



भारतीय दिवाला और शोधन अक्षमता बोर्ड  
Insolvency and Bankruptcy Board of India

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12<sup>th</sup> September 2023

***Subject: Judgment dated 11<sup>th</sup> September 2023 of Hon'ble Supreme Court of India in the matter M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. [Civil Appeal No. 5590 of 2021]<sup>1</sup>***

**Whether the claim pertaining to an arbitral award, which is in appeal under section 37 of the Arbitration and Conciliation Act, 1996, is liable to be included at a belated stage – i.e. after the resolution plan has been approved by the COC.**

**Brief Background:**

- RPS Infrastructure Ltd. (RPS) had entered into an agreement with M/s KST Infrastructure Private Limited (CD) for the development of land for the residential group housing complex.
- While the execution of arbitration award and the appeal against the arbitration award in the arbitration proceedings initiated by RPS against the CD were pending before the Courts, corporate insolvency process (CIRP) was initiated against CD on 27.03.2019 with respect to three projects under section 7 of IBC on an application filed by the financial creditors.
- While the resolution plan submitted by KST Whispering Heights Residential Welfare Association as approved by CoC was pending for approval by Adjudicating Authority (AA), RPS had sent an email to the resolution professional (RP) related to the claim arising out of arbitral award dated 01.08.2016 and the said claim was rejected on the ground that the claim was submitted belatedly after 287 days from the last of claims.
- RPS filed application before AA under section 60(5) of the Code before the AA, seeking a direction for inclusion of its claim in the CIRP which was allowed by the AA. On appeal filed by RP against this AA's order, NCLAT held that RP had fulfilled all its obligations and carried out all the duties diligently and RPS had not acted in a timely manner. The NCLAT while allowing the appeal of RP observed that if RP was allowed to entertain new claims, then the entire resolution plan will be put in jeopardy.
- RPS filed an appeal against the order of NCLAT, before Hon'ble Supreme Court (SC).

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**The SC in its Judgment dated 11<sup>th</sup> September 2023 upheld the order of NCLAT with the following observations:**

1. RPS was not vigilant enough to find out that CIRP was initiated against CD.
2. Section 15 of the Code read with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates public announcements through newspapers, providing impetus to the concept of ‘deemed knowledge’ and that the plea of not being aware of the newspaper announcement, will not be available to a commercial party.
3. Merely, the fact that the AA has not approved a resolution plan, does not imply the setting the clock back by making the CIRP an endless process. In case the belated claims are allowed, there may be possibility that a claimant in similar situation may jump onto the bandwagon.
4. While dismissing the appeal qua the belated claims, SC observed “*We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.*”