

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

11th November, 2022

Subject: Judgment¹ dated 10th November, 2022, in the matter of Edelweiss Asset Reconstruction Company Ltd. Vs. Mohit Goyal [Company Appeal (AT) (Insolvency) No. 583 of 2022]

By an order dated 31.03.2022, the Adjudicating Authority (AA) admitted CIRP in respect of the Corporate Debtor (CD). The IRP made a public announcement and called for claims with the last date of submission of claims as 15.04.2022. Edelweiss Asset Reconstruction Company Ltd. (Appellant) filed its claim on 21.04.2022.

2. The IRP constituted the CoC and the report certifying constitution of CoC was filed before the AA without including the Appellant in the CoC. The first CoC meeting was convened on 28.04.2022 comprising only of the Authorised Representative of the Home Buyers with 100% voting power. The Appellant being aggrieved on having been excluded from the first CoC meeting filed an application before the AA.

3. AA dismissed the application stating that the said application has become infructuous since the Appellant was provisionally accepted on 27.04.2022 and was made a member of the CoC. Aggrieved by the order of AA, appeal was preferred before the NCLAT.

4. NCLAT noted that the Appellant had sent two emails to the IRP on 13.04.2022 and 16.04.2022 stating that they were in the process of filing claims. While the claims were not submitted by the Appellant before the last date, it cannot be discounted that he had in clear terms stated that he was in the process of submitting his claims as a financial lender.

5. It observed that with the IRP is saddled with the crucial responsibility of properly constituting the CoC and also to assign voting share to each creditor based on the financial debts owed to such creditor and without that done, there cannot be a meeting of the CoC. The IRP constituted the CoC on the basis of provisional list of claims and yet chose to exclude the Appellant from the CoC on the ground that there was a need to verify the provisional claims submitted by him. This conduct is unjustified in that the exclusion of FC from the CoC or delayed inclusion of the FC on the CoC is prejudicial to the best interests of the CD. Overzeal shown in the present case, carries with it the risk of stifling the basic canons of fairness and justice, which must be obviated.

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6. The NCLAT set aside the order of AA and held the following: -

- The undue haste shown by the IRP in certifying the constitution of the CoC; excluding a secured financial creditor therefrom on a flimsy pretext and also proceeding ahead with a meeting of an invalidly constituted CoC is not in sync with the form and spirit of the Code and therefore cannot be countenanced.
- The CoC, therefore not having been validly constituted, the logical corollary is that decisions taken in the first meeting of the CoC stood vitiated.

Analysis: The time is of essence under the Code but in the special facts and circumstances when creditor is vigilant in filing claim by informing to IRP, the submission of claim beyond stipulated last date should not disentitle it from becoming part of CoC meeting held after it has submitted its claim.