

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V**

**(IB) 2083 (ND) /2019
IA/143/2021**

IN THE MATTER OF:

**SARDAR JI DI HATTI DEPARTMENTAL STORE PVT. LTD.
CIN: U52100DL2011214820
(THROUGH ITS DIRECTOR: GURJIT SINGH)**

**HAVING ITS REGISTERED OFFICE AT:
1/7, DOUBLE STOREY, TILAK NAGAR
NEW DELHI 110018**

...APPLICANT/ OPERATIONAL CREDITOR

VERSUS

**SUNIL KUMAR AGGARWAL
RESOLUTION PROFESSIONAL
REGISTERED ADDRESS AT:
E-29, SOUTH EXTENSION II, NEW DELHI 110049
ALSO AT:
904, GF, SECTOR 7C, FARIDABAD, 121006 (HARYANA)**

.... RESOLUTION PROFESSIONAL/ RESPONDENT

SECTION: U/S 60 OF IBC, 2016

Order delivered on: 09.03.2021

CORAM:

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. K.K. VOHRA, MEMBER (TECHNICAL)**

Present: Advocate Sandeep Thukral



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present application has been filed U/S 60 of the IBC, 2016 (Code) & read with Rule 11 of the NCLT Rules, 2016 and has prayed following reliefs and the same is quoted below: -
(a) allow the instant application of the Applicant;
(b) issue necessary instructions to the RP to consider the claim without having any regard to the delay;
(c) pass an order to admit the claim of the Applicant before RP; and
(d) in the meanwhile, direct the RP not to proceed with the adoption of Resolution Plan (not been approved till today and the approval of which would render the present application infructuous), without the admission of the instant claim of the applicant as the claim was duly presented before the RP at an appropriate stage which warranted admission as per the settled law.
(e) Pass any other order this Hon'ble Tribunal deems fit in the facts and circumstances of this case.
2. The facts mentioned in the application in brief are as follows:
 - i. The CIRP against the Corporate Debtor was initiated on 27.01.2020 and the respondent has appointed as IRP i.e. Mr. Sunil Kumar Agarwal.
 - ii. That the IRP has made the public announcement for inviting claims from creditors upto 12.02.2020 in the newspapers on 31.01.2020 against the Corporate Debtor.
 - iii. Further, the applicant has missed the publication, therefore, the applicant could not file the claim within the time.
 - iv. Further, later on, the lockdown was imposed by the Central Government as well as State Government and that is also the reason for not filing the claim before the RP.



- v. Further, the applicant was remained in touch with the Director of the Corporate Debtor for the payment of the dues but no response was given to him.
- vi. Recently, the director of the applicant company came to know about the CIRP.
- vii. Soon, thereafter, the applicant submitted a claim to the RP for the aforesaid dues but the RP vide email dated 31.12.2020 informed that **"Your claim documents is not received within in time as per IBC, 2016"**.
- viii. Further, the RP has also informed that the Form G of EOI has issued and the Resolution Plan is under process.
- ix. Further, the applicant again on 03.01.2021 requesting for admission of the claim along with the decisions of the NCLT in which amended Regulation 12(2) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 has been held to be directory and not mandatory.
- x. On behalf of the RP counsel's sent an email dated 05.01.2021 stating that the claim cannot be accepted as it was submitted by delay to RP and already resolution plan was submitted by one resolution applicant to RP which is pending for consideration by the CoC.
- xi. Further, the applicant has referred various decisions and the same are quoted below: -

In the matter of Twenty-First Century Wire Roads Ltd. [IB-737(PB)/2018], an application was filed by one AMA Agencies Pvt. Ltd. before the Hon'ble Principal Bench of the NCLT, New Delhi

In the matter of Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd. [IB-1083(PB)/2018]

In State Bank of India v. ARGL Ltd. [IB-531(PB)/2019 the Principal Bench of the Hon'ble NCLT, New Delhi



- xii. Further, the RP has appeared and filed the reply and the facts of the reply in short is that the application filed by the applicant is not maintainable because the present application is filed only to mislead this Tribunal, delay the entire process/proceedings and waste the valuable time of the Tribunal.
 - xiii. Further, the application is not maintainable on the ground of delay.
 - xiv. Further, the application is filed under Section 60 of the IBC is not maintainable because the heading of the Section 60 is Adjudicating Authority for Corporate Persons.
 - xv. Further, the present application is filed for condonation of delay in filing the claim but as per the own version of the applicant, 12.02.2020 was the last day for submission of claim and on 23.12.2020 the claim was filed with the RP for due and outstanding amount payable by the Corporate Debtor to the applicant and the RP has sent its reply on 31.12.2020 and again on 05.01.2021, the RP has rejected the claim.
3. We have heard the Ld. Counsel for the applicant as well as Ld. Counsel for RP and perused the averments made in the application as well as the decisions upon which the applicant has placed reliance.
4. Ld. Counsel for the applicant in course of arguments submitted that since the applicant was not aware about the publication made by the IRP. Therefore, the applicant could not file the claim within the time prescribed in the advertisement.
5. He further submitted that thereafter, on 25.03.2020, the lockdown was imposed by the Central Government as well as State Governments and due to this the development was not known to the applicant.
6. He further submitted that the moment the applicant has come to know regarding the initiation of the CIRP against the Corporate Debtor soon thereafter, he has filed the claim before the RP but the RP has rejected the same.
7. He further submitted that the Regulation 12 (2) is not mandatory rather directory as held by Hon'ble NCLT in series of decisions.



8. He further submitted that considering the submissions and the averments made in the application, claim of the applicant may be allowed.
9. On the other hand, Ld. Counsel for the RP submitted that the applicant had submitted the claim much after the publication of the advertisement.
10. He further submitted that the applicant in its application has admitted this fact that the last date for submission of the claim was 12.02.2020. Therefore, the claim is filed much after that period.
11. Before making any comments on the submissions raised on behalf of the parties, at this juncture, we would like to refer Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 which substituted vide notification no. IBBI/2018-19/GN/REG031 dated 03.07.2018 with effect from 04.07.2018 which says that ***A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date***, prior to this, old Regulation 12(2) says that ***A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.***
12. When we read the old and new Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 then it can be said that prior to the amendment in Regulation 12(2), a claim is required to be filed before the IRP or the RP as the case may be, till the approval of a resolution plan by the committee and that is the reason earlier the Co-ordinate bench has given directions to the RP to consider the claim in some cases but after the amendment till the approval

of the resolution plan by the committee was substituted by on or before the 90th day of the insolvency commencement date. Herein the case in hand, as we notice that the CIRP was initiated on 27.01.2020 and thereafter, the public announcement was made and within the prescribed period no claim was placed by the applicant. We further notice that, in view of Amended Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the claim was not filed within the 90 days of the insolvency commencement date.

13. At this juncture, we would like to refer the arguments advances on behalf of the applicant who in course of his arguments submitted that Regulation 12(2) is directory not a mandatory that has been held by the Co-ordinate Bench of this Tribunal. We have gone through the decisions upon which the applicant has placed reliance and we notice that of course the word directory is mentioned in the order but none of the order Amended/Unamended provision of Regulation 12(2) was discussed by the Co-ordinate Bench of this Tribunal. Therefore, in our considered view that order was per incuriam.
14. On the other hand, this Bench has discussed the amended/unamended provision of Regulation 12(2) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 in the case of HSIIDCL Vs. M/s Ankur Roller Flour Mills Pvt Ltd. CP (IB) No. 2161/2019 in IA/3612/2020.
15. At this juncture, we would like also to consider this submission that due to pandemic the lockdown was imposed by the Government the claim could not be submitted within time. Admittedly, in another matters, we exclude the period of lockdown which was imposed on 25.03.2020 till 31.05.2020 i.e. 68 days if we exclude this period of lockdown while calculating the period of 90th day from the CIRP period even then the claim of the applicant is delayed because it was submitted on 23.12.2020.

16. For the reasons discussed above, we are of the considered view that, in view of Regulation 12(2), the prayer of the applicant is not liable to be accepted. Hence, we, hereby, unable to give any direction to the RP to consider the claim of the applicant. Accordingly, the prayer of the applicant is rejected.
17. ***With this order, the present application stands dismissed.***

-Sol-

K. K. VOHRA

Member (T)

-Sol-

ABNI RANJAN KUMAR SINHA

Member (J)