

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

IA(IBC) No. 1515/KB/2025

In

CP (IB) No.378/KB/2018

Devi Trading & Holding Private Limited

...Financial Creditor

Versus

Avani Project & Infrastructure Limited

...Corporate Debtor

*Applications under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of National Company
Law Tribunal Rules, 2016;*

IN THE MATTER OF:

Vish Realty Solutions Private
Limited, an existing company
within the meaning of Companies
Act 2013, having it's office at
55, Ezra Street, Room No. 15,
2nd Floor, Kolkata-700001

...Applicant

Versus

Ajay Kumar Agarwal, Resolution Professional of Avani Projects and Infrastructure Limited, having his office at plot no. 11D/31/1, Street no. 1111, P.S.- Qube, Unit No. 1015A, 10th Floor, beside City Centre - II, Kolkata - 700161

...Respondent

Order pronounced on: 22.06.2026

CORAM:

MR. LABH SINGH, HON'BLE MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

Counsels appeared (through hybrid mode):

For resolution professional

- i. Mr.Rishav Banerjee, Adv.
- ii. Mr.Supriyo Gole, Adv.
- iii. Mr.Ajay Kumar Agarwal, RP

For the applicant

- i. Mr.Shiiyan Sengupta, Adv.
- ii. Mr.Saurav Mallick, Adv.

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, JUDICIAL MEMBER

1. This is an application filed by Vish Realty Solutions Private Limited, an existing company within the meaning of Companies Act 2013, having its office at 55, Ezra Street, Room No. 15, 2nd Floor, Kolkata - 700001 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.
2. The present application has been filed against Ajay Kumar Agarwal, the Resolution Professional of Avani Projects and Infrastructure Limited seeking the following reliefs:
 - (a) An order be passed condoning the delay of days 1948 in filing the claim by the applicant;
 - (b) An appropriate order be passed by this tribunal directing the respondent to accept the claim of the applicant and register the name of the applicant as a financial creditor;
 - (c) Ad interim order in terms of prayers above;
 - (d) Such further order or order, direction or directions, as would afford complete relief to the applicant.

3. It has been submitted that during the year 2012, the Corporate Debtor (hereinafter referred to as the “CD”) made an advertisement for a proposed real-estate project to be developed near the Eastern Metropolitan Bypass area, Kolkata, namely “Avani Grand,” offering attractive prices for the units to be constructed thereat to lure prospective buyers. Being lured by such representations, the applicant expressed its intention to purchase a unit in the said proposed project and subsequently made an application to the Corporate Debtor, leading to an allotment being made in the applicant’s favour.
4. It is submitted that on 20th July, 2012, the Corporate Debtor issued an allotment letter in favour of the applicant for Unit No. 21B, containing by estimation a chargeable area of 2923 Sq. Ft. situated on the 21st Floor of Tower - I, together with one covered car parking space on MLCP and two basement car parking spaces in the Avani Grand project. Subsequently, an agreement for Sub-Lease of Service Apartment dated 31st August, 2013, was entered between Adone Hotels & Hospitality Ltd., Avani Projects & Infrastructure Ltd., the CD herein, and the applicant for the purchase of the aforesaid flat and parking space for a total consideration amount of Rs. 2,46,76,300/-.

5. It is submitted that out of the total consideration amount agreed between the parties, the applicant paid a total sum of Rs. 25,00,000/- by way of RTGS to the corporate debtor in respect of the aforesaid flat and garage. It is submitted that, it is an undisputed fact that a substantial amount of money has been paid to the Corporate Debtor by the applicant towards part consideration, yet despite making such payment, neither has any deed of conveyance been executed in favour of the applicant, nor the amount paid by the applicant been refunded by the CD.
6. It is submitted that sometime in 2024, after a considerable lapse of time, the applicant came to learn from a reliable source that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor had commenced long back in March 2019. As the applicant had invested a huge sum of money for the purchase of the subject flat, the applicant, being a homebuyer, filed a claim in FORM-CA along with proof to the resolution professional on 25th July, 2024. The claim was sent to the Resolution Professional by way of an email which was duly received by the respondent.
7. It is submitted that on 27th July 2024 claim of the applicant was rejected by the respondent merely on the ground of delay and was not scrutinized on merits, even

though the applicant has a valid claim and had annexed proof of payment with the FORM-CA which the respondent failed to take into consideration.

8. It is submitted that the applicant thereafter consulted an Advocate and was advised to file an application before this adjudicating authority for the condonation of delay in lodging the claim. On the instructions of the applicant, steps were taken to file an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, on 05.10.2024. However, the application was marked as defective by the department on 08.10.2024.
9. It is submitted that due to the negligent approach and inaction of the erstwhile Advocate-on-record, who took little or no steps to cure the defects, the application was not informed to the applicant and was left with remarks stating “declined to register” on the NCLT portal. It is submitted that the applicant only learned upon enquiry that the application had not been proceeded with properly and further submitted that the present application is filed as a result of the inaction of the erstwhile Advocate.
10. It is submitted that, by orders dated 23rd October, 2024, and 23rd June, 2025, this Tribunal was pleased to condone the delay in filing claims and directed the Resolution

Professional to admit the claims of various other homebuyers having claims in respect of different real estate projects of the Corporate Debtor.

11. It is submitted that, it is evident from the duly acknowledged money receipts that the applicant has paid a total amount of Rs. 25,00,000/- which has been paid out of the total consideration amount, but till date no deed of conveyance has been executed by the Corporate Debtor. It is submitted that the applicant has a claim for a sum of Rs. 25,00,000/- towards part payment of the total consideration in respect of the flat and also claims interest at 12% p.a. till the date of realization. The total claim amount, including interest as on the date of admission of CIRP, is Rs. 61,05,753/-. Taking the last date for filing claims to be 27th March 2019, there is a delay of 1948 days in filing the instant claim. Therefore, a prayer has been made to allow the present application.
12. Respondent appeared in this matter and did not file a reply affidavit. However, Learned Counsel for respondent has vehemently opposed the present application on its merits. He has prayed for dismissal of the present application.
13. Heard Learned Counsel appearing for the applicant and

Learned Counsel appearing for the Resolution Professional. We have gone through the entire record of the present application. We have duly considered and appreciated the law applicable on the facts and circumstances of the present application.

14. Before entering upon the merit of the present application, it is relevant to refer provision of Section 18 of the IBC 2016 which provides for receipt and collation of all claims submitted to him in pursuance of public announcement. The relevant provision of Section 18 of IBC read as under:

“18. Duties of interim resolution professional.

The interim resolution professional shall perform the following duties, namely:—

- (a) xxxxx
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
- (c) to (g) xxxxx

15. Thus, the Resolution Professional under Section 18(1)(b) of the IBC, 2016 is obliged to receive and collate all the claims submitted by creditors. The term “receive” implies a passive role dependent on filings and the term “collate”

suggests an active duty to verify and arrange the claims. Further, Regulation 36(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, prescribes the contents of the Information Memorandum. The Information Memorandum must contain details of all material litigation and crucially, a list of creditors and liabilities.

16. In the instant case, the Resolution Professional, in compliance with Section 13 and 15 of IBC 2016, published Form 'A' in newspapers dated 16.03.2019 with the last date for submission of claims on 27.03.2019. The resolution plan was approved by the CoC on 26th June 2025. The applicant did not file its claim in pursuance of Form 'A' published in newspapers rather file its claim before RP on 25.07.2024. The claim of the applicant was found not acceptable by the Resolution Professional on 27th July 2024. The applicant claims that there is a delay of 1948 days in submitting the claim before the respondent/Resolution Professional; however, there was a delay of 2712 days as on 25.07.2024 and delay of 3026 at the time of filing the present application. The Resolution Plan approval is pending the decision of this Tribunal.

17. The question arises whether such a belated claim with delay

of 3026 days should be admitted at this stage when the CoC has already approved the resolution plan which is pending approval of this Adjudicating Authority. It is pertinent to refer provision of Regulation 13(1B) and 13(1C) of IBBI(CIRP) Regulation 2016 which provides as under:

“13(1B). In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorize them as acceptable or non-acceptable for collation.

“13(1C). The interim resolution professional or resolution professional, as the case may be, shall:-

(a) intimate the creditor within seven days of categorization thereof under sub-regulation (1B) and provide reasons where such claim has been

categorized as non-acceptable for collation; and

(b) put up the claims categorized as acceptable under sub-regulation (1B) and collated by him to:-

(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and

(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.”

18. Thus, a conjoint reading of the above stated Regulation 13(1B) and 13(1C) of the IBBI(CIRP) Regulation 2016 clearly provides that the Resolution Professional can accept or reject claims if the same is received within seven days before the date on which the CoC is to approve the resolution plan. It is an undisputed fact that the applicant submitted his claims which was verified by the Resolution Professional but categorized as non-acceptable. The Resolution Professional intimated timely to the applicant.

19. The meeting of the CoC was held on 26.06.2025 and approved

the resolution plan with a majority vote on the same day. The applicant filed application for delay condonation in filing the claim before this Tribunal on 05.10.2024 but did not pursue the same with due diligence and the same was declined to be registered on 08.10.2024. The instant application for condonation of delay filed on 08.09.2025 before this Adjudicating Authority after the resolution plan approved by the CoC on 26.06.2025. It is not a case where the Resolution Professional has acted contrary to Regulations or stalled the claim of the applicant.

20. A similar question arose before Hon'ble National Company Law Tribunal in case of Suman Chopra Vs. Sh. Arvind Kumar (RP) (2026) ibclaw.in 281 NCLAT wherein claim was submitted four days prior to CoC meeting held for approval of resolution plan. Hon'ble NCLAT, after relying on judgment passed by Hon'ble Supreme Court in case of Essar Steel Vs. Satish Kumar Gupta (2020) 8 SCC 531 and RP Infrastructure Ltd Vs. Mukul Kumar (2023) 10 SCC 718 held that belated claim filed is in violation of Regulation 13(1B) and 13(1C) of IBBI (CIRP) Regulation 2016. The relevant observation of Hon'ble NCLAT is as follow:

“14. This brings us to the judicial precedents

relied upon by the Appellants to contend that if the liability of the creditor is reflected in the records of the Corporate Debtor, the RP must forward such claims to the resolution applicant for inclusion even if the claim is filed belatedly. When we look at the facts of the case which has been relied upon by the Appellant in Rahul Jain judgment supra and Sonia Kapoor judgment supra, we find distinguishing facts in both those cases from the present factual matrix. Quite apart from the fact that there was admittedly no dispute amongst the creditor and the RP in those two cases unlike the present one where the RP and the Appellant are not on the same page over the fact as to whether the liability had been reflected in the Information Memorandum or not, what is still more distinct that those two cases dealt with admission of belated claim before the coming into play of CIRP Regulations 13(1B) and 13(1C) unlike in the present matter. CIRP Regulations 13(1B) and 13(1C) were introduced with effect from 18.09.2023 while in the Rahul Jain case and Sonia Kapoor case, the belated claims were filed on 19.09.2022 and 24.06.2023. On

the other hand, in the present case the claim was file on 15.03.2024 which was after the CIRP Regulations 13(1B) and 13(1C) had come into effect. Hence, these two judicial precedents do not come to the aid of the Appellant.

*15. We also do not find any infirmity in the impugned order upholding the non-admissibility of the claims by the RP since it is well-settled law as laid down by the Hon'ble Supreme Court in **Essar Steel Vs Satish Kumar Gupta (2020) 8 SCC 531** and in **RP Infrastructure Ltd. Vs Mukul Kumar (2023) 10 SCC 718** that belated claims should not be entertained as it is fraught with the possibility of more such claims springing up leading to indefinite delay in the completion of the resolution process thereby affecting the certainty and effectiveness of resolution. If new and additional claims are allowed to crop up even after the plan is approved by the CoC, the CIRP process could be put to jeopardy and the intent of IBC would stand frustrated. Further, the Hon'ble Supreme Court has also propounded the fresh slate principle in*

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Asset Restructuring Company Ltd. (2021) 9 SCC 657

and in light of the above well-established legal

precept, we are of the considered view that the

Adjudicating Authority had not committed any

infirmity in disallowing the belated claim”.

21. The applicant, is claiming parity on the basis of orders 23rd October, 2024, and 23rd June, 2025, wherein this Tribunal condoned delay in filing claims by respective claimants/homebuyers and directed the Resolution Professional to admit their claims in different real estate projects of the Corporate Debtor; however, the delay on these application were condoned by this Tribunal before CoC held its meeting on 28.06.2025 and approval of resolution plan. The present applicant cannot claim parity on the basis of order dated 23rd October, 2024, and 23rd June, 2025.
22. Therefore, the present application filed at a belated stage can not be admitted as prayed by the applicant. Hence the present application stands dismissed being devoid of merits.
23. In view of our observation, the present application also stands dismissed being devoid of merits.

24. Therefore, in view of our observation herein and law applicable thereon, the application being I.A.(IBC)1515.KB.2025 in CP (IB) No.378/KB/2018 stands disposed of as above.

25. Files of these applications be consigned to records.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR(LRA)