

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2



ITEM No301
IA/759(AHM)2023
in
CP(IB) 232 of 2018

Order under Section 60(5) IBC

IN THE MATTER OF:

Chronos Richardson India Pvt Ltd

.....Applicant

Vs

Sundaresh Bhat RP For JBF Petrochemicals Ltd.

.....Respondent

Order delivered on 09/08/2023

Coram:

Mr. Shammi Khan, 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-

**SHAMMI KHAN
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT NO.II)

IA No. 759 / NCLT / AHM / 2023

IN

CP(IB) No. 232 / NCLT / AHM / 2018

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

IN THE MATTER BETWEEN

Chronos Richardson India Pvt. Ltd. Applicant

Versus

Sundresh Bhatt Respondent

IN THE MATTER OF

IDBI Bank Ltd. ... Applicant / Financial Creditor

Versus

JBF Petrochemicals Ltd. ... Respondent/Corporate Debtor

Order pronounced on : 09/08/2023

Coram:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

Chronos Richardson India Pvt. Ltd.

A-21, 3rd Floor, Green Park, (Main)
New Delhi – 110016

... **Applicant**

Versus

JBF Petrochemicals Limited

Through its Resolution Professional
Mr. Sundaresh Bhat
BDO Restructuring Advisory LLP,
Level – 9, The Ruby North West Wing,
Senapati Bapat Marg,
Dadar (West)
Mumbai – 400028

... **Respondent**

Present:

For the Applicant : Mr. Rasesh Parikh, Adv.
For the Respondent : Mr. Monaal Davawala, Adv.

ORDER

1. The brief facts of this case are that the application u/s 7 of IBC, 2016 filed by IDBI Bank Ltd. was admitted on 28.01.2022 initiating Corporate Insolvency Resolution Process in the case of JBF Petrochemicals Limited in CP (IB) 232 of 2018. The resolution plan vide IA No.899 of 2022 was approved on 13.03.2023. While approving the resolution plan, following order was made in para-20, clause VII which is reproduced below for ready reference:

“This order is subject to outcome of interlocutory applications regarding claims presently pending before the Adjudicating Authority, such creditors will be entitled to pro rata amount as per their respective category in accordance with the resolution plan”.

2. The applicant herein Chronos Richardson India Pvt. Ltd. had filed IA 745 of 2022 regarding its claim. The said IA was disposed of vide order dated 15.03.2023 which is reproduced below for ready reference:

“Application is filed by applicant directing Resolution Professional to making following prayer:

IA 759 OF 2023
IN
CP(IB) 232 OF 2018

“(A) The Hon'ble Adjudicating Authority may please to quash and set aside the communication dated 03.08.2022 issued by the respondent to applicant rejecting its claim and be pleased to direct respondent to verify the claim made by the applicant as presented in Form-B (corrected);

(B) Such other relief as this Hon'ble Tribunal deems fit.

Learned Counsel for the applicant appeared. Since, plan has been approved and under implementation, this application cannot be kept pending. We heard Learned Counsel Mr. Davawala for the Resolution Professional. Without going into the merits of this application, we set aside the communication dated 03.08.2022 and Resolution Professional is directed to reconsider the claim afresh as per law. With these directions, IA stands allowed and disposed of”.

3. Since the claim of the applicant was rejected in re-verification by the Resolution Professional on 24.05.2023, the present application being IA 759 of 2023 has been filed by the applicant on 16.06.2023.
4. In his written submission, respondent Resolution Professional had given reasons for rejection of the claim of the applicant. The relevant part of the reply is reproduced below for ready reference:

“Accordingly, the claim of the Applicant is rejected on account of the reasons as stated below:

<i>Particulars of the components of the operational claims of the Applicant</i>	<i>Amount claimed by the Applicant in Rs.</i>	<i>Grounds of rejection</i>
<i>Net Invoices Outstanding</i>	<i>97,75,001/-</i>	<i>As per the books of accounts of the Corporate Debtor there is debit balance of Rs. 20,70,698. The reconciliation to arrive at the debit balance of Rs. 20,70,698 is as per Note 1 below.</i>
<i>Escalation</i>	<i>41,47,500/-</i>	<i>Escalation Clause</i>



		has not been accepted by the Corporate Debtor in writing and accordingly the Respondent cannot admit this claim.
Unbilled Contract Value	47,00,002/-	Unbilled amount to the extent of Rs. 47,00,002/- has not been accounted for as no invoice has been raised by the Applicant. This amount is the unbilled contract value.
Interest	1,30,76,219/-	The respondent has sought admission of his interest claims "as per market practice". Since no written agreement between the parties exists and even the work order does not contain the interest clause, the Respondent cannot admit such a claim.
TOTAL	3,16,98,722/-	Accordingly, the total claim of the Applicant for Rs.3,16,98,722/- is rejected in full by the Respondent.


Note 1

Amounts allegedly payable to the Applicant as per the Applicant	Rs. 97,75,001
Add: Invoice No. 185/2017-18 not considered by the Applicant	Rs. 5,48,000
Add: Advance amount paid by Applicant for Baliga Equipments.	Rs. 1,46,643
Less: Debit notes raised by the Corporate Debtor and not considered by the Applicant	Rs. 90,40,341
Less: Invoice no. WE00173/2017-18 raised by the Applicant not been approved and booked by the Corporate Debtor	Rs. 35,00,000
Debit Balance as per the books of the Corporate	Rs.-20,70,698*

<i>Debtor recoverable from the Applicant.</i>	
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5. The Resolution Professional had further submitted that the claim is verified from the audited books of accounts of the Corporate Debtor, which contained debit notes raised by the Corporate Debtor of Rs.90,40,341/-. According to Resolution Professional, as per the books of accounts of the Corporate Debtor, an amount of Rs.20,70,698/- is recoverable from the applicant herein.
6. The resolution plan submitted by the Successful Resolution Applicant, GAIL was approved by the CoC on 15.10.2022 and by this Tribunal on 13.03.2023 and has been implemented.
7. The applicant in his written submission had stated that debit notes of Rs.90,40,341/- were accounted unilaterally by the Corporate Debtor and were for items directly procured from the suppliers of the applicant without recourse to the applicant. It is contended that while verifying claim of Operational Creditor, Resolution Professional cannot solely be guided by the books of accounts of the Corporate Debtor and he should make objective assessment.
8. We have gone through the submissions of the applicant and respondent. We have heard counsels for the applicant and respondent. It is apparent that Resolution Professional had rejected the claim of the applicant based on the audited books of accounts of the Corporate Debtor.
9. The claim has been admitted by the Resolution Professional based on the records of the Corporate Debtor, including audited books of accounts. It has been held by the Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. & Another vs. Union of India & Ors.** (Civil Original / Appellate Jurisdiction Writ Petition (Civil) No.99 of 2018) that Resolution Professional is given administrative as opposed to quasi-judicial powers. Relevant portion of the said judgement is extracted below:

“59... It is clear from a reading of these Regulations that the Resolution Professional is given administrative as opposed to quasi-judicial powers. In fact, even when the Resolution Professional is to make a determination



under Regulation 35A, he is only to apply to the Adjudicating Authority for appropriate relief...”

10. Resolution Professional had rejected the claim based on the records and audited books of accounts of the Corporate Debtor and his action in doing so cannot be faulted with.

11. As sequel to the above discussion, IA 759 of 2023 is rejected and disposed of.

-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Prakash - Steno