

**TREATMENT OF DELAYED FILING OF CLAIMS AND AMENDMENT OF 2023 - A  
CORRECTIVE STEP FORWARD**

**1. Introduction**

The Hon'ble National Company Law Appellate Tribunal (New Delhi Bench) ("**NCLAT**") in the case of *Suraksha Realty Ltd. v. Mr. Anuj Bajpai*<sup>1</sup> ("**Suraksha Realty**") confirmed the rejection of the claim filed by Suraksha Realty Ltd. through its judgment dated November 01 2023. The claim was rejected by the NCLAT on the ground that the same was filed by Suraksha Realty Ltd. before the Resolution Professional after the resolution plan was already approved by the Committee of Creditors ("**CoC**") of Panache Aluminium Extrusion Private Limited (*corporate debtor*). The Appellant had filed its application<sup>2</sup> before the Hon'ble National Company Law Tribunal ("**NCLT**") (Mumbai Bench) for a direction to the resolution professional to accept its claim as a financial debt under the provisions of the Insolvency & Bankruptcy Code, 2016 ("**Code**"). NCLT took a view that the resolution plan was already approved by the CoC and therefore, no directions could be passed. This view was taken by the NCLT *albeit* the fact that the resolution plan was yet to be approved by the NCLT under Section 31 of the Code.

**2. Amendment of 2018**

The provisions of the Code have undergone several changes since its enactment while aiming to ensure and to further tighten the time bound procedure. One such amendment was brought in 2018 through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). As per the said amendment, the claims could be filed before the interim resolution professional or the resolution professional, as the case may be, before the ninetieth day of the insolvency commencement date. Despite the said amendment, delay in filing the claims beyond the stipulated time period (as mentioned in Regulation 12 (2)) was condoned by the NCLT's and the NCLAT in few cases and they took a view that Regulation 12 (2) of the CIRP Regulations is directory in nature and not mandatory and had condoned delays in filing the claims. However, there are precedents wherein the NCLT and NCLAT took a stricter view and allowed condonation of delay in filing the claims only if there were justifiable reasons for the delay and wherein the corporate insolvency resolution process had not a reached the stage of approval of resolution plan by the CoC.

**3. Judicial precedents**

The Hon'ble Supreme Court of India ("**Apex Court**") in the much-celebrated judgment of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*<sup>3</sup> ("**Essar Steel**"), was also faced with the issue of 'undecided claims' after the acceptance of the resolution plans. The Apex Court while not allowing such 'undecided claims' held that '*A successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan has been accepted as this would amount to hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the*

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<sup>1</sup> Company Appeal (AT) (Insolvency) N. 1389 of 2023; 2023 SCC OnLine NCLAT 2171

<sup>2</sup> I.A. No. 1758 of 2022 in C.P. (I.B.) No. 2808 of 2018; decided on September 04, 2023

<sup>3</sup> 2019 SCC OnLine SC 1478

*business of the corporate debtor*'. This was also reiterated later by the Apex Court in the case of *Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*<sup>4</sup> ("**Ghanashyam Mishra**").

The NCLAT while passing the judgment in the *Suraksha Realty's* case relied upon the judgment in the case of *RPS Infrastructure Limited v. Mukul Kumar & Anr.*<sup>5</sup> ("**RPS Infrastructure**") wherein the Apex Court had already taken a view that no claims can be entertained after the approval of the resolution plan by the CoC. In the *RPS Infrastructure* case, the Apex Court was faced with a situation where the claim of an award holder was rejected by the resolution professional as it was filed after the approval of the resolution plan by the CoC. This rejection was challenged before the NCLT. NCLT allowed the reliefs in favour of the award holder while observing that, *amongst others*, its claim would have appeared in the concerned corporate debtor's books of accounts. The grant of relief in favour of the award holder was challenged before the NCLAT<sup>6</sup> by the resolution professional and NCLAT reversed the decision of the NCLT. The matter was then escalated to the Apex Court wherein the decision by the NCLAT was affirmed. The rationale for the Apex Court to disallow the claim of the award holder was that the successful resolution applicant cannot be surprised with new claims which were not before it at the time of submission of the bids and for consideration in the resolution plan.

In the *RPS Infrastructure* case, reliance was placed on the judgment passed by the Apex Court in the cases of *State Tax Officer v. Rainbow Papers Limited*<sup>7</sup> ("**Rainbow Papers**") and *Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Private Limited and Others*<sup>8</sup> ("**Paschimanchal**"), wherein the Apex Court has taken divergent views. However, the Apex Court, in the *RPS Infrastructure* case, was of the view that the questions of law in *Rainbow* and *Paschimanchal* were different.

In the *Rainbow Papers'* case, the Apex Court was dealing with the issue of whether the provisions of the Code (in particular Section 53 of the Code) overrides Section 48 of the Gujarat Value Added Tax, 2003 ("**GVAT**"). The Apex Court, in this case, was of the view that the "State" would be a secured creditor and that a security interest could be created by operation of law. By holding so, the Apex Court set aside the resolution plan, which was approved by the CoC and the NCLT in light of the fact, that the statutory dues under the GVAT were not considered. The Apex Court further held that the time period for filing claims prescribed under the IBBI CIRP Regulations is directory and not mandatory. The key takeaway from this case is that ignorance of the statutory claim would render the resolution plan void. It is pertinent to note that in the *Rainbows Papers'* case, the claim was filed by the State Tax Officer after the resolution plan was already approved by the CoC and therefore, the same was rejected by the resolution professional. The rejection of the claim was affirmed by NCLT and NCLAT, which was later reversed by the Apex Court. However, the Apex Court by a later decision in *Pashchimanchal'* case, took a different view than before and held that "*The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.*" However, the issue on any delayed filing of the claims was not before the Apex Court in *Pashchimanchal's* case and it was restricted to the issue *qua* the treatment of

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<sup>4</sup> 2021 SCC OnLine SC 313

<sup>5</sup> 2023 SCC OnLine SC 1147; decided on 11 September 2023

<sup>6</sup> Company Appeal (Ins.) No. 1050 of 2020; decided on 30 July 2021

<sup>7</sup> 2022 SCC OnLine SC 1162

<sup>8</sup> 2023 SCC OnLine SC 842

statutory dues. In any event, both the judgments have been passed by an equal strength of the bench of the Apex Court and therefore, the treatment of the statutory dues may have a prospect of reference to a larger bench.

The decision in *Rainbow Papers'* case undoubtedly opened an avenue for several creditors to adopt a casual approach in filing their claims in the corporate insolvency resolution process under the Code. While one may argue that the claim can be filed and accepted after the approval of the resolution plan by CoC on the basis of the *Rainbow Papers'* judgment, however, it cannot be ruled out that the said judgment was passed in a different set of facts and circumstances and dealt with the requisites of a resolution plan. As mentioned earlier, the ratio as it seems to be in the said judgment is that all the statutory dues have to be considered in a resolution plan, without which a resolution plan cannot be approved and be given a 'go ahead'.

#### **4. Amendments in 2023 – a way forward to corrective course**

Though the amendments were brought in from time to time, the insolvency regime continued to witness delays in the completion of the resolution process which was not in the spirit and intent of the Code. There were several stakeholders who filed their claims beyond the stipulated period of 90 (ninety) days in the CIRP Regulations and in all such cases the intervention by NCLT became inevitable. This is so because the claims could be considered only after the delay in filing the claim was condoned by the NCLT. Therefore, such adjudication of applications has only burdened the NCLT with additional litigation which is time consuming and has a staggering impact on the completion of the resolution process. Additionally, fixing of a timeline of 90 (ninety) days when the entire process itself was delayed, has the effect of militating value realization adversely being detrimental to the stakeholders. Having realized these setbacks, amongst other issues, the Insolvency and Bankruptcy Board of India ("IBBI") introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 ("**Amendment**") on September 18, 2023.

The timeline of 90 (ninety) days in Regulation 12 (2) of the CIRP Regulations was earlier provided in 2018 to avoid any potential delay in filing claims, and to ensure a timebound resolution process. In other words, giving such timelines in the CIRP Regulations was a pragmatic approach to ensure a smooth and contiguous resolution process and did not seem to have any bearing on the ability of a resolution professional to determine the same as such. This being the rationale and since the courts in the past have condoned delays in filing the claims until the stage of approval of resolution plans, IBBI notified the Amendment and deemed it fit to take an inclusive approach. As per the Amendment, the claims are to be filed on or before the last date as mentioned in the public announcement in Form AA of the CIRP Regulations. However, at the same time, the amended CIRP Regulations have retained the window for creditors to file the claims upto the date of issue of request for resolution plans under Regulation 36B of the CIRP Regulations or 90 (ninety) days from the insolvency commencement date, whichever is later. Therefore, IBBI has adopted a flexible and inclusive approach, which is practical in nature, while retaining the time period of 90 (ninety) days. It is significant that, as per the timelines stipulated in the CIRP Regulations, the date for issuance of the request for resolution plans falls on the ninetieth day of the insolvency commencement date and therefore, the attempt seems to be not disturbing the same.

The amendment brought in the CIRP Regulations is in line with the judicial precedents passed wherein it has been held that any resolution applicant cannot be surprised with new claims which it was not aware of at the time of submission of its bids. In fact, it is for this reason that Form G has also been

amended by the Amendment and the date for issuance of request for resolution plans is required to be provided while inviting the 'expression for interest' under Regulation 36A of the CIRP Regulations. This ensures that the creditors are aware of the limitation period for filing their claims.

However, in the event, the claims are not filed within the time period as stipulated in the amended Regulation 12 and are filed beyond a period of 90 (ninety) days from the insolvency commencement date, such creditor will have to provide its reasons for the delay. The insolvency regime has witnessed substantial delays by various creditors in filing their claims and then, knocking the doors of the NCLT for adjudication on the condonation of delay causing delay in the resolution process. Therefore, it was imperative that accountability be attached to the creditors by making it mandatory for them to explain the reason for the delay in filing the claim. The intent behind doing so, appears to be to discourage delayed filing of claims in cases of creditors *sans* any justifiable grounds for such delay. Necessary amendments have also been brought in Regulation 13 for the resolution professional to verify the claims and categorize them as acceptable or non-acceptable for collation for the claims received between the time period after the expiry of the period specified under Regulation 12 (1) of the CIRP Regulations and accordingly, inform the concerned creditor of the same. Further, the resolution professional is required to provide the necessary intimation to the concerned creditor if the claim is not accepted. The new amendments have also provisioned for inclusion of the belatedly filed claims which were accepted, subject to the recommendation by the CoC and its consequent treatment in the resolution plan<sup>9</sup>. However, the intervention by the NCLT is still required for condoning the delay and adjudication and the inclusion of such claims have not been left completely at the discretion of the resolution professional or the CoC<sup>10</sup>.

## 5. Conclusion

Continuous and consistent attempts have always been made to do away with the lacunae when unprecedented situations arise and directly or indirectly create roadblocks for timely completion of resolution process. IBBI and the judicial precedents have always endeavored to tighten the knot for completion of the corporate insolvency resolution process. However, given the complexities involved, including the time spent in adjudicatory process on account of delayed filing of claims, the achievement of the objectives of the Code seems to be brittle.

Delayed filing of claims and the adjudication on condonation of delay for such filings are one of the major hindrances for the Code in meeting its objectives of ensuring a time bound process. Having realized the academic nature of filing such applications when the resolution process itself has not achieved its contemplated stage, such adjudication only burdens the NCLT with litigation work and causes further delay in the resolution process. Therefore, the Amendment is a huge respite and a welcome step.

While the Amendment has taken a sincere effort to do away with the difficulties faced and to reduce litigation work, the responsibility of the NCLT to determine the condonation of delay in filing the claims remains intact with them. It appears that as much as the approach is to make the insolvency resolution process congruous, obstacles such as delayed claim filing and intervention by NCLT is inevitable.

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<sup>9</sup> Regulation 13 (1C) (b) of the CIRP Regulations

<sup>10</sup> Regulation 13 (1C) (c) of the CIRP Regulations

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