

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- II

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

In the matter of:

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

AND

In the matter of :

M/s V M Engineers

Shop no. 20, Shree Sankeshwar Park CHS Ltd.
Behind Model College , Bhoir Wadi, Khambalpada,
Dombivli-East-421201
Dist. Thane, Maharashtra

...Applicant

Versus

1. Kuldeep Verma

Liquidator

M/s Hindustan Paper Corporation Limited In-Liquidation
Unit No. 501, 46 B Ganguly Street,
Kolkata-700012
Email: liquidation.hpcl@gmail.com

Also At:

3, Jagabandhu Modak Road, 4th Floor,
Shova bazaar, Kolkata-700005

...Respondent

No. 1

2. M/s Hindustan Paper Corporation Limited

Registered Address:

South Tower, 4th Floor,
Scope Minar, Laxmi Nagar,
District Centre, Delhi-110092

Also At:

HPC Housing Complex, Block HC,
Sector-III, Salt Lake, Kolkata-700106

...Respondent No. 2/Corporate Debtor

ORDER DELIVERED ON:.01.06.2022

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

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CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

For the Applicant : Adv. Anuj Jhawar and
Adv. Manmeet Singh

For the Respondent : Mr. Vivek Sibal, Senior Advocate with
Adv. Rahul Sharma for Liquidator

ORDER

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

1. The present Application is filed by M/s V M Engineers (hereinafter referred to as "Applicant"), the Operational Creditor of Respondent No. 2 M/s Hindustan Paper Corporation Limited (hereinafter referred to as "Corporate Debtor") through its partner Venkatesh Gopalan under section 60(5) of the Code, seeking direction from this NCLT to direct the Liquidator/Respondent No. 1 Mr. Kuldeep Verma (hereinafter referred to as "Liquidator") to admit the claim filed by the Applicant of Rs. 1,04,34,836/-, which has been partially rejected by the Liquidator and only a claim of Rs. 62,56,288/- has been admitted by the Liquidator.
2. The Applicant is a partnership firm and is registered as MSME and with NSIC.
3. Brief Facts of the case are as follows:
 - i. That the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor was initiated and vide Order dated 13.06.2018, Mr. Kuldeep Verma was appointed as the Interim Resolution Professional ('IRP'). The IRP made the public announcement in Form A on 28.06.2018.
 - ii. That vide order dated 14.05.2019, this Tribunal passed an order of liquidation and confirmed the appointment of Mr. Kuldeep Verma, Resolution Professional as the Liquidator, as no resolution plan was received during 270 days of the CIR Period.
 - iii. That on 16.12.2015, in pursuant of Tender published on the E-Tender Portal to replace their existing rusted crane with a new crane, the Applicant was participated in the E-tender and submitted its bid dated 30.12.2015 and being the lowest quoted participant was shortlisted for placing the order for supply and installation.

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

- iv. That the Corporate Debtor had issued a Purchase Order 11.08.2016 bearing No. 2514100215/2516400515/527 to the Applicant with respect to supply, erection and commissioning of 15MT capacity EOT Crane for a total cost of Rs. 78,22,650/- and executed a Work Order dated 16.02.2017 for the replacement of Base & Foundation Bolts of 15MT capacity EOT Nagaon paper Mill, Kagajnagar-782413 (JAGIROAD), Assam for a total number of Rs. 60,000/-.
- v. That the Applicant has performed its part of the Agreement and delivered the crane at the Nagaon Paper Mill, Assam of the corporate debtor on 10.01.2017. Further, the crane was commissioned at the said plant on 19.04.2017.
- vi. The Applicant performed its services by supplying, erecting and commissioning the 15MT capacity EOT Crane and thereafter raised following tax invoices and debit notes which are as under:

S. No.	Invoice/ Debit Note No.	Date	Description	Amount (INR)
1.	Tax Invoice No. 20	26.12.2016	Spares/Accessories for EOT Crane Gantry Girders 57 mtrs. Bay Length (114 Mtrs.) Rail 105 lbs 57 mts Bay Length (114 Mtrs.) Fore 15t EOT Crane Loaded in Two Traylor No. MH-46-AF-9397 & MH-AF-8157 through M/s G.N. Roadlines	30,58,088/-
2.	Tax Invoice No. 20	09.01.2017	Double Girder 15t Capacity Eot Crane Design, Manufacture, Testing & Supply of 1 No. 15t Capacity, 21.7 mtrs Span Double Girder Eot Crane Made as per your order. Part Consignment Agst. Order Loaded in Traylor No. MH-46-H-4157 through M/s G.N. Roadlines	26,39,250/-
3.	Tax Invoice No. 26	10.01.2017	Double Girder 15t Capacity Eot Crane Design, Manufacture, Testing & Supply of 1 No. 15t Capacity, 21.7 mtrs	4,99,163/-

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

			Span Double Girder Eot Crane Made as per your order. Part Consignment Agst. Order Loaded in Trailor No. MH-48- AG-3396 through M/s G.N. Roadlines Part No. 019561000	
4.	Tax Invoice No. 17/16-17	10.01.2017	Labour Charges for Erection &Commissioning of Gantry Girder, rail, 1 no. 15t Ccapacity Double Girder Eot Crane & Installation of DSL Systems at your wroks. Categori: Erection, commissioning or Installation Services.	6,90,000/-
5.	Tax Invoice No. 18/16-17	10.01.2017	Transport charges Transport charges for Gantry, Girder, rail, DSL Systems and 1 No. 15t Capacity Double Girder EOT Crane from Ambernath to Kagajnagar, Assam	9,40,500/-
6.	Tax Invoice No. 19/16-17	21.02.2017	Labour Charges for replacement of base plate and foundation bolts of 15T capacity EOT Crane at pulp mill	69,000/-
7.	Debit Note No. 01/18-19	16.05.2018	Being the amount debited to your account towards difference amount of VAT & interest as on date for non- submission of 'C' Form towards supply of 15 Ton Capacity EOT Crane with accessories vide invoices no. 20/16-17, 24/16-17, 26/16-17.	9,16,855/-
			TOTAL	88,12,856/-

- vii. Thereafter from 17.04.2017 to 19.04.2017, the Applicant successfully carried out erection and commissioning along with load test of 15 MT EOT Crane. On 19.04.2017 the Inspection Report and Minutes of Meeting was signed and acknowledged by the representatives of the Applicant and Corporate Debtor wherein the said fact was recorded.

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

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- viii. That on 19.06.2017, the Applicant sent a letter to the Chairman and Managing Director of the Corporate Debtor stating that the crane was delivered and commissioned at plant of the Corporate Debtor and almost 45 days have passed and no payments have been made by the Corporate Debtor. The Corporate Debtor further stated that the representatives of the Corporate Debtor have stopped responding to the phone calls, mails and letters of the Applicant. It is submitted that, despite several repeated requests and reminders, the corporate debtor since 19.07.2017 has been defaulting the payment of the abovementioned invoices.
- ix. That after several requests, the Applicant was received a letter dated 17.07.2017 from the Corporate Debtor admitting its liability towards the Applicant and stating that the Corporate Debtor is facing financial crunch thereby requesting to bear with the situation of the Corporate Debtor. The Applicant replied vide letter dated 21.08.2017 to the Corporate Debtor requesting for clearing the payment as the Applicant is facing major problems due to non-payment of dues by the Corporate Debtor.
- x. That the Applicant had received a reply dated 08.09.2017 from the Corporate Debtor again admitting its debt owed towards supply and installation of 15T Crane at Nagaon Plant of the Corporate Debtor by the Applicant and further requesting to co-operate with the Corporate Debtor for some more time.
- xi. That on 18.03.2018, the Applicant had filed an RTI to enquire about whether the Corporate Debtor had received any financial assistance from the Government. On 28.04.2018, the Applicant received the reply of the RTI wherein it was stated that the Corporate Debtor had applied for financial assistance from the Government and the same will be provided after completion of Process For Engagement Of Operation & Management(O&M) partner.
- xii. That a Demand Notice dated 24.05.2018 under the Section 8 of Insolvency and Bankruptcy Code, 2016 was delivered to the Corporate Debtor requesting for payment of Rs 88,12,856/-. The Corporate Debtor replied to the said demand notice on 12.06.2018 wherein the Corporate Debtor admitted its debt owed towards the Applicant and did not dispute the amount claimed by the Applicant. Thereafter, the Applicant received a letter dated 23.05.2018 issued by the Corporate Debtor in which the Corporate Debtor had attached the Form 'C'. Therefore the Applicant cancelled the Debit Note No. 01/18-19 which was raised by the Applicant for non-submission of Form 'C' and the principal amount due from Corporate Debtor stood at Rs 78,96,001/-



- xiii. Thereafter, CIRP of the Corporate Debtor was initiated vide order dated 13.06.2018 of this Tribunal.
- xiv. That the Applicant herein being the Operational Creditor of the Corporate Debtor qua the Purchase Order dated 11.08.2016 and Work Order dated 16.02.2017 had filed a claim in Form B dated 06.07.2018 with the Liquidator for a principal amount of Rs. 78,96,001/- alongwith interest due from 19.07.2017 @3 times of bank interest rate notified by RBI as 6.5% with monthly rest till actual realization as per the provisions of Section 16 of Micro Small & Medium Enterprises (MSME) Development Act, 2016 compounded to 19.5% p.a. amounting to Rs. 13,87,857/-, which was due to the Applicant by the Corporate Debtor as on 13.06.2018. The total claim amount was of Rs. 92,83,858/-.
- xv. That the Liquidator had published the list of claims admitted on the website of the corporate Debtor wherein the Liquidator wrongly admitted only Rs. 21,42,326/- out of the total claim amount of Rs. 92,83,858/-, which was substantially less as compared to the amount claimed.
- xvi. The Applicant then sent an email dated 24.12.2018 to the Liquidator stating that the amount of Rs. 21,42,326/- admitted by the Liquidator is incorrect. The Applicant further requested the Liquidator to inform them how the said figure has been derived since the invoices of the Applicant are not matching this amount.
- xvii. The Applicant again sent an email dated 11.03.2019 to the Liquidator referring to the list of creditors published by the Liquidator on 13.06.2018, on the website of Corporate Debtor stating that the amount claimed by the Applicant has been wrongly calculated. The Applicant further requested for clarification regarding the same.
- xviii. That on 31.08.2020, the Liquidator published the revised list of claims admitted on the website of the Corporate Debtor wherein the Liquidator admitting its mistake revised the claim amount of the Applicant from Rs 21,42,326/- to Rs 62,56,288/- however, the Liquidator has not given any valid reason for not accepting the total claim amount of the Corporate Debtor amounting to of Rs. 1,04,34,836/-.
- xix. That on 26.11.2019, the Applicant through his counsel sent an email to the Liquidator requesting for clarification regarding part admission.
- xx. That the Liquidator vide email dt 28.11.2019, and email dated 03.01.2020 informed that the admitted amount of Rs 62,56,288/- is based on ERP balance of the Corporate Debtor alongwith a screenshot of the same however, the Liquidator did not correctly assess the claim



filed by the Applicant for an amount of Rs 1,04,34,836/- alongwith all the proofs.

- xxi. That the applicant through his counsel replied vide email dated 13.01.2020, to the Liquidator stating that admitted amount of Rs. 62,56,288/- does not include the invoices no. 17/16-17, 18/16-17, 19/16-17 raised for labour and transport charges.
- xxii. That the above email was forwarded to the Corporate Debtor and the Corporate Debtor vide email dated 17.01.2020 replied to the Liquidator and the Advocate of the Applicant stating that the relevant purchase order was issued by Nagaon Paper Mill (NPM) and the Corporate Office of the Corporate Debtor is not a privy to any of these. It is submitted that the Nagaon Paper Mill was fully operated and owned by the Corporate Debtor itself.
- xxiii. That after repeated reminders to the Liquidator, the Advocate of the Applicant had received an email dated 27.02.2020 from the Liquidator forwarding the attachments received by the Liquidator from the officials of the Corporate Debtor.
- xxiv. That the Advocate of Applicant requested for clarification towards the deduction amount from the Liquidator and the Liquidator on 28.02.2020 sent an email stating that the deduction has been made as per the terms and conditions of the Purchase Order as informed to the Liquidator by the erstwhile officials of the Corporate Debtor.
- xxv. That on 02.03.2020, the Advocate of the Applicant sent an email to the Liquidator explaining that the amount of Rs. 10,00,696/- has been wrongly deducted and requested to reassess the deduction amounts.
- xxvi. That on 04.03.2020, the Advocate of the Applicant received an email from the Liquidator stating that the subsequent amount will be added in the total claim amount based on the details provided by the official of the Corporate Debtor.
- xxvii. It is submitted that thereafter, the Advocate of the Applicant following up the Liquidator vide emails but the Liquidator has failed to give positive response.

4. The Liquidator for Hindustan Paper Corporation Ltd. (Corporate Debtor) in his reply dated 08.04.2021 has submitted :

- i. That in pursuant to the public announcement made by the Answering Respondent on 17.05.2019, the Applicant had filed its claim in Form C on 09.06.2019.
- ii. The status of claim filed by the Applicant and claim admitted by Answering Respondent is as follows:

S. No.	Particulars	Amount Claimed (Rs.)	Amount Admitted (Rs.)	Amount Rejected (Rs.)
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IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

1.	Principal Amount	78,96,001	62,56,288	16,39,713
2.	Interest	25,38,835	Nil	25,38,835
	Total	1,04,34,836	62,56,288	41,78,548

- iii. The admitted claim of the Applicant of Rs. 62,56,288/- is incorporated in the Revised List of Stakeholders filed with this Tribunal in I.A. No. 2953 of 2020 and same has been taken on record vide Order dated 31.08.2020 and also communicated to the applicant on 28.11.2019 through mail.
 - iv. That as per available records, the Corporate Debtor had issued Purchase Order dated 11.08.2016 for supply, erection and commissioning of 15 MT EOT crane for Nagaon Paper Mill (NPM).
 - v. That as per records, there are no operations at NPM since March 2017.
 - vi. That the amount payable to the Applicant as per ERP of Corporate Debtor (duly audited) is Rs. 62,56,288/-.
 - vii. That the Answering respondent also sought detailed note for all documents and records pertaining to the invoices of the Applicant from officials of the Corporate Debtor. A note dated 19.02.2020 along with records was submitted by the corporate debtor. As per the note, the amount payable is Rs. 61,88,488/-. The said note dated 19.02.2020 also indicated deduction of Rs. 10,00,696/- towards TDS, Late Delivery (LD) penalty and 10% Retention Money for non-submission of Performance Guarantee.
 - viii. That as per terms of P.O issued by the Corporate Debtor and accepted by the Applicant, there is no clause for payment of interest by the Corporate Debtor in case there is any delay in making the payment.
 - ix. The Applicant should have exercised the legal remedies within the timelines prescribed under section 42 of the Code instead of filing the present application, which is not maintainable in view of express provision of Section 42 of the IBC.
5. The Applicant in its rejoinder dated 10.06.2021 has submitted:
- i. That the Liquidator, in its reply, has not given any just and proper reasoning for admitting claim of only Rs. 62,56,288/- out of the total claim amount of Rs. 1,04,34,836/-.
 - ii. That the Corporate Debtor in all its communications has not disputed the amount claimed by the Applicant and has always admitted its liability owed towards the Applicant.
 - iii. That the Applicant has referred the judgment of the Hon'ble Supreme Court in the matter of Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta &Ors (Civil Appeal No. 9241 of 2019).

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

6. That the applicant has filed the written submissions and the scanned copy of the same is reproduced below:

WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

1. THE PRESENT APPLICATION IS MAINTAINABLE UNDER SECTION 60(5) IBC

The Applicant has right to approach the Hon'ble Tribunal under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 as the clause 'c' of sub-section 5 of Section 60 is very broad in its sweep hence, the application is maintainable.

The National Company Law Appellate Tribunal, Principal Bench, New Delhi vide its judgment dated January 06, 2022 in *SICOM Limited Vs. Mr. Sundaresh Bhat* (Company Appeal (AT) (Insolvency) No. 470 of 2021) has held that "17... *The Application filed by the Appellant under Section 60 sub-section (5), thus, clearly maintainable and there is no occasion to reject the Application applying the limitation of an Appeal.*" "18. *We are thus of the considered opinion that the Application filed by the Appellant under Section 60 sub-section (5) was fully entertainable and it could not have been rejected on the ground that it has not been filed within 14 days as provided under Section 42. Section 42 was clearly inapplicable, since no Appeal was filed by the Appellant. The Adjudicating Right to Appeal under Section 42 and right to Application under Section 60 sub-section (5) are two different remedies provided by the statute. A person is entitled to elect for a remedy and pursue the remedy as provided by the statute. The period of limitation provided for an Appeal under Section 42 cannot be applied in an Application filed under Section 60 subsection (5).*" The SICOM Limited Vs. Mr. Sundaresh Bhat judgment is annexed as **Annexure 1**.

2. LIQUIDATOR IS INDEFINITELY SITTING ON THE CLAIM OF THE APPLICANT

The Liquidator has not passed a final and reasoned order of rejection or admission of total claim amount of the Applicant and as such the Liquidator is sitting on it. The said fact is evident from the last email dated March 04, 2020 (Pg. 187) of the Liquidator, which states that "*the subsequent amount will be added in the claim admitted amount based on the details provided by the official of Corporate Debtor*". Thereafter, the Applicant has been regularly following up with the Liquidator however, the Liquidator has blatantly ignored the emails of the Applicant. In a similar matter as the present Application, the National Company Law Appellate Tribunal, New Delhi vide its judgment dated February 03, 2021 in *Tuf Metallurgical Private Limited Vs. Impex Metal & Ferro Alloys Limited & Ors.* (Company Appeal (AT) (Insolvency) No. 190 of 2020) wherein Applications were filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions against the Liquidator/Corporate Debtor for admission of their claim amount, has held that "43. *It is important to mention that under Regulation 30 of The Insolvency and Bankruptcy Board of India (Liquidation Process Regulation, 2016) the Liquidator is duty-bound to verify the claim submitted, within 30 days from the last date of receipt of the claims. He may either admit or reject the claim, in whole or in part, as the case may be but cannot simply sit on it. We find that the Liquidator has failed to admit or reject the claim even after receiving the claim on 03rd January 2020....*" "44... *As in the present matter, the Liquidator failed to take a decision, one way or the other on the lame excuse that the Liquidator is in the process of obtaining details of transactions from Respondent No. 3 and now wants to*

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

claim that the Appellants have jumped forum...". The Tuf Metallurgical Private Limited Vs. Impex Metal & Ferro Alloys Limited & Ors. Judgment is annexed as Annexure 2.

3. RELIEF TO BE GRANTED EVEN IF WRONG PROVISION IS MENTIONED

Even if the Application is filed under wrong provision, this Hon'ble Tribunal can provide the relief as it has the power to do so. The Hon'ble Supreme Court vide its Judgment dated February 12, 2009 in *J. Kumardasan Nair and Anr Vs. IRIC Sohan and Ors* has held that "18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. ...When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned." The same was upheld by the Hon'ble Supreme Court vide its judgment dated October 04, 2019 in *Pruthvirajsinh Nodhubha Jadeja Vs. Jayeshkumar Chhakaddas Shah* stating that "8. It is well settled law that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court." The *J. Kumardasan Nair and Anr Vs. IRIC Sohan and Ors* is annexed as Annexure 3 and *Pruthvirajsinh Nodhubha Jadeja Vs. Jayeshkumar Chhakaddas Shah* is annexed as Annexure 4.

4. GRAVE CALCULATION ERRORS BY THE LIQUIDATOR

That on June 12, 2018 the Corporate Debtor replied to the Demand Notice under the Section 8 of Insolvency and Bankruptcy Code, 2016 dated May 24, 2018 sent by the Applicant wherein the Corporate Debtor again admitted its debt owed towards the Applicant and did not dispute the amount claimed by the Applicant. It is pertinent to point out that only a day after the reply dated June 12, 2018 was sent by the Corporate Debtor to the Applicant, the CIRP of the Corporate Debtor was initiated vide order dated June 13, 2018 of this Hon'ble Tribunal, however, the Liquidator has arbitrarily decided not to admit the total claim amount of the Applicant of Rs 1,04,34,836/-. It is pertinent to note that there are grave calculation errors made by the Liquidator in calculating the total claim amount, and has completely relied on the figures provided by the Corporate Debtor (pg. 179-184) on arbitrary basis. The document submitted by the Liquidator with respect to the ERP of the Corporate Debtor is not clear on the below mentioned aspects –

Points	Particulars
Invoice	The invoice no. 19/ 16-17 dated 21.02.2017 (Pg.106) for a sum of Rs.69,000/- is not included in the ERP records, despite due acknowledgement of the same by Corporate Debtor along with other invoices no. 17/16-17 and 18/16-17
Form 'C'	In the 2 Form 'C' (Pg.126-130) issued by the Corporate Debtor to the Applicant, it has been recorded that the liability of corporate Debtor is for Rs. 31,38,413/- and Rs. 30,58,088/- totaling to an amount of Rs. 61,96,501/-. However, the Corporate Debtor with arbitrarily has recorded the amount as per ERP to be Rs. 55,59,184/-, whereas the same should have been Rs.61,96,501/-
Penalty	The deduction of Rs. 8,09,396/- as penalty is completely baseless as the Applicant had duly supplied the crane and effectively completed the commissioning and erection of the same which is duly acknowledge by the Corporate Debtor and the Corporate Debtor had never previously raised this issue. (Pg. 108 inspection report bears no mention of late delivery)
Income tax	The ERP states about Income tax deduction of amount of Rs. 13,800/- against invoice no. 17/ 16-17 dated 10.01.2017 and Rs. 18,800/- against invoice no. 18/16-17 dated 10.01.2017, however the Corporate Debtor has till date not provided the Applicant with the relevant TDS Certificate and the same has not been filed with the IT department, in view of the same, the Applicant has not been able to avail the benefit in their audited balance sheet. Therefore, the Corporate Debtor is liable to make payment for the same and it cannot be deducted from the amount being claimed by the Applicant.

Performance Guarantee	The question of deduction of 10% Performance Guarantee of Rs. 1,58,700/-, which has been arbitrarily deduct does not arise whatsoever as the Corporate Debtor has itself admitted vide Inspection Report and Minutes of Meeting dated April 19, 2017, that the crane has been duly delivered and has been effectively commissioned, and the performance period of 12 months (clause 7.0-Pg.87) has also expired from the date of commissioning. The said Minutes of the meeting have been handed over to the Corporate Debtor and have also been signed by Applicant's QC head and representatives. Further, the invoices towards labour charges were handed over to the concerned department in presence of Mr. Jagjit Singh (signatory in the inspection report) and the said information was also informed to the plant head Mr. Jayant Tewary.
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Hence, the admitted principal amount should have been Rs. 78,96,001/- (Rs. 61,96,501 + Rs.6,90,000 + Rs. 9,40,500 + 69,000) along with the interest of Rs. 25,38,835/- totaling to an amount of Rs. 1,04,34,836/-. The National Company Law Appellate Tribunal, Principal Bench vide its judgment dated July 19, 2021 in *NTPC Limited Vs. Ram Ratan Modi* (Company Appeal (AT) (Insolvency) No. 309 of 2021) has upheld that "12... it was inappropriate on the part of the Liquidator to inform the Appellant in the e-mail dated 4th September, 2019 that because the Corporate Debtor had disputed the amount and the same did not reflect in the record of the Corporate Debtor, the claim filed by the Appellant was not admissible. It was his duty to examine the claim as provided by Regulations and Regulation 25 to come at best estimate of the amount and give the benefit to the Appellant." The NTPC Limited Vs. Ram Ratan Modi judgment is annexed as Annexure 5.

5. INTEREST SHALL BE INCLUDED BY THE LIQUIDATOR IN THE TOTAL CLAIM

The Operational Creditor is registered under MSME and as per the Section 16 of The Micro, Small And Medium Enterprises Development Act, 2006, the buyer (Corporate Debtor) on default of the payment shall, notwithstanding anything contained in any agreement between the buyer and the supplier (Operational Creditor) or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank. It is submitted that the Operational Creditor is even entitled to the interest in normal cause on the delayed payments as the Corporate Debtor is liable to make the outstanding payments. The National Company Law Tribunal, Hyderabad Bench in *Shri Shrikrishna Rail Engineers Private Limited Mam Malgi Foundation Vs. Madhucon Projects Limited* [CP(IB) No. 305/9/HBD/2017] held that "23. The Operational Creditor is entitled for interest even though there is no provision in LOI for payment of interest for delayed payment. The Corporate Debtor is liable to pay the outstanding balance and in the normal course, Operational Creditor is entitled to charge interest for delayed payment. Claiming interest is not against law. Even though Operational Creditor had not approached Council under MSME Act, yet Operational Creditor is otherwise entitled to claim interest." The National Company Law Tribunal Mumbai vide its order dated April 10, 2017 in *DF Deutsche Forfait AG and Anr Vs. Uttam Galva Steel Ltd.* has held that "76...whereas operational debt is normally based on an agreement to pay goods or services, it does not mean that interest cannot be claimed in the times to come, it is a normal practice that trade payables are payments deferred for a fixed time, if the party fails to repay within the fixed time, then interest will be claimed over operational debt as well, the same happened over here as well." The Shri Shrikrishna Rail Engineers Private Limited Mam Malgi Foundation Vs. Madhucon Projects Limited is hereto annexed as Annexure 6 and the DF Deutsche Forfait AG and Anr Vs. Uttam Galva Steel Ltd judgment is hereto annexed as Annexure 7.

In view of the above, it is submitted that the Application of the Applicant may be allowed and the total amount of Rs. 1,04,34,836/- may be admitted as part of its claim.

IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018



7. Heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application, reply and the rejoinder filed by the respective parties.

8. On perusal of the averments made in the application, reply and rejoinder, we observe that the points for consideration are as follows:

1. Whether the application filed under Section 60(5) of the IBC, 2016 is maintainable against the rejection of the claim by the Liquidator.
2. Whether the interest amount can be admitted as filed by the Operational Creditor.

9. Ld. Counsel appearing for the Applicant submitted that the Liquidator has not clearly rejected the claim of the Applicant. He further contended that even till the date of filing of the application no just and proper reason has been given for admitting an amount of only Rs. 62,56,288/- out of total claim amount of Rs. 1,04,34,836/- and therefore, the present application is maintainable. He further contended that rejection of interest amount is contrary to the provision of law. Apart from this, ld. Counsel appearing for the Applicant has also raised all the facts averred in the application, rejoinder and written submissions.

10. Similarly, Ld. Counsel appearing for the Liquidator had raised the question of maintainability of the application under Section 60(5) of the IBC, 2016 as there is a specific provision under Section 42 of the IBC, 2016 to file an appeal against the rejection of claim by the Liquidator. Ld. Counsel for the Liquidator further contended that the rejection of claim was communicated to the Applicant through mail on 28.11.2019, whereas the present application is filed on 16.02.2021, hence barred by limitation. He further contended that the interest amount is not admissible as there was no clause of payment of interest by the Corporate Debtor.



11. Before considering the submissions of the parties, at this juncture, we would like to refer to Section 42 and Section 60(5) of the IBC, 2016 and the same are reproduced below.

“Section 42. Appeal against the decision of liquidator. –

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator ¹[accepting or] rejecting the claims within fourteen days of the receipt of such decision...”

“Section 60. Adjudicating Authority for corporate persons. –

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code...”

12. On conjoint reading of these two provisions, it is seen that the Section 60(5) (c) authorises the Adjudicating Authority to decide any question of priority or any question of law or fact arising out of or in relation to Insolvency Resolution or liquidation proceeding of the Corporate Debtor or Corporate person under this Code. Whereas there is a specific provision under Section 42 of the IBC, 2016, which gives right to every creditor to file an appeal before the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims, within fourteen days of the receipt of such decision.



13. In terms of the provisions referred to supra, at this juncture, we would like to refer to the prayer portion of the Applicant. As per prayer(d) the Applicant is seeking a direction against the Respondent/liquidator to admit the claim of the Applicant in totality of Rs. 1,04,34,836/-.

14. At this juncture, we would also like to refer to the e-mail dated 28.11.2019. The scanned copy of the page no. 167 at annexure 27 of the application is reproduced below:



Annexure A27

any action in reliance on the contents. If you have received this message in error, please immediately notify sender and delete or destroy any copy of this message.

Please do not print this email if not necessary **Save Paper, Save Trees, Save Environment.**

167

From: Ramesh Kumar Verma [mailto:liquidation1.hpcl@gmail.com]
Sent: Thursday, November 28, 2019 7:05 PM
To: corporate@ssrana.com
Cc: Kuldeep Verma ; Laishram Gianizail Singh ; vmecranes@gmail.com
Subject: Fwd: FW: [SSR REF. NO. 1100792/ 801120] Submission of proof of claim against Hindustan paper corporation

Dear Sir,

The claim for M/s V.M Engineers has been admitted basis the ERP balance of the Corporate Debtor. The amount admitted is Rs. 62,56,288/-. The screenshot of the same is attached herewith for your reference.

Request you to please drop a line of confirmation as acceptance of the same.

Thank-You.

Kind Regards,

Authorized representative

For or on behalf of Kuldeep Verma

IP Registration no. IBBI/IPA-001/IP-P00014/2016-17/10038

Liquidator-M/s Hindustan Paper Corporation Limited In-Liquidation

TRUE COPY



8

IA No. 1164/2021
In
Company Petition (IB) No.418/ND/2018



15. On perusal of the email referred to supra, it is seen that the amount of Rs. 62,66,288/- was admitted by the Liquidator and the same was communicated to the applicant on 28.11.2019. Thereafter, the Applicant sent another e-mail on 02.12.2019 acknowledging the receipt of the mail communicated by the Liquidator to the Applicant by which the claim of Rs. 62,66,288/- was admitted by the Liquidator. The scanned copy of the email dt/ 02/12/2019 placed at page no. 168 of the application is reproduced below :



IA No. 1164/2021

In

Company Petition (IB) No.418/ND/2018

168

t:+91-11-4012 3000f:+91-11-4012 3010

w:www.ssrana.in;corporate@ssrana.com

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From: S.S. Rana & Co. | Corporate [<mailto:corporate@ssrana.com>]

Sent: Monday, December 02, 2019 7:24 PM

To: liquidation.hpcl@gmail.com

Cc: S.S. Rana & Co. | Corporate ; kuverma@gmail.com

Subject: [SSR REF. NO. 1100792/ 801120] Submission of proof of claim against Hindustan paper corporation

Dear Sir,

Thank you for your below email, contents of which have been duly noted.

We request you to please confirm the rationale behind accepting the claim amount as Rs. 62,56,288/- instead of Rs. 1,04,34536, thereby enabling us to inform the client and submit the deficient documents, if any, for your records.

We look forward to hearing from you in this regard.

Kind Regards,
Vikram Narula
S.S. Rana & Co.

TRUE COPY



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Chennai-Kolkata-Mumbai

Registered Office: 317, Lawyers' Chambers, High Court of Delhi, N
Delhi 110003, India

Corporate Office: 81/2, 2nd & 3rd Floors, Aurobindo Marg, Adhchi
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IA No. 1164/2021

In

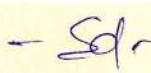
Company Petition (IB) No.418/ND/2018



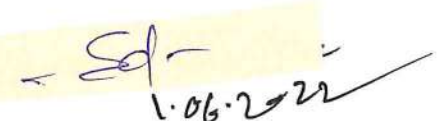
16. Now we consider the provision of Section 42, in terms of these two e-mails. Admittedly, the Liquidator has communicated decision regarding the acceptance of the amount of the Applicant vide mail dated 28.11.2019 and that was acknowledged by the Applicant vide email dated 02.12.2019, whereas the present application is filed on 25.02.2021. As per the provision of Section 42 of the IBC 2016, the Applicant is required to file an appeal against the decision of the Liquidator either accepting or rejecting the claim, within 14 days of the receipt of such decision. But the present application is filed much after the period of limitation prescribed under Section 42 of the IBC, 2016.

17. So far as the issue of the present application being filed under Section 60(5) of the IBC, 2016, since there is a specific provision under the Code, which gives statutory right to the Applicant to file an appeal against the decision of the Liquidator, in such circumstance, in our considered view Section 60(5) of the IBC, 2016, is not applicable. The Applicant has not preferred an appeal under Section 42 of the IBC, 2016 rather it has filed the present application under Section 60(5) of the IBC, 2016, and that too much after the period prescribed under Section 42 of the IBC, 2016. So under such circumstances, we are also unable to convert this application into an appeal.

18. In sequel to the above, in our considered view, on the ground of maintainability alone, the present Application is liable to be dismissed and the same is dismissed.



(L. N. Gupta)
(Member Technical)



Abni Ranjan Kumar Sinha
(Member Judicial)