

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**MA/791/2019**

**IN**

**CP/665/IB/2017**

*Under Section 42 and 60(5) (c) of the IBC,  
2016*

**In the matter of M/s. SBQ Steels Private Limited**

**M/s. Indian Oil Corporation Limited**

**(Represented by its Deputy General Manager, Mr. J.M. Virender Rao)**

**---Applicant/Operational Creditor**

**V/s**

**Mr. Ashish Arjunker Rathi**

**(Liquidator for SBQ Steels Private Limited)**

**---Respondent/Liquidator**

**Order delivered on: 26.08.2019**

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For the Applicant: Mr. Mohammed Fayaz Ali, Advocate*

*For the Respondent: Mr. Srinath Sridevan & Mr. Bhagavath Krishnan,  
Advocates*

**ORDER**

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in Open Court on: 20.08.2019**

It is an MA filed by the Applicant u/s. 42 of the Insolvency and Bankruptcy Code, 2016 stating that part of the claim of Applicant namely M/s. Indian Oil Corporation Limited i.e., claim of ₹2.35Crores towards damages and compensation, ₹2.90Crores towards interest component, being rejected by the Resolution Professional, the applicant has sought for admission of the claim along with consequential reliefs.

2. On perusal of this application, it appears that in Para 4 of this application, it has been categorically mentioned that the Applicant has initiated arbitration proceedings against the company by making a claim of ₹9,87,98,800 towards short fall in upliftment of furnace oil, ₹2,35,00,000 towards damages and compensation for setting up infrastructural facilities and ₹7,000 towards rent on fuel and an additional claim of ₹2.90Crores towards interest is included in the claim.

3. When this Bench has put it to the Applicant as to how this Applicant is entitled to seek damages and compensation under the caption of Operational Debt and as to how the Applicant is entitled for

interest component when no such component was incorporated in the Agreement entered into between the parties, with regard to first point, the Applicant has not given any answer, as to the interest component, he has stated that there is no necessity for a specific clause in the agreement for claiming interest.

4. As against the claims and submissions of the Applicant, the Liquidator counsel submitted that by seeing the documents made available to the Liquidator, he has admitted that the components based on Clause (8) of the Agreement dated 8.2.2010 for Supply of Furnace Oil between the applicant and the Corporate Debtor. As to other components i.e. in respect to the damages and compensation which has been said as investment made in the storage facility and interest component rejected on the ground that there is no provision for interest in the contractual agreement entered into between the parties.

5. This Applicant is a Public Sector undertaking i.e. M/s. Indian Oil Corporation Limited doing business with this Corporate Debtor for supply of furnace oil to the Corporate Debtor. The counsel has further

stated that this business has not even been taken off soon after entering into an agreement.

6. As to the claims admitted by the Liquidator, he has referred to Clause 8 of the agreement dated 08.02.2010 stating that the Corporate Debtor company (SBQ Steels Private Limited) had agreed to procure a minimum quantity of 10,000 MT of furnace oil per annum from 2<sup>nd</sup> year onwards till 6<sup>th</sup> year from the date of upliftment of furnace oil, in the event of any short fall in the upliftment from 2<sup>nd</sup> year, the Corporate Debtor Company agreed to make good the loss suffered by the Applicant at the rate of ₹2000 per MT of furnace oil and it will be settled on a yearly basis.

7. In view of the Clause 8 of this application, this Applicant is entitled for calculation of the payment for non-upliftment of furnace oil as per the quantity mentioned in Clause 8, therefore the Liquidator admitted the claim of ₹9,87,93,000 for non-upliftment of furnace oil. As to rent on fuel handling capacity, since the Applicant has charged it as ₹7,000, the Liquidator has admitted. As to investment made in storage

facility for ₹2.35Crores and ₹2.90Crores towards interest vide an email dated 23.04.2019 claimed by this Applicant, the Liquidator rejected these components on the ground that there is no agreement entered into between the parties in respect to these components.

8. Now the point for determination is as to whether this Applicant is entitled to claim which is claimed as damages and compensation for ₹2.35Crores and interest portion for ₹2.90Crores.

9. The Corporate Debtor has never agreed to pay towards these two components rejected by the Liquidator, whereby we are of the view that this Applicant is not entitled to claim anything that has not been crystallized in the agreement and that has not been agreed between the parties, therefore, we are of the view that this Liquidator has rightly rejected those two claims.

10. As to the second point i.e. not mentioning about the reasons for rejection of those two claims, it is true that the Liquidator has not given reasons in detail, but that does not mean reasons are not given.

Moreover, if the claim of the Applicant is ascertainable, then only the question of considering it as claim will arise. In this case, as to the above two components of claims raised by the Applicant, they are rejected on the ground no covenant has been arrived at over these two claims. When claim itself not claimable, for the sake of giving reasons in detail, that procedure is required to be repeated. For the Applicant has failed to place any material reflecting that this Corporate Debtor is obliged to pay on these two counts, we are of the view that not giving any reasons in detail cannot become a ground for invalidating the claim already considered and rejected by the Liquidator.

11. Though the Liquidator has not clearly mentioned in many words as to why he has rejected those two claims, with regard to the component of investment made in storage facility, he has mentioned that it is not admissible based on the information available, as to interest portion, it has been categorically mentioned that since there is no binding agreement between the parties obligating the Corporate Debtor

company to pay interest, we believe that reason is more than sufficient for rejecting the interest component.

12. In view of the reasons mentioned above, this MA/791/2019 is hereby **dismissed**.

**-Sd-**  
**(S. VIJAYARAGHAVAN)**  
**Member (Technical)**

**-Sd-**  
**(B. S.V. PRAKASH KUMAR)**  
**Member (Judicial)**

*SR/Arpan*