

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH- II, CHENNAI**

IA/(IBC)905(CHE)/2021

In

IBA/307/(CHE)/2019

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

In the matter of Bhatia Coke and Energy Limited

M/s. DONGWOO SURFACE TECH (INDIA) PRIVATE LIMITED

Represented by its Assistant General Manager Mr. V.R. Haribabu,

Plot No. 126, Samathuvapuram,

Mapedu, Uludai (Post),

Thiruvallur,

Tamil Nadu – 602 105

...Applicant

-Versus-

1. MR. S. DEHALEESAN

Resolution Professional of Bhatia Coke & Energy Limited

No.4/22, First Cross Street, Raghavan Colony,

Ashok Nagar, Chennai – 600 083

2. M/s. EARTH ELEMENTS DEVELOPMENT COMPANY PRIVATE LIMITED

3. M/s. MAHAVIR-COAL WASHERIES PRIVATE LIMITED

...Respondents

In the matter of

State Bank of India

... Financial Creditor

-Versus-

M/s. Bhatia Coke & Energy Limited

... Corporate Debtor

Order Pronounced on **02nd February, 2024**

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

For Applicant : Mr. K.K. Vijay Vigneshwar, Advocate
For 2nd Respondent : Mr. Rites Goel, Advocate
For 1st Respondent : Mr. Dehaleesan, Erstwhile Resolution Professional

ORDER

1. Under consideration is an Application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 by M/s. Dongwoo Surface Tech (India) Private Limited, represented by its Assistant General Manager Mr.V.R. Haribabu , seeking reliefs as follows,
 - a. *Hold that the Applicant is entitled to pay the sum of Rs. 32,50,000/- being the balance of sums payable on account of the cancellation of the contract by the Resolution Professional and direct that the payment shall be made to the Applicant forthwith.*
 - b. *Pass such other orders as may be deemed fit & proper by this Hon'ble Tribunal in the facts and circumstances of the case.*
2. The Learned Counsel for the Applicant submitted that the Applicant herein is M/s. Dongwoo Surface Tech (India) Private Limited, a Company incorporated under the Companies act 1956, in the business of Heat Treatment of Automobile components. The Applicant had approached M/s. Bhatia Coke and Energy Limited (hereinafter referred to as the 'Corporate Debtor') for purchase of 1.5 MW of power to the Applicant and a Letter of Intent (hereinafter termed as 'LOI') was entered into between the parties on 11.03.2019. It is further submitted that, a Power Purchase Agreement (hereinafter referred to as 'PPA') was also entered on 11.03.2019 between the parties.

3. The Learned Counsel for the Applicant submitted that, the LOI and the PPA contained a clause by which it was agreed that the Applicant Company shall subscribe to common equity shares of the Corporate Debtor via Private Placement as per the terms of the Share Purchase Agreement which was to be entered between the parties pursuant to the PPA. It is further submitted that however, no such Share Purchase Agreement was entered between the parties.
4. The Learned Counsel for the Applicant submitted that, pursuant to the LOI and PPA the Applicant herein had paid a sum of Rs. 82,50,000/- to the Corporate Debtor towards Share Capital allotment and to enter into a Group Captive Model on 08.03.2019.
5. The Learned Counsel for the Applicant submitted that neither the Share Purchase Agreement nor the allotment of shares were performed by the Corporate Debtor. It is further submitted that, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process vide order dated 22.05.2019 passed by this Adjudicating Authority.
6. The Learned Counsel for the Applicant submitted that, the Corporate Debtor neither allotted shares nor had fulfilled its obligation under the PPA to supply power for reasons best known to the Corporate Debtor and the Resolution Professional. It is further submitted that as a consequence of non-supply of power, the Applicant Company suffered serious financial loss.

7. The Learned Counsel for the Applicant submitted that, evidencing no supply of power, a notice of default dated 20.06.2019 was sent by the Applicant to the Corporate Debtor. Even after the notice of default there was no improvement from the Corporate Debtor's side.
8. The Learned Counsel for the Applicant submitted that, on 21.06.2019, 9141 (Nine Thousand Hundred and Forty One) shares belonging to Vel Casting Private Limited were purportedly transferred in favour of the Applicant Company by the Corporate Debtor. It is submitted that, the above referred transfer of shares are not the allotment of shares which were to be made as agreed in the PPA. It is further submitted that no allotment of shares has been made in favour of the Applicant Company as agreed in the PPA till date.
9. The Learned Counsel for the Applicant submitted that, despite the repeated pleas by the Applicant to supply power, no action was taken by the Corporate Debtor to supply power as per the PPA. The Applicant had vide its email dated 05.08.2019 had requested the Corporate Debtor to either supply the power as agreed or cancel the Power Purchase Agreement and refund the amount paid.
10. The Learned Counsel for the Applicant submitted that, during the CIRP Period, the Resolution Professional acting for and on behalf of the Corporate Debtor vide letter dated 12.08.2019 had cancelled the Power Purchase Agreement. In the cancellation letter, the

reason for the delay in power supply was stated to be because of the delay in processing time to accord Energy Wheeling approval by new policies of TNEB. A sum of Rs. 50,00,000 (Rupees Fifty Lakh Only) was also remitted to this Applicant by the Resolution Professional on 24.09.2019, 13.11.2019 & 20.12.2019 pursuant to the said cancellation.

11. The Learned Counsel for the Applicant submitted that, out of the Rs. 82,50,000/- due from the Corporate Debtor a sum of Rs.50,00,000/- was paid by the Resolution professional leaving a balance of Rs.32,50,000/- unpaid. It is further submitted that despite several requests made the applicant is unable to retrieve the balance amount to the tune of Rs. 32,50,000/-.
12. The Learned Counsel for the Applicant submitted that, by having cancelling the agreement and paying the sum of Rs.50,00,000/-, the Resolution Professional is now estopped from pleading that the balance sum dues need not be paid. The Resolution Professional having rescinded the contract cannot be allowed to resile from the same and avoid payment of the balance. It is further submitted that the balance amount due to the Applicant needs to be considered and paid as the CIRP cost of the Corporate Debtor.
13. The Learned Erstwhile Resolution Professional by way of an affidavit submitted that, under the terms of the Resolution Plan, a sum of Rs. 190.25 with interest was to be paid to the creditors together with interest as per the order of this Adjudicating

Authority have been paid by the SRA. Further, a remaining sum of Rs. 22 Crore is due to paid on the 2nd anniversary of the effective date, which is also paid in full on NPV Basis, to the financial creditors. Therefore, it is submitted that the Resolution Plan is implemented in full. It is further submitted that the then IRP Mr. Mottappa Thimmarayaswamy, has terminated the agreement and returned a sum of Rs. 50,00,000/- to the applicant. It is further submitted that, the applicant having paid the amount prior to commencement of Corporate Insolvency Resolution Process and having failed to file proper claim before the Resolution Professional/IRP is now claiming that the termination is done during the Corporate Insolvency Resolution Process period and hence, the same needs to be paid as Corporate Insolvency Resolution Process cost. It is further submitted that the act of the the IRP itself is wrong. It is submitted that no such claim is seen in the records of the information memorandum and moreover, the creditors are paid in terms of the plan as approved.

14. The Learned Counsel for the 2nd Respondent by way of its reply submitted that, no proof of claim was ever submitted by the applicant at any given point of time as required under the provisions of the Insolvency & Bankruptcy Code, 2016 and the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is further submitted that the resolution plan submitted by the 2nd respondent was approved by this Adjudicating Authority vide order dated 20.06.2022.

15. The Learned Counsel for the 2nd Respondent submitted that, the Resolution Plan is binding on the Corporate Debtor and other stakeholders. Therefore, the 2nd respondent have no liabilities or dues towards the applicant. It is further submitted that the alleged claim under the instant application are all pertaining to pre-Corporate Insolvency Resolution Process period and thus the same stands extinguished.
16. The Learned Counsel for the 2nd Respondent submitted that, it is a settled law, as decided by the Hon'ble Supreme Court through its various judicial decisions that the claims as provided in the resolution plan stands frozen and is binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders and that on the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan stands extinguished and no person is entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. It is further submitted that, there is no outstanding in the resolution plan amount.
17. The Learned Counsel for the 2nd Respondent submitted that, it was not aware of existence of any such letter of intent dated 11.03.2019 as averred by the applicant. It is further submitted that, the letter of intent, power purchase agreement and the alleged payment of Rs. 50,00,000/- are all much before the commencement

of Corporate Insolvency Resolution Process period of the Corporate Debtor.

10. Heard the Counsel for the Applicant, the Resolution Professional and the 2nd Respondent, perused the documents on record.

11. For better understanding of the events related to the present facts are tabulated as hereunder,

S.No.	EVENT	DATE
1.	NEFT Payment of Rs. 82,50,000/- to the Corporate Debtor by the Applicant	08.03.2019
2.	Letter of Intent	11.03.2019
3.	Power Purchase Agreement	11.03.2019
4.	Initiation of CIRP of the Corporate Debtor	22.05.2019
5.	9141 shares belonging to Vel Casting Private Limited were transferred in favour of the Applicant	21.06.2019
6.	Cancellation of Power Purchase Agreement	12.08.2019
7.	1 st Tranche of Rs. 15,00,000/- was made by the Corporate Debtor to the Applicant	24.10.2019
8.	2 nd Tranche of Rs. 15,00,000/- was made by the Corporate Debtor to the Applicant	13.11.2019
9.	3 rd Tranche of Rs. 20,00,000/- was made by the Corporate Debtor to the Applicant	20.12.2019

12. It is seen that, the matter of dispute in the present application has taken place during 2019 during which one Mr. Mottappa Thimmarayaswamy, was the interim resolution professional. It is observed that, the erstwhile Interim Resolution Professional of the Corporate Debtor had terminated the PPA and paid a sum of Rs.

50,00,000/- to the applicant. And that the present application is filed seeking the balance amount to the tune of Rs. 32,00,000/-. In so far as the status of the Resolution Plan is considered, it is seen that there is no any such payment due under the resolution plan.

13. Be that as it may, not venturing further, sticking on to the prayer sought and considering the existing position of the Corporate Debtor. We are of the view that once a resolution plan is approved by this Adjudicating Authority, all claims which are not part of the resolution plan shall stand extinguished. The Hon'ble Supreme Court of India in the matter of *Ghanashyam Mishra & Sons Pvt. Ltd. –Vs- Edelweiss Asset Reconstruction Company Limited* has held as follows:

“95. That once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such 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”

10. Thus, the above ratio makes it clear that on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, will stand extinguished.
14. On the above discussions, the instant application in terms of the order of the Hon'ble Supreme Court of India in the matter of *Ghanashyam Mishra & Sons Pvt. Ltd. -Vs- Edelweiss Asset Reconstruction Company Limited supra* is devoid of merits and liable to dismissed.
15. Accordingly, *IA(IBC)/905(CHE)/2021* in *IBA/307(CHE)/2019* is **dismissed**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)