



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.52/2023 IN CP (IB) No.05/ALD/2018

*(Application under Section 42 r/w Rule 60(5) of the Insolvency
and Bankruptcy Code, 2016 r/w 11 of NCLT Rules, 2016)*

IN THE MATTER OF:

Dr. Rajinder Mohan Bedi & Ors.

..... Petitioner/Applicant

versus

M/S UP Infraestate Private Limited

.....Respondent/ Corporate Debtor

AND IN THE MATTER OF:

PRADEEP KUMAR KESHARI

R/O Flat No. C-502, Kesarwani CGHS Apt., Near Lovely
Chowk, Plot No. 4, Sector-5, Amberhal, Dwarka Sector-6,
South West Delhi, Delhi-110075

.....Applicant

versus

DEVENDRA ARORA,

LIQUIDATOR OF M/S UP INFRAESTATE PRIVATE LIMITED

Reg. No. IBBI/IPA-002/IP-N00200/2017-18/10586 1301,
Vijaya Building, 17, Barakhamba Road, Connaught Place,
New Delhi

..... Respondent

Order pronounced on: 03rd October, 2024

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Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Ashok Kumar Juneja with : For the Liquidator
Sh. Shivam Kumar Gautam, Adv.

Sh. Ashutosh Shukla, Adv. : For the Applicant in IA
No.52/2023.

ORDER

1. This Application has been filed by Pradeep Kumar Keshari under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter also referred as the "Code") challenging the decision of the Liquidator rejecting the claim of the Applicant filed on 18.07.2022.
2. It has been averred in the application that the Applicant is one of the Financial Creditor of Corporate Debtor i.e. U.P. Infraestate Pvt. Ltd. The Corporate Debtor was engaged in the real estate business and had an agreement dated 14.01.2013 with the applicant, wherein the Applicant paid an amount of Rs. 24,50,000/- (Rupees Twenty-Four Lakh

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Fifty Thousand Only) through an IDBI Bank's Cheque (no. 012525) dated 22.12.2012 for acquisition of land of plot size of 250 sq. yards in its proposed project- High Tech City (Vedic City) in Bulandshaher near Greater Noida.

3. As per the said agreement, if the Corporate Debtor fails to allot the said plot within a period of 24 months, or is unable to make allotment of the plot in terms of agreement for other reasons whatsoever, then the Applicant shall be entitled to the refund of Rs. 39,37,500/- calculated @ Rs. 15,750/- per sq. yards for 250 sq. yards of area taking it as the amount of the value of the plot which could have been allotted to the applicant. However, the Corporate Debtor failed to allot the land within stipulated period to the Applicant. Thereafter, the Applicant made several requests for the refund of the amount of Rs. 39,37,500/- to the Company, and the Company issued a cheque dated 07.07.2015 to the Applicant amounting to Rs. 15,00,000/- drawn at Bank of Baroda, Cantt, Lucknow as part payment which was returned as bounced when presented the bank for payment.



4. Subsequently, on an application filed under Section 7 of the Code, against the Corporate Debtor in CP(IB) 05/ALD/2018, this Tribunal vide order dated 13.12.2018 admitted the application starting the Corporate Insolvency Resolution Process (“CIRP”) and appointed Mr. Devendra Arora as the Interim Resolution Professional (“IRP”).
5. After the initiation of the CIRP, a Committee of Creditors (“CoC”) was formed for the Corporate Debtor Company and since no viable resolution plan could be agreed upon by the COC, this Tribunal vide order dated 08.11.2019, directed for liquidation of the Corporate Debtor and appointed Mr. Devendra Arora as the Liquidator.
6. The Applicant submitted that he was unaware of the ongoing CIRP proceedings and further due to ill health, ongoing pandemic and lack of access to relevant documents, there was a delay in filing of claims for his outstanding dues as discussed in para 3 above, but immediately after he learnt about the same, he filed the claim. The Applicant submitted a claim of Rs. 24,50,000/- and interest of Rs. 38,50,000/- (approx.) which totals to



Rs. 63,00,000/- (approx.) as per the agreement dated 14.01.2013 to the Liquidator via email dated 18.07.2020. However, the said claim was rejected by the Liquidator/Respondent vide email dated 09.12.2022.

7. The Applicant submitted that the last date for filing the claim was on 12.12.2019. However, the applicant submitted the claim on 18.07.2020 after a delay of around 219 days in total and 94 days after deducting the period of extension of limitation granted by the Hon'ble Supreme court vide its judgement in Suo Moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022. Furthermore, since the Liquidation process of the Corporate Debtor has not been finalized till date, the claim of the Applicant can still be entertained by the Liquidator.
8. The Respondent filed a reply on 08.08.2023 wherein it is submitted that on 4th Meeting of COC, which was held on 03.09.2019, due to the completion of CIRP i.e. 270 days expiring on 08.09.2019, the COC resolved for the liquidation of the Corporate Debtor and appointed the Resolution Professional as the Liquidator of the Corporate



Debtor. Thereafter, pursuant to the order dated 08.11.2019 of this Tribunal for Liquidation of the Corporate Debtor, the Liquidator has made a Public Announcement in the newspapers viz. "Financial Express" (English Edition) and "Jansatta" (Hindi Edition) on 12.11.2019, wherein the last date of submission of claims with the Liquidator was stated to be 10.12.2019. The Liquidator admitted the claims amounting to Rs. 7,05,29,162 of both the Homebuyers and Employees.

9. Subsequently, Mr. Manoj Dwivedi, (Suspended Board of Director), after the commencement of Liquidation Process of Corporate Debtor offered for the compromise under Section 230 of the Companies Act, 2013 which was accepted by the Creditors of the Corporate Debtor. Accordingly, as per Section 230 of the Companies Act read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, the Respondent/ liquidator has filed an application vide I.A No. 112 of 2021 on 01.03.2021 before this Bench for approval of Scheme of Compromises between the suspended Board of Directors



of Corporate Debtor and the Creditors of the Corporate Debtor.

- 10.** The Respondent submitted that he received the claim in Form D (Proof of Claim by the Financial Creditor) amounting to Rs.63,00,000/-(approx.) as Principal and Interest from the Applicant on 13.07.2021 i.e., after 614 days from the commencement from the Liquidation process of the Corporate Debtor and rejected the claim of the Applicant due to the settlement under section 230 of Companies Act, 2013 as it was under process for implementation. As per the scheme of settlement, all the Creditors will be repaid their principal amount paid to the Corporate Debtor. Further, the Respondent received an amount of Rs.3.65 Crores from the Suspended Director of the Corporate Debtor and has proposed for the disbursement of amount proportionately to the Claimants.
- 11.** The Respondent submitted that while the Applicant has received a Cheque dated 07.07.2015 amounting to Rs. 15,00,000/- drawn on Bank of Baroda, Cantt, Lucknow from the Corporate Debtor, the Applicant has not placed



on record that a case under Section 138 of the Negotiable Instrument Act has been filed by the Applicant or not. Moreover, the limitation period of 3 years has expired on 06.07.2018. Furthermore, the Applicant has belatedly filed the claim after expiration of 614 days from the commencement from the Liquidation process of the Corporate Debtor.

- 12.** The Applicant filed a rejoinder on 11.09.2023 in response to the reply of the Respondent wherein it is submitted that the delay in filing the present application is not deliberate and should therefore be condoned. Further, the case under section 138 of the Negotiable Instrument Act could not be initiated by the applicant as he was assured by the Directors of Corporate Debtor in respect of issuing fresh cheque to that effect. The rest of the contentions are reiterated and therefore not repeated for sake of brevity.
- 13.** We have heard Ld. Counsels of both the parties and perused the record and considered the submissions made before us orally as well as in writing.



- 14.** It is an admitted case of the Applicant that no claims had been filed, when initially the publication was made on 12.11.2019 in pursuance of the admission order dated 13.12.2018 initiating CIRP against the Corporate Debtor after the IRP made publication in this regard. The Applicant therefore, did not file the claim, which was invited by the Resolution Professional giving the last date for submission of the claims in the publications itself.
- 15.** The Applicant submitted that they had no knowledge of the public announcement due to the fact that he was residing in Kolkata till July 2019 and also, due to his ill health. Moreover, due to pandemic, he could not access the relevant documents in stipulated time. Thereafter, when it came to the knowledge of the Applicant about the CIRP proceedings against the Corporate Debtor, he immediately arranged all the documents related to his claim and collated the details of the claim. Further, the Liquidation process of the Corporate Debtor has not been finalised, and therefore the claim of the Applicant can be entertained by the Liquidator.



- 16.** The Respondent, however contended in response that the claim of the Applicant has been rejected because of delay of 614 days in submitting the claims and also, due to the ongoing settlement process under Section 230 of the Companies Act, 2013 as per which all the creditors will be repaid their principal amount that was paid to the Corporate Debtor. Also, after considering the Suo Moto order of the Hon'ble Supreme Court, the delay is only of 94 days.
- 17.** In view of the above, we consider it appropriate to condone the 94-day delay in the Applicant's filing of the claim as the applicant was prevented by sufficient cause from filing this application and the Applicant belatedly submitted the claim in response to the publication, and the claim was filed on 18.07.2020 via email. The process of settlement u/s 230 of the Companies Act with the Corporate Debtor during liquidation is still not completed, and hence, claim of the Applicant can be very well be considered. Therefore, we condone the delay in filing of the claim by the Applicant. However, we are not issuing any directions



regarding the admission of the Applicant's claim by the Liquidator, and are only condoning the delay in filing the claim, which will therefore be considered in accordance with law.

- 18.** The Application is accordingly, disposed of in the above terms.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Dated: 03rd October, 2024