

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-5637/2023

In

Company Petition No. (IB)-113(ND) 2021

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

IN THE MATTER OF:-

Vistra ITCL India Limited

..... **Applicant/Operational Creditor**

Versus

Ansal Urban Condominiums Private Limited & Ors.

..... **Respondent/Corporate Debtor**

AND

IN THE MATTER OF:-

Ansal Properties Infrastructure Limited

.....**Applicant**

Versus

Rajesh Ramani Resolution Professional

of Ansal Condominium Private Limited

.....**Respondent**

Pronounced on 05.03.2024

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

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

PRESENT:-

For the Applicant : Mr. Aarsheya Sharda, Advocate in IA 5637/2023
For the RP : Mr. Shivanshu Kumar, Mr. Anupam Jain, Advocates,
Mr. Rajesh Ramnani, RP in person

ORDER

PER: SHRI BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present application is being filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("IB Code") read with Rule 11 of NCLT Rules, 2016 by the Applicant herein seeking directions to the Respondent for verification and admission of claim of the Applicant, being the Operational Creditor of the Corporate Debtor in the present company petition. The prayers in the application are as under:-
 - a. *Pass an order directing the Respondent herein to verify and admit the claim of the Applicant at the earliest;*

b. Pass such orders or further orders as it may deem fit and proper in the facts and circumstances of the case.

2. That the Applicant herein is one of the leading Real Estate and Infrastructure development company in the country having vast experience in the Real Estate Industry.
3. The Corporate Debtor had engaged the services of the Applicant herein in respect of projects being developed by the Corporate Debtor from 31.03.2011. The said transactions / engagement of services between the Applicant and the Corporate Debtor were carried out on an arm's length basis.
4. Brief facts leading up to the filing of the present application are as under:-
 - a) That on 10.03.2022, the Corporate Insolvency Resolution Process ("CIRP") in relation to the affairs of the Corporate Debtor was commenced by an order of this Hon'ble Tribunal in C.P IB No.113/2021 and the Respondent herein was appointed as the Interim Resolution Professional of the Corporate Debtor and later confirmed as the Resolution Professional of the Corporate Debtor. Thereafter, on 14.03.2022, the Respondent made Public Announcement in Form A for intimation of initiation of CIRP of the Corporate Debtor. The Respondent vide the said Public Announcement invited claims for submission wherein the last date for submission of claims was 24.03.2022 as per the provisions of the IB Code, 2016. The said timeline was extended from time to time as per law.
 - b) On 21.04.2022, the Applicant herein being the Operational Creditor of the Corporate Debtor, submitted its claims in Form B to the tune of Rs.8,06,58,074.30 (Eight Crore Six Lakhs Fifty-Eight Thousand Seventy Four and Thirty-Four Paise Only). The Applicant had enclosed its statement of account for the period between 31.03.2011 to 07.02.2022, showing outstanding amounts due to the tune of the claim amount.

5. Further, no response was received from the Respondent acknowledging the submission of the claim of the Applicant nor any communication with respect to admission/rejection of claim of the Applicant was sent by the Respondent. On 21.03.2023, the Applicant herein sent a reminder email to the Respondent seeking information regarding status of the Applicant's claim. However, no response has been received from the Respondent till date. To the shock and surprise of the Applicant herein, instead of verifying and admitting the claim of the Applicant, the Respondent sent a notice dated 09.05.2023 to the Applicant herein calling upon the Applicant to transfer Rs. 4,90,55,307.74 (Four crore Ninety Lacs Fifty-Five Thousand Three Hundred and Seven Only) purportedly due on the Corporate Debtor from the Applicant as per the books of accounts of the Corporate Debtor as on Insolvency Commencement date i.e. 10.03.2023.
6. That on 13.09.2023, the Applicant duly responded to the notice sent by the Respondent stating as under:-
- There is no debt due or payable by our Client to AUCPL and no amount as alleged in the notice under reply is recoverable from our Client.
 - The Respondent has not disclosed any details about the nature of the transaction or state under what head are the said amounts allegedly due.
 - There is no accounting evidence such as ledger balance or any statement of balance confirmation.
7. That long time has passed since the Applicant submitted the claim form and all the relevant documents to the Respondent and still the Respondent has not taken any further steps to verify and admit the claim of the Applicant. Therefore, the present application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 is filed seeking urgent directions from this Hon'ble

Tribunal, directing the Respondent to verify and admit the claim of the Applicant herein.

Respondent Case:-

- 8.** Pursuant to the Admission order dated 10.03.2022, being passed by this Hon'ble Tribunal, In compliance with the mandate cast upon the Interim Resolution Professional [IRP] (presently, the Resolution Professional (RP)), a public announcement dated 14.03.2022 was made by IRP which was published on 15.03.2022 in Financial Express, NCR Edition and Jansatta, NCR Edition, inviting submission of claims from the financial creditors along with proof on or before 24.03.2022. Subsequently, the Applicant was confirmed as the Resolution Professional of the Corporate Debtor at the First meeting of the Committee of Creditors ("CoC") held on 09.04.2022
- 9.** In accordance with the provisions of the Code, the Applicant published the Invitation of Expression of Interest (Form G) on 24.05.2022 in Pioneer (English & Hindi Edition) and the last date for the receipt of the Expression of Interest was 08.06.2022 and the last date of submission of resolution plan was 23.07.2022. Thereafter, the Applicant received Five Expression of Interests for submission of resolution plans. However, the Expression of Interest received did not meet the Minimum Eligibility Criteria approved in the Second CoC meeting dated 18.05.2022.
- 10.** Thereafter, in accordance with the provisions of the Code the Resolution Professional republished the Invitation of Expression of Interest (Form G) on 21.06.2022 in Financial Express (English Edition) Jansatta (Hindi Edition) and the last date for the receipt of the Expression of Interest was 05.07.2022 and the last date of submission of resolution plan was 19.07.2022 after taking requisite approvals in the 3rd CoC meeting dated 14.06.2022.

Thereafter, the Applicant received Nine Expression of Interests for submission of resolution plans

- 11.** The Resolution Plan submitted by One City Infrastructure, (Successful Resolution Applicant) was approved by the CoC through E-Voting. On 09.08.2023, the Resolution professional filed an Application under Section 31 of the IBC, before this Adjudicating Authority for the approval of the Resolution Plan. The Applicant after long delay and after approval of the Resolution Plan by the CoC and during the pendency of IA No. 4863 of 2023 for approval of the Resolution Plan filed its claim by way of Form CA. (See pg 8-9 para 16 of Reply)
- 12.** During the pendency of the CIRP, the Applicant as per the advice of the COC, engaged the services of the Forensic Auditor, who submitted its Report with the Respondent after auditing the records of the Corporate Debtor. The said Forensic Audit report is already filed by the Respondent alongwith its Application under Section 66 and 43 of the Code, which is pending before this Hon'ble Authority.
- 13.** There is no amount due from the Respondent to the Applicant rather the records and documents available with the Respondent/Resolution Professional qua the Corporate Debtor shows that the Applicant is liable to pay to the Corporate Debtor an amount of Rs. 4,97,67,715.26/ - (Rupees Four Crore Ninety Seven Lakh Sixty Seven Thousand Seven Hundred Fifteen and Twenty Sux Paisa Only).
- 14.** It is submitted that while analyzing the ledger account statements of Ansal Properties and Infrastructure Limited, the Applicant herein for the period 2010-11 to 2021-22 (Period under Review), it has been found that the Corporate Debtor had entered into various fraudulent transactions with Applicant herein in the form of allocation of units of the Corporate Debtor to

the creditors of the Applicant, loan given without agreement 9 transactions have not been shared by the Respondent/Resolution Professional with the Applicant. The advance service of the Section 66 Application replies to all your concerns, queries raised in all your communications till date. It is further clarified that in the Notice dated 9th May, 2023, the Respondent/Resolution Professional had clearly stated that he reserves his right to vary the amount based on further investigation. Accordingly, the amount stated in the Section 66 Application filed by the Respondent/Resolution Professional is slightly higher than the amount mentioned in the letters.

15. The Applicant is not entitled to any amount and the Respondent/Resolution Professional has rightly not taken into consideration the claim of the Applicant. In this regard, the captioned Application ought to be dismissed forthwith.

Findings:-

16. We have heard the submissions made by the Learned Counsel appearing for both the parties and perused the records.
17. It is an admitted case that the Resolution Professional republished the invitation of Expression of Interest (Form-G) on 21.06.2022 in Financial Express (English Edition) & Jansatta (Hindi Edition) and the last date for the receipt of the Expression of Interest was 05.07.2022 and the last date of submission of Resolution Plan was 19.07.2022 after taking approval in the 3rd CoC meeting dated 14.06.2022. The necessity for republishing the EoI arose because five Expression of Interest for submission of Resolution Plan received after the publication of Form-G did not meet the minimum eligibility criteria approved in the second CoC meeting held on 18.05.2022. The Resolution Plan submitted by One City Infrastructure was approved by the CoC on 09.08.2023 and the Respondent/Resolution Professional has filed IA-4863/2023 before

this Adjudicating Authority for approval of the Resolution Plan by the CoC. The Applicant has filed its claim in Form CA on 31.08.2023 long after the approval of the Resolution Plan by the CoC and during the pendency of IA-4863/2023 seeking approval of the Resolution Plan. It is settled principle of law that delayed submission for claims particularly after the approval of the CoC cannot be entertained. The Respondent/Resolution Professional has further submitted that on the advice of the CoC Forensic Audit was conducted and basing on the Forensic Audit Report, the Respondent has filed applications under Section 66 & 43 of the Code which are pending adjudication before this Adjudicating Authority. It is also submitted that the Applicant is not liable to receive any amount from the Respondent. Rather, from the records and documents available with the Respondent/Resolution Professional qua the Corporate Debtor, it is evident that the Applicant is liable to pay the Corporate Debtor of Rs. 4,97,67,715.26. Further, ledger account statements of the Applicant for the period 2010-2011 to 2021-22 reveals that the Corporate Debtor has entered into various fraudulent transactions with the Applicant in the Form of allocation of units of the Corporate Debtor to the Creditors of the Applicant, loan given without agreement etc.

- 18.** In view of the factual matrix of the matter, we do not consider it appropriate to entertain the present application and accordingly, **dismissed**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

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