



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**IA No. 156/2022 IN CP (IB) NO. 75/ALD/2019**

*In the matter of*

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 32 read with Rule 11 of NCLT Rules, 2016)*

**AND IN THE MATTER OF:**

**INOX WIND LTD.**

(Through its Authorized Representative)

**Corporate Office at:**

Inox Tower, Plot No. 17, Sector 16A,  
Noida, Uttar Pradesh (201301)

**..... Applicant**

***Versus***

**1. FEDDERS ELECTRIC & ENGINEERING LTD.**

(Through its Monitoring Committee)

**Registered Office at:**

6 and 6/1 UPSIDC Industrial Area  
Sikandrabad, Bulandshahr,  
Uttar Pradesh- 203205

**2. IM+ CAPITALS LTD.**

(Through its Managing Director)

**Registered Office at:**

72, Ground Floor, World Trade Center Babar  
Road, Connaught Place New Delhi- 110001

**.....Respondents**

**-Sd-**

**-Sd-**



**IN THE MATTER OF:**

**STATE BANK OF INDIA**

**..... Financial Creditor**

***Versus***

**FEDDERS ELECTRIC & ENGINEERING LTD.**

**Registered Office at:**

6 and 6/1 UPSIDC Industrial Area  
Sikandrabad, Bulandshahr,  
Uttar Pradesh- 203205

**..... Corporate Debtor**

Order pronounced on 26<sup>th</sup> September, 2023

***Coram:***

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

***Appearances:***

Sh. Bharat Singh, along with : For the Applicant.  
Sh. Suraj Kumar Singh, Advs.

Ms. Gunjan Jadwani, Adv. : For the Respondent.

**ORDER**

**IA No.156/2022**

1. The present application has been filed on behalf of the INOX WIND LTD, seeking the following reliefs:

- a.** *BE PLEASED to direct the Corporate Debtor to release remaining materials i.e. loosed materials such as plates, flanges, internal parts, fasteners, frames, clamps, segments and ladder amounting*



*around Rs. 1,36,00,000/- (Rupees One Crore Thirty-Six Lakh Only) laying in Jambusar Bharuch plant of the Corporate Debtor as per the Internal Approval Note order dated 23.06.2021.*

- b.** *BE PLEASED to direct the Corporate Debtor to reconcile the accounts for the rest of the raw MS plates which belongs to the applicant and has been laying in Bharuch factory whose worth is around Rs. 5,77,00,000/- (Rupees Five Crores Seventy-Seven Lakh Only) as per the Internal Approval Note.*
- c.** *BE PLEASED to pass any such other order as this Hon'ble Tribunal as may deem fit and proper under the facts and circumstances of the case, in the interest of justice, equity and fair trial.*

**2.** It has been averred in the application that the INOX WIND LTD. provides services concerning wind resources assessment, site acquisition, infrastructure development, erection and commissioning and long term co-operations and maintenance of wind power projects.

**3.** It is stated in the application that the applicant had been placing orders with the Corporate Debtor since 2016 for fabrication of towers and other relevant equipment, for which the applicant was providing the raw material for fabrication



of the said towers and other equipment. The applicant has issued multiple purchase orders for the aforesaid work.

4. It is further stated that the Corporate Debtor was mandated under various purchase orders to fabricate from the raw material to construct the wind towers and deliver the same to the applicant and thereafter, it was liable to pay on the terms agreed under the purchase orders. However, the applicant did not receive the wind towers within the stipulated time line and meanwhile, the Corporate Debtor has gone into CIR Process, vide order dated 14<sup>th</sup> August, 2019.
5. It is further stated that the erstwhile RP namely, Sh. Ashok Kumar Gulla approved an Internal Approval Note on 23<sup>rd</sup> June, 2021, wherein the RP agreed for release of the said materials that comprised of the three finished sections and loosed materials such as flanges, internal parts, fasteners, frames etc. A copy of the Internal Approval Note has been annexed as **Annexure C** in the application.
6. It is further stated in the application that as per the terms of the Internal Approval Note, the applicant was to pay an amount of Rs. 70,00,00/- to get loosed material and the rest of the raw material would have been handed over after



reconciliation of the accounts. Meanwhile, this Tribunal approved a Resolution Plan on 6<sup>th</sup> October, 2021 and the Successful Resolution Applicant completed the terms of the Resolution Plan and got complete takeover and control of the Corporate Debtor on 21<sup>st</sup> February, 2022.

7. It is also stated that as per the Internal Approval Note, three sections and some loosed material were to be handed over, which have not been handed over except for the turbines and therefore, the present application has been filed for releasing of the “remaining material”.
8. The reply/ objection has been filed by the Successful Resolution Applicant (SRA) alleging that the purchase orders being relied upon by the applicant are outside the purview of the CIR Process period and the application is not maintainable. The relevant part of the reply/ objections of the SRA are as under:

*12. That it is submitted that as such the dispute being alleged by the Applicant is prior to commencement of CIRP and as such cannot be said to be “in relation to” or “arising out of” insolvency resolution process. As such, it is the humble submission of the Respondents that the present application, filed under Section 60(5) of the Code is not maintainable and is liable to be rejected.*



14. That however, in the present case, it is submitted that the CIRP of the corporate debtor commenced on 14.08.2019 and the Resolution Plan was approved on 06.10.2021, which means that the Corporate Debtor was out of the insolvency resolution process as on 07.10.2021.

16. That it is also pertinent to highlight here that the present application has been filed by the Applicant only on 23.05.2022 whereas the resolution plan was approved way back on 06.10.2021.

17. That furthermore, the Monitoring Committee handed complete control of the Corporate Debtor to the Successful Resolution Applicant i.e. Respondent No. 2 with effect from 21.02.2022 as is evident from the letter dated 05.04.2022. A true copy of the letter dated 05.04.2022 is being filed herewith and marked as **ANNEXURE NO. 2.**

21. That it is pertinent to reproduce Section 60(5) of the Code, which reads thus:

**“60. Adjudicating Authority for Corporate Persons-**

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation



*proceedings of the corporate debtor or corporate person under this Code.”*

*46. That in reply to the contents of paragraphs no. IV (12) of the Application, it is submitted that, from the very beginning it has been the consistent stand of Respondent No. 1 that Storage and Handling Charges will be levied for release of raw materials, for which an invoice will be raised by the Respondent No. 1/FEEL. Accordingly, the Respondent No. 1, after calculating the cost spent by it for preserving and maintaining the said raw material, has raised an invoice. It is submitted that as per the email dated 12.11.2021, 3 finished towers have been released in favour of the Applicant in lieu of payment of Rs. 70 lakhs. Thus it is clear that the Respondents are acting in furtherance of its emails dated 12.11.2021 and it is the Applicant who is now playing foul.*

*51. That the contents of paragraph no. IV (17) of the Application are denied in the form stated and in reply thereto it is submitted that the purchase orders being relied upon by the Applicant are outside the purview of the CIRP period, in as much as the last purchase order is dated 20.03.2018 which is 1.5 years prior to the insolvency commencement date. Thus the dispute being raised by the Applicant is not arising from or in relation to the corporate insolvency resolution process and as such outside the scope and jurisdiction of this Hon'ble Adjudicating Authority as per Section 60(5) of the Code. It is incorrect to say that dispute arises from internal approval note of the Resolution professional, as after the approval of the resolution plan, the internal note has lost its significance, if any. Moreover, no reference of the internal note was made in the Information Memorandum, which makes it abundantly clear that the same was not binding on anybody. The Internal note/ approval has lost its validity as on*



*31.07.2021 and thus the same has no bearing, whatsoever. The term of the monitoring committee has expired and the control of the Corporate Debtor has been handed over to the Successful Resolution Applicant on 21.02.2022 whereas the applicant has approached this Hon'ble Adjudicating Authority much later, which further fortifies the fact that the dispute does not pertain to the CIRP period which lapsed on 06.10.2021. Thus the present application filed by the Applicant is not maintainable and outside the scope and purview of Section 60(5) of the Code.*

*53. That the contents of paragraph no. VI (a) to (c) of the Application are denied and in reply thereto, it is submitted that the Applicant is not entitled to any relief from this Hon'ble Adjudicating Authority. It is submitted that the present application is not maintainable as the relief being sought does not relate to or arising from the corporate insolvency resolution process of the corporate debtor. Moreover, the approved resolution plan, which is binding on all parties, does not provide for release of any such goods in favour of the Applicant and as such the present application is misconceived and liable to be rejected, with cost.*

- 9.** We have perused the record and heard the submissions of Ld. Counsel representing the parties.
- 10.** It is an admitted case that the CIR Process was triggered on 14<sup>th</sup> August, 2019 as per the order passed by this Tribunal. Further, the plan was approved vide order dated 06<sup>th</sup> October, 2021. As a result thereof, complete control of the CD was taken over by the SRA on 21<sup>st</sup> February, 2022. The



present application came to be filed on 23<sup>rd</sup> May, 2022. It is also an admitted case that the applicant has not filed any claim before the IRP/ RP for consideration of the Committee of Creditors (CoC) for adjudication on the claim with regard to the payment made by the applicant, for manufacturing of the equipment or for return of the towers and the materials, allegedly lying in the premises of the Corporate Debtor.

- 11.** The application for the first time was filed on 23<sup>rd</sup> May, 2022 with respect to the relief being sought in the present application arising out of the several purchase orders. One of the last order was dated 20<sup>th</sup> March, 2018 and for which the delivery schedule was 21<sup>st</sup> march, 2018. It is again to be reiterated that the CIR Process was triggered vide order dated 14<sup>th</sup> August, 2019 and the delivery schedule has already expired. In such an eventuality, if the INOX had any dispute with regard to the assets to be claimed concerning the turbines and the raw materials, it was incumbent upon the INOX to have filed the claim before the RP/ CoC.
- 12.** It is however, stated by the non-applicant respondent/ SRA that even prior to filing of this application and after ascertainment of the facts, it has already returned three



turbines and that is the reason that the claim for the relief in the present application that has been sought is only for the purpose of release of the “remaining materials”.

- 13.** It is also stated by the Ld. Counsel representing the non-applicant respondent that for the purpose of the “remaining materials”, it had to charge the material storage, handling and security charges for the period for which the alleged “remaining materials” has been lying in the premises.
  
- 14.** Be that as it may, without going into the merits of the rival contentions and on perusal of the record and hearing the submissions made by the Ld. Counsel representing the parties, we are of the considered opinion that the present application is not maintainable for seeking reliefs as sought for in the present application. The dispute raised with respect to the pre CIR Process period is not maintainable and all rights and dues would get extinguished, except the one for which the claims have been lodged before RP/ CoC and that too as to the extent of the same having been adjudicated and admitted. However, in the present case, even no claims were filed by the applicant before the RP/ CoC during the entire period when the Corporate Debtor remained under CIR



Process commencing from the CIR Process order dated 14<sup>th</sup> August, 2019 till the approval of the Resolution Plan on 6<sup>th</sup> October, 2021. On the contrary, the applicant chose to file the application on 23<sup>rd</sup> May, 2022. Therefore, without advertng anything on the merits of the matter except to the extent of determining its maintainability under Section 60(5) of the Code, we are not inclined to entertain the present application and the same is therefore, dismissed.

**15.** Ordered accordingly.

*-Sd-*

**(Ashish Verma)**  
**Member (Technical)**

*Avaneesh Kumar Singh*  
*(Stenographer)*

*-Sd-*

**(Praveen Gupta)**  
**Member (Judicial)**