

## Time-Limit on admissibility of claims during CIRP: Where should the line be drawn?



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The Insolvency and Bankruptcy Code, 2016 ("Code") has thus far acted as a robust piece of legislation, in as much as regulating the insolvency and liquidation of corporate entities is concerned. However, due to the lack of developed jurisprudence, in this regard, various aspects of the Corporate Insolvency Resolution Process ("CIRP") have often been called into question before the Courts and Tribunals, to put such aspects and/or issues at rest. One such contentious issue is regarding the admission of claims during the CIRP by a Resolution Professional ("RP"). In this article, the authors trace the provisions relating to admission of claims during a CIRP, the varying judgments of different judicial fora on the same, the current position of law and conclude by arguing whether the current position of law is holistically the best-suited for all stakeholders.

It is pertinent to understand the contours of "Claim" under the Code before analysing the time-limits within which one must be presented to the RP. Claim has been defined in the Code to include *"a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;"*<sup>1</sup> As evident from this definition, a Claim does not merely mean a right to payment, but also denotes the freedom to exercise such right or remedy a wrong in respect of such a right; irrespective of whether such right has been reduced to judgement, fixed, disputed, undisputed, legal, equitable, secured or unsecured. Claims play a significant role under the Code and first appear during the CIRP, when an Interim Insolvency Professional ("IRP") is appointed. Immediately after his appointment the IRP makes a public announcement,<sup>2</sup> pursuant to which the creditors have to submit their claims within 14 days to the IRP or latest within 90 days of Insolvency Commencement Date.<sup>3</sup>

Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") was amended by the Amendment Regulations<sup>4</sup> ("Amendment Regulations") to provide for a limit of 90 days for the submission of claims by creditors in a CIRP. Prior to the Amendment Regulations, Regulation 12(2) stood as below:

*"A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the interim resolution professional or resolution professional, as the case may be, till the approval of a resolution plan by the committee"*

The purpose of introducing the 90-day time limit, vide an amendment was necessary to ensure that the objective of resolution as envisaged by the Bankruptcy Law Reforms Committee ("BLRC") while formulating the Code is not diluted i.e., to ensure a time-bound insolvency resolution process of

corporate debtors. The freedom to file claims at any time before the approval of resolution plan by the Committee of Creditors ("CoC") led to various hiccups along the road to insolvency resolution of a corporate debtor, some of which are:

1. Last-minute filings, updating list of claims and changes in information memorandum;
2. Skepticism amongst prospective resolution applicants with regard to the amount of claims against a corporate debtor; and
3. Eleventh-hour disputes before the jurisdictional Adjudicating Authority ("AA") relating to the inclusion/ acceptance or rejection of such claims.

Although the introduction of a fixed timeline for submission of claims can be said to be a welcome move, as far as ensuring adherence to timelines and certainty of the quantum of claims is concerned, the amended Regulation 12(2) seems to have raised more issues than it purported to solve. One of the major issues with Regulation 12(2) as it stands today is that it is silent with regard to the status of creditors who have missed the deadline and are desirous of filing their claims.

Therefore, the question that arises is whether the 90-day timeline prescribed under Regulation 12(2) is mandatory in nature, which must be adhered to under all circumstances, or could a delay in filing claims beyond the prescribed period be condoned by the IRP/ RP or AA?

In order to arrive at an answer to the question above, regard may be had to the recent judgment of the Hon'ble Supreme Court of India in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors.*,<sup>5</sup> ("Jaypee Judgment") where the Apex Court arrived at the finding that claims must be made within the stipulated time and in case a claim is not made within the said time, then it cannot be made part of information memorandum. This finding of the Supreme Court was based on the bedrock of Regulation 12(2) of the CIRP Regulations.

While the Jaypee Judgment has clarified the position of law on the time limit for filing claims during a CIRP, it has still left a few issues open in practical terms. Few of the direct issues that arise with strict adherence to the 90-day time limit are:

- ◆ There might be a situation that few of the creditors fail to submit their claim within 90 days due to genuine delays, and are barred by the Regulation 12(2) read with the Jaypee Judgment. While this might be dismissed on the ground that the creditors should be more vigilant about their rights, the situation becomes precarious and potentially problematic in light of the Hon'ble Supreme Court's decision in *Ghanashyam Mishra and Sons Private Ltd v. Edelweiss Asset Reconstruction Company*,<sup>6</sup> ("Ghanashyam Mishra Judgment") held that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 all claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. Therefore, the position of law as it stands today is that any creditor who fails to file a claim within the stipulated 90-day time limit, forfeits their right to a claim in the CIRP and even outside the CIRP.
- ◆ The provisions of Section 25(2)(e) read with Regulation 14 of the CIRP Regulations put the Resolution Professional under an obligation to update the list of claims until the end of CIRP period. Considering that the duty to update claims goes hand in hand with admission of claims, whether a strict timeline for submission of claims, overrides the duty to maintain an updated list of claims till the end of the CIRP period and consequently limit the performance of this duty by the RP only till the 90-day time limit under Regulation 12(2)?

- ◆ When the IBC, under Section 12 allows the Resolution Professional to seek extension beyond 180 days of CIRP period, wherein the NCLT accepts the fact that a situation has arisen that the company is viable but due to extraordinary circumstances the strict timelines cannot be adhered to by the Resolution Professional. Then, is it justified to restrict certain creditors to file their claim merely on ground of delay, when they themselves might have been prevented from filing such claims on account of extraordinary circumstances?
- ◆ Also, there might be certain claims which had been clearly demarcated in the financial statements of the Corporate Debtor and its books of accounts. For example taxation dues. Then in such situations the RP is already within the knowledge of such dues being in acceptance, so whether even in such circumstances the RP can reject the claim on ground of delay?
- ◆ Further, in the situation that the Corporate Debtor has given certain bank guarantees to its creditors, which are invoked by the creditors post the expiry of 90 days; will the bankers who have paid on account of the corporate debtor be precluded from filing a claim for the claims honored by them in respect of the bank guarantee? Will the bankers not be entitled to change the nature of their claims from non-fund based to fund-based claims?

Having, identified the many questions that arise from the Jaypee Judgment, it is important to consider the exact rationale of the Supreme Court in restricting the admission of claims beyond 90 days:

*"135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate."*

However, it must be noted that there existed several judgments on the matter of time-limits for submission of claims prior to the Jaypee Judgment, which held that the 90 days restriction is directory in nature and not mandatory therefore a claim can be admitted until the date of approval of resolution plan by COC. Few of them were:–

1. *Edelweiss Asset Reconstruction Company Private Limited v. Adel Landmarks Limited*,<sup>7</sup> wherein it was held that:

*"The rejection of claim on the ground of delay is not sustainable because the provisions has been held to be directory.... We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an*

***applicant, like the present one, could not be rejected on the ground of delay, as the provision has been held to be directory."***

2. Further, in *Twenty-First Century Wire Roads Ltd.*<sup>8</sup> the Hon'ble NCLT New Delhi was of considered view that **until the time the COC is considering a plan for approval, the claims can be admitted.**
3. Interestingly, in *State Bank of India v. ARGL Ltd.*<sup>9</sup> the Principal Bench of the Hon'ble NCLT, New Delhi, while considering an application filed by Central Board of Goods and Service Tax Department indicated that **it was irrelevant whether the claim is considered or not, since the government dues would always been reflected in the books of accounts of the corporate debtor and the RP/IRP would be required to take cognizance of the dues as per the books of accounts.** Therefore, the application was allowed. The relevant portion of the order is reproduced herein below:

*"It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claim were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."*

5. It may also be pertinent to note the judgment of NCLT Hyderabad in *JBF Industries Ltd. v. Anup Kumar Singh*<sup>10</sup>, where, the delay in filing the claims by a creditor was condoned by the adjudicating authority. Yet it, refrained from commenting on the admissibility of the claim and held that the admission of such claim is for the Resolution Professional to decide. The Hon'ble Supreme Court of India has also, on various occasions made it clear that the timelines prescribed under the IBC are procedural in nature and cannot be treated as if they are set in stone. In the event these timelines cannot be strictly followed, a reasonable relaxation may be given whenever the situation demands. [*Surendra Trading Company v. Juggilal Kamapat Jute Mills Co. Ltd. & Ors*<sup>11</sup>] and [*COC of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*,<sup>12</sup>].
6. The Hon'ble NCLAT in *Ranjit Das v. MX Mall*<sup>13</sup>, upheld the finding of the NCLT New Delhi that, *"receipt of the late claims beyond the period of 90 days would not entitle the claimant to be part of the COC. However, a legitimate claim of an investor or creditor cannot be turned out or rejected till it is a point of no return. In our considered view this situation shall arise only after disbursal of the liquidated estate of the Corporate Debtor as even at the state of liquidation claims are invited."*
7. A very important issue pertaining to the powers of a resolution professional was decided by the NCLAT in *Navneet Kumar Gupta RP of Monnet Power Company Ltd. v. Bharat Heavy Electricals Ltd.*<sup>14</sup>, wherein, after giving due consideration to *Swiss Ribbons Pvt. Ltd. v. Union*

*of India*, it was held that the RP doesn't have the authority to reject a claim without going through the supporting proofs, and upheld the order of NCLT directing RP to reconsider the claim as per law.

From a perusal of the judicial pronouncements discussed above, it is clear that strict adherence to the time-limit of 90 days under Regulation 12(2) might not be the right step, considering a holistic approach to the Code and its impact on all stakeholders. While strict adherence would definitely be a step towards timely resolution of the corporate debtor and would achieve the higher goals of value preservation and maximization, it would have an adverse impact on the claims of creditors, who are genuinely rendered unable to file claims within the stipulated 90 days. It is therefore, strongly felt that the time limit of 90 days should either be removed and the line for filing of claims should be drawn at such a point in time where the CoC has not yet approved the resolution plan. As an alternative, at least special carve outs may be made available so that creditors who are precluded from filing their claims on account of genuine reasons do not have to bear the brunt of a timeline that rests on the anvil of the consideration of their claims.

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- [1.](#) Section 3(6) of the Insolvency and Bankruptcy Code, 2016.
  - [2.](#) Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 ("CIRP Regulations").
  - [3.](#) Regulation 12 of the CIRP Regulations.
  - [4.](#) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018.
  - [5.](#) [2021] 125 taxmann.com 360 (SC).
  - [6.](#) Civil Appeal No. 8129 Of 2019, Supreme Court of India.
  - [7.](#) IB-1083 (PB)/2018, NCLT New Delhi.
  - [8.](#) IB 737 PB 2018, NCLT New Delhi.
  - [9.](#) [2018] 98 taxmann.com 287 (NCLT - New Delhi).
  - [10.](#) [IA 156 of 2019 in CP (IB) 421/7/HDB/2018]
  - [11.](#) [2017] 85 taxmann.com 372 (SC) / [2017] 144 SCL 198 (SC)
  - [12.](#) [2019] 111 taxmann.com 234 (SC)
  - [13.](#) [Company Appeal (AT) (Insolvency) No. 07 of 2019]
  - [14.](#) [Company Appeal (AT) (Insolvency) No. 743 of 2018]