

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Company App. (AT) (Ins) No. 799 of 2023

IN THE MATTER OF:

IDBI Bank Ltd.

...Appellant

Versus

**Jalesh Kumar Grover
RP of GPI Textiles Ltd.**

...Respondents

Present:

For Appellant : Adv. Praful Jindal,

For Respondents : Mr. Abhishek Anand & Karan Kohli, Adv. for RP

O R D E R

Per: Justice Rakesh Kumar Jain (oral)

15.09.2023 This Appeal is directed against the order dated 27.04.2023 passed by the 'National Company Law Tribunal, Chandigarh Bench (hereinafter referred as to 'the Adjudicating Authority') by which an application bearing IA no. 1613/2022 filed by the Appellant (IDBI Bank Ltd.) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'The Code') for setting aside the email/order dated 30.06.2022 of the Resolution Professional of the Corporate Debtor (GPI Textiles Ltd) and allow the Appellant to submit the claim, has been dismissed.

2. Shorn of unnecessary details, the 'Corporate Insolvency Resolution Process' (hereinafter referred as to 'CIRP') was initiated against the Corporate Debtor vide order dated 06.07.2018. The Respondent, who was appointed as 'Interim Resolution Professional' (hereinafter referred as to

'IRP') was confirmed as 'Resolution Professional' (hereinafter referred as to 'RP'), made publication on 14.07.2018 and invited claim till 26.07.2018. The Appellant did not file their claim within the time prescribed and even the period of 90 days also expired on 04.10.2018 as prescribed in Regulation 12(2) of the IBBI (CIRP) Regulation, 2016. The CoC approved the plan on 27.03.2019. Thereafter, on 20.11.2019 the Appellant submitted his claim to the RP after a delay of 502 days which was rejected by the RP and the Appellant filed the application bearing IA No. 511 of 2021 before the Adjudicating Authority for setting aside the email/ order of the RP declining its claim on the ground of delay and to allow the Appellant to submit his claim. The said application was dismissed on the ground of delay by the Adjudicating Authority on 24.05.2022.

3. It is pertinent to mention that the order dated 24.05.2022 by which the application bearing IA No. 511 of 2021, filed by the Appellant herein was dismissed, was not further challenged in appeal in terms of Section 61 of the Code before this Appellate Tribunal and thus attained finality.

4. In the meantime, the litigation, being pursued by the then Successful Resolution Applicant (M/s. Aggarsain Spinners Ltd.), reached the Hon'ble Supreme Court in Civil Appeal Nos. 7015-7016 of 2022 and was decided on 09.12.2022. these appeals were filed against the order passed by this Tribunal dated 14.09.2022 in Company Appeal (AT) (Ins) Nos. 637 and 638 of 2022 and Company Appeal (AT) (Ins) Nos. 635 and 636 of 2022 which were dismissed. The Hon'ble Supreme Court has passed the following orders on 09.12.2022:

“12 In this view of the matter, and since the Court is apprised of the fact that substantially higher offers are now made available to the CoC, it would be appropriate and proper that the CoC is permitted to proceed further on the basis of the fresh EoIs which have been received. Since the subsequent communication dated 16 February 2021 issued by BSE operates to lift the restraint status that was imposed on the appellants, it would be appropriate to permit the appellants to submit a resolution plan and an EoI to the CoC within a period of thirty days.

14 The period for the completion of the process shall stand extended by sixty days from the date of this order. After completing the process, the RP shall file a fresh application before the adjudicating authority for approval of the resolution plan in terms of the provisions of Section 31 of the IBC.”

5. The Appellant is stated to have taken a cue from the aforesaid order of the Hon’ble Supreme Court and sent an email dated 30.06.2022 to the RP for admitting its claim. The said email was replied by the RP and rejected the claim on the ground of delay.

6. Counsel for the Appellant has fairly submitted that the order dated 24.05.2022 in IA No. 511/2021 was not challenged in appeal and has attained finality but it is submitted that the fresh claim has been sent to the

RP through email dated 30.06.2022 only on the ground that litigation was re-opened by the Hon'ble Supreme Court.

7. On the other hand, counsel for the Respondent has submitted that once the claim has been declared to be delayed and rejected by the Adjudicating Authority vide order dated 24.05.2022, the Appellant cannot pursue the same claim once again in this litigation as it is contrary to the law laid down by the Hon'ble Supreme Court in the case of M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr in Civil Appeal No. 5590 of 2021 decided on 11.09.2023.

8. We have heard counsel for the parties and perused the record with their able assistance.

9. Since, the facts are borne out from the record, therefore these are not much in dispute and the only issue for our consideration is the request made by the Appellant which has been rejected by the Adjudicating Authority on the ground of delay.

10. In the aforesaid circumstances, we are now guided by the law laid down by the Hon'ble Supreme Court in the case of M/s. RPS Infrastructure Ltd (supra) and in this regard it would be relevant to refer to the findings recorded in the above case which are as follows:

“16. We have examined the aforesaid submissions. The only issue before us is whether the appellant's claim pertaining to an arbitral award, which is in appeal under Section 37 of the said Act, is liable to be included

at a belated stage – i.e. after the resolution plan has been approved by the COC.

17. It is undisputed that the process followed by respondent no. 1 was not flawed in any manner, except to the extent of whether an endeavour should have been made by respondent no. 1 to locate the liabilities pertaining to the said award from the records of the Corporate Debtor.

18. If we analyse the aforesaid plea, it is quite obvious that respondent no. 1 did what could be done to procure the Corporate Debtor's records by even moving an application under Section 19 of the IBC. That it was not fruitful is a consequence of the Corporate Debtor not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not.

19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That

they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, ⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

23. The result of the aforesaid is that the appeal is dismissed leaving the parties to bear their own costs."

11. In view of the aforesaid facts and circumstances of the present case, once the Hon'ble Supreme Court has held that even in a case where the Adjudicating Authority has not approved the plan would not imply that the plan can go back and forth making the CIRP an endless process because in that matter it would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon.

12. No other points have been raised by the parties.

13. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is hereby dismissed. No order as to costs.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

Raushan/Ravi