

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1537 of 2023 & I.A. No. 5520, 5521 of 2024

(Arising out of the Order dated 10.10.2023 passed by the National Company Law Tribunal, Mumbai Bench in I.A. No. 4455 of 2023 CP (IB)/1330 (MB) 2020)

IN THE MATTER OF:

Vikram Laxman Pawar

Aged about 39 years, Occ: Service
R/o, At Post Lonand,
Taluka Khandala District Satara,
Maharashtra – 415521.

...Appellant

Versus

Mr. Sripatham Venkatasubramaniam

Ramkumar,

Resolution Professional of Privilege Industries Ltd.
1605, Block 1, Myhome Vihanga, Gachibowli,
Hyderabad, Telangana 500032.

...Respondent

Present

For Appellant:

**Mr. Krishnendu Datta, Sr. Advocate along with
Ms. Neha Agarwal & Mr. Nipun Gautam.**

For Respondents:

**Mr. Udit Singh, for R-1.
Mr. Abhishek Sharma, Mr. Kritya Sinha &
Mr. Shawaiz Nisar, for R-2.
Mr. Mithilesh Kumar Pandey, for R-3.**

J U D G E M E N T

(05.04.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Appeal i.e., Company Appeal (AT) (Insolvency) No. 1537 of 2023 has been filed by Mr. Vikram Laxman Pawar (in short the ‘Appellant’) who

was workman employee with the Corporate Debtor since 30.09.2010 against the Impugned Order dated 10.10.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-V (in short '**Adjudicating Authority**') in I.A. No. 4455 of 2023 CP (IB)/1330 (MB) 2020. Mr. Sripatham Venkatasubramaniam Ramkumar is the Resolution Professional of the Corporate Debtor i.e., Privilege Industries Ltd. (in short '**Respondent**').

2. It has been brought out that due to one alleged false criminal case, the Appellant was arrested and was behind bars from 03.09.2015 to 16.12.2016 and later he was acquitted by the Sessions Court at Satara vide an order dated 16.12.2016. The Appellant stated that in between the service of the Appellant was terminated by the Corporate Debtor on 19.04.2016 which was challenged by the Appellant before the Labour Court in 2018 and the Labour Court vide its order dated 12.01.2023 reinstated the Appellant with back wages w.e.f. 16.04.2016 till actual reinstatement.

3. It has been submitted that the Appellant informed the Corporate Debtor vide letter dated 06.02.2023 regarding the Labour Court's order and in response to the Corporate Debtor on 07.04.2023 asked the Appellant to join with immediate effect, however, without back wages for which the Corporate Debtor contemplated approaching the High Court.

4. It has brought out that the Corporate Debtor was admitted into CIRP by the Adjudicating Authority vide its order dated 15.02.2023 and IRP issued form 'A'

as public announcement on 22.02.2023 for seeking claims against the Corporate Debtor.

5. It is the case of the Respondent that 90 days time limit from filing of the claims in terms of Regulation 12 (2) of the CIRP Regulations, 2016 expired on 21.05.2023, whereas the Appellant filed the claim with the Respondent on 05.07.2023 and the Respondent rejected the claim of the Appellant vide letter dated 18.07.2023 being delayed claims.

6. In due process, the SNJ Breweries Private Limited was considered as Successful Resolution Applicant (in short ‘SRA’) and the Respondent filed I.A. No. 4004 of 2023 (Plan approval application) before the Adjudicating Authority on 30.08.2023.

7. It has been submitted that the Appellant filed an application before the Adjudicating Authority for his claims which was dismissed by the Adjudicating Authority vide its Impugned Order dated 10.10.2023 and subsequently the Adjudicating Authority approved the Resolution Plan submitted by the SRA based on I.A. No. 4004 of 2023 of the Respondent.

8. The Respondent submitted that as per the Regulation 12 of CIRP Regulations, 2016 the claims are required to be filed within 90 days whereas the Appellant filed his claims much later.

9. It is the case of the Appellant that even after the Corporate Debtor was admitted under CIRP on 15.02.2023, the Corporate Debtor wrote a salary fixing

letter dated 20.02.2023 to the Appellant and the Appellant again brought to the notice of the Corporate Debtor vide his letter dated 10.05.2023 for his back wages in terms of order of Labour Court Satara. However, the Appellant was advised to file the claims before the Respondent as IRP vide letter 19.05.2023 and the Appellant filed his claim in form 'D' on 05.07.2023 for an amount of Rs. 20,25,577/- which was rejected by the Respondent on the ground of delay on 18.07.2023.

10. It is the case of the Appellant that all this happened much prior to CoC approving the Resolution Plan of SRA on 23.08.2023, whereas he has submitted the claims much earlier and has taken up his case for back wages even earlier than filing the claims with the Respondent.

11. The Appellant mentioned that his application No. 4455 of 2023 before the Adjudicating Authority was dismissed on 10.10.2023 on the ground that the claim has been filed by the Appellant beyond 90 days and the application for approving the Resolution Plan of SRA was pending that the Adjudicating Authority at that stage.

12. The only issue in the present appeal is whether the claims of the Appellant could have been considered by the Resolution Professional and the Adjudicating Authority despite being filed after 90 days in terms of Regulation 12 of CIRP Regulations, 2016.

13. We note that the case has chequered history whereby the Appellant was allegedly falsely implicated in criminal case, arrested and subsequently discharged from the charges after legal battle. The Appellant also got order in his favour by the Labour Court, Satara for reinstatement with back wages and the same was informed by the Corporate Debtor much before CIRP Process was admitted by the Adjudicating Authority. It is the fact that the Corporate Debtor in the meantime was admitted under CIRP, but even during this period of the CIRP, the Corporate Debtor wrote letter to the Appellant for wage fixation as noted earlier, which clearly implies that Corporate Debtor/ Respondent know very well of the claims of the Appellant.

14. It is the also admitted fact that the Appellant filed his claim in Form 'D' on 05.07.2023 which was beyond stipulated period of filing the claims with the Resolution Professional.

15. However, we note that the Respondent as Resolution Professional knew about the claims of the Appellant and also knew about the Court orders in favour of the Appellants for his reinstatement in the Corporate Debtor with back wages.

16. We also note that the CoC approved the Resolution Plan of SRA in August 2023 which was approved by the Adjudicating Authority on 23.12.2023, whereas the claims of the Appellant were filed much earlier.

17. The Respondent has cited few judgements of Hon'ble Supreme Court of India in case of *CoC of Essar Steel India Limited Vs. Satish Kumar Gupta &*

Ors. [(2019) SCC Online SC 1478], Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited [(2021) 9 SCC 657] and M/s RPS Infrastructure Ltd. vs. Mukul Kumar & Anr. [(2023) 10 SCC 718].

18. On the other hand, the Appellant brought out that he has taken up regularly with the Corporate Debtor (prior to admission of CIRP) and later with the Respondent regarding back wages and at one stage the Corporate Debtor indicated that they are approaching the High Court regarding back wage as indicated in their letter dated 07.02.2023 which was never challenged by the Corporate Debtor before any High Court.

19. In this connection we take note of relevant background of *M/s RPS Infrastructure Ltd* (Supra) which reads as under :-

"21.... We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

22. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not

being aware of newspaper pronouncements is not one which should be available to a commercial party.

23. 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.

(Emphasis Supplied)

20. The Appellant submitted that he has filed his claim on 05.07.2023 against the last date of filing on 21.05.2023 i.e., delay of 46 days. The Appellant also submitted that list of Creditors was prepared by the Respondent on 13.07.2023, whereas the claims of the Appellant was rejected on the grounds of delay on 18.07.2023.

21. Thus, we note that although there has been delay by the Appellant in filing the claims, however, the Respondent prepared the list of Creditors after receiving the claims with the Appellant and rejected the Appellants claims even later.

It establishes that the Respondent had complete knowledge about the claims of the Appellant and exact amount therein even at the stage prior to formation of list of Creditors.

22. We also note that according to Regulation 12(2) of the CIRP Regulations, 2016 (prior to amendment carried out in 2023; the relevant regulation in the present appeal) the Resolution Professional was mandated to accept the claim only up to 90 days. Similarly, under Regulation 13 of the CIRP Regulations, 2016 obligated the Resolution Professional to decide the claims within 7 days of the last date of receipt of such claims. We have seen earlier that the last date expired on 21.05.2023 and therefore according to Regulation 13 of the CIRP Regulations, 2016 the list of Creditors should have been prepared by 28.05.2023 whereas we note from the Reply Affidavit of the Respondent that final list of Creditor was uploaded only on 13.07.2023, much after the stipulated period in the Regulations. There was sufficient time available to the Respondent to consider the claims of the Appellant but the Respondent did not do so despite the Respondent not meeting the Regulation 13 of the CIRP Regulations, 2016 himself

23. From this it becomes very clear that at one side the Appellant did not meet the requirement of filing of claims within 90 days under Regulation 12 of the CIRP Regulations, 2016, on the other side the Respondent also did meet the requirement of verifying claims within 7 days of the last date of receipt of the claims as required by Regulation 13 of the CIRP Regulations, 2016 and thus the plea of the Respondent regarding timelines is required to be taken with a pinch of salt.

24. We also note that the issue regarding delay claims has been commented by this Tribunal and the following was recorded in our order sheet dated 13.12.2023 which reads as under :-

“Learned Counsel for the Appellant submits that the Appellant has filed its claim with delay on 05th July, 2023 and plan was approved by the Committee of Creditors in August, 2023 and the Judgment of the Hon’ble Supreme Court in the matter of M/s. RPS Infrastructure Vs. Mukul Kumar as referred to in the Order dated 30th November, 2023 is distinguishable since in the said cases claim was filed after approval of the plan by the CoC....”

25. It is reiterated that Appellant has been perusing for his claim from time to time and has filed the claims much before the approval of Resolution Plan of the SRA and much before the approval of Resolution Plan by the Adjudicating Authority, whereas in the case of *M/s RPS Infrastructure Ltd* (Supra) the claims were filed after the approval of Plan by the CoC, as such we hold that the *M/s RPS Infrastructure Ltd* (Supra) is clearly distinguished based on the facts of the cases.

26. The Appellant stated that the Resolution Plan size is approximately Rs. 380 Crores whereas the claims of the Appellant being worker, who has been fighting legal battles, is of only Rs. 20 Lakhs. We also take into account that the Appellant is only a workman empowered with limited resources, professional and legal

background, unlike other Financial Creditors who are fully equipped to defend their claims.

27. We also observe that it is the duty of the IRP under Section 18 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') to collate of the claims and since the Respondent had access to all the letters and claims filed by the Appellant the Resolution Professional should have included the said claims of the Appellant although it was beyond the stipulated 90 days but before his finalising the list of Creditors and the Respondent should have put up for consideration of the CoC. In any case, all these were much prior to consideration and approval of Resolution Plan by CoC and final approval of Resolution Plan by the Adjudicating Authority.

28. It may also be worth considering that although the timeline as stipulated in the Code are sacrosanct and important and sometime critical for resolution of the Corporate Debtor in order to achieve the maximization of value of all the stakeholders, the timelines need to be considered as of directory nature and not as mandatory in nature.

29. We hold that sufficient cause has been made out by the Appellant for consideration of his claims and as such the appeal succeeds and the Impugned Order dated 10.10.2023 rejecting I.A. No. 4455 of 2023 of the Appellant is set aside.

30. Both the parties are directed to appear before the Adjudicating Authority on **15th April, 2024** who shall decide the same in accordance with law. No Costs. Interlocutory Application(s), if any, are Closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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