

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-822/2023 IN

CP (IB) No.3071/MB-IV/2019

Under Section 60(5) of the IBC, 2016

**New Empire Textile Processor Private
Limited**

(Through its Resolution Professional of
Mr. Kailash T. Shah)

... Applicant

Versus

Sangeeta Tex Dyes Private Limited

... Respondent

In the matter of

Research Dye Chem Private Limited

...Operational Creditor

Versus

Sangeeta Tex Dyes Private Limited

...Corporate Debtor

Order Pronounced on: **18.07.2023**

Coram:

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Mr. Kunal Kanungo a/w Ms. Tanushree Sogani and Mr. Atishay Jain, Adv.

For the Respondent No.1:

Mr. Nausher Kohli a/w Ms. Nidhi Chheda, Adv

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application i.e. IA-822/2023, filed by M/s New Empire Textile Processors, through its Resolution Professional Mr. Kailash T. Shah in the matter of M/s Sangeeta Tex Dyes Private Limited, the Corporate Debtor, in C.P. (IB) 3071/2019 under section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules 2016, and seeks directions to the Corporate Debtor and the Erstwhile Resolution Professional of Corporate Debtor, to admit claim of Rs. 1,10,40,000/- (Rupees One Crore Ten Lakh Forty Thousand Only) and provide a copy of approved resolution plan in the matter of the Corporate Debtor.

1.1. The Hon'ble National Company Law Tribunal, Mumbai Bench initiated Corporate Insolvency Resolution Process against the applicant wherein Mr. Kailash Shah was appointed as the Interim Resolution Professional, vide order dated 26.08.2019, and he was subsequently replaced by Respondent No. 2 as Resolution Professional.

2. In the CIRP of the Applicant Creditor, an application was filed u/s 43, 49, 60(5) and 66 of IBC, 2016 by the Resolution Professional of the applicant on 28.01.2020 for declaring the transactions conducted between Corporate Debtor and the applicant Creditor as preferential and fraudulent transactions, however, the Corporate Debtor was also admitted into CIRP vide order dated 29.01.2020. The Applicant creditor filed its claim before the Interim Resolution Professional in form C dated 19.02.2020 for a sum of Rs. Rs. 1,10,40,000/- (Rupees One Crore Ten Lakh Forty Thousand Only).

2.1.The Respondent No. 2 i.e. Resolution Professional in the matter of Corporate Debtor, vide email dated 3.4.2020, informed the deficiencies in the claim, and the necessary documents/information to remove those deficiencies were provided the Respondent No. 2, except the loan document. However, the Applicant submitted the copy of the balance sheet of the respondent no.1/Corporate Debtor wherein the name of New Empire Textile Processors Private Limited was mentioned in liability side of the Balance Sheet under schedule-3 Long Term Borrowings, sub-heading Unsecured Loans.

2.2.Thereafter, the status of claim was followed by the Applicant, vide email dated 08.04.2021, 24.08.2021 & 3.2.2022 by the Applicant, and the Resolution Professional informed vide email dated 4.2.2022, that the erstwhile RP Mr. Suresh Jena had rejected the claim submitted by the Applicant, and there was no correspondence regarding the claim, further

the Applicant was not part of the Committee of Creditors conducted by the erstwhile RP which was never objected by the Applicant. Furthermore, the Respondent No. 2 stated that the books of accounts of Respondent No. 1/ Corporate Debtor reflected that an amount of Rs. 9,96,000/- (Rupees Nine Lakhs Ninety-Six Thousand Only) was owed by New Empire Textile Processors Pvt. Ltd. to the Corporate Debtor. However, due to approval of the Resolution Plan of the Applicant, the Respondent No. 2 could not lodge a claim in the CIRP of the Applicant Creditor.

2.3. It is claimed by the Applicant that it was never intimated about rejection of the claim by the erstwhile RP of Respondent No. 1/Corporate Debtor.

3. This Bench heard the Counsel and perused the material available on record.

3.1. The Resolution Plan in the matter of the Corporate Debtor came to be approved by this Tribunal vide order dated 20.7.2022. Thereafter, the Applicant filed an Application bearing no. 1538 of 2022 on 20.7.2022 against the Respondent No. 2 before the Hon'ble Tribunal under Section 60(5) of the Code for seeking directions against the Respondent to admit the claim, and this Tribunal, vide its Order dated 11.08.2022, directed the Respondent No. 2 to reconsider the claim filed by the Applicant. Pursuant to this order, Respondent No. 2 apprised the Applicant on 4.1.2023 that the Hon'ble Tribunal has directed him to reconsider the claim of the Applicant, and rejected the claim after giving detailed reasons/grounds for rejecting the claim of the Applicant

3.2.The Respondent No. 2 refused to provide the copy of the Resolution Plan and further informed that the Plan was already implemented and payment to all the Stakeholders was also made.

3.3.This Bench noticed that the then RP had dismissed the claim of the Applicant stating that the loan transaction is fraudulent and preferential, and an application in IA-430/2021 is pending for adjudication before NCLT Court-1, accordingly directed the Respondent No. 2, vide its interims order dated 19.04.2023, to produce copy of said IA to apprise itself the contents of said application. On perusal thereof, this Bench found that this IA-430/2021 is not relevant at this juncture.

3.4.Ld. Counsel for the Applicant drew our attention to the clause No.12 of the approved Resolution Plan, whereby contingent fund was provided in the Plan, and asked this Bench to direct the Monitoring Committee to pay the amount out of said Contingency fund. Accordingly, this Bench directed the Respondent no. 2 to clarify as to whether the contingent fund got exhausted upon the final implementation of the Plan.

3.5.Ld. Counsel for the Respondent No.2 submitted that the contingency fund was exhausted, and later on submitted that the said fund was utilised to satisfy the claims, which came subsequently before the Monitoring Committee but were not provided in the plan.

3.6.The Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [2019] ibclaw.in*

07 SC held that “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 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.”

3.7. In view of the aforesaid decision, this Bench is of the considered view that no direction can be issued to the Corporate Debtor or the Erstwhile Resolution Professional to admit the claim, after the Resolution Plan, in the matter of the Corporate Debtor, has been approved and fully implemented leaving no balance of undisbursed resolution money, even under contingency fund provided in the plan. Accordingly, this Bench feels that the present application is not maintainable and liable to be dismissed.

4. The IA-822/2023 is **dismissed** accordingly.

Sd/-

Prabhat Kumar
Member (Technical)
18.07.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)