



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A. 1025/2022

IN

Company Petition No. (IB) – 694/(PB)/2018

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

M/S. L & T FINANCE LTD

.... PETITIONER

VERSUS

M/S ZILLION INFRAPROJECTS PVT. LTD.

..... RESPONDENT

AND IN THE MATTER OF-

M/S SAITRAN ENGINEEERS PVT. LTD.

.... APPLICANT

VERSUS

RESOLUTION PROFESSIONAL FOR M/S ZILLION
INFRAPROJECTS PVT. LTD.

...RESPONDENT



Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri Rahul Bhatnagar, Member (Technical)

For the Applicant: Ms. Manu Loona

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 24.05.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against rejection of claim of the applicant by the Resolution Professional.

The applicant in the present application has prayed for the following reliefs: -

- a) *Allow the present application and direct the Resolution Professional to consider the claim of the Applicant to the tune of Rs. 04,79,880/- in the CIRP of the Corporate Debtor;*
- b) *Direct the Resolution Plan to be sent back to the Committee of Creditors for modification to provide for payment of the entire claim of the Applicant; and*



c) Pass any other relief which this Hon'ble Tribunal may deem fit and proper in favour of the applicant,

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That in and around the year 2016, the corporate debtor approached the applicant for supply of material to which the applicant supplied total material to the tune of Rs. 09,70,404.50/- through various purchase order to the Corporate Debtor and qua which he has paid a sum of Rs. 4,90,524.50/- as part payment vide various transactions and till today a balance of Rs. 4,79,880/- is still pending towards the Applicant by the Corporate Debtor.
- ii. That with regard to the outstanding amount the Applicant approached the Micro and Small Enterprise Facilitation Council, Nagpur for recovery of the amount in dispute, the corporate debtor did not appear before the council rather sent a letter informing about the initiation of insolvency proceedings under IBC, 2016



before the NCLT, Delhi Bench alongwith the order passed by the NCLT, Delhi Bench on dated 05.02.2019.

- iii. That the applicant had filed Form-B as proof of claim by the Operational Creditor before the IRP/Respondent herein on 18.02.2019 alongwith all the documents. However, the claim of the applicant was not approved and the same was informed to the applicant vide an Email dated 11.04.2019 stating as follows: "This is to inform you that from records we found that your matter is already into litigation (Filed by you). That is the reason claim status is pending. As your claim is disputed by the Corporate Debtor. So it can't be admitted."
- iv. That thereafter the Respondent IRP never responded to the various emails sent by the applicant and neither ever updated the status of the claim. The applicant further approached the IRP Respondent stating that the litigation pending before the Micro and Small Enterprise Facilitation Council, Nagpur has been disposed of with liberty to approach the IRP.



3. The Resolution Professional/Respondent has filed his reply to the averments of the applicants stating as below: -

- i. That the Respondent made public Announcement on 07.02.2019 for inviting the claims of the Creditors of the Corporate Debtor.
- ii. That the Applicant submitted its claim before the Respondent on 18.02.2019 for an amount of Rs. 4,79,880/-. After verification of the same, the Respondent found that there is an outstanding amount of Rs. 39,455/- which is pending on the part of the Applicant as per the books of accounts of the Corporate Debtor. Therefore, the Respondent rejected the claim of the Applicant.
- iii. That in the 23rd CoC meeting held on 03.07.2020, the CoC members approved the Resolution Plan with 88% voting share. Thereafter the RP submitted the Resolution Plan before this Tribunal on 25.07.2020 vide IA 3018/2020.



4. We have gone through the documents on record filed by both the parties and arguments advanced by counsels of both the parties.

5. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

6. Adverting to the facts of the present case, the public announcement was made on i.e., 07.02.2019 according to which last date for submission of the claim was 19.02.2019. The Applicant submitted its claim within the prescribed time period. However, the claim amount is disputed. As per the Applicant, an amount of Rs. 4,79,880/- is pending towards it.



However, as per the Respondent/Resolution professional, the Applicant owes an amount of Rs. 39,455/- to the Corporate Debtor. Both the Applicant and the Respondent have attached their ledger accounts.

7. The jurisdiction of this adjudicating authority has been interpreted to exclude the jurisdiction to decide a disputed claim especially when it would be required to decide a question of evidence or fact. The Hon'ble National Company Law Appellate Tribunal in *Encote Energy (India) Pvt. Ltd vs V. Venkatachalam Company Appeal (AT) (Insolvency) No. 1226 of 2019* held as follows:

“Therefore, it is not possible for this Appellate Tribunal to decide the claim on the basis of the disputed question of fact, which can only be decided by a Court of competent jurisdiction.”

8. Further, the Hon'ble Supreme Court in the matter of *Essar Steel India Limited vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531* dated 15.11.2019 held as follows:

"A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would



amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor.”

9. Keeping in mind the above judgements and the very objective of the Insolvency and Bankruptcy Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of assets, this Adjudicating Authority dismisses the application filed by the Applicant. However, the Applicant is at a liberty to approach any appropriate forum for settling the dispute with respect to the claim amount.

I.A/1025/2022 stands disposed off on above terms.

Let copy of the order be served to the parties concerned.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)