

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH**  
**KOLKATA**

**I.A (I.B.C)/139(KB) 2021**  
in  
**C.P. (IB) 634/KB/2017**

**In the matter of**

Shri Ram Moorti Mishra

...Applicant/Operational Creditor

-Versus-

Shri Abhilash Lal (Resolution Professional)

....Respondent/Resolution Professional

**Date of Hearing: 08/06/2022**

**Date of pronouncement : 06/07/2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Harish Chander Suri, Member (Technical)**

**Appearances:**

For RP : Mr. Ratnanko Banerji, Sr. Adv.  
Ms. Mamta Binani, Adv.  
Ms. Anindita Roy Chowdhury, Adv.  
Mr. Rohit Sharma, PCS  
Mr. Raghav Chadha, Adv.  
Mr. Kanishk Kejriwal, Adv.  
Mr. Abhilash Lal, RP in person

For CoC :Mr. Vaijayant Paliwal, Adv.  
Mr. Nikhil Mathur, Adv.  
Ms. Prabh Simran Kaur, Adv

For applicants in IA/139/2021, : Mr. Shekhar Sharma, Adv.  
IA/1379/2020, IA/126/2021

## O R D E R

**Per: Rohit Kapoor, Member (Judicial)**

1. The instant application has been filed by applicant under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Rule 11 of NCLT Rules, 2017 seeking for the following reliefs;-
  - i. The Hon'ble Tribunal may direct Resolution Professional to accept the claim of reimburse of service tax amount along with 15% interest up to 18/01/2022 to Rs. 36,84,224.69/- (Rupees Thirty Six Lakh Eighty Four Thousand two Hundred Twenty Four Rupees and Sixty Nine Paisa) along with interest @ 15% up to the date of actual realization.
  - ii. The Hon'ble Tribunal may direct Resolution Professional to accept the claim of balance payment of the executed work along with interest Rs. 5,47,94,186.77/- ( Five Crore Forty-Seven Lakhs Ninety-Four Thousand and One Hundred Eighty Six Rupees and Seventy-Seven Paisa) along with interest @15 % up to the date of actual realization.
2. The contentions of the applicant are summarized as under;-
  - i. The applicant was awarded a contract on 9<sup>th</sup> of October, 2012 for an amount of Rs. 2,31,46,160.
  - ii. By way of first amendment by the Corporate Debtor the value of work was revised to 2,76,50,560/- on 14<sup>th</sup> of March, 2013.
  - iii. Further rates were revised by the Corporate Debtor on 3<sup>rd</sup> of April, 2014.
  - iv. The work in question was successfully completed by the applicant on 9<sup>th</sup> of May, 2015 and all the relevant documents were handed over to the Corporate Debtor. The works were completed to the full satisfaction and a copy of acknowledgement dated 9<sup>th</sup> of May, 2015 is annexed as Annexure, A-5.
  - v. For the integration of work the Corporate Debtor paid an amount of Rs. 6,19,82,048/- to the applicant.
  - vi. The applicant has not been paid the balance dues despite his request.
  - vii. The Corporate Debtor has not acquired its outstanding despite the fact the work was executed to the satisfaction of the Corporate Debtor.

3. The Resolution Professional without any justification has alleged the claim of reimbursement of service tax paid by the applicant on the false pretext through its communication dated 3<sup>rd</sup> of September, 2020. The applicant submitted its revised claims for executed work in Form B.
4. Suffice it to say that the applicant has not been paid/reimbursed its dues.
5. The instant application has been filed by one Sri Ram Moorti Mishra who is the husband of Kanta Mishra. In IA(I.B.C)/126(KB)2021 the Resolution Professional has filed single reply affidavit to both this IA.
6. To the contentions raised by the applicant the Resolution Professional has filed his reply affidavit. The reply of the Resolution Professional is summarized as under;-
  - i. Resolution Professional vide email dated 6<sup>th</sup> of March, 2020 requested the applicant herein to provide additional information to review his claims. The Resolution Professional sought the following details
    - a. Tower wise agreement with villagers / farmers or ROW works for all towers.
    - b. Copy of villager payment receipts.
    - c. Copies of invoices raised by applicant on the Corporate Debtor as per the terms of contract.
    - d. Any other supporting document.
7. The Resolution Professional in para 1 at internal page 4 of his reply has stated that after verifying records from the Corporate Debtor's books sent an e-mail to applicant on 1<sup>st</sup> of September, 2020 informing the various form B filed by applicant on his behalf as well as PCC Construction Company and the status of the claim as verified by respondent, excerpted in this paragraph in the tabular form. In paragraph 'm' of reply affidavit it is mentioned by the Resolution Professional that the status of claims prepared in the tabular form upon the perusal and consideration of all the documents provided by the applicant. It is also mentioned that documents sought by the Resolution Professional were not provided by the applicant, in particular for the claims submitted by Mr. Ram Moorti Mishra regarding the scope of work order mentioned in this paragraph. Further for the claims filed on behalf of the PCC Construction Company, no additional and relevant details have been

provided. This e-mail dated 1<sup>st</sup> of September, 2020 is annexed with IA 126/KB/2021 at page 56.

8. The answering respondent also provided its working / calculations on the basis of which the claims filed by the applicant were partially admitted or not admitted. A copy of working sheet for the claims filed on behalf of PCC Construction Company has not been annexed by the applicant.
9. In spite of multiple requests providing supporting documents, applicant did not furnish any document and merely stating the value of claims was not sufficient to grant any claim.
10. The Resolution Professional has gone strictly by the documents and record filed by the applicant and available with the Corporate Debtor.

After considering the contentions of the applicant and the Resolution Professional, record annexed with the pleadings before us and the record before us, it is admitted position the alleged claims arise out of a work executed somewhere in 2014. From the above contentions and record before us we are of the view;

- i. The Resolution Professional could not have granted anything merely based on the assertion on a particular amount against a particular head and without any supporting documents thereto.
- ii. The applicant has also submitted written notes of submissions and has stated in the context of Service Tax dues the proof of the said payment would be available with the Corporate Debtor and therefore contention of respondent that applicant has not provided any supporting document is without any justification and it is for the respondent to produce the detailed statement along with supporting documents by which mode and when the payment was made. Therefore respondent be directed to accept a total claim of 2,14,24,617/- along with 15% interest.
- iii. This Adjudicating Authority cannot adjudicate upon the question of loss or profit interest etc. This Tribunal in its summary jurisdiction can in no way go into crystallizing the alleged claims. It is clear from the above position the works were executed somewhere in 2015 and the claims have been raised for the first time before the Resolution Professional and that too, as

observed by Resolution Professional, without the required documents in support.

11. In the absence of documents sought by the Resolution Professional, the Resolution Professional is right in saying it was not possible for him to grant any claim that has been rejected. We see no error as such by the Resolution Professional.
12. For the foregoing reasons, IA/139/KB/2021 is hereby rejected.
13. Urgent Certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**Harish Chander Suri**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on 06<sup>th</sup> of July, 2022.

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**I.A. (IB) No. 586/KB/2021**

**in**

**C.P. (IB) No. 634/KB/2017**

*In the matter of:*

An application under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016.

*And*

*In the matter of:*

**Flsmidth Private Limited**

*... Operational Creditor*

Versus

**Jhabua Power Limited**

*... Corporate Debtor*

And

**I.A. (IB) No. 586/KB/2021**

In the matter of :

**Abhilash Lal**

**Resolution Professional of Jhabua Power Limited**

*... Applicant*

**Coram:**

***Shri Rohit Kapoor, Member (Judicial)***

***Shri Harish Chander Suri, Member (Technical)***

**Appearances (via hybrid mode)**

For the Resolution Professional : 1. Mr. Ratnanko Banerji, Senior Advocate  
2. Ms. Mamta Binani, Advocate