

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT-V, MUMBAI BENCH**

Under Section 60 (5), of the Insolvency and Bankruptcy Code, Read with Rule 11 of the National Company Law Tribunal Rules, 2016

**I.A. 2016 OF 2022  
IN  
CP No. 2797 OF 2019**

**Thermax Babcock and Wilcox Energy Solutions Ltd.**

..... Applicant

*Versus*

**Mr. Fanendra Harkchand Munot  
(Interim Resolution Professional of Greatweld Engineering Pvt Ltd)**

..... Respondent

**In the matter between**

M/s. Karma Roadways

..... Financial Creditor

*Versus*

Greatweld Engineering Pvt Ltd.

..... Corporate Debtor

**Order Dated: 18.07.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearance:**

**For the Applicant:** Mr. Tyagi, Advocate

**For the Respondent:** Mr. Nausher Kohli a/w Mr. Kunal Chheda, Advocates

*Per: Anuradha Sanjay Bhatia, Member (Technical)*

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## **ORDER**

1. The above captioned I.A. 2016 of 2022 is filed by Thermax Babcock and Wilcox Energy Solutions Ltd. under Section 60(5) of the Insolvency and Bankruptcy Code 2016 (“**Code**”) seeking following reliefs:
  - a. *That this Hon'ble Tribunal be pleased to direct the IRP to reconsider the admission of claim i.e. Form B under the correct name of the Applicant i.e. Thermax Babcock and Wilcox Energy Solutions Ltd. to the Interim Resolution Professional and honor the Claim amounting to Rs.12,47,140/- (Rupees Twelve Lakhs Forty-Seven Thousand One Hundred and Forty Rupees) submitted by the Applicant in its capacity as an Operational Creditor to the Interim Resolution Professional;*
  - b. *That this Hon'ble Tribunal be pleased to condone the delay for filing of claim before the IRP;*
  - c. *That the Hon'ble Tribunal be pleased to direct the Resolution Professional to acknowledge and admit the Applicant's claim under the corrected name i.e. Thermax Babcock and Wilcox Energy Solutions Ltd. and consider the Applicant in its capacity as an Operational Creditor in the process;*
  - d. *That this Hon'ble Tribunal be pleased to allow any other and further reliefs as this Hon'ble Tribunal may deem fit and proper;*

## **FACTS OF THE CASE**

2. The Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated via order dated 29.01.2021 under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**) and Mr. Fanendra Harakchand Munot, was appointed as Interim Resolution Professional. The Interim Resolution Professional gave a public notice and invited claims on 03.02.2021. Thereafter, the Resolution Plan was approved on 08.03.2022 by the Committee of Creditors (hereinafter referred to as “**COC**”) and the Application for approval of Resolution Plan has been filed on 25.04.2022.
3. The present Interlocutory Application Number 2016 of 2022 is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by the

Applicant, Thermax Babcock and Wilcox Energy Solutions Limited (hereinafter referred to as **Applicant**). The present claim arises from the rejection of the Applicant's claim of Rs. 12,47,140/- by the Interim Resolution Professional, Mr. Fanendra Harakchand Munot (hereby referred to as the IRP)

4. It is submitted that the IRP has erred in rejecting the claim of the Applicant merely because of a delay in filing of the claim and there were no appropriate grounds or reasons given by the IRP to reject the said claim.
5. It was further submitted that the said claim was inadvertently filed in the name of Thermax Limited on behalf of the Applicant whereas the actual default was in relation to the Applicant, **which is a wholly owned subsidiary company of Thermax Ltd.**
6. The Applicant approached the Corporate Debtor for the supply of certain products in order to complete a contract assigned by CG Cements. Accordingly, three Purchase Orders were raised PO No.176024198 dated 03.09.2019, PO No, 176024199, dated 03.09.2019 and PO No.176024183, dated 29.08.2019 and a 70% advance was given to them which was raised in the name of the Applicant.
7. The goods for PO No.176024198 and PO No, 176024199 were not supplied. As a result of this non-supply of goods against the advance payment, a sum of Rs. 8,13,021/- was to be repaid to the Applicant.
8. In addition to this, there was no supply of materials on the purchase orders P.O 176024606 dated 27.11.2019 and PO 176024747 dated 24.12.2019 raised by the Applicant upon the Corporate Debtor, which led to a loss to the Applicant amounting to Rs.95,993/- on account of unadjusted advance. The Applicant was also denied a GST Return on the same of Rs. 69,882.56/. Further, The Corporate Debtor had also not filed GST on various Purchase Orders resulting in the further loss of Rs. 2,68,243.82/- to the Applicant.

9. The Applicant's parent Company inadvertently filed the claim in its name i.e. Thermax Ltd. on behalf of the Applicant, through Form B with the IRP on 02.02.2022. However, the same was rejected by the IRP via email dated 23.02.2022, on the grounds of delay.
10. It is submitted that the Applicant had not been properly served a notice of the CIRP by either the IRP or the Corporate Debtor. A mail from Applicant's parent company's (namely 'Thermax Limited) finance team dated March 2<sup>nd</sup> 2022 addressed to the IRP clearly states that no form of communication had been given. The IRP has erroneously claimed about the communication between the IRP and the Applicant, whereas no communication was received despite the fact the Applicant was conducting business with the Corporate Debtor and should have been informed. Hence this Application.

#### **REPLY OF THE RESPONDENT/IRP**

11. The Company Petition No. 2797 of 2019, was filed by the Operational Creditor viz M/s Karma Roadways and the Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated vide order dated 29.01.2021 under Section 9 of the Insolvency and Bankruptcy Code 2016. Thereafter Interim Resolution Professional was appointed. The Interim Resolution Professional gave public notice and invited claims on 03.02.2021.
12. After receiving the claims Committee of Creditors (CoC) was formed. The composition of CoC members is as under:

<b>Sr. No.</b>	<b>Name of the Member</b>	<b>Percentage</b>
1	Canara Bank	100%
<b>Total</b>		<b>100%</b>

13. Further, the Information memorandum was prepared, and public announcement for inviting claims was made on 03.02.2021. Thereafter Resolution Plan was approved on 08.03.2022 by Committee of Creditors and the application for approval of Resolution of Plan was filed on 25.04.2022
14. It is submitted by the IRP/ Respondent that the claim was rejected on 23.02.2022 as the Applicant i.e. Thermax Babcock and Wilcox Energy Solutions Ltd. had failed to lodge the claim within the stipulated time.

**FINDINGS:-**

15. We have heard the Learned Counsel appearing for the Applicant and perused the records.
16. After hearing the submissions of both sides, this Bench observed that the Resolution Professional has rejected the claim of the Applicant mainly on the ground of excessive delay in submission of the claim by the Applicant.
17. The claim of the Applicant is based on non-supply of goods against the advance given by the Applicant to the Corporate Debtor against the purchase order PO No.176024198 dated 03.09.2019, PO No. 176024199, dated 03.09.2019, P.O 176024606 dated 27.11.2019 and PO 176024747 dated 24.12.2019 raised by the Applicant upon the Corporate Debtor. The Corporate Insolvency Resolution Process (**CIRP**) order was passed against the Corporate Debtor on 29.01.2021 and the public announcement for inviting the claims was published on 03.02.2021. The last date of submission of claims was 16.02.2021. The Applicant filed his claim on 02.02.2022 i.e., after almost 379 days from the date mandated for submission (i.e.,16.02.2021). Further, the Resolution Plan for the Corporate Debtor has been duly approved by the COC on 08.03.2022.
18. Therefore, this Bench does not find any illegality or irregularity committed by the RP in rejecting the claims of the Applicant who has not been vigilant enough in respect of his rights.

19. It has been held by the Hon'ble Supreme Court that of "*law does not come to the aid of those who sleep over their rights*" in the matter of *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, [(2015) 1 SCC 680].
20. It is also appropriate to mention here that the Resolution Plan for the Corporate Debtor has been approved by the COC on 08.03.2022 and at this belated stage, the whole CIRP process cannot be derailed.
21. It has also been observed by this Bench that the claims of the have been filed by Thermax Limited on behalf of the Applicant which is a wholly owned subsidiary company of Thermax Ltd. whereas the actual default was in relation to the Applicant company. Therefore, this Bench is of the considered view that the Thermax Limited being a Separate Legal entity could not have filed the claim on behalf of the Applicant as per law without any proper authorization. Since the proper authorization for filing the claims by the Parent Company i.e. Thermax Ltd. is not reproduced in the present Interlocutory Application No. 2016 of 2022, the same cannot be said to justified in the eyes of law.
22. For the aforesaid reasons, this bench finds no merit in the above application. Accordingly, the above **I.A. 2016 of 2022** is **rejected and disposed of**.

SD/-

ANURADHA SANJAY BHATIA  
Member (Technical)

SD/-

KULDIP KUMAR KAREER  
Member (Judicial)