BBA dated 03.10.2013 for Unit No. A-46, Block A, measuring 1765 sq. ft. and another BBA dated 03.10.2013 for Unit No. A-12, Block A, measuring 1765 sq. ft.
- c. That the Applicant/ Financial Creditor made payments as and when the instalments letters were issued by the Corporate Debtor. On 25.07.2017, the Corporate Debtor had issued a letter to the Financial Creditor stating that the numbering of the unit No. A-46 has been changed to A-4.

- d. That the Corporate Debtor had issued two letters dated 02.11.2017, each for both the units, thereby certifying that the Financial Creditor had already paid Rs. 1,05,07,285/- for Unit No. A-4 and another 1,05,07,285/- for Unit No. 12, out of the total consideration being Rs.1,08,42,950/- fixed for each Unit.
- e. The Corporate Debtor failed to deliver the units even after inordinate delay and the Applicant/ Financial Creditor filed the captioned Application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") and the CIRP was initiated vide order dated 27.05.2019.
- f. That after the initiation of CIRP on 27.05.2019, the Corporate Debtor approached the Applicant/ Financial Creditor herein for Settlement and after discussions and a Settlement Agreement was entered into between both the parties. The fact that the said dispute got settled has been recorded in the first order dated 19.06.2019 passed by the Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) No. 645 of 2019. But the said Appeal was dismissed in November 2019 and the Settlement entered into between the parties also failed.
 - i. That the Applicant/ Financial Creditor was in the process of filing its claim before the RP, however due to the outbreak of Covid-19 and the non-availability of requisite documents, the same could not be filed within time.
 - ii. That as soon as the lockdown was lifted by the Government, the Applicant/ Financial Creditor collated requisite documents and filed its claim before the IRP vide email dated 18.08.2020.

- g. That after filing the said claim by email dated 18.08.2020, the Applicant/ Financial Creditor received a reply from the RP stating that the prescribed time period for submission of the claim has already expired and that the Committee of Creditors ("COC") has approved the Resolution Plan on 31.07.2020 and the same is pending for adjudication before this Tribunal. Accordingly, the Applicant was advised by the RP to approach this Tribunal for necessary directions.
- h. That the Applicant is the original Financial Creditor, who had filed the captioned IB Application, however its claim is not being considered because the same was filed after approval of the Resolution Plan by COC. **It is submitted that even the list posted by the RP on the website www.intellicitycirp.com shows the Applicant/ Financial Creditor as the Allottee of Unit No. A-04 and A-12.**
- i. That this Tribunal vide order dated 02.09.2020 has directed the RP to file short notes of submission along with clarifications as to how the Resolution Applicant has complied to the conditions notified in the EOI. Thus, prima facie this Tribunal has noticed ambiguities in the Resolution Plan so approved by the COC.
- j. That this Tribunal vide its order dated 02.08.2019 passed in (IB) No. 297 (PB)/ 2018 titled as *Col. Sanjeev Dalal v. M/s International Recreation & Amusement Ltd.* had directed the RP therein to accept the claims filed by the Financial Creditors, who were real estate allottees, even after approval of Resolution Plan as the Resolution Plan was still pending consideration before the Tribunal and the delay in filing claims was unintentional.



- k. That considering the unintentional delay on the part of the Applicant/ Financial Creditor, who is a homebuyer and has paid almost 100% consideration against the two units and was induced by the Corporate Debtor to enter into settlement and considering that the approved Resolution Plan is still pending approval before this Tribunal, the present Application is deemed to be allowed and the RP is liable to be directed by this Tribunal to admit/accept the claim filed by the Applicant/ Financial Creditor.

3. We have heard the Ld. Counsel for the applicant as well as RP (Resolution Professional) and perused the averments made in the application.

4. Ld. Counsel for the applicant has raised all the facts mentioned in the application and further submitted that it was on their application, the CIRP (Corporate Insolvency Resolution Process) against the Corporate Debtor was initiated.

5. He further contended that against that order, the Corporate Debtor had preferred an appeal before the Hon'ble NCLAT and in that appeal, a settlement was arrived between the applicant and the Corporate Debtor.

6. He further submitted that the said appeal was dismissed by the Hon'ble NCLAT in the month of November, 2019.

7. He further submitted that during the pendency of that application, the constitution of CoC was stayed.

8. He further submitted that after dismissal of the said appeal and after arranging the documents, the applicant had submitted the claim before the RP but the RP informed the applicant to approach the Adjudicating Authority because the time period prescribed under the law for submitting the claim had already expired.



9. On the other hand, Ld. Counsel for the RP submitted that since the applicant had submitted the claim after the expiry of the time period prescribed under the IBC as well as under the Regulations, their claim could not be accepted.

10. Now in the light of the submissions, we consider the prayer of the applicant. Admittedly, on the application filed by the applicant, the CIRP against the Corporate Debtor was initiated and on perusal of the main application, we find that while filing the application, the applicant had filed all the documents. As per the averments made in part-IV; column II of the main application, he had enclosed two separate builder-buyer agreements dated 17.04.2013 and 03.10.2013, money receipts, statements issued by the Corporate Debtor admitting the payment made by the financial creditor and bank statement.

11. We further notice that on page 19 of the application, the applicant had enclosed the list of allottees, who have not filed the claim as on 30.06.2020 and this list was also available on the website of the Resolution Professional.

12. We further notice that while submitting the claim form, the applicant has submitted the same documents as submitted by him alongwith the main application.

13. This Bench is aware of the decisions of Hon'ble Supreme Court in the case of **Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019**; and in the case of **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC India Pvt Ltd and Ors. in Civil Appeal No. 3395 of 2020**.

14. But the basis of claim of the present applicant is different from the facts of the cases referred above. It is not the case of the applicant that for the first time, he has raised the claim before the RP after approval of the Resolution



Plan by COC. Rather, it is the same applicant, on whose application, the CIRP of the Corporate Debtor was initiated and the RP was appointed.

15. We find that the documents enclosed by the applicant along with the application filed under Section 7 of the IBC, 2016 are the same documents which have also been filed along with the claim form. Therefore, the RP is well aware about the claim of the applicant and that is the reason, the applicant is shown as a creditor in the list of creditors prepared by the RP and which is uploaded on his website too. This fact has also not been denied by the RP during the course of his arguments.

16. If the name of the applicant is shown in the list of creditors prepared by RP, it should have been incorporated in the Information Memorandum prepared under Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

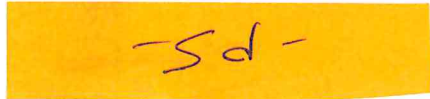
17. We further notice that the reason assigned by the applicant for not submitting the claim to the RP within the prescribed period is that, against the order of CIRP, an appeal was preferred by the Suspended Board of Directors, in which the settlement was arrived at between the applicant and corporate debtor and the same is also reflected in the order of the Hon'ble NCLAT. This fact has also not been denied by the RP.

18. In our considered view, the facts of this matter are different from the facts and circumstances of the cases referred Supra. Here, it is not for the first time that the claim came to the knowledge of the RP or Resolution Applicant, rather all the documents as required to prove the claim by the creditor in class under Regulation 8A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 were already available with the RP.

19. For the reasons discussed above and in view of the peculiar facts and circumstances of the case, we are inclined to give a direction to the RP to consider the claim of the applicant.

20. Accordingly, we hereby direct the RP to consider the claim of the applicant. Thereafter, the RP may inform the Resolution Applicant regarding the claim of the applicant.

21. With this order, the present application stands disposed of.



(L. N. GUPTA)
Member (T)



(ABNI RANJAN KUMAR SINHA)
Member (J)