

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1316 of 2023

(Arising out of Order dated 12.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench (Court-II) in IA-1688/2022 in CP(IB)-2582(ND)2019)

IN THE MATTER OF:

Gyan Chandra Misra
Resolution Professional for
M/s Three C Green Developers Pvt. Ltd.
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.

Also At:
Hall No.2, IInd Floor, Plot No.17,
SS Tower, Sector 4, Vaishali
Ghaziabad (U.P.)

... Appellant

Vs

1. M/s. Three C Universal Developers Pvt. Ltd.
Through its Resolution Professional
Sh. Rakesh Kumar Gupta

Office at:
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.

2. Sh. Rakesh Kumar Gupta,
Resolution Professional for
M/s. Three C Universal Developers Pvt. Ltd.
Registered office at:
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.
Also at – Vikrant Tower-4,
Rajendra Place, New Delhi-110008.
3. Sh. Girish Chander Joshi,
Ex-Director,
M/s. Three C Universal Developers Pvt. Ltd.
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.
4. Sh. Rajender Kumar
Ex-Director,
M/s. Three C Universal Developers Pvt. Ltd.

- C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.
5. Girish Chander Joshi,
Ex-Director,
M/s. Three C Universal Developers Pvt. Ltd.
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.
6. Anand Ram
Ex-Director,
M/s. Three C Universal Developers Pvt. Ltd.
C-23 Greater Kailash Enclave,
Part-I, New Delhi – 110048.
7. M/s Ace Infracity Developers Pvt. Ltd. Noida
Ace Studio, Plot No.01B,
Sector 126, Noida,
Uttar Pradesh – 201303. ... Respondents

Present:

For Appellant: Mr. Gaurav Mitra, Roy Choudhary, Ms. Mrinal Harsh Vardhan, Advocates.

For Respondent: Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Shikhar Tiwari, Mr. Parveen Kaur Kapoor, Mr. Rahul Singhal, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 12.09.2023 passed by National Company Law Tribunal, New Delhi, Special Bench (Court – II), rejecting IA No.1688 of 2022 filed by the Appellant for admitting claim of the Applicant on behalf of M/s. Three C Green Developers Pvt. Ltd. The Adjudicating Authority by the impugned order, dismissed the Application, aggrieved by which order, the Appellant has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:

- (i) The Adjudicating Authority vide order dated 17.12.2019 admitted Application under Section 9 filed by one Jackson Limited against the Corporate Debtor namely – M/s. Three C Universal Developers Pvt. Ltd.
- (ii) The Interim Resolution Professional (“**IRP**”) of the Corporate Debtor issued public notice and invited claims till 31.12.2019.
- (iii) In the Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor, Resolution Plan was received from a Resolution Applicant, which was approved by the Committee of Creditors (“**CoC**”) on 16.01.2021.
- (iv) The Adjudicating Authority by order dated 23.12.2021 admitted company namely – M/s Three C Green Developers Pvt. Ltd. in proceedings under Section 7. On 21.02.2022, the Appellant was appointed as Resolution Professional (“**RP**”) of M/s Three C Green Developers Pvt. Ltd. The Appellant sent a letter date 06.04.2022 to the RP of Corporate Debtor along with claim form. The claim of the Appellant having not been admitted, IA No.1688 of 2022 was filed by the Appellant before the Adjudicating Authority, where following prayers were made:

- a) *direct respondent no.2 to provide to the applicant all the relevant information with respect to information memorandum and resolution plans received by respondent no.2;*
- b) *direct respondent no.2 to admit the claim of the Applicant on behalf of COC of Three C Green Developers Pvt. Ltd. as per Annexure A-10;*
- c) *declare the non-lodging of claim of M/s Three C Green Developers Pvt. Ltd. with M/s Three C Universal Developers Pvt. Ltd. to be an act defrauding the creditors of M/s Three C Green Developers Pvt. Ltd.;*
- d) *Reverse the effect non-lodging of financial claim/ relinquishment/ giving up of claims/ security interest of M/s Three C Green Developers Pvt. Ltd. in favour of M/s Three C Universal Developers Pvt. Ltd. while directing respondent no.2 to prepare fresh information memorandum while accepting and considering the financial claims of M/s Three C Green Developers Pvt. Ltd.;*
- e) *Pass necessary order staying and quashing resolution plan proposed by respondent no.7 and in the interim stay approval of resolution plan proposed by respondent no.7.*
- f) *direct respondent no.2 to invite proposals for resolution plans only after accepting claims of applicant or in the alternative initiate process for liquidation.*
- g) *direct enquiry under S. 46(2) of the Insolvency Code by an independent expert to evaluate the entire transaction and the collusion between the management of M/s Three C Green Developers Pvt.*

*Ltd. and M/s Three C Universal Developers Pvt.
Ltd. and other person as may be involved.;*

AND

- h) pass any such other, further consequential orders that may be deemed fit and proper in the interest of justice.”*
- (v) The Adjudicating Authority initially rejected the Application vide order dated 18.04.2022 against which Company Appeal (AT) (Ins.) No.471 of 2022 was filed, which Appeal was decided vide order dated 28.09.2022. This Tribunal vide its judgment dated 28.09.2022 allowed the Appeal and set aside the order dated 18.04.2022 and remanded the matter back to the Adjudicating Authority to decide again. Taking into consideration the Application, as it was filed under Section 60, sub-section (5), this Tribunal further observed “*It is needless to mention that we have not touched any part of the merit of this case which has been kept open*”.
- (vi) After order of this Tribunal dated 28.09.2022, the Adjudicating Authority heard the Application afresh and by the order impugned, rejected the Application. The Adjudicating Authority while rejecting the Application noticed that the last date for submission of claim by a creditor in the CIRP of the Corporate Debtor was 31.12.2019 and the Applicant submitted its claim only on 06.04.2022. It was further noticed that Resolution Plan was approved by the CoC on 16.01.2021.

The Adjudicating Authority also relied on the judgment of the Hon'ble Supreme Court in **Civil Appeal No.5590/2021** in the matter of **M/s. RPS Infrastructure Ltd. vs. Mukul Kumar & Anr.** decided on 11.09.2023. Following the judgment of the Hon'ble Supreme Court, the Application filed by the Appellant being IA No.1688 of 2022 was rejected.

3. Shri Gaurav Mitra, learned Counsel appearing on behalf of the Appellant, challenging the order passed by the Adjudicating Authority submits that the claim by the previous management of the Company M/s Three C Green Developers Pvt. Ltd. was not filed by the Ex-Management and the Directors of the Company, who have willfully omitted to lodge their claims with the IRP and the same was purposely omitted and not done. It is submitted that the Appellant, who was appointed as RP of the Company was authorised by the CoC to file the claim and hence, the claim was filed on 06.04.2022. It is submitted that charge created over the assets and receivables of the Corporate Debtor was registered with ROC and the IRP of the Corporate Debtor ought to have included the claim in the Information Memorandum. The Resolution Plan of the Corporate Debtor has been approved by the CoC in the absence of legitimate claim of the Company. There has been huge siphoning of funds, which has led to M/s Three C Universal Developers to insolvency. It is submitted that act of the Ex-Management was fraudulent and if claim of the Appellant is not considered it would render approving the Plan by the CoC vitiated and untenable. The learned Counsel for the Appellant has also submitted that the judgment of

the Hon'ble Supreme Court relied by the Adjudicating Authority is distinguishable. Shri Gaurav Mitra submits that despite there being charge of Rs.150 crore in favour of 3C Green, the Management and the Directors of 3C Green purposefully omitted to file their claims in the CIRP of the Corporate Debtor. The learned Counsel for the Appellant further submits that the Adjudicating Authority did not consider the plea of fraud, which has been played upon the creditors of 3C Green, who collectively lend the money to the Corporate Debtor, which was siphoned away to its proxy and by not considering the import of Section 17 of the Limitation Act, 1963.

4. The learned Counsel appearing for the Respondent, refuting the submissions of the learned Counsel for the Appellant submits that claim filed by the Appellant was highly belated and was filed after the Resolution Plan of the Corporate Debtor was approved by the CoC. Any claim after approval of the CoC, cannot be admitted. Learned Counsel further submitted that Adjudicating Authority has rightly relied on the judgment of the Hon'ble Supreme Court in **RPS Infrastructure Ltd.** and there is no infirmity in the order of the Adjudicating Authority.

5. We have heard learned Counsel for the parties and have perused the records.

6. The CIRP against the Corporate Debtor commenced on 17.12.2019 and as per notification of the IRP, the last date for submission of claim was 31.12.2019. The Resolution Plan in the CIRP of the Corporate Debtor came

to be approved by the CoC on 16.01.2021. In the List of Creditors of the Corporate Debtor, the name of the Company, i.e., M/s Three C Green Developers Pvt. Ltd. was not mentioned nor claim was noticed in the Information Memorandum. The claim for the first time was filed by the Appellant vide letter dated 06.04.2022, i.e., after more than 14 months of the approval of the Resolution Plan. In the Application, which was filed by the Appellant before the Adjudicating Authority, i.e. IA No.1688 of 2022, the fact was clearly admitted that management of Three C Universal Developers Pvt. Ltd. and the Company is common. In paragraph 10 of the Application, it was pleaded "*It is pertinent to mention that the management of M/s. Three C Universal Developers Pvt. Ltd. is common and same as that of another corporate entity, namely Three C Shelters Pvt. Ltd., which is also admitted to CIRP by this Hon'ble Tribunal vide order dated 20.07.2020...*". In the Application, allegations have been made against the Ex-Management and Directors of the Company, who according to the Appellant have willfully admitted the Corporate Debtor to CIRP and both the Corporate Debtor and the Company – M/s Three C Green Developers Pvt. Ltd. are related party.

7. It is not necessary to decide the reason for not filing the claim by the Company in a timely period. The fact of the matter is that the claim was filed by the Appellant, who is a RP of the Company and was appointed after initiation of CIRP process vide order dated 23.12.2021. The CIRP against the Company was initiated almost two years after claims were invited by the IRP of the Corporate Debtor. For two years, no claim was filed, nor any

Application was filed by the Company in the CIRP of the Corporate Debtor. The Adjudicating Authority has placed reliance on judgment of Hon'ble Supreme Court. In the judgment of ***M/s. RPS Infrastructure Ltd.***, a claim was filed after more than 287 days of the approval of the Resolution Plan by the CoC. The Hon'ble Supreme Court after considering the rival submissions of the parties, upheld the order of the Appellate Tribunal, which had set aside the order of the Adjudicating Authority admitting the belated claim of the Appellant. The Hon'ble Supreme Court in paragraphs 22 and 23 has laid down the following:

“22. 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.

23. 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.”

8. Shri Gaurav Mitra submits that judgment of the Hon'ble Supreme Court in ***M/s. RPS Infrastructure Ltd.*** is distinguishable in the facts of the present case. He relied on paragraphs 18 and 19 of the judgment of the Hon'ble Supreme Court where the Hon'ble Supreme Court has noticed

that there are circumstances in which time can be increased. It is submitted that the present case was a case in which time for filing the claim could have been increased, since the Ex-Management of 3C Green fraudulently did not file the claim in the CIRP of the Corporate Debtor. We have also noticed that Management of 3C Green and the Corporate Debtor was common Management and for non-filing of claim by the Management of 3C Green, the Resolution Professional of 3C Green is fully entitled to take appropriate proceedings against the Ex-Management on allegation of fraud of siphoning of money in the CIRP of the 3C Green. The present is a case of related party, who deliberately did not file the claim in the CIRP of the Corporate Debtor. The claim having been lodged after about 430 days from the date of approval of the Plan and after 750 days from the last date of the receipt of the claim, the Resolution Applicant cannot be saddled with the claims, which were not before the Resolution Applicant when the Resolution Plan was submitted and approved by the CoC.

9. Following the judgment of the Hon'ble Supreme Court in **Civil Appeal No.5590/2021** in the matter of **M/s. RPS Infrastructure Ltd. vs. Mukul Kumar & Anr. – (2023 SCC OnLine SC 1147)**, this Tribunal in **Millennium Construction Pvt. Ltd. vs. Rakesh Kumar Gupta (IRP) – Company Appeal (AT) (Insolvency) No.1172 of 2023**, upheld the order of the NCLT where a claim filed after 511 days, after approval of the Plan by the CoC was rejected. In the facts of the present case, the claim of the Appellant was filed after 14 months from the date when Resolution Plan in the CIRP of the Corporate Debtor was approved by the CoC. In the entire

process of CIRP, at no point of time any Application was filed by the Company or any protest was lodged and as noted above, both the Corporate Debtor and the Company were related parties.

10. The learned Counsel for the Appellant has placed reliance on Section 17 of the Limitation Act and submits that the Adjudicating Authority did not consider the plea of fraud, which has been played upon the creditors of 3C Green, who collectively lend the money to Corporate Debtor. Section 17 of the Limitation Act provides as follows:

“17. Effect of fraud or mistake.— (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or

enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or*
- (ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or*
- (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.*

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

11. Section 17(1)(a) of the Limitation Act provides that when a suit or application is based upon the fraud of the defendant or respondent or his agent, the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud. The present is a case where fraud is being alleged against the Management of 3C Green itself and in which Appellant is Resolution Professional. It is not a case of the Appellant that

any fraud was played by the Corporate Debtor in whose CIRP belated claim has been filed by the Appellant, so that claim could not be filed by the Appellant. No fraud is alleged against the Corporate Debtor. Hence, we fail to see as to how the benefit of Section 17 of the Limitation Act can be claimed by the Appellant in the present case. Clear allegation of fraud is against the Ex-Management of the Company 3C Green itself in which the Appellant is a Resolution Professional.

12. In the facts of the present case, we thus do not find any error in the order of the Adjudicating Authority, rejecting IA No.1688 of 2022 filed by the Appellant. There is no infirmity in the order dated 12.09.2023 passed by the Adjudicating Authority. There being no merit in the Appeal, the Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

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

NEW DELHI

17th October, 2023

Ashwani