IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

Item No.8 - IA 646 of 2022
In
CP(IB) 418 of 2018
ITEM No8

Proceedings under Section 60(5) IBC

IN THE MATTER OF:

Sudip Bhattacharya RP of Reliance Naval and Engineering Limited ....**Applicant**

V/s

Globalcom IDC Limited ....**Respondent**

Order delivered on 17/05/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

(COURT - II)

IA No. 646 / NCLT / AHM / 2022

IN

CP(IB) No. 418 / NCLT / AHM / 2018

(Application under Section 60(5) of the IB Code, 2016)

IN THE MATTER BETWEEN

Mr. Sudip Bhattacharya
Resolution Professional of
Reliance Naval and Engineering Ltd. .... Applicant

Versus

Globalcom IDC Ltd. .... Respondent

IN THE MATTER OF

IDBI Bank Limited ... Financial Creditor

Versus

Reliance Naval and
Engineering Ltd. ... Corporate Debtor

Order pronounced on :17/05/2023

Coram:

DEEP CHANDRA JOSHI
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Mr. Sudip Bhattacharya
Resolution Professional of
Reliance Naval and Engineering Limited
Having its registered officer at
C/o Duff & Phelps,
14^{th} Floor, Raheja Tower,
G Block,
Bandra Kurla Complex
Mumbai – 400 051 **... Applicant**

Versus

Globalcom IDC Limited
Having its office at
H Block, 1^{st} floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai
Maharashtra – 400 170 **... Respondent**

Present:

For the Applicant	: Mr. Navin Pahwa, Sr. Adv. a.w Mr. Dhrupad Vaghani, Adv., Ms. Nandita Bajpai, Adv. & Mr. Ajiz M.K., Adv.
For the Respondent	: Mr. Manish Bhatt, Sr. Adv. a.w Mr. Manikya Khanna, Adv. & Mr. Aditya Krishna, Adv.

ORDER

1. The present IA 646 of 2022 has been filed in CP(IB) 418 of 2018 by the Resolution Professional of Reliance Naval and Engineering Limited (hereinafter referred as RP of RNEL) against the Globalcom IDC Limited which were supplying information technology related services to RNEL. The applicant has claimed following reliefs in the said IA which are as under:

"(A) To direct the Respondent not to take any action in light of the Termination Letter dated 22^{nd} July, 2022.

(B) To quash and set aside the Termination Letter dated 22^{nd} July, 2022.

(C) *To direct the Respondent to comply with the provisions of Section 14 of the Code read with Regulation 32 of the Corporate Insolvency Resolution Process Regulations and continue to provide essential services to the Corporate Debtor.*

(D) *During pendency or disposal of this application, direct the Respondent not to take any action in light of the Termination Letter dated 22nd July, 2022 of discontinue the services provided to the Corporate Debtor in any manner.*

(E) *For interim and ad-interim reliefs; and*

(F) *Pass such other necessary orders as this Hon'ble Tribunal may deem fit."*

2. The brief facts of the case are that Corporate Insolvency Resolution Process was initiated against RNEL on 15.01.2020. The present IA was filed on 26.07.2022 fearing termination of Information Technology related services by the respondent company. Through order dated 28.07.2022, the Adjudicating Authority provided interim relief and directed the respondent to maintain status-quo, which was extended from time to time vide orders dated 28.07.2022, 18.08.2022, 27.09.2022, 31.10.2022, 01.12.2022, 20.12.2022 and 07.02.2023. The resolution plan submitted by Hazel Mercantile Ltd. was approved on 23.02.2022 by the CoC. After dealing with the objections and other issues raised, the Adjudicating Authority approved the resolution plan on 23.12.2022. Under the terms of the sanctioned resolution plan, the successful Resolution Applicant Hazel Mercantile Ltd. (hereinafter referred as HML) was to make upfront payment within 90 days of the said order.

3. Through another IA No.306 of 2023, the successful Resolution Applicant had sought further time to make upfront payment. Learned Senior Counsel Mr. Navin Pahwa appearing for the applicant urged on 12.04.2023 that the matter may be heard on

urgent basis as the essential information technology services have been discontinued by the respondent.

4.1 On behalf of the applicant, Learned Senior Counsel submitted that Information Technology Services rendered by the respondent are essential service and as per paragraph 32.9 of the resolution plan, the respondent was required to continue to supply these services till the closing date, that is, till upfront payment is made by the successful Resolution Applicant HML. The relevant portion of the resolution plan is reproduced below for ready reference:

> *"32.9 During the period between the NCLT approval date and the closing date the Corporate Debtor and all its facilities shall continue to receive supply of essential supplies, goods and services, including the continuation of the contractual and lease arrangements. This shall also include the Lease Agreement with E-Complex Private Limited as well as the leases / sub-concession entered into with the Gujarat Maritime Board and Gujarat Pipavav Port Limited Lease Agreements on an uninterrupted basis and shall not for any reason be shut down or restricted in its activities in any manner. In this regard, the Monitoring Committee shall be entitled to make an application to the NCLT to seek appropriate directions".*

4.2 Learned Senior Counsel also brought to our notice the definition of closing date and upfront payment as mentioned in the resolution plan which are reproduced below for ready reference:

> *" Closing Date*
>
> *Shall mean the date on which the Resolution Applicant causes the upfront payment amount under clause 20.1 to be deposited with the Designated Lender."*

“ Upfront Payment

Means the amounts committed to be paid within a period of 90 days from the Approval Date, as per Clause 20 below, subject to any escalation in accordance with the terms of this Resolution Plan.”

4.3 Learned Senior Counsel appearing for the applicant submitted that since the upfront payment has not been made by the Successful Resolution Applicant HML and since their application for extension of last date of payment is pending before the Adjudicating Authority, the closing date for the purpose of para-32.9 of the resolution plan has not yet come, and hence, the respondent was required to supply information technology services to the Corporate Debtor, as the approved resolution plan is binding on all the stakeholders. Learned Senior Counsel for the applicant submitted that no payments are being made to the respondent in absence of receipt of funds from the successful Resolution Applicant.

5.1 Learned Senior Counsel Mr. Manish Bhatt appearing on behalf of the respondent stated that their payments for services rendered prior to the Corporate Insolvency Resolution Process period, during the Corporate Insolvency Resolution Process period and subsequent to the Corporate Insolvency Resolution Process period, post approval of the resolution plan are due from the applicant. It was further submitted that the relief sought in the present IA relates to moratorium u/s 14 of the IBC, 2016 and in the order dated 23.12.2022, wherein the resolution plan was approved, the Adjudicating Authority had specifically observed that *“ the order of moratorium dated 15.01.2020 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of passing of this order”.*

5.2 It was contended by the respondent that even in the moratorium u/s 14 of the IBC, 2016, requirement of law is to continue supply of essential services uninterrupted during the period of moratorium *"except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified"* (Sub-section 2A of Section 14 of IBC, 2016). It was further contended that even as per resolution plan, closing date is 90 days from the approval of the resolution plan which expired on 23.03.2023.

5.3 It was contended that the resolution plan nowhere stipulates that services be provided without payment of requisite fees / charges. Learned Senior Counsel for the respondent relied on the following judgements in support of his contention that supply cannot be continued in absence of payment.

i. *Dakshin Gujarat Vij Company Ltd. V. M/s. ABG Shipyard Ltd. & Anr.* CA(AT) (INS) 334 of 2017
ii. *Uttarakhand Power Corporation Ltd. Vs. M/s. ANG Industries Ltd.* CA(AT) (INS) 298 of 2017.
iii. *Innovative Industries Ltd. Vs. Maharashtra State Electricity Distribution Company Ltd.* CA (AT)(INS) No.156 of 2017 & IA No.612 of 2017.

6.1 Heard the Learned Senior Counsel for the applicant and Learned Senior Counsel for the respondent and perused the documents.

6.2 The present IA was filed to seek protection of the Adjudicating Authority regarding continued supply of information technology services during the Corporate Insolvency Resolution Process period, by invoking provisions of Section 14 of the IBC, 2016. However, in the oral submissions and in the written statement filed by the applicant, the applicant is seeking to extend the benefit of Section 14 of IBC, 2016 during pendency of upfront payment by the successful Resolution Applicant by invoking paragraph 32.09

of the resolution plan. The information technology services are essential services as per Regulation 32 of Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Person) Regulations, 2016. The said essential services were required to be provided to the applicant as per the provisions of Section 14 of IBC, 2016, though against payment for such services as per provisions of sub-section 2A of Section 14 of IBC, 2016.

6.3 While examining the issue of continuous supply of essential services during Corporate Insolvency Resolution Process, Hon'ble NCLAT in the case of *Dakshin Gujarat Vij Company Ltd. V. M/s. ABG Shipyard Ltd. & Anr.*, CA(AT) (INS) 334 of 2017 has held that electricity is to be supplied subject to payment of current charges. The relevant part of the said order is reproduced below*:*

"13. However, from the provisions of 'I&B Code' and Regulations, we find that no prohibition has been made or bar imposed towards payment of current charges of essential services. Such payment is not covered by the order of 'Moratorium'. Regulation 31 cannot override the substantive provisions of Section 14; therefore, if any cost is incurred towards supply of the essential services during the period of 'Moratorium', it may be accounted towards 'Insolvency Resolution Process Costs', but law does not stipulate that the suppliers of essential goods including, the electricity or water to be supplied free of cost, till completion of the period of 'Moratorium'. Payment if made towards essential goods to ensure that the Company remains on-going as made in the present case for the month of December, 2017, such amount can be accounted towards 'Insolvency Resolution Process Costs', but it does not mean that supply of essential goods such as electricity to be supplied free of cost and the 'Corporate Debtor' is not liable to pay the amount till the completion of the period of

'Moratorium'. If the 'Corporate Debtor' has no fund even to pay for supply of essential goods and services, in such case, the 'Resolution Professional' cannot keep the Company on-going just to put additional cost towards supply of electricity, water etc. In case the 'Corporate Debtor' (Company) is non-functional due to paucity of fund, and has become sick the question of keeping it on going does not arise".

6.4 In *Uttarakhand Power Corporation Ltd. Vs. M/s. ANG Industries Ltd.*, CA(AT) (INS) 298 of 2017, the Hon'ble NCLAT had ordered the Corporate Debtor to pay the current electricity charges to become entitled to continuous electric supply.

6.5 In the case of *Innovative Industries Ltd. Vs. Maharashtra State Electricity Distribution Company Ltd.*, CA (AT)(INS) No.156 of 2017 & IA No.612 of 2017 in similar circumstances, Hon'ble NCLAT directed as under:

"……If such amount is deposited, the respondent will restore the electrical connection within 48 hours from the date of receipt of amount to ensure that the company remains on going and functional. On such restoration of such electricity, the IRP on behalf of the 'Corporate Debtor' will also pay month to month charges towards consumption of electricity failing which it will be open to the respondent – Maharashtra State Electricity Distribution Company Limited to take appropriate steps.

3. We make it clear that the Corporate Debtor or Resolution Professional are not liable to pay the dues of period prior to passing of order of moratorium, which can be considered at the time of payment of dues to the creditors (Resolution Plan).

4. The appeals stands disposed of with the aforesaid observations and directions."

6.6 We note that reliefs claimed in this IA are substantially availed by the Corporate Debtor during the CIRP period and the applicant had availed uninterrupted essential information technology services rendered by the respondent during CIRP period and even in 90 days period after approval of the resolution plan. We are of the view that protective umbrella of IBC, 2016, cannot be extended to such an extent as to direct the supplier of essential services to continue to supply the services even when no payments are made. The applicants were unable to commit to make the payment to the respondent for the supply of information technology services even for the period post Corporate Insolvency Resolution Process, that is, the period after the resolution plan was approved. In this circumstances, when the respondent had supplied information technology services during the entire Corporate Insolvency Resolution Process period, and even thereafter, it’s action to discontinue the services now in absence of payment cannot be faulted with.

6.7 Further the service rendered by the Respondent during the CIRP of the Corporate Debtor to the Applicant cannot be allowed to be continued without any cost. If the applicant wishes to continue to avail such services, the applicant has to bear the due amount which is pending and afterward continue to pay and avail the services from the Respondent.

6.8 With these observations, IA 646 of 2022 is disposed of.

-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)

Prakash - Steno