



**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 1588/2021**

**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 HINDUSTAN STEELWORKS CONSTRUCTION  
LIMITED.

.... APPLICANT

**VERSUS**

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

...RESPONDENT



**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

For the Applicant: Mr. Ram Anugrah Singh and Mr. SK Warish

Ali, Advs.

**ORDER**

**PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**Order Pronounced on: 28.04.2023**

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 claims of the applicant by the Resolution Professional on 20.02.2021.

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 Operational Creditor in the interest of justice; and*



*b) 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 the applicant being the Operational Creditor herein had filed its claim along with the details of the contract which was entered between the applicant and the Corporate Debtor for the work of construction of group housing project situated in Dehradun at a total cost of Rs. 124.06 Crores.
- ii. That the applicant invited EOI for construction of 2 packages dated 20.05.2015 for construction for a group housing project for an estimated cost of Rs. 32.19 Crore and 80.48 Crore each.
- iii. That the Operational Creditor awarded the work to the Corporate Debtor by issuing the Letter of Intent on 24.09.2015 for construction of the project (Package 1 and 2) and entered into two separate agreements dated 09.11.2015.



- iv. That due to breach of terms of agreement on the part of CD, the applicant on 20.09.2017 terminated both the agreements dated 09.11.2015 between them.
- v. After termination of the contract with the Corporate Debtor, the applicant company (HSCL) engaged alternative agency, to complete the remaining work of the said projects at the risk & cost of contractor (M/ s Zillion Infraproject Pvt. Ltd) The Applicant company was entitled to recover its claim in terms of contract from the Corporate Debtor (M/ S Zillion Infraproject Pvt. Ltd.).
- vi. That the applicant company is entitled to recover claim amount of Rs. 24,48,18,289/- from the Corporate Debtor along with 18% interest & pendente lite interest.
- vii. That the Operational Creditor filed a commercial suit before the Hon'ble Delhi High Court (Original side) in the month of September, 2020 and for the filing of the commercial suit, it is mandatory to file pre-institution mediation before filing a commercial suit. Accordingly, the same was filed on 19.09.2020 by the applicant (HSCL) in the month of September and no one appeared on behalf of



the Corporate Debtor before the mediation committee of Delhi High Court.

- viii. That the Resolution Professional of the Corporate Debtor never communicated regarding the CIR Process hence, acted against its duty as provided under the IB Code.
- ix. That on 16.10.2020 the applicant came to know about the CIR Process against the CD.
- x. That it was very difficult to collect all the documents from various offices across India for filing the claim during the Covid 19 and lockdown measurement and to engage counsel to proceed with the present case.
- xi. The Counsel for the applicant submitted the claim to the Resolution Professional on 18.02.2021 in Form B.
- xii. The Resolution Professional rejected the claim of the applicant vide email dated 19.02.2021 stating as under: -

*“Your claim cannot be considered at this stage because Resolution Plan has already been approved and it is pending with the Hon’ble Tribunal for final approval”*



xiii. It is submitted that the act of RP is completely illegal and in gross violation of the provisions of IB Code. Therefore this Tribunal may direct the RP to consider the claim of the applicant

3. The resolution professional of the Corporate Debtor had filed his reply to the averments of the applicants. The defence taken by the resolution professional, respondent herein, are stated in brief as below: -

- i. That, the RP made public Announcement on 07.02.2019 for inviting the claims of the Creditors of the CD, wherein no claim was received by the RP from the applicant even after the expiry of 90 days from the date of CIRP in view of Regulation 12(2) of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 (hereinafter referred to as “CIRP Regulations”).
- ii. That in the 23<sup>rd</sup> CoC meeting held on 03.07.2020, the CoC members approved the Resolution Plan with 88% voting shares. Thereafter the RP submitted the



Resolution Plan before this Tribunal on 25.07.2020 vide IA 3018/2020.

- iii. The applicant was required to submit its claim before the RP on or before 19.02.2019 (90 days from Insolvency Commencement date) however, the applicant filed the claim after more than 2 years.
- iv. It is submitted that the RP vide letter dated 16.10.2020 requested the applicant to provide and confirm the balance as per their books of accounts / Ledgers as on 05.02.2019 against the project undertaken by the CD. However, no response was received from the applicant.
- v. That admitting the claim at a belated stage will not only affect the stakeholders but CIRP would be jeopardized.
- vi. It is submitted that CIRP is a time bound process and there are various duties which are entrusted to the RP and the CoC.
- vii. On the merits of the claim of the applicant it was submitted that there was no breach of terms of the agreement by the CD. On the contrary the applicant itself wrongfully terminated the agreement executed



between the applicant and the CD without any prior intimation.

- viii. The CD vide letter dated 28.09.2017 raised objection to the wrongful termination of the agreement and requested the applicant to arrange a meeting with the AR of the Applicant. However, the Applicant has not given any response to the said letter. It is further submitted that applicant is not entitled to recover any cost which is paid to the alternative agency for the remaining work.
- ix. That in light of above stated facts the RP prayed to dismiss the application and impose an exemplary cost on the applicant.

4. We have gone through the rejoinder and 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. We find that the in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

***“12. Submission of proof of claims. –***

(1) xxxxxx

(2) *A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution*



*professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) *Xxxxx* ”

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7. 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 Committee of creditors had approved the resolution plan in its 23<sup>rd</sup> COC meeting held on 03.07.2020. The applicants had submitted their respective claim on 18.02.2021 after more than 2 years from Insolvency Commencement date.

8. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 06.05.2019 (i.e., 90 days from public announcement). It is undisputed that the COC approved the resolution plan on 03.07.2020 and the application for approval of the Resolution Plan as approved by the Committee of Creditors was filed to the Adjudicating Authority on 25.07.2020 much before the said claim was filed before the RP.



9. It is pertinent to refer to the judgment of 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 wherein it was held that *"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."*

10. Further in the matter of *Tata Capital Financial Services Limited and Ors. vs. Santanu T. Ray and Ors.* (02.09.2021 - NCLT - Mumbai) : MANU/NC/3503/2021 in para 86 it was held as under : -

*86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern.*



*I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. **The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.***



11. We are of the view that the applicant had sufficient opportunities to file the claim within time. Public Announcement was made on 07.02.2019 wherein last date for submission of claim was 19.02.2019. The applicant even failed to file the claim within the extended time period as provided in Regulation 12(2) of IBBI (CIRP) Regulations, 2016. The extended period expired on 06.05.2019 and the applicant filed its claim on 18.02.2021. If the claim of the applicant is admitted at this stage, then the very purpose of IBC would be defeated as discussed in the abovesaid judgements. Keeping in mind 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 the applicant.

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

SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**