

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**IA (I.B.C.) 126/KB/2021**

**In**

**C.P. (IB) 634/KB/2017**

**In the matter of**

Kanta Mishra wife of Shri Ram Moorti Mishra

...Applicant/Operational Creditor

-Versus-

Shri Abhilash Lal (Resolution Professional)

....Respondent/Resolution Professional

**Date of Hearing: 08/06/2022**

**Date of pronouncement : 06/07/2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Harish Chander Suri, Member (Technical)**

**Appearances:**

For RP : Mr. Ratnanko Banerji, Sr. Adv.  
Ms. Mamta Binani, Adv.  
Ms. Anindita Roy Chowdhury, Adv.  
Mr. Rohit Sharma, PCS  
Mr. Raghav Chadha, Adv.  
Mr. Kanishk Kejriwal, Adv.  
Mr. Abhilash Lal, RP in person

For CoC : Mr. Vaijayant Paliwal, Adv.  
Mr. Nikhil Mathur, Adv.  
Ms. Prabh Simran Kaur, Adv

For applicants in IA/139/2021, : Mr. Shekhar Sharma, Adv.  
IA/1379/2020, IA/126/2021,

## **ORDER**

**Per: Rohit Kapoor, Member (Judicial)**

1. The instant application has been filed by applicant under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Rule 11 of NCLT Rules, 2016 seeking for the following reliefs;-
  - i. This Hon'ble Tribunal may direct the Resolution Professional to accept the remaining claim of Rs. 2,14,24,617/- along with interest @ 11.5% up to the date of actual realization.
2. The contents of this IA are summarized hereinafter;-
  - i. The Corporate Debtor awarded 3 works to the applicant vide work order dated 19<sup>th</sup> of January, 2012 for an amount of Rs. 3,86,87,920/- copy of which is annexed as Annexure- A2
  - ii. Thereafter on 1<sup>st</sup> of October, 2012 parties agreed for construction of a boundary wall. The Corporate Debtor issued service order to the applicant on 9<sup>th</sup> of October, 2012 which is annexed as Annexure A-4.
  - iii. The Corporate Debtor issued letter of intent dated 19<sup>th</sup> of January, 2012 for balance of site infrastructure works.
  - iv. In the meeting conducted on 29<sup>th</sup> of November, 2012 the representative of the Corporate Debtor and the applicant agreed for a bonus to the applicant upon satisfactory completion of boundary wall by 31<sup>st</sup> of March, 2013. If the boundary wall is not completed within time the bonus will not be paid. Minutes of the meeting are annexed as Annexure- 5.
  - v. The applicant completed the work satisfactory and outstanding amount statement was prepared on 17<sup>th</sup> of December, 2014. In the service order it was mentioned that the service tax will be paid under composition extra on the awarded work. The Corporate Debtor has not given the service tax extra on the awarded work and also deducted service tax from running bill of the applicant. The Corporate Debtor has violated the terms and conditions of the service order and the Finance Act, 1994.
  - vi. The Corporate Debtor has submitted the payment certificate to the applicant, the details of which along with the amount are mentioned in Para 10 of the instant

application. A copy of payment certificate issued by the Resolution Professional is also annexed as A-8.

- vii. The applicant has raised certain disputes regarding the outstanding amount of cutting of trees on 17<sup>th</sup> of December, 2014 and has claimed a loss of Rs. 10.50 lakhs.
  - viii. It is also stated by the applicant in paragraph 14 that the Corporate Debtor completed the work satisfactorily in all respects as per terms and conditions of work order but the Corporate Debtor failed to clear its dues which are mentioned in Paragraph 14 of the instant application.
  - ix. In paragraph 15, applicant has alleged breach of contractual obligations by the Corporate Debtor.
  - x. The applicant on 18<sup>th</sup> of January 2021 submitted its claim Form B to the Resolution Professional in which he claimed an amount of Rs. 2,27,47,897.35/- and subsequently modified its claims on 18<sup>th</sup> of June, 2020 for an amount of Rs. 2,14,24,617/- in Form B.
  - xi. In Response to the claims, the Resolution Professional has accepted an amount of Rs. 29,23,208/- and rejected the rest without assigning any reason.
3. To the contentions raised by the applicant the Resolution Professional has filed his reply affidavit. The reply of the Resolution Professional is summarized as under;-
- i. Resolution Professional vide email dated 6<sup>th</sup> of March, 2020 requested the applicant herein to provide additional information to review his claims. The Resolution Professional sought the following details
    - a. Tower wise agreement with villagers / farmers or ROW works for all towers.
    - b. Copy of villager payment receipts.
    - c. Copies of invoices raised by applicant on the Corporate Debtor as per the terms of contract.
    - d. Any other supporting document.
4. The Resolution Professional in para 1 at internal page 4 of his reply has stated that after verifying records from the Corporate Debtor's books sent an e-mail to applicant on 1<sup>st</sup> of September, 2020 informing the various form B filed by applicant on his behalf as well as

PCC Construction Company and the status of the claim as verified by respondent, excerpted in this paragraph in the tabular form. In paragraph 'm' of reply affidavit it is mentioned by the Resolution Professional that the status of claims prepared in the tabular form upon the perusal and consideration of all the documents provided by the applicant. It is also mentioned that documents sought by the Resolution Professional were not provided by the applicant, in particular for the claims submitted by Mr. Ram Moorti Mishra regarding the scope of work order mentioned in this paragraph. Further for the claims filed on behalf of the PCC Construction Company, no additional and relevant details have been provided. This e-mail dated 1<sup>st</sup> of September, 2020 is annexed with IA 126/KB/2021 at page 56.

5. The answering respondent also provided its working / calculations on the basis of which the claims filed by the applicant were partially admitted or not admitted. A copy of working sheet for the claims filed on behalf of PCC Construction Company has not been annexed by the applicant.
6. In spite of multiple request providing supporting documents, applicant did not furnish any document and merely stating the value of claims was not sufficient to grant any claim.
7. The Resolution Professional has gone strictly by the documents and record filed by the applicant and available with the Corporate Debtor.

After considering the contentions of the applicant and the Resolution Professional, record annexed with the pleadings before us and the record before us, it is admitted position the alleged claims arise out of a work executed somewhere in 2014. From the above contentions and record before us we are of the view;

- i. The Resolution Professional could not have granted anything merely based on the assertion on a particular amount against a particular head and without any supporting documents thereto.
- ii. The applicant has also submitted written notes of submissions and has stated in the context of Service Tax dues the proof of the said payment would be available with the Corporate Debtor and therefore contention of respondent that applicant has not provided any supporting document is without any justification and it is for the respondent to produce the detailed statement along with supporting documents

by which mode and when the payment was made. Therefore respondent be directed to accept a total claim of 2,14,24,617/- along with 15% interest.

iii. This Adjudicating Authority cannot adjudicate upon the question of loss or profit interest etc. This Tribunal in its summary jurisdiction can in no way go into crystallizing the alleged claims. It is clear from the above position the works were executed somewhere in 2015 and the claims have been raised for the first time before the Resolution Professional and that too, as observed by Resolution Professional, without the required documents in support.

8. In the absence of documents sought by the Resolution Professional, the Resolution Professional is right in saying it was not possible for him to grant any claim that has been rejected. We see no error as such by the Resolution Professional.
9. For the foregoing reasons, IA/126/KB/2021 is hereby rejected.
10. Urgent Certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**Harish Chander Suri**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on 06<sup>th</sup> of July, 2022.

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