



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court-I)
KOLKATA**

IA.(I.B.C.) No. 1137/(KB)/2023

In

C.P. (I.B.) No. 891/(KB)/2020

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

In the matter of:

NBCC (India) Ltd.

.....Applicant

-Versus-

McNally Bharat Engineering Company Limited

Through its Resolution Professional

.....Respondent

Date of Hearing: 03/08/2023

Date of pronouncing the order: 05/09/2023

Appearances (via Video Conferencing/ Physical):

For the Applicant : Mr. Devajyoti Barman, Advocate
: Mr. Sudhir Kumar Senapati, Advocate

For the Resolution Professional : Ms. Shweta Dubey, Advocate
: Ms. Kanishka Prasad, Advocate

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)



ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The instant application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 by NBCC (India) Limited, which is an Operational Creditor of the Corporate Debtor seeking direction upon the Resolution Applicant so as to accept the claim of the applicant of Rs. 40,64,01,910/-.

Brief Facts of the Case are summarised herein below:

2. The Applicant states in **para 4 (XVIII)** of the Application that it was not aware about the ongoing CIRP against the Corporate Debtor and therefore it could not raise its claim before the Resolution Professional soon after he was appointed in the case. After becoming aware of the same, the applicant raised its claim in Form-B on 27.02.2023 before the Resolution Professional and the same was rejected by the Resolution Professional *vide* email dated 01.03.2023. There has been a delay of 210 days in filing the claim.
3. The Applicant in its application, prays for the following reliefs: -
 - (a) *Delay in filing the claim by the applicant before the Respondent beyond the period as envisaged in the Code be condoned by this Hon'ble Tribunal;*
 - (b) *A direction upon the Resolution Professional to consider the claim of the applicant afresh in accordance with the Rules and Regulations framed under the Insolvency and Bankruptcy Code;*
 - (c) *Upon considering and verifying the claim of the applicant, the Resolution Professional be directed to include and publish the name of the applicant in the list of beneficiaries or creditor of the Corporate Debtor as prepared by the Resolution Professional;*
 - (d) *To pass such other or further order or orders and/or direction or directions as may be deemed fit and proper.*



**Submissions by Ld. Counsel appearing on behalf of the Resolution Professional
i.e., the Respondent**

4. The Ld. Counsel appearing on behalf of the Resolution Professional states that the Corporate Debtor was admitted to CIRP on 29.04.2022. Thereafter the IRP published a public announcement on 07.05.2022 in Form A, in terms of Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 informing about the initiation of CIRP and calling upon its creditors to submit their claims with proof on or before 18.05.2022.
5. Subsequently on 05.07.2022, Form-G was published inviting the expression of interest. On 14.07.2022 and 13.10.2022, the IRP issued letters to the Applicant informing about the initiation of CIRP against the Corporate Debtor and requested to pay the amount due by the Applicant to the Corporate Debtor.
6. The 90th day to submit the claim with proof to the Respondent ended on 02.08.2022. Pursuant to the same, the Respondent received three Resolution Plans from Resolution Applicants.
7. It is submitted that the Respondent received the claim of the Applicant on 27.02.2023 when the Resolution Plans were already placed for consideration before the CoC for consideration. Therefore, the Respondent rejected the claim of the applicant *vide* an email dated 01.03.2023. The Resolution Plan came to be approved by the CoC on 26.07.2023 and the Respondent filed an application under Section 30(6) of IBC, 2016 before this Adjudicating Authority on 03.08.2023.
8. It is also submitted that the claim of the Applicant that it was not aware of the ongoing CIRP is false and baseless in view of letters dated 14.07.2022 and 13.10.2022 sent by the IRP informing about the initiation of CIRP against the Corporate Debtor.

Analysis & Findings


9. Heard the Learned Counsel appearing for both the parties and perused the records.



10. The applicant despite knowledge of CIRP and also being asked to file its claims did not file its claim within the prescribed period. A list of dates and events in this connection is mentioned in the chart below:

Dates	Events
29.04.2022	The Corporate Debtor was admitted to CIRP by this Adjudicating Authority.
07.05.2022	The IRP published a Public Announcement in Form A, in terms of Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Financial Express, The Telegraph and Ekdin regarding initiation of CIRP against the Corporate Debtor and calling upon its creditors to submit their claims with proof on or before 18.05.2022
05.07.2022	Form G was published by the IRP inviting Expression of Interest as per Regulation 36A(1) of the CIRP Regulations in Business Standard, Financial Express and Ekdin (Bengali)
14.07.2022	A letter was issued to the Applicant by the IRP regarding initiation of CIRP and moratorium being imposed, and also to repay the outstanding amount of Rs. 1,48,56,282.35/- due to the Corporate Debtor
13.10.2022	A letter was once again issued to the Applicant by the IRP regarding initiation of CIRP and moratorium being imposed and also to pay the outstanding amount of Rs.5,10,45,846/- which was paid as advance by the Corporate Debtor to the Applicant for projects
02.08.2022	As per Regulation 12(2) of CIRP Regulations, the 90 th day to submit a claim with proof to the Respondent came to an end.
27.02.2023	The Applicant submitted its claim in Form B whereas the Resolution Plans were already placed before the CoC for consideration.
01.03.2023	The Respondent i.e., the Resolution Professional <i>vide</i> an email rejected the claim of the Applicant and informed that resolution plans have already been submitted and are under active consideration by the CoC, therefore, at this stage it will not be possible to verify its claim.

11. From the above dates and events it is clear that claims were invited by the RP by publication in newspapers i.e., Business Standard, Financial Express and Ekdin (Bengali) on 05.07.2022. Thus there is a presumption that the Applicant had deep knowledge of it having failed to submit the claim within the time prescribed therein. Further, the Applicant did not file its claim despite being informed of the CIR Process by the IRP *vide* two letters dated 14.07.2022 and 13.10.2022. In view of this position



we find that the stand taken by the Applicant while filing this application in **para 4 (XVIII)** is incorrect on the face of it and also legally untenable.

12. Timelines are the essence of of the Code for the purpose of maximisation of value of assets. As on this date, the Resolution Plan has been approved by the CoC and an application seeking approval of the Resolution Plan has already been filed before this Adjudicating Authority.
13. We also refer to the judgment passed by the Hon’ble Madras High Court in the matter of **Czarnikow Group Limited v. Commissioner of Customs (Preventive) & Ors¹**, relevant paragraphs of which are reproduced as hereunder:

“51. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (in short ‘2016 Regulations’) provide for a clear and transparent procedure by which the public/creditors are made aware of the proceedings before the NCLT. The proceedings of the NCLT are stated to be uploaded promptly and advertisements are issued in publications with sufficient circulation to enable the creditors to be aware of pending proceedings.

52. It is thus necessary for the concerned creditor, whether operational or financial to file a claim within the time limit stipulated under Regulation 16 of the 2016 Regulations that is, within 30 days from date of publication of advertisements in order to secure its rights.

(emphasis applied)

65. The scheme of the IB Code proceeds on the basis that the CIRP shall be time bound and adhere to the statutory time frame, in a scrupulous manner. This is made clear by the provisions of Section 12 which sets out the time limit for completion of insolvency resolution process. A second proviso has been inserted to Section 12(3) making it clear that the outer time limit for completion of CIRP shall mandatorily be within a period of 30 days from commencement of insolvency taking into account any exemptions granted and the time taken in legal proceedings in relation to such process.

95. As a matter of prudence, the Departments must consider appointing a Nodal officer who would monitor the proceedings before the NCLT on a regular basis. This process does not appear very cumbersome as the proceedings are stated to be available online for periodical reference and timely action.”

¹ (2023) ibclaw.in 565 HC



14. Keeping in view the above facts, position of law and also the object of the Code, we have no option except to disallow this application. Hence, this I.A. being I.A.(I.B.C.) No. 1137/KB/2023 is accordingly **disallowed**.

15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 5th day of September, 2023

(FA, LRA)