

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

IA No. 2255/MB/C-I/2020

In

C.P (IB) No.1061/MB/C-I/2017

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016
Filed by

IL&FS Financial Services Limited

...Applicant

Versus

Rajendra K. Bhuta

Liquidator of

Guruashish Constructions Private Limited.

...Respondent

In the matter of

Union Bank of India

...Financial Creditor

Versus

Guruashish Constructions Private Limited.

... Corporate Debtor

Order delivered on: 11.08.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Luckyraj Indorkar and Mr.
Ranjit Shetty i/b. Argus Partners,
Advocates
For the Respondent/Liquidator : Mr. Darryl Pereira, Advocate.

ORDER

Per :Anu Jagmohan Singh, Member (Technical)

1. The present Applicant is the Financial Creditor of the Corporate Debtor. The main relief sought by the Applicant is:
 - i. That this Tribunal be pleased to set aside the impugned decision dated 18.11.2020 of the Liquidator and direct the Liquidator to accept the claim of the Applicant for the amount of Rs.3,38,67,858/- in respect of Guruashish Loan.
2. However, the Liquidator vide its report dated 03.02.2023 further accepted the claim of the Applicant to the tune of Rs.1,17,73,438/- towards penal interest of security shortfall/document deficiency out of the total rejected claim. Hence, the Applicant prays that this Tribunal be pleased to set aside the impugned decision dated 18.11.2020 and the said Report of the Liquidator. The Applicant further prays that direction be given to the Liquidator to accept the claim of the Applicant for the amount of Rs.2,20,94,420/- in respect of Guruashish Loan.

Backdrop of facts

3. The Corporate Debtor was admitted in CIRP vide Order dated 24.07.2017. Since, no Resolution Plan was passed, the Corporate Debtor was Liquidated vide Order dated 04.09.2020 and the Respondent herein was appointed as the Liquidator.

4. The Applicant submits that it had entered into a loan agreement dated 17.11.2011 with the Corporate Debtor and granted a loan of Rs. 215,00,00,000/- (Rupees Two Hundred and Fifteen Crores Only). It had also entered into a loan agreement dated 30.06.2015 with one of the group companies of the Corporate Debtor namely Serveall Construction Private Limited. The Applicant granted a loan of Rs.155,00,00,000/- (Rupees One Hundred and Fifty Five Crore only) to Serveall Construction.
5. The Corporate Debtor for securing the aforesaid loan, granted to Serveall Construction Private Limited created a mortgage over its assets and issued a Corporate Guarantee dated 30.06.2015 in favour of the Applicant.
6. The Applicant submits that as on 24.07.2017, Rs.6,69,88,218/- (Rupees Six Crore Sixty Nine Lakh Eighty Eight Thousand Two Hundred and Eighteen Only) was due and payable by the Corporate Debtor (**“Guruashish Loan”**). With respect to loan granted to Serveall Construction Private Limited an amount of Rs.154,13,01,627/- (Rupees One Hundred Fifty Four Crore Thirteen Lakh One Thousand Six Hundred and Twenty Seven only) was due and payable by Serveall Construction Private Limited.
7. Pursuant to the public notice dated 01.08.2017, the Applicant filed two separate proof of claims, the first proof of claim dated 09.08.2017 was

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filed for Guruashish Loan for Rs.6,69,88,218/- (Rupees Six Crore Sixty
Nine Lakh Eighty Eight Thousand Two Hundred and Eighteen Only).

The second proof of claim dated 31.08.2017 was filed for Serveall Loan
for Rs.154,13,01,627/- (Rupees One Hundred Fifty Four Crore Thirteen
Lakh One Thousand Six Hundred and Twenty Seven only).

8. Pursuant to the second public notice dated 09.09.2020 issued by the Liquidator, the Applicant filed its proof of claim dated 06.10.2020 aggregating to Rs.258,58,11,933/- (Rupees Two Hundred Fifty Eight Crore Fifty Eight Lakh Eleven Thousand Nine Hundred and Thirty Three Only) for both Guruashish and Serveall Loan.
9. The Liquidator after filing the claim, has vide his letter dated 28.10.2020 sought clarification from the Applicant with respect to the variable interest rates ranging from 15% to 22% levied by the Applicant.
10. The Applicant replied to the said letter by email dated 02.11.2020 and forwarded the Liquidator relevant documents for increase in interest rates. The Applicant submits that penal and additional interest at 2% p.a. each is charged as per clause 29 and 30 of the offer letter dated 08.11.2011.
11. The Applicant further clarified that increase in interest rate from 15% to 20% is by way of supplemental agreement dated 19.11.2012 and Second supplemental agreement dated 14.11.2019 executed between the Applicant and the Corporate Debtor.

12. However, the Liquidator partially rejected the claim of Rs.3,38,67,858/- (Rupees Three Crore Thirty Eight Lakh Sixty Seven Thousand Eight Hundred and Fifty Eight Only) from the total claim of Rs.10,86,23,598/- (Rupees Ten Crore Eighty Six Lakh Twenty Three Thousand Five Hundred and Ninety Eight Only). The reason assigned by the Liquidator for rejection is that Applicant is claiming, interest on the interest amount already charged over the loan facility. The penal interest amount is also admitted by the Liquidator. Hence, the interest on interest component cannot be considered in claim amount.

13. The break down of the total claim amount of Rs.10,86,23,598/- is set out below:

Sr. No.	Particulars	Amount due as on 30.09.2020
1.	Principal	Rs.3,35,42,460/-
2.	Interest	Rs.3,67,61,376/-
3.	Penal Interest	Rs.44,51,904/-
4.	Delayed Payment Interest	Rs.2,20,94,420/-
5.	Penal Interest on security shortfall/Document Deficiency	Rs.1,17,73,438/-
6.	Total	Rs.10,86,23,598/-

14. The Applicant submits that the Liquidator has rejected Delayed Payment Interest and Penal Interest on Security Shortfall. The Liquidator has miscalculated the amount, the correct amount of the rejected claim ought to be Rs.3,38,67,858/- instead of Rs.3,83,19,762/-.
15. The Applicant submits that the Liquidator was directed by this bench on 16.01.2023 to reconsider the claim and submit a report. In compliance of the order dated 16.01.2023, the Liquidator filed his report dated 03.02.2023 accepting the claim amount of Rs.1,17,73,438/- towards penal interest on security shortfall/document deficiency but rejected the claim of Rs.2,20,94,420 towards delayed payment interest.
16. Hence, the present Application has been filed by the Applicant for direction to the Liquidator for admission of the balance rejected amount. The Applicant urges that the delayed payment interest was charged in terms of the offer letter dated 08.11.2011 and the Liquidator has erroneously rejected the same without considering the terms of the contract entered into between the parties. The Applicant relies on clauses 29 and 30 of the offer letter dated 08.11.2011.
17. The Applicant submits that the Liquidator has not assigned any cogent reasons for rejecting the claim and there is no reason to override the contractual terms.

Submissions advanced by the Respondent/Liquidator

18. The Respondent/Liquidator submits that the rationale behind the

rejection of the claim is that IL&FS has claimed interest on interest amount outstanding already charged over the loan facility and penal interest. Thereafter, it has further claimed interest on delay in payment of interest and penal charges. The Liquidator argues that if principal amount is not paid a claim of interest and penal interest is justified. In the present case, the claim of principal and interest along with penal interest is accepted. The Applicant herein is claiming interest on unpaid interest. Hence, the partial claim is rejected.

19. The Liquidator has filed its report dated 03.02.2023, the Liquidator submits that he has accepted the claim of Rs.7,03,03,836/- which includes Rs.3,35,42,460/- principal amount, Rs. 3,67,61,376/- interest on the facility provided. The Liquidator has further accepted penal interest of Rs.44,51,904/-.
20. The Applicant has provided further information in respect of security shortfall, accordingly, the amount of Rs.1,17,73,438/- is accepted by the Liquidator. Hence, the total claim accepted by the Liquidator is Rs.8,65,29,178/- and rejected the claim of Rs.2,20,94,420/-.

Findings and Directions:

21. We have perused records and heard the submissions made by the parties.
22. It is not in dispute that the Liquidator has accepted the claim of the Applicant to the tune of Rs.8,65,29,178/- comprising of the principal amount, interest, penal interest and penal interest on security

shortfall/document deficiency. The Liquidator has rejected the partial claim of Rs.2,20,94,420/- towards delayed payment interest.

23. This Tribunal vide order dated 16.01.2023, had directed the Liquidator to re-examine the claim and file its report. Accordingly, the Liquidator has filed its report dated 03.02.2023 wherein he has further admitted penal interest for security shortfall/document deficiency. However, he has rejected the delayed payment interest amounting to Rs.2,20,94,420/- without assigning any cogent reasons. It is merely stated that the Applicant is charging interest on interest and the claim of interest on interest is rejected.

24. The Applicant has disputed the partial rejection on the ground that the Liquidator has overlooked the clauses of the offer letter dated 08.11.2011 and has rejected the claim erroneously. The said clauses are reproduced herein below for reference:

29. Additional Interest : In the event the borrower fails to furnish documentation/creation of security in the stipulated time period (in form and manner satisfactory to IFIN) as required for the facility and as set out herein or such other documents as may be required in the connection and as are intimated by IFIN to the Borrower, IFIN reserves the right to levy additional interest upto 2% p.a. over and above the contracted interest rate mentioned herein, which would be charged retrospectively from the date of disbursement/due date of submission of the document upto the date of

rectification of the defect.

30. Penal Interest : In the event of the borrower being in arrears of the debt servicing amount, the borrower will pay a late charge @ 2% p.a. over and above the prevailing interest rate on overdue amount.

25. The Applicant argues that clause 30 provides that the Applicant can charge interest over and above the interest rate levied on overdue amount. The overdue amount includes principle along with interest which being is capitalized. We agree with argument advanced by the Applicant, the aforesaid clause provides for delayed interest.
26. The Liquidator has erroneously rejected the partial claim of delayed payment interest without considering the clauses of the offer letter.
27. The Liquidator is directed to examine the claim again in view of the aforesaid observations.
28. With the aforesaid observation, **IA No. 2255 of 2020 in CP(IB) No. 1061 /MB/C-I/2017** stands disposed of as **allowed**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

11.08.2023

Priyal

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)