

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

IA No. 1758/2022

In

C.P.(IB)2808/2018

Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016

In the matter of

Suraksha Realty Limited

.... Applicant

V/s

Mr. Anuj Bajpai

.... Resolution Professional

In the matter of

Dena Bank

.... Financial Creditor

V/s

**Panache Aluminium Extrusions Pvt.
Ltd.**

.... Corporate Debtor

Order delivered on:04.09.2023

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:-

For the Applicant:- Adv. Ansh Karnawat a/w Adv. Simran

ORDER

Per :- Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory Application has been filed by Suraksha Realty Limited, the Applicant herein on being aggrieved with the actions of the Respondent herein i.e. the Resolution Professional of the Corporate Debtor who has filed an Application under Section 30 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code). The Applicant herein seeks directions to consider its claim as a Financial Debt under the provisions of section 5(8) of the Code for an amount of Rs. 19,93,21,632 inclusive of interest and due treatment to be given to its claim in the Resolution Plan before being approved by the Tribunal.

Submissions of the Applicant :

2. That an Order for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was passed by this Tribunal on 31.12.2019 and appointed the Respondent herein as the Interim Resolution Professional thereafter confirmed as the Resolution Professional (RP).

3. The RP published a public announcement on 02.01.2022, in Loksatta and Indian Express edition.

4. The Applicant seeks the directions of Tribunal to consider the claim of the Applicant as a financial debt under the provisions of section 5(8) of the Code for an amount of INR 19,93,21,632 (INR Nineteen Crores Ninety-Three Lakhs Twenty-One Thousand Six Hundred and Thirty-Two Only) inclusive of interest, which is due and validly payable to the Applicant. The Applicant has relied upon the loan agreement and agreement for pledge of shares dated 05.02.2014, that were agreed by and between the Applicant and the Corporate Debtor. The said loan agreement and share pledge agreement are annexed to the Application.

5. The Applicant submits that in the year 2013, the Corporate Debtor along with its group company Blockwel Pvt Ltd having its registered office address at 355-356, Jagannath Shanker Seth Road, Next to Thakurdwar Post Office, Girgaon, Mumbai- 400002 approached the Applicant and requested for financial assistance for a sum of Rs. 3,00,00,000/- (INR Three Crores Only). Based on mutually agreed terms, an agreement was executed between the Applicant as a "Lender" therein and Panache Aluminium Extrusions Pvt. Ltd. as a "Borrower" Blockwel Pvt. Ltd. acted as a "Co-Borrower" therein and 1) Anil Padliya and Shabnam Padliya, 2) Vipul Padliya, 3) Akshay Padliya and Saroj Padliya, 4) Vaibhav Padliya and 5) Anil Padliya

HUF (collectively referred to as "Confirming Party" No. 1,2,3,4 and 5 respectively). The said financial assistance/loan of Rs. 3,00,00,000/- (Rupees Three Crore only) had been given by the Applicant/Lender to Corporate Debtor/Borrower and Co-Borrower vide RTGS bearing UTR no. ICICH13353045925 dated 19/12/2013 done through ICICI Bank Ltd. As per the said agreement, the Corporate Debtor agreed to repay the said sum along with interest @15% p.a. repayable in following manner :

Due Date	Amount Due
45th Day from the date of disbursement	Rs. 50,00,000/- + interest
90th Day from the date of disbursement	Rs. 50,00,000/- + interest
120 th Day from the date of disbursement	Rs. 50,00,000/- + interest
150 th Day from the date of disbursement	Rs. 50,00,000/- + interest
180 th Day from the date of disbursement	Rs. 50,00,000/- + interest
210 th Day from the date of disbursement	Rs. 50,00,000/- + interest

It was further stipulated that in case of any default in repayment beyond the timelines as mentioned herein above shall attract an additional penalty @ 1% per month on the outstanding dues and shall be levied on the Borrower/Co-Borrower. Time of the repayment is the essence of this Agreement.

6. Further, for the purpose of security, the Co-Borrower i.e., Blockwel executed an agreement dated 05.02.2014 for pledge of shares, wherein the aforementioned Confirming Parties had pledged physical shares of the Co-Borrower in favour of the Applicant. Further, the Co-Borrower have the tenancy rights of office premises bearing Unit no. 356, Jagannath Shankar Sheth Road, Next to Thakurdwar Post Office, Girgum, Mumbai- 400 002. The Confirming Parties are the shareholders of the said Co-Borrower company and individually possess the shares as under-

Sr. No.	Name of the Shareholder	Nos of Shares
1.	Anil Padliya	50,900
2.	Vipul Padliya	26,350
3.	Akshay Padliya	26,350
4.	Vaibhav Padliya	1,45,253
5.	Anil Padliya HUF	43,100
	Total	2,91,953

The said shares were pledged by the aforesaid shareholders as security for the repayment of loan amount and payment of all other amounts due under the said loan agreement as mentioned above.

7. Thereafter, vide a letter dated 09.12.2018, the Applicant called upon the Confirming Parties and Corporate Debtor to make the total payment of Rs. 9,30,58,613/- (Rupees Nine Crores Thirty Lakhs Fifty Eight Thousand Six Hundred and Thirteen Only) towards the repayment of the loan amount and interest accrued thereon failing which Applicant would have the right to invoke the Pledge of Shares under Agreement for Pledge of Shares dated 05.02.2014 and transfer all the aforementioned shares in its name and take possession of the leasehold office premises Unit no, 356, Jagannath shanker Sheth Road, Next to Thakurdwar Post office, Girgum, Mumbai-400 002. However, even after receipt of aforementioned letter the Corporate Debtor, Blockwel or the Confirming Parties did not repay the loan amount or interest.

8. Further, the Confirming Parties, replied to Applicant's letter dated 09.12.2018 vide letter dated 19.12.2018 ignored the letter and further asked to furnish the loan documents in spite of the Confirming Parties being involved in the steps of the transaction and being a signatory to the loan documents.

9. Due to the non-payment of the dues, the Applicant filed a complaint in Economic Offence Wing. Mumbai which was later transferred to Matunga Police Station. Further, Mr. Vipul Padliya was called by the concerned Police Officer who informed the Applicant that the Corporate Debtor is under CIRP proceedings. The applicant

was not aware of any CIRP proceeding of Corporate Debtor or invitation of any claims from the creditors of Corporate Debtor by the Resolution Professional, Therefore, the Applicant could not file its claim as a secured financial creditor of the Corporate Debtor. However, the amount of loans and advances taken by the Corporate Debtor from the Applicant was reflected in the records and ledger account and balance sheet of the Corporate Debtor. Hence, the Resolution Professional is bound to have the knowledge of the said secured loans and advances outstanding and payable to the Applicant by the Corporate Debtor. Further, from the information available on the website, it appears that the Committee of Creditors has approved the Resolution Plan of the Corporate Debtor and has failed to consider the outstanding loans and interest payable by the Corporate Debtor.

10. The Applicant states that the said amount reflects in the Bank Statements and the Ledger Statements, balance sheet of the Corporate Debtor and hence the Applicant is entitled to be treated as a Secured Financial Creditor.

11. The Respondent herein was duty bound to take cognizance of the said claim of the Applicant from the records and the Balance Sheet of the Corporate Debtor and also should have informed the potential Resolution Applicant about the claim of he Applicant.

12. The Applicant has also filed Additional Affidavit dated 28.07.2023 to bring on record additional documents supporting its

claim. The Applicant submits that the Corporate Debtor continued to make interest payments to the Applicant much after the expiry of the 210 days from the date of disbursement as contemplated to be the last date of repayment under the loan agreement. The interest payments were credited to the Applicants account after deducting TDS of 10% paid separately. To corroborate the same, Form 26 AS of the Applicant for Financial Years, 2013-2014 and 2014-2015 reflect credit of Rs. 12,57,534/- and Rs. 5,09,589/- respectively along with corresponding TDS entries. Copies of the Form 26 AS are annexed to the Additional Affidavit.

13. Hence the Application.

Reply of the Respondent :

14. The Respondent has filed its Affidavit in Reply to the Application.

15. The Respondent states that the Application is barred by limitation and the Applicant has failed to file its claim before the Respondent Resolution Professional (RP) within the timeline as provided under the Regulation 12 of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016.

16. The Respondent submits that it is a settled law that once a Resolution Plan has already been approved by the CoC no claims can

be entertained. The Respondent has also filed IA 1045 of 2021 under section 30(6) of the Code almost 14 months prior to the Application filed by the Applicant.

17. Further, with regard as to the nature of claim, the said claim arises out of a loan Agreement dated 05.02.2014 while the disbursement was done on 19.12.2013 and the tenure of the loan was merely 210 days, as stated by the Applicant itself i.e. which expired on 17.07.2014. Therefore, the claim is time barred

18. The provisions of the Code does not warrant the RP to individually intimate every creditor to whom the Corporate Debtor may owe dues. The Respondent has duly complied with the regulations which refers to the Public Announcement and the same is not disputed.

19. Further it is submitted that, the Applicant has failed to file any claim with the Respondent and the Applicant has also failed to file any claim form along with the present Application.

20. The Applicant has not placed on record any extract or financial statement of the Corporate Debtor so as to show that the Balance Sheet reflects the said debt and the applicant was to be treated as “secured financial creditor”. The Applicant has also failed to establish any mortgage or security of the Corporate Debtor over which a charge is created in favour of the Applicant.

21. The Applicant also failed to lodge its claim at the 90th day of the Insolvency commencement date as provided under Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which also expired on 18.03.2020. In the 15th CoC held on 25.03.2021, the CoC approved the Resolution Plan (e-voting concluded on 30.03.2021). Thereafter, the Respondent filed an Application bearing no. 1045 of 2021 for approval of the Resolution Plan and the Applicant has filed the present application in the year 2022. Hence, the present Application needs to be dismissed as is also barred by limitation as the Applicant has failed to file its claim within the prescribed timelines.

FINDINGS

22. We have heard the counsel for the parties and gone through the record.

23. During the course of the arguments, it has been contended by the counsel for the applicant that the Respondent i.e. RP was duty bound to take cognizance of the claim of the applicant from the records of the Corporate Debtor, more particularly the balance sheet. The counsel for the applicant has further argued that the claim of the applicant is based upon in agreement dated 05.02.2014 in pursuance of which a sum of Rs. 3 crore was extended as a loan to the Corporate Debtor along with Blockwel Private limited who was the co-borrower and some individuals are also party to it who pledged their shares in

favour of the applicant as a security to the aforesaid loan. Therefore, the claim of the applicant was a legitimate one and the RP was bound to accept the same on the basis of the Accounts Book maintained by the Corporate Debtor. Since it was not admitted by the RP, a direction ought to be issued to the RP to admit the same.

24. On the other hand, Counsel for the RP has argued that the application is without any merits as no claim was formally filed by the applicant with the RP within the period provided under Regulation 12 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The counsel for the RP has further contended that the alleged loan was advanced by the applicant to the Corporate Debtor was not reflected in the Books of Account. Since the applicant failed to lodge a claim within the time provided by law despite a public notice having been issued by the RP, at this belated stage when the Resolution Plan has already been approved by the CoC, no such claim can be entertained as it would de-rail the entire process. The Counsel for the RP further argued that even otherwise the claim being raised by the applicant is time barred, considering the fact that the loan, if any, was advanced in the year 2014 and as per the repayment schedule, it was re-payable on the 210th day from the date of the loan agreement.

25. We have weighed the contention raised by the Counsel for the parties.

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 others. Vs. NBCC (India) Limited and Others, 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 deserves to be dismissed being without any merit.

27. In view of the above, **IA 1758 of 2022 is dismissed.** Ordered accordingly.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)