

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 337/JPR/2023
In CP No. (IB)- 87/9/JPR/2020

IN THE MATTER OF:

APOLLO PIPES PRIVATE LIMITED

...Financial Creditor

VERSUS

TONK WATER SUPPLY LIMITED

...Corporate Debtor

IN THE MATTER OF

IA(IBC) No. 337/JPR/2023

Essel Infraproject Limited

Through Its Authorized Signatory,
Having Its Office At 513/A, 5th Floor,
Kohinoor City, Kirol Road, Kurla (West),
Mumbai City, Maharashtra-400070

..... Applicant

VERSUS

M/s Tonk Water Supply Limited

Through Resolution Professional, Amit Gupta
Registered Add.: F-2, First Floor, Jagdamba Tower,
Amrapali Circle, Vaishali Nagar, Jaipur-302021

..... Respondent

FOR THE APPLICANT:

Nikhil Yadav, Adv.





Shantanu Jugtawat, Standing Counsel
Nagendra Singh Adha, Adv.

FOR THE RP:

Rishabh Singh, Adv.

Order Pronounced On:22.12.2023

ORDER

Per: Shri Deep Chandra, Judicial Member

1. This Adjudicating Authority had admitted an Insolvency Application filed by *Apollo Pipes Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') and directed the commencement of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor namely *M/s Tonk Water Supply Limited*; thereby appointing *Mr. Amit Gupta* as the Interim Resolution Professional ('IRP') vide order dated 16.09.2022.
2. It is seen that the present application has been filed by the Resolution Professional subsequent to the filing of the application bearing *IA No. 408/JPR/2023* seeking liquidation of the Corporate Debtor under Section 33(1) of the IBC, 2016 read Rule 11 of NCLT Rules seeking liquidation of the Corporate Debtor.
3. The present application has been filed on the following grounds:
 - 3.1. The present Application has been filed by *M/s Essel Infraprojects Limited* ('Applicant'/'Financial Creditor') under Section 60(5) of the IBC, 2016 read with regulation 12 of the Insolvency and Bankruptcy

Sd/-

Sd/-

Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 for wrongfully rejecting the claim under Form-C.

3.2. In the present matter the CIRP of the Corporate Debtor has commenced on 16.09.2022. Thereafter the IRP has issued public announcement in Form-A on 21.09.2022 to submit the claims of the creditors. The Applicant herein vide E-mail dated 19.04.2023 has submitted its claim in Form-C to the RP. The RP has rejected the claim of the Applicant under Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The RP has rejected the claim of the Applicant since it was filed at the belated stage. The Copy of the claim under Form-C along with the E-mail dated 19.04.2023 is annexed as Annexure-3 (Colly).

3.3. The Applicant has filed a claim of Rs. 94,93,11,859/- (Rupees Ninety-Four Crores Ninety-Three Lakh Elven Thousand Eight Hundred Fifty-Nine Only) on the account of their financial debt due and payable which is arises out of two (2) agreements whereby the Applicant has facilitated the Corporate Debtor with advance bank guarantee and performance bank guarantee. Copy of the agreements are annexed as Annexure-5 (Colly) of the Application.

3.4. It is further submitted that the claim of Rs. 94,93,11,859/- (Rupees Ninety-Four Crores Ninety-Three Lakh Elven Thousand Eight

Sd/-

Sd/-

Hundred Fifty-Nine Only) is outstanding against the Corporate Debtor. The Applicant stated that the CIRP of the Corporate Debtor is at very preliminary stage therefore the delay can be condoned by this Adjudicating Authority.

4. The RP filed its reply vide Dairy No. 1932/2023 dated 09.08.2023 whereby the following was submitted:

4.1. The RP has made the Public Announcement in Form-A under Regulation 6 of the CIRP Regulation and the last date for submission of the claim was 03.10.2022. The Applicant has not filed the its claim in the stipulated timelines as the RP has received the claim of the Applicant on 19.04.2023 wherein the Applicant had claimed an amount of Rs. 94,93,11,589/- (Rupees Ninety-Four Crores Ninety-Three Lakh Elven Thousand Eight Hundred Fifty-Nine Only).

4.2. It is pertinent to mention that the Applicant has filed the said claim after the last date of the submission of the claim as per the Regulation 12(1) and (2) of the CIRP Regulation, 2016. Further the delayed claim was submitted after 198 days from the last date mentioned in Form-A i.e., 03.10.2022, therefore the said claim was rejected by the RP.

4.3. The Applicant has failed to submit the its claim in a time bound manner as specified timelines under the Code therefore the claim of the

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Applicant is now time barred and the said claim of the Applicant cannot be entertained at this belated stage.

4.4. Furthermore, the CoC has assented for the Liquidation of the Corporate and has filed an application before this Adjudicating Authority which is pending for the adjudication therefore at this juncture the RP cannot reconstitute the CoC by allowing the claim of the Applicant.

4.5. Additionally, the RP has relied on the Judgement of the Hon'ble NCLAT in the matter of *The Assistant Commissioner, Central Tax, CGST & CX Vs Avishek Gupta (RP) CA (AT) (INS) No. 869 of 2021*

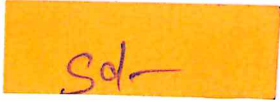
5. We have heard the Ld. Counsel & the RP and perused the averments made in the Application and Reply along with the documents enclosed with the Application.
6. Learned Counsel for the Applicant has submitted that the total outstanding amount towards Corporate Debtor is Rs. Rs. 94,93,11,859/- (Rupees Ninety-Four Crores Ninety-Three Lakh Elven Thousand Eight Hundred Fifty-Nine Only) in Form-C dated 20.10.2022. Accordingly, a claim statement has been filed before the RP however it was rejected by the RP on the ground of the late submission of the claim.
7. It is seen that the claim filed by the Applicant is beyond the timeline as provided under regulation 12(2) of the CIRP Regulations, 2016 and the same has been resolved and thereby received at a stage where the

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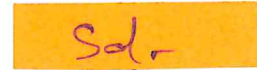
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Committee of Creditors had already approved to liquidate the Corporate Debtor. An application to this effect was also moved by the RP before the Adjudicating Authority bearing *IA No. 408/JPR/2023* which has been further allowed vide Order dated 22.12.2023.

8. The Hon'ble Supreme Court has in the matter of *M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. Civil Appeal No. 5590 of 2021* dealt with the issue of inviting claims. In Para 20 of the Judgment, it is stated that Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP in the newspapers. This would constitute deemed knowledge on part of the Applicant. Therefore, there appears to be no valid reason for the submission of the claim by the Applicant after the final date as mentioned in the public announcement.
9. The application numbered as *IA No. 408/JPR/2023* filed under Section 33(2) of the IBC seeking Liquidation of the Corporate Debtor has been allowed by this Adjudicating Authority vide Order dated 22.12.2023 and Liquidator has duly been appointed. In view of the Order passed in *IA (IBC) No. 408/JPR/2023*, at this stage, the Corporate Debtor is now undergoing Liquidation. Therefore, it is not proper to allow the plea of the Applicant at this stage.

Sd-Sd-

10. In view of the foregoing, the Applicant may present its claims during liquidation process before the Liquidator under Regulation 16(1) of the IBBI (Liquidation Process) Regulations, 2017.
11. Accordingly, this application is rejected & thereby disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**