

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

**I.A. (IB) No...../KB/2020
Connected to
C.P. (IB) 140/KB/2019**

In the matter of:

An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 and 14 of National Company Law Tribunal Rules, 2016;

And

In the matter of:

An application filed for necessary direction to RP of Corporate Debtor to admin claims of the Applicant

And

In the matter of:

Mr. Nitesh Sagarmal Jain, of 904, Gold Crest Centre, Opp. Manubhai Jewellers, L. T. Road, Borivali (West), Mumbai 400092 representing **M/s Bhairav Metals** in capacity as its Partner.

... Applicant

Versus

M/s. Prithvi Ferro Alloys Private Limited (CD undergoing CIRP), a Company incorporated under The Companies Act, 1956, bearing CIN: U27100WB2008PTC121962 and having its Registered Office at CF- 361, Salt Lake City, Sector-I, Kolkata 700064.

And

Mr. Samir Kumar Bhattacharyya, Resolution Professional, C/o LSI Resolution Pvt. Ltd.
Sagar Trade Cube, 104, S. P. Mukherjee Road Kolkata 400026

... Respondents

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Parties Present:

Mr.Siddhartha Murarka, CS] For the applicant

Mr.Niraj Saha, Adv. } For the applicant

Mr. Rahul Auddy, Advocate] for the Respondent.

Date of hearing: 11.06.2020

Order delivered on: 11.06.2020

ORDER

Per Jinan K.R. Member (Judicial)

1. Mr. Nitesh Sagarmal Jain, representing **M/s Bhairav Metals** in capacity as its Partner (hereinafter "Applicant") filed this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter "Code") read with relevant Regulations and Rules 11 and 14 of National Company Law Tribunal Rules, 2016, challenging the order of rejection of the claim submitted by the applicant. The applicant contents that his office is located in Mumbai, and the order of admission was not brought to his notice in time and that immediately knowing the initiation of CIRP he

had submitted the claim but rejected by the RP twice and hence filed this application praying for issuing direction to the RP to accept the claim of the Applicant and not to reject it merely on technical grounds such as delayed filing.

2. It is submitted that CIRP has not completed and no resolution plan was approved and hence prayed for an early hearing of the application through video conference. The explanation for the early consideration of this application before lifting of the lockdown being satisfactorily explained, this application is listed on today for hearing after giving notice to both sides and directing the respondent to submit a brief written defence. The respondent submitted written defence submitting that after the commencement of CIRP, public announcement was done by him in the news papers in Kolkata on 11th August 2019 since the Registered Office is situated at Kolkata, in the news papers in Nagpur, Maharashtra namely Indian Express (English) on 11th August 2019 and in Lok Satta (Marathi daily) on 11th August 2019 since the plant of the CD is situated near Nagpur. The advertisement was also uploaded by him on the IBBI website. Since as per Regulation 12(2) of the CIRP regulations, the RP cannot accept any claim submitted by the creditor after 90 days from the CIRP Commencement date he rejected the claim. The applicant lodged its claim beyond 90 days and hence there is no illegality crept on the side of the RP.

3. Herd both sides. Perused the applications and records.

4. The Ld. Pr. CS.Mr.Siddhartha Murarka, for the applicant submits that the applicant on 19th October 2016 placed a Purchased Order on the CD for supply of goods more particularly, Ferro Silicon. As per agreed terms, the Applicant gave advance payment to the CD to the tune of Rs. 10 (Ten) Lakhs. However, CD failed to supply goods to the Applicant and also failed and neglected to repay the advance amount that was paid to

the CD. Despite several demands neither the goods supplied nor return the money hence the applicant is entitled to claim the advance amount from the CD and hence submitted the claim to the RP.

5. The Ld Pr.CS further submits that the RP made public announcement under Section 13 of the Code the newspapers published in Kolkata, whereas the Applicant resides in Mumbai and therefore the publication was not brought to the notice of the applicant and hence the delay. According to him the applicant found about this process under the Code sometime on 2nd February 2020 and it took all necessary steps expediently. It filed its claim by email through its advocate with the RP of the CD on 7th February 2020. The RP referring to Regulation 12(2) of CIRP Regulations replied through email on 11th February 2020 and declined to accept the claim on the ground of delayed submission. The Applicant's advocate on 12th February 2020 again wrote to RP of CD for admission of claim relying on the order of **The Hon'ble NCLT, Principal Bench in Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd., dated 06.06.2019**, however not considered and declined the application on 13th February, 2020 and hence this application.

6. The Ld. Counsel Mr. Rahul Auddy for the RP submits that RP was not empowered to receive the claim submitted to him beyond 90 days as per section 12(2) of the Code, and that the RP have taken all possible steps at his end to ensure public notice about the initiation of CIRP of the CD and invitation of claims. However, he did not oppose this application and submit that if the Adjudicating Authority is satisfied that there was reasonable cause in the delayed filing of the claim and directs the RP to consider the claim of the Applicant, the RP shall abide by such directions.

7. From the foregoing submissions on both sides it is understood that the order of admission was passed in the case in hand on 8th August, 2019. The extended period of CIRP was expired on 3rd May 2020 in the midst of lock down. That lockdown was implemented in India owing to Covid-19 pandemic from 25th March 2020 and subsequently on 20th April 2020, Regulation 40C was introduced in CIRP Regulations thereby the RP can exclude the period of lockdown from the timelines prescribed for the completion of the CIRP if he chooses. Since I am satisfied that no resolution plan was so far approved and that there were no deliberate delays or latches on the side of the applicant for the belated submission of the claim, it appears to me that this application requires consideration.

8. In view of the above discussion, this application is liable to be allowed by directing the RP to reconsider the claim if filed in proper Form, if not time is to be given for correction by stipulating time to resubmit and consider the claim in accordance with the provisions of the Code, and Regulations. The result of admission or rejection is to be intimated to the applicant.

Accordingly this application is disposed of as above.

The Registry is directed to send e-mail copies of the order forthwith to all parties inclusive of the Counsel.

(Jinan K.R.)

Member (J)

Signed on this, the 11th day of June, 2020.

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