

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (COURT-II)

Item No. 6
(IB)-470(ND)/2017
IA/5623/2020

IN THE MATTER OF:

Amit Kumar Malik

... **Applicant/Petitioner**

Vs.

M/s. Kindle Developers Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 31.05.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

Adv.Sanyam Goel and Adv.MohtashimKibriya for Applicant in IA-5623/2020

ORDER

Order is pronounced in the Open Court today.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 470 (ND)/2017
IA/5623/2020

IN THE MATTER OF:

ANURAG SACHDEVA
C- 26, SECTOR 56,
NOIDA- 201301
UTTAR PRADESH

...APPLICANT/FINANCIAL CREDITOR

VERSUS

KASHI VISWANATHAN SIVARAMAN
RESOLUTION PROFESSIONAL
M/S KINDLE DEVELOPERS PRIVATE LIMITED
CIN NO. U701 OODL2011 PTC215632

REGISTERED ADDRESS:

B-9, SECOND FLOOR, MODEL TOWN-II,
DELHI 110009

CORPORATE OFFICE

TECH BOULEVARD, CENTRAL BLOCK,
PLOT NO 6, SECTOR 127, NOIDA- 201301
UTTAR PRADESH

...RESPONDENT/CORPORATE DEBTOR

AND IN THE MATTER OF:

SHRI AMIT KUMAR MALIK

.....PETITIONER

VERSUS

M/S KINDLE DEVELOPERS PRIVATE LIMITED

.....RESPONDENT

SECTION: U/S 60(5)(b) of IBC, 2016

Order Delivered on : 31.05.2021



CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. L. N. GUPTA, MEMBER (TECHNICAL)

PRESENT: -

Adv. Sanyam Goel & Adv. Mohtashim Kibriya for Anurag Sachdeva (Applicant) in IA No. 5623 of 2020
CS Suraj Sharma
Respondent - Shriya
Raychaudhuri Adv. Rachit
Mittal for Noida Authority
Adv Gaurav Mitra, Adv Kanishk Khetan for
RP Adv. Asish Nischal for R-22
Adv Anurag Ojha and Shivam Malhotra for the Respondents

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present petition has been filed under Section 60(5)(b) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for issuance of necessary direction to the Resolution Professional for acceptance of the complete claim of the applicant.

2. The facts as mentioned in the application in brief are as follows: -
- i. That CIRP was initiated against the Corporate Debtor vide order dt.09.03.2018.
 - ii. That the Applicant is the allottee of Flat No. T-8/A-312 in the group housing project namely, 'Shubhkamna Lords' of the Corporate Debtor located at Plot No. SC-01/D-1, Sector 79, Noida vide a Builder-Buyer Agreement dated 22.11.2014 between the Applicant and the Corporate Debtor.
 - iii. That the Applicant has made payment towards the cost price of the Apartment and in aggregate an amount of Rs. 9,00,000/- has been paid in terms of the Builder Buyer



Agreement in the following manner and receipts against the same have been issued by the Corporate Debtor:

Sl. No.	Mode of payment	Amount (in Rs)	Receipt number	Date of receipt
1	Cash	700,000	3952	03.03.2015
2	Cheque number 613474 drawn on OBC Bank	100,000	0145	27.09.2012
3	Cheque number 613796 drawn on OBC Bank	100,000	0146	27.09.2012
Total		900,000		

- iv. That out of Rs. 9,00,000/-, Rs. 2,00,000/- was earlier invested in the project namely "Legend" located at Sector 150, Expressway Noida owned by the Corporate Debtor, which was later transferred/shifted to the project "ShubhkamnaLords" owned by the same Corporate Debtor (Kindle Developers Pvt. Ltd) by stating that the project "Legend" was aborted due to certain issues and the same could not be continued. Therefore, the Corporate Debtor had transferred the amount of investment made by the Applicant in its other running project namely, "Shubhkamna Legend" located Sector-150, Expressway, Noida UP.
- v. That in pursuant of the public announcement made on 03.08.2018 by the IRP, Mr. Anurag Nirbhaya, the Applicant filed its claim as a Financial Creditor on 13.08.2018.
- vi. Whereby the last date of submission of the claims was 14.08.2018.

- vii. That the Applicant received an email dated 15.01.2019 from the Resolution Professional, stating that only Rs. 2,00,000/- is being admitted as claim of the Applicant against Rs. 9,00,000/-, the actual amount paid by him with a reason for the difference being the 'cash payment'. That the claim of the Applicant is being shown at serial no. 43 of the List of Creditors issued by the Resolution Professional.
- viii. That the Applicant had replied to the Resolution Professional giving details of the cash withdrawn from his bank account while submitting bank statements in support of the same and requested the Respondent to modify the claim amount including the sum of Rs. 7,00,000/- paid in cash.
- ix. That Vide his email dated 01.02.2019, the Applicant has requested the 'Resolution Professional' to re-examine the claim on the basis of the proof of payment being the valid cash payment receipts issued by the Corporate Debtor and annexed by the Applicant in its Claim Form-CA.
- x. That the Respondent vide its email dated February 4, 2019 replied that *"This is to inform you that the proof provided by you is not sufficient for the admittance of claim. Therefore, we are provisionally accepting the claim and is subject to verification from the Kindle Books of accounts."*
- xi. It is submitted that the Resolution Professional has wrongly disallowed the substantial claim of the applicant in its entirety. That the CoC in its 5th meeting approved the Resolution plan of the Corporate Debtor. However, the same has not been approved by the NCLT yet.
- xii. That the Applicant has placed reliance upon the following decisions: -



- a) Hon'ble Supreme Court in the matter of '*Swiss Ribbons Pvt Ltd &Ors - Writ Petition (Civil) No 99 of 2018*', by its decision dated Jan 25, 2019 held that the "**Resolution Professional has no adjudicatory Powers**".
- b) Hon'ble NCLAT New Delhi, in the *Company Appeal (AT) (Insolvency) No. 743 of 2018 [arising out of Order dated 12th October, 2018 by NCLT, Mumbai Bench in MA No. 55012018 in GP 1696/l&BC/MBIMAH/2017]* in the matter of *Mr. Navneet Kumar Gupta, Resolution Professional of Monnet Power Company Limited Versus Bharat Heavy Electricals Limited*, held that :

"the resolution professional is given administrative as opposed to quasi-judicial powers

....As opposed to this, the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. Sections 41 and 42, by way of contrast between the powers of the liquidator and that of the resolution professional, are set out hereinbelow: .. "

....It is clear from these Sections that when the liquidator - "determines" the value of claims admitted under Section 40, such determination is a - decision", which is quasi-judicial in nature, and which can be



appealed against to the Adjudicating Authority under Section 42 of the Code."

- c) The National Company Law Tribunal, Principal Bench New Delhi in GP No. 297/2018 in the matter of Col. Sanjeev Dalal Vs. International Recreation and Amusement Ltd. vide order dated 02.08.2019, inter-alia, passed an order stating that even if the Resolution Plan which is approved by COC but pending for adjudication before the Adjudicating Authority still at this stage claims of the Financial Creditor can be accepted and adjudicated by the RP.
- xiii. That Section 18 and Section 21(1) Insolvency and Bankruptcy Code, 2016 read with Regulation 10, 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, clearly establish the duties of the Interim Resolution Professional or a Resolution Professional. It is clear from a reading of the Code as well as the Regulations that the Resolution Professional has no adjudicatory powers. He has to collate the claims on the basis of the available proofs of claims as may be submitted by the creditors along with the claim submission forms or at the time of substantiation of their claims, which in the present case, the Resolution Professional has miserably failed causing irreparable loss to the Applicant, and is liable to be corrected at this stage itself.

3. The Respondent/Resolution Professional has filed its reply and has asserted the following contentions:



- i. That the Application (I.A No. 496/2018) under section 19(2) of the Code is moved by the Respondent and the same is pending before this Tribunal. The erstwhile management of the Corporate Debtor had never cooperated with the Applicant in providing full documents. This Tribunal vide order dated 08.11.2019 had ordered the Promoter/ Directors namely, Mr. Parmjit Gandhi) to provide tally backup to the Applicant from inception of the Company to till the date of the CIRP proceedings or any transactions thereafter, which has not been provided, by the erstwhile management of the Corporate Debtor till the date of the filing of the application.
- ii. That the Applicant had filed the claim for Rs. 9,00,000/- on 13.08.2018. On 15.01.2019, the Respondent sent an email to the Applicant informing him that Rs. 2,00,000/- is being admitted as claim of the Applicant against Rs. 9,00,000/- and the difference in the balance amount of Rs. 7,00,000/- which was paid in cash was subject to verification.
- iii. That the Applicant had received an email from the Applicant on 01.02.2019 in response of email dated 15.01.2019 justifying that he had withdrawn monies from bank account on different dates to make payments to the Corporate Debtor and it is to be noted that no receipts were issued by the Corporate Debtor on the date of withdrawal, made by the Applicant. The Applicant had also alleged that Corporate Debtor on 03.03.2015 had issued receipt no. 3952 against the payment of Rs.



7,00,000/- . In response to that Respondent sent an email to the Applicant on 04.02.2019 that the proof shown by the Applicant with regard to balance amount of Rs. 7,00,000/- are not sufficient for the acceptance of the claim and the same is subject to verification from the books of accounts of the Corporate Debtor.

- iv. That the Respondent cannot blindly rely on the receipt no. 3952 dated 03.03.2015 because the same can be fabricated, until the claims for the amount of Rs. 7,00,000 are verified and confirmed from the books of accounts of the Corporate Debtor as to the receipt of money of Rs. 7,00,000 on 03.03.2015 by the Corporate Debtor.
- v. That on the basis of the amount admitted of Rs. 2,00,000/- plus interest at the rate of 8% p.a. of Rs.1,00,384 the Respondent had given voting share to the Applicant, which is 0.01% and he has been inducted in the CoC. The list of Allottees has been shared with the CoC members as on 28.10.2019 and it has been informed that claims are subject to the receipt of any further documents, given an Application under section 19(2) is subjudice before the NCLT, New Delhi Bench.
- vi. That the Homebuyers Association of the project 'Lords' namely, Lords Social Welfare Association (hereinafter referred to as 'LSWA' in which the Applicant is also one of the 'member) had submitted the Resolution Plan for the revival of the Corporate Debtor as well as for completion of the project 'Lords'. The resolution plan submitted by LSWA has been approved by the CoC in its 5th



meeting of CoC dated 04.12.2019 by 92.39% voting share.

- vii. That the Application filed by the Applicant is not maintainable because the Resolution plan submitted by the successful Resolution Applicant, LSWA is approved and Resolution Applicant cannot be burden up with the undecided claim as the same have been considered extinguished.
- viii. That the Applicant himself has voted in favour of the Resolution Plan. It is deemed that the Applicant knows the law that after the approval of the Resolution Plan his undecided claim will get extinguished. The Respondent had moved an Application (IA No. 1664/2020) for the approval of resolution plan u/s 30(6).
- ix. That the present Application is not maintainable in view of the law laid down by the Hon'ble Supreme Court of India and Hon'ble NCLAT in the landmark rulings in the matters of *Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors.—2019 SCC OnLine SC 1478, JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. in Company Appeal (AT) (Insolvency) No. 957 of 2019* and *Santosh Wasantrao Walokar vs. Vijay Kumar V. Iyer Resolution Professional Murli Industries Limited in Company Appeal (AT) (Insolvency) No. 871-872 of 2019*. The Hon'ble Supreme Court held that no claims can be entertained after the approval of the resolution plan. On this ground, the present application is liable to be dismissed *in limine*.
- x. That the NCLT, Mumbai Bench in the matter of Amar Remedies Ltd. in MA 524/2018 in C.P. No.



(IB) 1053 (MB)/ 2017 vide order dated 04.12.2018 held;-

"It has been further informed by the applicant that Resolution Professional has applied for the approval of the Adjudication Authority, which is pending before this Bench. At this stage, no such direction can be given to the Resolution professional for accepting the claim: of the applicant. There is no provision in the Code, which permits that after approval of the resolution plan by the CoC, Resolution professional is authorized to accept any claim from any of the creditors. Therefore, application filed by the Financial Creditor/Non applicant is not maintainable at this stage, hence rejected."

- xi. That the Annexure 10,-clause 12 of the Resolution Plan specifically gives an opportunity to substantiate the claims by presenting original documents before the Resolution Applicant/ Corporate Debtor within 60 days from the date of approval of the resolution plan i.e., cut off date. The relevant excerpts of the clause 12 of the Annexure 10 of the Resolution Plan are reproduced below :

*"12. Claims received but not **admitted by the Resolution Professional** will be given an opportunity to substantiate their claims by presenting original documents before RA/CD within 60 days of Cut Off Date, if their balances are outstanding as on 31.03.2018 in the books of account of the Corporate Debtor."*

- xii. That this Tribunal has no jurisdiction to direct the Respondent to admit the claim of the Applicant

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where there are no documents to verify the veracity of the claim filed with the Resolution Professional/Respondent.

xiii. That the claim filed by the Applicant to the tune of Rs. 7,00,000/- stands extinguished in view of the above-mentioned decisions laid down by the Hon'ble Supreme Court and Hon'ble NCLAT. Although, the Applicant does have an opportunity to substantiate their claim within 60 days from the date of approval of the resolution plan by this Tribunal under section 31 of the Code, 2016, as per Clause 12 of Annexure 10 of the Resolution Plan.

4. The Petitioner/Financial Creditor has filed its written submissions and submitted the following :

- i. That the RP has not been able to prepare the books of accounts or obtain necessary documents from the promoters of the Corporate Debtor for a period of more than 2 years from the CIRP commencement date, and that as a retail investor and common man, the Applicant has no means or resources to provide any other additional information to the RP other than the payment receipts issued to him by the Corporate Debtor.
- ii. That the RP has not followed the process of Law, which lays down the clear guidelines regarding the verification of claim. That Regulation No. 8A of IBBI (CIRP) Regulations, 2016 lays down a list of documents which RP can consider regarding the verification of Claim which inter-alia includes **"receipt of payment made"**.
- iii. That during the course of argument the counsel of RP has stated that the clause no. 12 of Annexure 10 of the Resolution Plan inter-alia states as under:



"Claims received but not admitted by the Resolution Professional will be given an opportunity to substantiate their claims by representing original documents before the RA/CD within 60 days of cutoff date, if their balances are outstanding as on 31.03.2018 in the books of accounts of the Corporate Debtor."

iv. That in the present case, the Resolution Professional while not considering the requests is prejudicially affecting the rights and position of the Applicant, whose hard earned money is at stake and no heave is being paid to the significant supporting documents produced by him. That if the books of accounts are not available with the RP or if the same are not true and correct for any reason whatsoever, then the Applicant cannot be made a sufferer due to the negligence of a third party.

5. The Respondent/Resolution Professional has also filed its written submissions and has submitted the following :

i. That the Hon'ble Supreme Court of India in "*Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.—201 & SCC OnLine SC 1478*" observed that:

'88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of section 31 of the



Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us here in above. For these reasons, the NCLAT judgment must also be set aside on this count.”

- ii. That the Hon'ble Appellate Tribunal (NCLAT) *JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. in Company Appeal (AT) (Insolvency) No. 957 of 2019* held the following:

“144. Therefore, the conditions stipulated by the Adjudicating Authority at paragraph 128(k) of the impugned order being against the provisions of law, is set aside. The Appellant being the successful Resolution Applicant’ cannot be asked to face with undecided claims after the ‘Resolution Plan’ submitted by him and accepted by the ‘Committee of Creditors’ as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business



of the 'Corporate Debtor', as held by the Hon'ble Supreme Court."

- iii. That with regard to the extinguishment of liabilities, the Hon'ble Appellate Tribunal (NCLAT) vide order dated 24.01.2020 in the matter of *Santosh Wasarntrao Walokar vs. Vijay kumar V. Iyer Resolution Professional Murli Industries Limited in Company Appeal (AT) (Insolvency) No. 871-872 of 2019* answered the question regarding "Whether those claims that are not dealt under the resolution plan can be held to be extinguished under the provisions of the I&B Code?". The contents of answer/ observation of the Hon'ble NCLAT are reproduced below :

All claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly who has to be paid in order that it may then take over and run the business of the Corporate Debtor. Therefore, claims that are not submitted or are not accepted or dealt with by the Resolution Professional and such Resolution Plan submitted by the Resolution Professional is approved then those claims would stand extinguished."

6. We have heard the Ld. Counsel for the applicant as well as respondent/Resolution Professional (hereinafter referred as 'RP') and perused the averments made in the application, reply as well as written submissions filed on behalf of respective parties.

7. In course of hearing, Ld. Counsel for the applicant as well as RP has raised all the facts mentioned in the written submissions. Therefore, it is needless to repeat the arguments advanced on behalf of the both the counsels.



8. On perusal of averments made in the application, reply filed by the Resolution Professional, the written submissions filed by the parties and submissions made by the Ld. Counsels appearing for the Parties, when we consider the claim of the Applicant, we notice that out of the claim of Rs. 9 Lakhs, part of the claim of the applicant i.e, Rs. 2 Lakhs has already been admitted by the Resolution Professional and the part of the claim of Rs. 7 Lakhs has been provisionally accepted subject to verification and that has been communicated by the RP to the applicant vide email dated 04.02.2019.

9. We notice that the ground for not accepting the claim of Rs. 7 lakhs paid by the applicant is that the payment was made in cash and the books of accounts of the Corporate Debtor (hereinafter referred as 'CD') were not made available by the Suspended Board of Directors of the Corporate Debtor to the Resolution Professional and that is the reason the verification of that claim could not be done.

10. We further notice that along with the application, the applicant has enclosed the three (3) money receipts issued by the Corporate Debtor (at page 32 to 34 of the application).

11. We further notice that through two cheques dated 28.04.2012, the payment of Rs. 200000/was made on 27.09.2012, whereas Rs. 7 lakhs was paid in cash on 03.03.2015 and that is the reason, the Resolution Professional has only accepted the claim of Rs. 2 lakhs made through two cheques and not accepted the claim of Rs. 7 lakhs, which was paid in cash.

12. From the averments made in the reply of the RP, we notice that the ground for not accepting the claim of payment is that due to absence of the documents of the Corporate Debtor, the genuineness of the money receipts could not be verified.

13. In course of hearing, Ld. Counsel for the applicant has referred to Regulation 8A of the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the 'IBBI Corporate Persons Regulations') and submitted that Regulation 8A of the IBBI Corporate Persons Regulations provides the mode to prove the claim.

14. Therefore, at this juncture, we would like to refer to the Regulation 8A,13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same are quoted below :

8A. Claims by financial creditors.

(1) A person claiming to be a creditor in class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to creditor in class may be proved on the basis of :

- (a) the records available with an information utility, if any; or*
- (b) other relevant documents, including any -
 - (i) Agreement to sale;*
 - (ii) letter of allotment;*
 - (iii) receipt of payment made ; or*
 - (iv) such other document, evidencing existence of debt.**

(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.

13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every



claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be –

- (a) available for inspection by the persons who submitted proofs of claim;*
- (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;*
- (c) displayed on the website, if any, of the corporate debtor;*
- (d) filed with the Adjudicating Authority; and*
- (e) presented at the first meeting of the committee.*

14. Determination of amount of claim.

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

15. From perusal of the relevant regulations referred above, we notice that the Regulation 8A(2) of the IBBI Corporate Persons Regulation, stipulates the modes by which, the existence of debt due to a creditor



in class may be proved. We further notice that if the records are not available with an information utility, then it can also be proved by other relevant documents including an agreement to sale, letter of allotment, and receipt of payment made. Here in the case in hand, it is not the case of the applicant that he is not a creditor in a class. Only dispute is in respect of the quantum of payment made by him and in support of that he has filed the photo copy of the money receipts issued by the Corporate debtor. Out of the three receipts submitted by the applicant, two were found to be genuine whereas the third one, on the basis of which the applicant claimed to have paid Rs. 700000/ in cash, according to the Resolution Professional, "**it can be forged**". But no final decision is taken by the Resolution Professional that the document is a forged one. Rather he simply had an apprehension about the genuineness of the money receipt.

16. Section 62 and 63 of the Indian Evidence Act, 1872, deals with the admissibility of Primary and Secondary evidences. On perusal of the documents with the application, we notice that all these documents are the photocopies of the documents, therefore, at this juncture, we would like to refer to the provisions of Section 63 of the Indian Evidence Act, 1872 and same is quoted below: -

Section 63 in The Indian Evidence Act, 1872 :

63. Secondary evidence.—Secondary evidence means and includes:-

- (1) *Certified copies given under the provisions hereinafter contained;*
- (2) *Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;*
- (3) *Copies made from or compared with the original;*



- (4) Counterparts of documents as against the parties who did not execute them;
- (5) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations:

- (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
- (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

A bare perusal of the provision shows that Copies made from the original by mechanical processes, which in themselves insure the accuracy of the copy, and copies compared with such copies comes under the purview of the Secondary evidence.

17. An illustration given in the provision also show, a copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter. When we consider the documents filed by the applicant in terms of Section 63 of the Indian Evidence Act, 1872 read with Regulation 8A(2) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, we are of the considered view that the applicant has enclosed the relevant documents for verification as per provisions of the Indian Evidence Act, 1872 read with Regulation 8A(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.



18. We further notice that the applicant has enclosed the photocopy of the passbook to show withdrawal of the amount from the bank and that has also been informed by the applicant to the Resolution Professional vide email dated 01.02.2019 (at page 70 of the application). In that email, it has been clearly mentioned that on 11.02.2015, the applicant has withdrawn Rs. 3 lakhs; on 21.02.2015, the applicant has withdrawn Rs. 1.5 lakhs and on 02.03.2015, the applicant has withdrawn Rs. 2 lakhs and so far as the balance amount of Rs. 50,000 is concerned, it is mentioned that, that amount was cash in hand, which shows his bona fide that he has withdrawn Rs. 6.5 lakhs from his bank account. The photo copy of passbook of that account has also been enclosed by the applicant.

19. We further notice that the date of payment of Rs. 7 lakhs as per the money receipts issued by the CD is 03.03.2015 i.e. just one day after the date of the last withdrawal of Rs. 2 lakhs on 02.03.2015.

20. Therefore, the ground that the books of account of the Corporate Debtor are not available with the Resolution Professional, in our considered view, is not a genuine and justified ground to allege that money receipt filed by the applicant is not a genuine one.

21. As per Regulation 13 of the IBBI Corporate Persons Regulations, the Resolution Professional is required to verify the claim within seven (7) days from the last date of receipt of the claim. Neither the Code nor any of the regulations permit the RP to sit over the matter for verification of a claim submitted by the financial creditor till he received the co-operation/documents from the Corporate Debtor.

22. At this juncture, we would like to refer to the relevant provision for verification of the claim by the liquidator i.e. Section 39 and 40 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as



'IBC') and Regulation 29 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as 'IBBI Liquidation Regulations') and the same are quoted below: -

IBC Section 39-Verification of claims.

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

IBC Section 40-Admission or rejection of claims.

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

Regulation 29. Verification of claims

(1) The liquidator shall verify the claims submitted within thirty days from the



last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code.

(2) A creditor may appeal to the Adjudicating Authority against the decision of the liquidator as per section 42 of the Code.

23. When we consider the provisions of Section 39 and 40 of the IBC, 2016 along with Regulation 29 of the IBBI Liquidation Regulations, we notice that a liquidator under the law is empowered to admit or reject the claim in whole or in part and a time is also prescribed under Regulation 29 of the IBBI Liquidation Regulations to decide the claims, i.e. within 30 days from the last date of the receipt of the claims. The Regulation 29 (1) of the IBBI Liquidation Regulations says that within thirty days from the last date for receipt of claims, the Liquidator may either admit or reject the claim and Regulation 29(2) gives right to the creditor to file an appeal to the Adjudicating Authority against the decision of the liquidator under section 42 of the I.B. Code 2016. But when we consider these provisions along with the power of the IRP/RP, we notice that unlike Section 39 and 40 of the IBC, the IRP/RP is not vested with the power to admit or reject the claim. In view of Section 18(1)(b) of the IBC, 2016, the duty of the IRP/RP is to receive and collate all the claims submitted by the creditors to him pursuant to the public announcement made under Section 13 and 15 of the IBC, 2016.

24. That is the reason, the legislature has made a provision for appeal against the order of admission or rejection passed by the liquidator and there is no such provision of appeal in case of collation of claims by the IRP/RP is concerned.

25. For the reasons discussed above, we are of the considered view that IRP/RP has exceeded with the duty vested under the law, and not



finally accepted the claim of the applicant on flimsy ground that the documents are not available and money receipt may be a forged one.

26. We are of the view that mere apprehension regarding the genuineness of a document(s) is not enough to keep the claim submitted by the applicant/ claimant pending; even after the approval of Resolution Plan by the COC, if the other documents support the contention.

27. Hence, we are of the considered view that the IRP/RP has erred in law by not finalising the claim of Rs. 7 lakhs of the applicant only on the flimsy ground.

28. At this juncture, we would also like to refer to the arguments advanced on behalf of the RP that the Resolution Plan has already been approved by the CoC and is pending for consideration before the Adjudicating Authority and there is a specific provision under the Resolution Plan that those claims, which have not been admitted can raise their claim before the Resolution Applicant within Sixty (60) days from the date of approval of the Resolution Plan.

We further notice that the RP has also placed reliance upon the few decisions referred (Supra).

29. We have perused the decisions, on which the RP has placed reliance and we find that the facts of those case are different from the facts of the case in hand. Herein the case in hand, it is not the case of the applicant that he had not filed the claim within the time prescribed in the public announcement. It is also not the case of the applicant that he has raised the claim for the first time.. Rather, the applicant has duly submitted the claim within the time prescribed under the law and the RP has provisionally accepted the claim. Therefore, the Resolution Applicant must be aware of the fact that the RP has provisionally accepted the claim of Rs. 7 lakhs of this applicant, which is subject to the verification.



30. Hence, we are of the considered view that the decisions upon which the RP has placed reliance are not applicable in the facts and circumstances of the case in hand.

31. For the reasons discussed above, we are of the considered view that the applicant has duly submitted the claim supported with the relevant documents and money receipts issued by the Corporate Debtor but the RP has acted beyond the duty/ power vested with him under the law. We are also of the considered view that the Resolution Professional has erred in law by not placing reliance upon the documents, which are referred in Regulation 8A (2)(iii) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Hence, non-finalization of the Applicant's claim by the RP is contrary to the provision of law.

32. Accordingly, the RP is directed to verify the claim of the applicant on the basis of the documents filed by the applicant i.e. money receipts and the bank statement and declare that the applicant has paid Rs. 9 lakhs instead of Rs. 2 lakhs and as such the total financial debt owed to the applicant is of Rs. 9 lakhs. Thereafter, the RP may inform the Resolution Applicant regarding the acceptance of the claim of Rs. 9 lakhs of this applicant.

33. With this order, the present application i.e., IA/5623/2020 stands disposed of.

— s/d —

(L. N. GUPTA)
Member (T)

— s/d —

(ABNI RANJAN KUMAR SINHA)
Member (J)