

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-3

IB-2728/ND/2019

IA/933/2022

IN THE MATTER OF:

Om Logistics Ltd.

Vs.

Servel India Pvt. Ltd.

.....Respondent

....Applicant

SECTION

U/s60(5)(C) of IBC

Order delivered on 27.04.2023

CORAM:

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

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IA/933/2022in IB-2728/ND/2019 **is dismissed.**

Sd/-

**(RAHUL BHATNAGAR)
MEMBER (T)**

Sd/-

**(P.S.N PRASAD)
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT V**

**I.A. 933/2022
IN
C.P. No. (IB) – 2728/(ND)/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

OM LOGISTICS LIMITED

CREDITOR

....

OPERATIONAL

VERSUS

M/S SERVEL INDIA PRIVATE LIMITED

..... CORPORATE DEBTOR

AND IN THE MATTER OF-

ICICI BANK LIMITED

.... APPLICANT

VERSUS

MR. REETESH KUMAR AGARWAL

...RESPONDENT

CORAM:

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

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Order Pronounced on: 27.04.2023

ORDER

PER: SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

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 against rejection of claims filed by the applicant/ Financial Creditor by the Resolution Professional seeking the following relief(s): -

- a) Direct the Respondent to admit the claim of applicant of Rs 49,47,589.02/- as on 08.06.2020 along with interest @24% per annum till realization under the category of Secured Financial Creditor.
- b) Grant the Ad-interim ex-parte stay in the present proceeding pertaining to the Application bearing IA No. 2810/2021 filed by the Respondent seeking approval of the Resolution Plan until the adjudication of the present application.
- c) Consider the present application as objections to the application bearing IA No. 2810/2021 filed by the Respondent seeking approval of the Resolution Plan.
And/ Or
- d) Pass any other or further directions as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice in favor of the applicant and against the Respondent and in the interest of justice.

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

- a) That the present application has been filed seeking direction to the RP to admit the claim of applicant of Rs. 49,47,589.02/- as on 08.06.2020 along with interest @24% per annum till realization under the category of Secured Financial Creditor.
- b) Two Financial Facilities were availed by the Corporate Debtor. One Overdraft Facility (Loan No. 00070519501) for Rs. 25,00,000/- and Second, Used Car Loan (Loan No. LUDEL00036772078) for Rs. 55,00,000/- for purchase of the vehicle bearing registration No. HP12G9753 Make BMW 730L Eminence against the hypothecation of the said car.
- c) On 29.06.2020, the Used Car Loan Account was foreclosed after receiving the payment of Rs. 26,53,187.91/- vide cheque No. 085300 from OD account. The charge/hypothecation on the vehicle was removed and the NOC was issued in this respect. It is pertinent to mention that the applicant was not aware at that point of time about the commencement of the CIRP of the Corporate Debtor and by concealing the said fact the payment was made. On 13.08.2020, the applicant came to know that the CIRP of Corporate Debtor had been commenced w.e.f. 08.06.2020 and the Respondent was appointed as IRP.
- d) In the meantime, the Ex-Directors sold the said vehicle to one Mr. Rahul Chaudhary. The Respondent also filed an IA 3981/

2020 praying to declare the sale of car to Mr. Rahul Chaudhary as invalid and to direct the refund of the consideration which was subsequently transferred to other persons.

- e) That, this Hon'ble Tribunal vide order dated 18.02.2021 was pleased to set aside the sale of car and directed the Respondents to repay/refund the amount to the account of CD. The applicant bank on 29.04.2021 reversed the amount of Rs. 26,53,187.91 to OD account.
- f) The counsel of the applicant sent email on 30.04.2021 to the Respondent seeking suggestions for further course of action. The RP sent an email 13.05.2021 stating inter-alia to file the claim as per law.
- g) That on 17.06.2021 through email, the applicant sent the claim Form C dated on 17.06.2021 to the RP for Rs. 26,36,364.21 due as on 08.06.2020 along with interest with respect to Used Car Loan Account. However, no response was received.
- h) Thereafter, applicant received an email from the RP intimating that an amount of Rs. 23,84,974.81 has been adjusted by the applicant out of receipts from Trade Debtors received in OD account. Thereafter the applicant reversed and transferred the amount Rs. 23,84,974.81 to another account as provided by the RP in correspondence dated 31.08.2021. Therefore, the amount of Rs. 23,11,224.81/- again became due and payable by the CD towards its liability with respect to the loan Account No. 000705019501.
- i) The applicant again filed the revised claim form C dated 03.12.2021 for Rs. 49,47,589.02/- as on 08.06.2020 @24% per

annum till realization through email dated 03.02.2021. However, no response was received from the RP. Therefore, the present application was filed by the applicant.

- j) It is submitted that the email sent on 17.06.2021 along with Claim Form was not bounced back. The same can be verified from the emails annexed with application. Further, the RP was aware about the loan facilities about the CD from the applicant. It is submitted that the RP has failed to discharge his duties as per the provisions of the IBC.

3. The Resolution Professional of M/S Serval India Private Limited has filed reply to the averments of the applicants. The defense taken by the resolution professional, respondent herein, are stated in brief as follows:-

- a) Initiation of CIRP by the Hon'ble Adjudicating Authority on 8th June, 2020 and further Public Announcement made on 11th June, 2020 by the Respondent RP and the last date to file claim was 22nd June, 2020.
- b) During the moratorium period, Applicant Bank have foreclosed the car loan by adjusting by the current account therefore RP filed an application vide IA/ 4477/ 2020. During the course of hearing, Hon'ble Adjudicating Authority verbally advised the Applicant Bank to refund the adjusted amount. Therefore, Applicant Bank refunded the amount and Respondent RP withdraw the application IA/ 4477/ 2020 vide order dated 02.11.2021.

- c) Respondent have made public announcement in wider circulation newspapers in NCT of Delhi on 11.06.2020 and also uploaded on the IBBI Portal.
- d) Respondent through email dated 13.05.2021 advised Applicant to transfer the adjusted amount towards the vehicle loan from the current account of Corporate Debtor into current account of the Corporate Debtor. Further so far as hypothecation is concerned, team of RP in the same mail 31.05.2021 informed the Applicant about the order passed by this Tribunal in IA 3857/2020 wherein this Hon'ble Tribunal held that transaction of sale of car by the Corporate Debtor to Mr. Rahul Chaudhary is null and void and Applicant is at liberty to file application with jurisdictional Transport Officer for withdrawal of NOC and getting the hypothecation on the car re-instated. In continuation, Respondent also advised Applicant to file its claim before approval of resolution plan. Copy of email dated 13.05.2021 sent by Respondent is on Page. No. 20 of the application filed by the Applicant.
- e) Further, Mr. Shashank Raj, Corporate Legal Group of the Applicant vide his mail dated 03. 06.2021 wrote to the Respondent that ICICI Bank shall file an application with the jurisdictional Transport Officer. Copy of the mail dated 03.06.2021 sent by the Applicant is on Page No. 20 of the application filed by the Applicant.
- f) RP has not received claim form on mail dated 17.06.2021 as pleaded by the applicant in para 21. It is submitted that on 22.09.2021 Advocate Chandrashekhar A Chakalabbi wrote to

Mr. Shashank, Official of ICICI Bank to file claim before the RP. Further on November 6, 2021 Advocate Chandrashekhar A Chakalabbi again wrote to Mr. Shashank official of ICICI Bank to file claim before RP.

- g) It is most respectfully submitted that both the above said email dated 20.09.2021 and 06.11.2021 are in trail mail under the same subject Om Logistics V. Serval India Pvt. Ltd. (I.A. No. 4477/2020) mail communications which is attached by the Applicant on Page No. 18 to 21 but Applicant has hidden the email communication dated 20.09.2021 and 06.11.2021 with an illicit motive to gain undue advantage. Copy of the detailed mail communication under the subject line Om Logistics V. Serval India Pvt. Ltd. (I.A. No. 4477/2020) is annexed as Annexure A-4 of the Reply.
- h) It is submitted that on one side Applicant is pleading that it has filed claim on 17.06.2021 while on another side counsel of the Applicant was guided on 20.09.2021 and 06.11.2021 to file claim before RP. Therefore, contentions of the Applicant are false and frivolous. Also, the Applicant has fabricated the mails dated 17.06.2021, 15.07.2021, 19.07.2021, 02.08.2021 and 10.08.2021 as RP has never received such mail from the Applicant.
- i) RP received the claim in Form C from the applicant on 05.02.2022 (almost after 3 months of withdrawal of application IA/4477/2020), after the approval of resolution plan by Committee of Creditors and submission of resolution

plan before Hon'ble AA (Application for approval of resolution plan was filed on 22nd June, 2021).

j) CoC at their 12th CoC meeting held on 04th June, 2021 discussed the resolution plan and RP put the resolutions proposed in twelfth (12th) meeting of CoC for e-voting. That on 19th June, 2021, 06:00 PM voting on the resolution for approval of resolution plan submitted by M/s Pooja Marbles was concluded and the same has been approved by 85.65%.

k) It is submitted that on one side in para 21 of the application, Applicant is pleading that it has filed on 17.06.2021 and in para 26 it is pleading for admission of Claim Form dated 03.12.2021. Therefore, Applicant is contradicting its own words which is nothing but only trying to gain undue advantage.

4.No rejoinder has been filed to the reply filed by respondents.

5.We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been examined in detail.

6.The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is

issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

7. We find that in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement. This is quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

“12. Submission of proof of claims. –

(1) xxxxxx

(2) *A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) Xxxxx ”

8. Adverting to the facts of the present case, the respondent/IRP had made public announcement in the newspapers having wide circulation on 11.06.2020 as per which the last date for submission of claim was 22.06.2020. The respondent/IRP came to know that

the Applicant Bank have foreclosed the car loan by adjusting the current account of the Corporate Debtor in contravention of moratorium period under Section 14 of the Code, 2016. The Respondent through email dated 13.05.2021 had advised the Applicant to transfer the adjusted amount towards the vehicle loan from the current account of Corporate Debtor back into the current account of the Corporate Debtor and also advised the Applicant to file the claim before the Resolution Professional before the approval of Resolution Plan. The respondent seeking refund of the said amount had filed I.A/4477/2020 which was later allowed to be withdrawn by this Adjudicating Authority order dated 02.11.2021 pursuant to the refund of amount by the applicant. The Committee of Creditors in the 12th CoC meeting held on 04th June, 2021 had approved the resolution plan submitted by M/s Pooja Marbles with 85.65% votes in favour and an application bearing I.A./2810/2021 is filed before this Adjudicating Authority seeking approval of the Resolution Plan.

9. The submission of the applicant is that the applicant has filed claim on 17.06.2021 via e-mail whereas the submission of the Respondent is that the claim form was received on 03.12.2021. Even if this Adjudicating Authority, considers the submission of the Applicant that the claim was filed on 17.06.2021 via e-mail with the Resolution Professional, a prudent financial creditor would have taken the trouble to follow up with the Resolution Professional about the status of his claim. However, the Applicant had not placed on record any correspondence to corroborate the submission

that the claim was submitted on 17.06.2021 with the Resolution Professional. On the other hand the Applicant had placed on record the e-mail correspondence dated 20.09.2021 wherein Advocate Chandrashekhar (Respondent's Advocate) had written to Mr. Shashank, Official of ICICI Bank to file claim before the RP and by e-mail dated 06.11.2021 Advocate Chandrashekhar A Chakalabbi again wrote to Mr. Shashank official of ICICI Bank to file claim before RP. Therefore, we do not find any force in the applicant's submission that claim was filed on 17.06.2021 with the Resolution Professional.

10. Further, in this context, we are conscious of the decision on similar facts of the **Hon'ble NCLAT in Axis Bank Ltd. Vs. Shubhkamna Buildtech Pvt. Ltd. & Anr. – NCLAT New Delhi (2022) ibclaw.in 640 in which Hon'ble NCLAT** has placed reliance on the decision of the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors : 2019 SCC Online SC 1478**, in which it is held that:

“107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution Applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who would successfully take over the business of

the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count”.

(Emphasis Supplied)

11. In view of the aforesaid discussion and judicial pronouncement we are of the considered view that the applicant has failed to show due diligence in submitting the claim before the Resolution Professional. We, therefore, cannot accede to the request for issuing direction for the acceptance of the claim of the applicant as the same has been filed after the approval of the Resolution Plan in 12th CoC Meeting held on 04.06.2021.
12. Resultantly, the present application i.e., I.A./933/2022 being devoid of merits stands dismissed. No orders to cost.

Sd/-

**Shri Rahul Bhatnagar
Member (Technical)**

Sd/-

**Shri P.S.N. Prasad
Member (Judicial)**