



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 561/ND/2022

IN

Company Petition No. (IB) – 908/(ND)/2020

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

IN THE MATTER OF:

ORATOR MARKETING PRIVATE LIMITED.

.... PETITIONER/FINANCIAL CREDITOR

VERSUS

SAMTEX DESINZ PRIVATE LIMITED

..... RESPONDENT

AND IN THE MATTER OF -

BHARAT BHUSHAN, PROPRIETOR OF M/S. SAI
TRADERS

.... APPLICANT/ OPERATIONAL CREDITOR

VERSUS

SAMTEX DESINZ PRIVATE LIMITED (IN CIRP)

...RESPONDENT NO 1/CORPORATE DEBTOR

MR VIMAL KUMAR



...RESPONDENT NO 2/ RESOLUTION PROFESSIONAL

CORAM:

SHRI. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

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

For the Applicant: Mr. Manish Raghav, Adv

For the CD : Mr. Siddharth Shankar and Mr. Sharique
Ajmal, Advs.

ORDER

PER- P.S.N PRASAD, MEMBER (JUDICIAL)

Order Pronounced on: 09.11.2023

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 praying for setting aside communication dated 01.12.2021 of the Respondent No. 2 adjudicating the claim of the Applicant.

The Applicant has prayed for the following relief(s)

a. Setting aside communication dated 01.12.2021 of the Respondent No. 2 adjudicating the claim of the Applicant; and



b. Declare the Respondent No. 2 had no authority in law to adjudicate the claim of the Applicant; and

c. Pass any such other order(s)/direction(s) as this Hon'ble New Delhi Tribunal may deem fit and proper in the facts and circumstances of the case.

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

- i. That CIRP of CD was commenced vide order dated 02.09.2021 and Mr. Vimal Kumar was appointed as the Interim Resolution Professional.
- ii. That the Applicant on submitted its claim for and amount of Rs. 83,34,671/- before Respondent No. 2.
- iii. That on 08.11.2021, the applicant was informed by Respondent No. 2 that after verification claim of the Applicant, an amount of Rs. 55,85,769/- has been admitted. The Respondent No. 2 rejected the claim towards interest for an amount of 24,65,184/- and also illegally and erroneously rejected payment toward 3 invoices being Invoice No. 1814, 1815 and 1830 amounting to Rs. 2,83,718.



- iv. That on 30.11.2021, Respondent No. 2 stated that he has come to know about the dispute between the Applicant and corporate debtor and the Respondent No 2 reduced the claim amount of the Applicant to Rs. 34,049.19.
- v. It is submitted that as per provisions of Section 18 and Section 25 of the Code, it is the duty of the Interim Resolution Professional (“IRP”)/ Resolution Professional (“RP”) i.e Respondent No. 2 to collate all claims submitted by the creditors in pursuant to the public announcement. It is pertinent to mention that that neither Section 18 nor Section 25 expressly cast a duty upon the IRP/RP to verify and admit or reject claims.
- vi. The Resolution Professional is not an Adjudicating Authority and is not required to enquire into the factual scenario between parties and determine their rights and liabilities. The task of the RP is to limit itself to confirm that the claims received by him are true and correct. Verification is a process of establishing the truth, accuracy or validity of the claim. It is not meant to be passing a judgment or making a decision on the quantum of the claim.



vii. It is submitted that the resolution professional does not formally have the power to reject claims, in practice the resolution professional can deny the verification of claims due to reasons such as the debt being barred by limitation, late filing of the claims or improper format of the proof of the debt, but after claim being admitted the Respondent No 2 rejected the claim it is beyond the scope of the power of the Respondent No. 2.

3. The Respondent No 2 of the Corporate Debtor had filed his reply to the averments of the applicants. The stand taken by the resolution professional, respondent herein, are stated in brief as below: -

i. The contention of the Applicant that Resolution Professional has no adjudicatory power to adjudicate the claim of the Applicant is true. In this regard, it is categorically stated that the Resolution Professional has not adjudicated the claim of the Applicant but has only verified the claim from the records of the Corporate Debtor. Regulation 14 provides that claim which shall be admitted by the Resolution Professional shall contain only those amounts, which are true and correct, as per



records, provided by the Ex-management of the Corporate Debtor. In this regard, it is stated that verification is a process of establishing truth, accuracy or validity of the claim, which can only be collated with books of accounts, ledgers, invoices and other records, provided by the Ex-management

- ii. The Applicant herein namely M/s Sai Traders (a proprietorship firm) being an Operational Creditor filed its claim in 'Form-B' on 21.10.2021 i.e., after a considerable delay of one (1) month from the last date of submission of claim which was 22.09.2021. In this regard, it is stated that the Applicant/Operational Creditor herein, has left blank the column (6) of claim 'Form-B' containing details of dispute/ legal proceeding between the Operational creditor and Corporate Debtor and accordingly, has not disclosed the 'pre-existing disputes' between the parties. However, after the scrutiny of the claim of the Applicant based on the documents provided by it, the Resolution Professional admitted a claim of INR 55,85,789/- out of total claimed amount of INR 83,34,371/-. The deduction of an amount



was made on the basis of non-availability of relevant documents, which were not annexed with the claim form to collate the claimed amount. The admission of claim of INR 55,85,789/- was duly intimated to the Applicant through email dated 08.11.2021. However, the Resolution Professional further received various records from the Ex-management and once again scrutinised all the claims received from various operational creditor. Upon re-verification, it was found that the Applicant had not disclosed the facts of raising various debit notes, by the corporate debtors. It is stated that after adjusting the Debit Notes raised by the Corporate Debtors, the Ledger Accounts maintained by the Corporate Debtor in regard to the Applicant shows a balance payment of INR 34,049.19 only. The said re-verification of the claim was done in terms of Regulation 14(2) of the Regulations, 2016.

- iii. That the Applicant had also filed a Petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short "Code") being C.P. (IB)-3171/ND/2019, against the Corporate Debtor, which was dismissed on merit by this



Hon'ble Adjudicating Authority vide final order dated 03.12.2020, while holding that there is pre-existing dispute between the parties. Relevant paras of order dated 03/12/2020 are reiterated as follows:

7. it is the case of the respondent that there has been a pre-existing dispute between the parties in respect of quality of coal supplied by the applicant. The respondent has placed e-mails and reports of laboratory to prove it 's claim. The applicant has denied the allegations. However, the documents on records show that the respondent raised its dispute much before issuance of demand notice. It is seen that vide an E-mail dated 27.08.2019 the respondent categorically replied to the applicant that 'there is no outstanding' as per accounts.

8. In the factual background it is seen that there has been no admission of operational debt by the respondent. In fact, there has been a dispute regarding bills raised and material supplied provided by the applicant. Respondent had raised counter debit notes. There was existence of dispute much prior to the issuance of notice under Section 8 of the Code. Respondent has raised dispute with sufficient particulars. The amount of claim raised by the applicant clearly falls within the ambit of disputed claim. The claim of dispute suggests the need of elaborate investigation. In the facts it is reiterated that existence of genuine dispute in the present case cannot be ruled out.



iv. Based on the said ledger account and debit notes raised by the Corporate Debtor, the Resolution Professional revised the admitted claim of the Applicant/Operational Creditor in terms of Regulation 14(2) of the Regulations, 2016. It is therefore stated that the present Applicant is liable to be dismissed.

4. The applicant filed its rejoinder and submitted as under: -

i. It is submitted that debit notes mentioned in ledger of the corporate debtor attached with the reply by RP of Corporate Debtor are forged and fabricated. Thus, RP of corporate debtor is relying on forged and fabricated documents of corporate debtor without verifying genuineness of documents, to misled this Hon'ble Court.

ii. That Respondent No. 2 grossly failed in discharging its duty as the Resolution Professional as it has not afforded any opportunity to the applicant to explain the true and correct position of the applicant and did not even checked the genuineness of the Debit Notes issued by the Corporate Debtor.



5. We have gone through the documents on record filed by both the parties and have heard the parties on merits.

6. The applicant in the application and the rejoinder has stated that once RP admits the claim, he cannot revise the same. However, it is very clear from Regulation 14(2) of the IBBI Insolvency Resolution Process for Corporate Persons, Regulations, 2016, provides as to how the claim amount has to be determined. The said regulation is reproduced as under:

14. Determination of amount of claim

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

Hence, it is clear from the aforesaid Regulation that the RP has vested with the power to revise the claim on the basis of the documents on record. With respect to the issue of claim



filed by the Operational Creditor, it is observed that the RP has taken a conscious view by verification of claim keeping in view the judgement of Hon'ble NCLT wherein the claim of the applicant was dismissed on the ground that dispute regarding bills raised and material supplied provided by the applicant. Further, upon re-verification, it was found that the Applicant had not disclosed the facts of raising various debit notes, by the corporate debtors. It is stated by the RP that after adjusting the Debit Notes raised by the Corporate Debtors, the Ledger Accounts maintained by the Corporate Debtor in regard to the Applicant shows a balance payment of INR 34,049.19 only and the same was revised as per law.

Therefore, it is evident that the RP has not acted ultra vires, and we see no arbitrariness or illegality in the verification process followed by the Resolution Professional

7. Taking into consideration the facts and circumstances of the present case, this Adjudicating Authority is of the considered view that there is no merit in the present application, therefore, the present application is **dismissed** without costs.



Let copy of the order be served to the parties concerned at free of cost.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(P.S.N PRASAD)
MEMBER (JUDICIAL)