

(2023) ibclaw.in 709 NCLAT

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Principal Bench, New Delhi

Suraksha Realty Ltd.

v.

Anuj Bajpai

Company Appeal (AT) (Insolvency) No. 1389 of 2023

Decided on 01-Nov-23

Mr. Justice Ashok Bhushan (Chairperson), Mr. Barun Mitra (Technical Member) and Mr. Arun Baroka (Technical Member)

Add. Info:

Impugned Order: [\(2023\) ibclaw.in 561 NCLT](#), upheld.

Corporate Debtor: Panache Aluminium Extrusion Pvt. Ltd.

For Appellant(s): Advocate Pulkit Kapoor

ORDER

01.11.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 04.09.2023 passed by the Adjudicating Authority rejecting I.A. No. 1758 of 2022 filed by the Appellant by which Appellant sought direction from the Adjudicating Authority to accept the claim as a Financial Debt under the provision of Section 5(8) of the Code.

3. The Corporate Insolvency Resolution Process against the Corporate Debtor commenced on 31st December, 2019. The IRP issued a publication 02nd January, 2020 and last date for filing the claim was 18.03.2020. The Appellant did not file the claim within time. A Resolution Plan came to be

approved by the CoC on 30th March, 2021. The Appellant filed its claim before the RP on 04th October, 2022 and I.A. 1758 of 2022 was filed by the Appellant before filing the claim.

4. The adjudicating authority heard the Appellant and dismissed the I.A.. The Adjudicating Authority has observed that claim has been filed with the RP on 04th October, 2022 whereas plan was already approved on 30th March, 2021 hence no direction can be issued. In paragraph 26 of the Order, following observations have been made:

“26. It is not disputed even by the applicant that no claim was formally lodged with the RP within the timelines prescribed under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The public notice under Regulation 6 was published on 02.01.2020 and the last date for filing the claim was 18.03.2020. No claim was filed within a period of 90 days as provided under Regulation 12 (2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. That being so, as per law no claim can possibly be admitted at such a belated stage. The claim is said to have been filed with the RP on 04.10.2022 vide email whereas the Resolution Plan was approved by the CoC on 30.03.2021. It is well settled that no claims can be entertained after the approval of the plan by the Committee of Creditors as it would de-rail the whole process which has to be concluded within a time bound manner. In this regard, a reference can be made to the law laid down by the Hon’ble Supreme Court Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Ltd. and Ors. 2021 Ibclaw.in 63 whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP. It was further held that the Resolution Applicant cannot be expected make a provision in relation any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12. It was further observed that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the

resolution plan submitted by his has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the Corporate Debtor. In the instance case also, since the Resolution Plan has already been approved by the CoC and plan is pending for approval with the Adjudicating Authority, admission of any claim at this stage would jeopardize the whole CIRP process and on this short ground, the application deserved to be dismissed being without any merit.”

5. Learned Counsel for the Appellant submits that since the Application for approval of Resolution plan is still pending before the Adjudicating Authority, the order can be passed to consider the claim of the Appellant.

6. We have heard Learned Counsel for the Appellant and perused the record.

7. Hon'ble Supreme Court in recent Judgment in M/s. R.P.S. Infrastructure Limited Vs. Mukul Kumar and Anr. has already taken the view that after approval of the plan by the CoC, the claims cannot be entertained. There is no dispute with the facts that the claim was filed by the Appellant after approval of the plan by the CoC. The Appellant has also not been able to show that claim of the Appellant was reflected in the records of the Corporate Debtor.

8. We thus are of the view that no error has been committed by the Adjudicating Authority rejecting I.A. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

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