

727/2021 & I.A. No. 525/2021, both filed under Section 60(5) of the IBC in CP (IB)-496(ND)/2019.

3. The factual matrix of the case as stated and argued by the Appellant is that the Appellant, Greater Noida Industrial Development Authority (GNIDA in short), is a statutory authority which demised land plot No. GH-01 sector adjoining Tech Zone – IV, Greater NOIDA on certain terms and conditions to the Corporate Debtor M/s. Maple Realcon Private Limited for the purpose of development of sports city through a lease deed. An application under section 9 of the IBC was filed by the operational creditor M/s. Bindals Merchandise against the Corporate Debtor and CIRP was initiated vide order dated 18.7.2018 of the Adjudicating Authority (NCLT, New Delhi Bench). After initiation of CIRP, actions were taken by the RP culminating in the consideration of the proposed resolution plan by the Committee of Creditors (COC) in its meeting on 8.11.2019. Thereafter, after its approval, the Resolution Plan was submitted to the Adjudicating Authority, who granted approval vide order dated 20.02.2020.

4. The Appellant has further stated that it was, for the first time, made aware of the ongoing CIRP of the Corporate Debtor through a letter dated 1.11.2019 from an ex-Director of the Corporate Debtor. The Appellant thereafter submitted its claim of Rs. 17,31,22,890 as a financial creditor to the RP on 6.2.2020, which was not considered by the RP and the order approving the Resolution Plan was passed by the Adjudicating Authority on 20.02.2020.

5. The Appellant has further stated that since the RP did not consider his claim, he filed IA No. 525 of 2021 through e-filing on 29.1.2021

under Section 60(5) of the IBC being aggrieved by the decisions/actions/orders of the RP for quashing/setting aside all decisions/actions of the RP. The Appellant also filed IA No. 727 of 2021 through e-filing on 5.2.2021 for recall of the order dated 20.2.2020 of the Adjudicating Authority qua which the resolution Plan has been approved.

6. The Learned Counsel for Appellant has argued that the Appellant is a statutory authority and it could not submit its claim as a financial creditor in the stipulated time period to the resolution professional as it was not aware of the ongoing CIRP process against the Corporate Debtor. He has further argued that the Appellant submitted its claim as financial creditor to the RP on 6.2.2020, by which date the Learned Adjudicating Authority had not approved the Resolution Plan (which was done vide order dated 20.2.2020) hence his claim should have been considered while approving the resolution plan.

7. The Appellant has prayed for setting aside of the common impugned order dated 4.6.2021 given in IA No. 727 of 2021 and IA No. 525 of 2021 or remand the case back to the Adjudicating Authority for reconsideration after giving him an opportunity of hearing.

8. It is admitted by the Appellant (Para 7.V of Appeal Paperbook, p. 26) that the Appellant came to know of the ongoing CIRP against the Corporate Debtor through letter dated 1.11.2019 sent by an ex-director of the Corporate Debtor to the Chief Executive Officer, GNIDA, wherein it was informed that since CIRP is pending against the Corporate Debtor, all pending litigation between the Appellant and the Corporate Debtor should be kept in abeyance.

9. It is useful to look at the various dates relevant to this appeal.

These are as follows:-

- (i) CIRP initiated against Corporate Debtor
M/s. Maple Realcon Private Limited - 18.07.2018
- (ii) Letter written by ex-Director of M/s. Maple
Realcon Private Limited to GNIDA to keep
in abeyance all on-going litigations since
CIRP against the Corporate Debtor M/s.
Maple Realcon Private Limited is pending - 1.11.2019
- (iii) Claim filed by GNIDA to RP - 6.02.2020
- (iv) Approval of Resolution Plan by Adjudicating
Authority - 20.2.2020
- (v) e-filing of IA No. 525 of 2021 - 29.01.2021
- (vi) e-filing of IA No. 727 of 2021 - 5.02.2021
- (vii) Order of Adjudicating Authority disposing
of IA No. 727 of 2021 and IA No. 525 of 2021 - 4.6.2021
- (viii) Appeal CA (AT)(Ins) No. 853 of 2021 filed - 3.9.2021

10. We note that IA No. 525 of 2021 was e-filed on 29.1.2021, over 11 months after the approval of the Resolution Plan by the Adjudicating Authority. Even if we assume that the Appellant came to know of the ongoing CIRP on 1.11.2019, there was an inordinate delay in filing of claim after almost three months of this knowledge, and much after the stipulated time period for filing claims. Furthermore, when the claim was filed after much delay on 6.2.2020, the COC had already approved the proposed resolution plan on 8.11.2019 and the RP had submitted it for Adjudicating Authority's approval. The Adjudicating Authority approved the resolution plan on 20.2.2020. The claim of the Appellant that he came to know of the Impugned Order for the first time from a

letter dated 20.12.2020 sent by the Successful Resolution Applicant Apex Height Private Limited, with which the Resolution Applicant had attached the order dated 20.2.2020 regarding approval of the Resolution Plan does not inspire confidence.

11. It is clear that the Appellant was well aware of the ongoing CIRP and hence should have kept track of the various actions being taken under the CIRP to guard its interest. By being remiss, it has not only missed the opportunity to file its claim, but has also filed its claim and IA Nos. 727/2021 and 525/2021 after much delay, after the lapse of respective limitations.

12. Furthermore, as the Adjudicating has held in the Impugned Order, there is no provision in the IBC for recalling of the order approving the Resolution Plan, the proper course for the Appellant was to file an appeal under IBC if it was aggrieved by the Resolution Plan approval order. This was not done within limitation. Insofar as the Appellant's grievance against the actions/decisions of RP is concerned, again the proper course was to file application within limitation against the specific action/s of the RP.

13. Once the Resolution Plan has been implemented after approval by the Adjudicating Authority, any claim cannot be considered. Hon'ble Supreme Court has held in the matter of **Committee of Creditors of Essar Steel India Limited vz. Satish Kumar Gupta and Ors. (Civil Appeal Nos.8766-8767/2019 and other petitions, 2019 SCC Online SC 1478)** and also in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association and Ors vs. NBCC (India) Limited and Ors. [CA No. 3395 of 2020, 2021SCC Online SC 253]** that a Successful Resolution Applicant cannot be faced with undecided claims

after the Resolution Plan submitted by him has been approved as this would amount to a 'hydra head popping up, which would throw into uncertainty amounts payable by a prospective Resolution Applicant who successfully takes over the business of the Corporate Debtor.' Hon'ble Supreme Court has upheld this principle again in **Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd [2021 SCC Online SC 313]**.

14. The relevant portion from the **Committee of Creditors of Essar Steel judgment (supra)** is reproduced below:

“67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him 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 successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”

15. In view of the discussion above, we are in agreement with the Adjudicating Authority who has correctly held in the Impugned Order that there is no legal provision that allows it to recall or review its order dated 20.2.2020 approving the resolution plan for the corporate debtor. Moreover, once the Resolution Plan has been approved and implemented, any new/undecided claims cannot be considered as has been held in a number of judgments of the Hon'ble Supreme Court (supra).

16. The appeal is, therefore, dismissed at admission stage. No orders as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
10th November, 2021

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