

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 248/JPR/2023
In CP No. (IB)- 601(ND)/ 2018
TA No. 69/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S PACKWELL (INDIA) PRIVATE LIMITED

... Operational Creditor/Applicant

VERSUS

M/S EMGEE CABLES & COMMUNICATION LTD.

... Corporate Debtor/Respondent

AND IN THE MATTER OF:

IA No. 248/JPR/2023

MEMO OF PARTIES

M/s Rajasthan State Industrial Development & Investment Corporation Limited ('RIICO')

Registered Office – Udyog Bhawan, Tilak Marg,
C-Scheme, Jaipur, Rajasthan – 302005

Also at: Road No. 5, Vishwakarma Industrial Area,
Sikar Road, Jaipur, Rajasthan – 302013

... Applicant

VERSUS

IA No. 248/JPR/2023

In CP No. (IB)- 601(ND)/ 2018 TA No. 69/2018

Sdr

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Shri Satyendra Prasad Khorania,
The liquidator of M/s Emgee Cables & Communication Limited
 402, OK Plus, DP Metro, Opposite Metro
 Pillar No. 94, New Sanganer Road,
 Jaipur, Rajasthan – 302019

... Respondent

For the Applicant : Ankit Totuka, Adv.
For the Respondent : Anubha Singh, Adv.
 Satyendra Prasad Khorania, Liquidator In-Person

Order Pronounced On: 20.10.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') bearing IA (IBC) No. 248/JPR/2023 is filed by M/s Rajasthan State Industrial Development & Investment Corporation Limited ('Appellant/ RIICO') through its authorised representative Mr. K. K. Kothari, under Section 42 of the Insolvency and Bankruptcy Act, 2016 (the 'Code/ IBC') read with Rule 11 and 15 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking to challenge and for setting aside the rejection of claim by the Liquidator *via* Email dated 10.03.2023. A copy of the authorisation letter is annexed as Annexure – 2 of the IA.

2. The present IA has been filed on the following set of facts:

- a. The Appellant is a public financial institution and is a premier agency of the Government of Rajasthan for industrial development. Hence, bearing in mind the aforesaid vision, the Corporate Debtor was allotted 4,089.80 *sq. mtrs.* Plot No. F-75-76 in Jetpura Industrial Area, Jaipur on 19.05.1986 to carry on the business of

manufacturing all kinds of electrical and telecommunications wires and cables *vide* Allotment Letter dated 20.05.1986 ('Allotment Letter') for which lease deed was executed on 14.05.1987 ('Lease Deed'). A copy of the Allotment Letter and Lease Deed is annexed as Annexures – 3 and 4 of the IA, respectively.

- b. Subsequently, upon an onsite inspection, an excess land measuring 178.20 *sq. mtrs.* was found in the possession of the Corporate Debtor which was regularised after requisite formalities wherein the total allotted area stood at 4268 *sq. mtrs.* The Lease Deed stated that it would have a validity of Ninety-Nine years on the condition of payment of annual economic rent and service charges. The Corporate Debtor was regularly paying all its dues till 2010. However, it stopped paying any kind of charges as levied and demanded by the Appellant in accordance with RIICO Disposal of Land Rules, 1979 in spite of regular follow-ups. Thus, the total amount due on the account of economic rent, services charge and interest is Rs. 7,22,677/- (Rupees Seven Lakhs Twenty-Two Thousand Six Hundred and Seventy-Seven Only). A copy of the calculation sheet is annexed as Annexure – 5 of the IA.
- c. Meanwhile, the Directorate of Enforcement ('ED') issued a Letter dated 06.02.2019 wherein the RIICO was asked to provide a copy of the Lease Deed for investigation under the Prevention of Money

Laundering Act, 2002 which it responded *vide* Letter dated 06.03.2019 ('Response Letter'). A copy of the Letter dated 06.02.2019 and the Response Letter is annexed as Annexure – 6 and 7 of the IA, respectively. Thereafter, the ED attached all immovable and movable properties of the Corporate Debtor *vide* Provisional Attachment Order No. 13/2019 dated 12.12.2019 ('Attachment Order'). A copy of the Attachment Order is annexed as Annexure – 8 of the IA. Whereas, the order for liquidation was passed *vide* Order dated 18.09.2019 ('Liquidation Order') and *vide* Order dated 25.09.2019 appointed Mr. Satyendra Prasad Khorania as the Liquidator ('Liquidator') to manage, protect, and liquidate property, assets, business, and other affairs of the M/s Emgee Cables and Communication Limited ('Corporate Debtor').

- d. Consequently, the public announcement was made on 27.09.2019 calling the claims from the stakeholders of the Corporate Debtor and it was stated that the last date of submission of claims as per Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulation') was 24.10.2019. Subsequently, RIICO received a Letter dated 01.02.2023 ('Intimation Letter') from the office of the Liquidator stating that the Corporate Debtor is undergoing the liquidation process and it is expected to remove, if any, noting in respect of

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provisional attachment of ED or non-transfer of assets in the light of Order dated 05.12.2022 passed by the Adjudicating Authority wherein *inter-alia* it was held that the Prevention of Money Laundering Act would cease to have the power to attach the property of the Corporate Debtor when there is an order of liquidation has already been passed.

- e. It was through the Intimation Letter that RIICO came to know about the Liquidation Process of the Corporate Debtor. Further, the Intimation Letter also stated that if the Appellant has any outstanding demand from the Corporate Debtor, it may submit the claim as specified under the Code upon getting delay condoned for submission of the claim. A copy of the Intimation Letter is annexed as Annexure – 9 of the IA. Therefore, the Appellant made the necessary arrangements to compile all the requisite documentation and submitted its proof of claim in Form B on 24.02.2023. A copy of Form B is annexed as Annexure – 10 of the IA.
- f. However, the Respondent *vide* Email dated 10.03.2023 ('Rejection Email') rejected the claim of the Appellant as the claim was received after 24.10.2019, the last date for submission of claims, and cannot be accepted without the leave of the Adjudicating Authority. A copy of the Rejection Email is annexed as Annexure – 1 of the IA.

Furthermore, the Liquidation Proceedings have not reached the stage

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where the assets of the Corporate Debtor are distributed. Therefore, the claim of the Appellant should be admitted after necessary verification of the claim. As a result, the appellant *inter-alia* has prayed for the Email dated 10.03.2023 to be quashed and set aside along with the following:

- i. *Pass an order to condone the delay in filing the claim before the Liquidator and issue direction to the Liquidator to consider the claim of the Appellant and consider the same after due verification and to treat the Appellant at par with other Operational Creditors;*
 - ii. *Pass an order directing the Liquidator to accordingly modify the list of stakeholders of Company-in-Liquidation in terms of Regulation 31(4) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and include the entry of the appellant as a stakeholder*
 - iii. *Any other order, in the interest of justice and to ensure the sanctity of the liquidation proceedings under IBC.*
- g. The Appellant filed its Written Submissions *vide* Diary No. 2193/2023 dated 08.09.2023 and has reiterated its earlier submissions while relying on the following judgments:

- i. *Virender Singh & Ors. v. Theme Export Pvt. Ltd., Company Appeal (AT)(Ins) No. 34 of 2022 AND M/s Pepper Craft v. Theme Export Pvt. Ltd., Company Appeal (AT)(Ins) No. 46 of 2022.*

The Hon'ble NCLAT, while dealing with both Appeals simultaneously for rejection of the claim filed belatedly before the liquidator, had allowed the appeals on the sufficient cause of the COVID-19 pandemic.

ii. *In Re: Kamla Syntex Limited, 2018 SCC Online Del 9396.*

The Hon'ble Delhi High Court while adjudicating the application filed by the Employees Provident Fund Organisation and discussing the various judgments observed that the creditor has the option to come in to prove his debt and join the liquidation process before the final distribution of the assets, but he cannot disturb any dividend which has already been paid.

iii. *Asmi Enterprises v. Yog Industries Limited, MA 1098/2018 in CP No. 82/IBC/NCLT/MB/MAH/2017.*

The coordinate bench held that *the liquidation proceedings are yet to be finalised in the present case, no prejudice will be caused if the claim of the applicant is adjudicated and admitted. The delay in submission of the claim by the Applicant deserves condonation.*

iv. *The Customs Department v. Rajendra Prasad Tak, IA No. 990/2022 in CP (IB) No. 328/7/HDB/2018.*

Similarly, another coordinate bench held that *a creditor may come in and prove at any time before the Corporate Debtor is dissolved. The penalty for not coming in before the day fixed by Regulations is not exclusion altogether, but exclusion from the benefit of any distribution made before proof.*

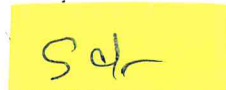
3. The Learned Counsel for the Respondent *vide* Order dated 05.09.2023, waived the right to file a formal reply and has submitted, during the course of the arguments, that the liquidator has no objection to the appeal being allowed in the interest of justice as the final distribution of the assets of the Corporate Debtor is awaiting conclusion.

4. On careful perusal of the above-mentioned facts, documents placed on record before us, submissions made, and arguments advanced, we find that the Appellant was genuinely under the impression that no proceedings would be undertaken given the provisional attachment by the ED. However, if the delay is not condoned on account of ignorance of the law, it shall put the Appellant at an irreparable loss, cause heavy financial cost, and would be against the letter and spirit of the Code. The claim of the Appellant was rejected as it was filed beyond the last date prescribed for filing the claims and not on the merits. Moreover, the Liquidation Regulation does not deal with the belated submission of the claim, which is procedure technicalities.
5. Therefore, such circumstances cannot defect the substantive rights and come in between to cause injustice as the amount of Rs. 7,22,667/- (Rupees Seven Lakhs Twenty-Two Thousand Six Hundred and Sixty-Seven Only) is a substantial amount for the public financial institution. In addition, the liquidation proceedings have not reached the stage where the assets of the Corporate Debtor are distributed in full and final.
6. Consideration of the foregoing narrative leads to the inference that the delay in filing the proof of claim before the Liquidator deserves to be condoned. Accordingly, the delay is condoned. The Appeal is allowed. The Liquidator is directed to receive the claim of the Appellant, adjudicate

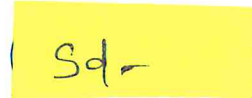


the claim of the appellant upon the merits for its admission and proceed in accordance with the provisions of the Code.

7. Accordingly, IA No. 248/JPR/2023, stands allowed with the aforesaid observations and a copy of this Order may be placed in the file of the said IA. A copy of this Order is to be furnished to the parties.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 408/JPR/2021
In IA No. 72/JPR/2019
In IB – 601 (ND)/ 2018
TA No. 69/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S PACKWELL (INDIA) PVT. LTD.

...Operational Creditor

Versus

M/S EMGEE CABLES & COMMUNICATIONS LTD.

...Corporate Debtor

IA No. 408/JPR/2021:

MEMO OF PARTIES

Mr. Shripal Chaudhari

S/o Shri Hira Lal Chaudhari

Residing at 102, Akshat Nilay Apartments,

A-4, Keshav Nagar, Civil Lines, Jaipur, Rajasthan – 302006

...Applicant

Versus

IA No. 408/JPR/2021
In IA No. 72/JPR/2019
In IB – 601 (ND)/ 2018
TA No. 69/2018

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**Mr. Satyendra Prasad Khorania,
Liquidator of M/s Emgee Cables & Communications Ltd.**

402, Fourth Floor, OK Plus DP Metro,
Opposite Pillar No. 94, New Sanganer Road
Jaipur, Rajasthan –302019

...Respondent

For the Applicant : Amol Vyas, Adv.
For the Respondent : Anubha Singh, Adv.
Satyendra Prasad Khorania, Liquidator

Order Pronounced On: 20.10.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') has been filed by Mr. Shripal Chaudhari, one of the suspended directors ('Applicant') of M/s Emgee Cables and Communications Limited ('Corporate Debtor') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC'). The Resolution Professional ('RP') filed an application, IA No. 72/JPR/2019, under Sections 43, 45 and 66 of the Code against the Applicant and other parties ('PUFE Transaction Application') in the above-mentioned matter. The Applicant in the instant matter seeks dismissal of IA No. 72/JPR/2019.
2. The Applicant stated that the RP has moved the PUFE Transaction Application as one composite application. Such application under the scheme and parameters of the Code is not maintainable as the question of intent is not involved in Section 43 of the Code whereas an undervalued

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transaction requires a different kind of enquiry, which can also be made by a creditor under Section 47 of the Code.

3. Further, Section 66 of the Code relates to fraudulent trading and wrongful trading which entails liabilities on the persons responsible thereof. Furthermore, the Hon'ble Supreme Court of India in the case of *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited, Civil Appeal Nos. 8512-8527 of 2019* has also held that a Resolution Professional is required to file a separate application for each of the aforesaid provisions.
4. The RP (*now* Liquidator) has filed his reply to the aforesaid IA *vide* Diary No. 2652/2021 dated 09.12.2021 and has stated the Applicant is relying on selective parts of the judgment of Anuj Jain (*Supra*) for its benefit. The Hon'ble Supreme Court held that there is no need for filing a separate application but such applications should sufficiently identify the arguments for all the categories of transaction with the finding of the Adjudicating Authority be distinct and adequately addressed. The relevant extract of the judgment is reproduced below for ease of reference:

' Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would

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be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority.

In the present case, it is noticed that NCLT in its detailed and considered order essentially dealt with the features of the transaction in question being preferential at a relevant time but recorded combined findings on all these three aspects that the impugned transactions were preferential, undervalued and fraudulent. Appropriate it would have been to deal with all these aspects separately and distinctively.

We are conscious of the fact that IBC is comparatively new legislation and various aspects expected therein are in the progression of taking proper shape, particularly in the adjudicatory processes envisaged. Having said so, we would leave this aspect at that only, while expecting all the concerned to be more attentive to the scheme, object and requirements of the provisions contained in the Code.'

5. We have considered the arguments made by both parties, perused the judgment of the Hon'ble Supreme Court in the case of Anuj Jain (*Supra*) and scrutinised the PUFEE Transaction Application. The Hon'ble Apex Court has observed and recommended that RP while filing such an application for preferential, undervalued, and fraudulent transactions should not mix the issues at hand. For illustration, the RP uses one instance to fit the requirements of all the preferential, undervalued, and fraudulent transactions without assigning any separate reasoning for such transactions. Such composite applications filed by the RP cannot be acceptable under the scheme of the Code.

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6. It is seen in the PUFÉ Transaction Application, although filed by the RP in March 2019 issues pertaining to Sections 43, 45 and 66 of the Code are dealt with under distinct headings intelligibly marked and highlighted with further sub-headings which include *inter-alia* the manner of payment, movement of goods, relation with the concerned parties and source of funds. Every part has its comprehensible and separate reasoning assigned to it which is in line with the observation of the Hon'ble Supreme Court of India in Anuj Jain (*Supra*). Further, the alleged parties in the PUFÉ Transaction Application are different and are not intertwined. Consequently, it does not affect the adjudication of the aforementioned Sections of the Code.
7. The Hon'ble Supreme Court of India has directed in the Anuj Jain (*Supra*) matter that it would be expected of any resolution professional to keep such requirements in view while making a motion under Sections 43,45 or 66 of the Code before the Adjudicating Authority. The cases under aforesaid sections not segregated would require refiling before the Adjudicating Authority for further time-bound resolution.
8. Accordingly, we do not find merits in the present IA as the PUFÉ Transactions although filed under one application, all the issues relating to Sections 43, 45 and 66 of the Code are already dealt with clearly and separately. In addition, it was directed *vide* Order dated 09.11.2021 for

filing of amended Memo of parties and appropriate affidavit along with newspaper publications. The same has been complied with by the Respondent in the instant IA.

9. Correspondingly, the present IA is dismissed. IA No. 408/JPR/2021 in IA No. 72/JPR/2019 in CP No, stands disposed of with the aforesaid observations and a copy of this Order may be placed in the file.

Sd/-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**