

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIALBENCH,COURT II**

IA 1464/2020

IN

CP No. 1704 (IB)/MB/C-II/2017

Under Section 60 (5) of the Insolvency and
Bankruptcy Code, 2016 r/w 11 of
National Company Law Tribunal Rules,
2016.

Bhadrashree Steel & Power Limited

Successful Resolution Applicant of the
Corporate Debtor

...Applicant

Versus

**Maharashtra Industrial Development
Corporation &Anr.**

...Respondent

In the matter of

Oriental Bank of Commerce

...Financial Creditor

v/s.

Ambey iron Private Limited

...Corporate Debtor

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

Order delivered on :- 01.10.2021

Coram:

Hon'ble Member (Judicial) : **Ms. Suchitra Kanuparthi**
Hon'ble Member (Technical) : **Mr. ShyamBabu Gautam**

Appearance: (through video conferencing)

For the Applicant : Mr. Rahul Gaikwada/w Ms. Nikita
Abhyankar i/b Gravitas Legal,
Advocates

For the Secretary Industries, : Senior Counsel Mr. JanakDwarkadas
Government of Maharashtra

For the Respondent/RP: Mr. Chetan Kapadiaa/w Mr. Rahul
Sarda

ORDER

Per:-Suchitra Kanuparthi, Member (Judicial)

1. This is an application filed by the successful Resolution Applicant of the erstwhile Corporate Debtor. Resolution Plan was approved by Committee of Creditors and was approved by the Hon'ble

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

Tribunal vide its order on 14.10.2019. The Resolution Professional of the Corporate Debtor filed an MA 82 of 2019 under section 31 of the code for ratification of the resolution plan by the Tribunal and the same was allowed on 14.10.2019. The order dated 14.10.2019 at para 18 states that no claim can be added in the proposed Resolution Plan. The para 18 is reproduced here in below.

18. That, the Resolution Applicant in one of the Clauses has raised an apprehension about the claim of any Creditor, yet to be raised, being not lodged during Corporate Insolvency Resolution Process period before the Learned RP. It is hereby made clear that all the claims lodged, considered and accepted during the Corporate Insolvency Resolution Process are already made part of the Resolution Plan, therefore, subsequent to the approval of the Resolution Plan by the CoC, no such claim can be added in the proposed Resolution Plan presently under discussion.

2. The Resolution Applicant had taken possession and custody of the unit on 07.07.2020 and had initiated steps to revive the said unit wherein the production of 250 tons per day was anticipated. The person from the applicant company visited the office of the Respondent No. 1 at Solapur to enquire into the process for a new water connection. At that time the applicant was informed that an

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

arrears of Rs. 37, 39, 725/- was payable at that the water connection to the said unit cannot be revived unless arrears are paid in full.

3. The applicant claims that no fresh claim can be included in the resolution plan and that the Respondent No. 1 failed to file any claim to the Resolution Professional during the CIRP. The Applicant addressed a letter dated 26.06.2020 to Respondent No. 1. to reconnect the water supply in view of the order of the tribunal dated 14.10.2019. The Respondent No. 1 office informed the applicant that unless the amount is paid the water supply of the said unit shall not be reconnected.
4. The applicant submitted that despite a public announcement inviting claims from the Creditors of the Corporate Debtor, the Respondent No. 1 did not file any claim before the Resolution Professional and therefore the Respondent No. 1 had taken no steps to recover the dues. The Applicant also mentions that Ambey Iron Private Limited had a security deposit of Rs. 4,37,400/- with the Respondent No. 1., yet they did not take steps to forfeit the Security Deposit and recover the dues of the Respondent No. 1 from the Resolution Professional.
5. In view of the delay in reconnection of the water can be carried out in the said unit and the applicant is incurring an interest of Rs. 32,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

500 per day. Additionally, the applicant is also incurring labour cost and security expenses at the said unit.

Reply of the Respondent No.1:-

6. Respondent No. 1 filed its reply and contended that it was not aware of the order passed on 14.10.2019 of sanctioning of the resolution plan. But however, it was notified about the said order only on 26.06.2020.
7. The Respondent No. 1 is a statutory body under Maharashtra Development Act and promotes and assist rapid and orderly establishment, growth and development of the industries in the state of Maharashtra. Broadly the functions and powers of Corporation are to develop of industrial areas for providing amenities such as supply of water, street light, drainage sewerage etc.
8. The water connection given to Ambey Iron Private Limited was disconnected from 31.10.2004 as Corporate Debtor had not paid relevant charges. The Respondent No. 1 informed that unless the necessary charged are paid the reconnection of water cannot be granted.
9. The Resolution Applicant has sought for extinguishment of claims as provided in the Resolution Plan. The Respondent No. 1 further claimed that as the water connection was cut off for nonpayment of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

charges, such plot holders should apply for the reconnection upon such Application being made a Corporation would then calculate the outstanding charges to be paid by such plot holder before reconnecting the supply. In the said circumstances outstanding liabilities of the plot holder for payment of outstanding dues become crystalize only upon making the Application of reconnection of supply.

Reply of the Industries Department State of Maharashtra:-

10. In terms of the provision of MID Act,1961 MIDC is required to provide necessary infrastructure like road, Street light, drainage, water supply etc. for establishing industrial areas Respondent No. 1 MIDC invests huge amount of money acquiring large track of land by plotting and the Industrial areas/plots are allotted to interested parties on lease.
11. The Respondent No. 1 MIDC is a statutory nonprofit making organization which works to achieve balanced industrial development in the entire state. The survival of MIDC depends wholly upon the land receipt received as differential premium and service of fees received from the allottees of the plots.
12. The lease deed dated 06.02.2004 between MIDC and the Corporate Debtor lease out a plot land bearing plot No. E-1 admeasuring 41,200 square meters to the Corporate Debtor for the purpose

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

of development of industries there on. Similarly, MIDC also leased out of plot no. E- 5 admeasuring 45,925 square meters in the Chincholi industrial areas to the Corporate Debtor for the purpose of development of industry by lease deed dated 05.09.2012 the Corporate Debtor inter alia provided consent from Maharashtra Control Board and file an Application dated 09.10.2003 for providing water connection.

13. Upon scrutiny of the Application the 24 hours water connection was made available to the Corporate Debtor. In view of the failure to comply with the terms and conditions of the water supply by the Corporate Debtor the Water connection was disconnected on 31.10.2014.
14. The Respondent MIDC also filed an IA 985 of 2021 in view of the failure of Corporate Debtor to pay the relevant charges to the MIDC. Upon approval of Resolution Plan on 14.10.2019 the Resolution Applicant stepped into the shoes of Erstwhile Management and shareholders of Corporate Debtor and there was 100% change in shareholding of Corporate Debtor. The Respondent MIDC on 06.05.2021 informed various compliance to be carried out by the Applicant to get a new water connection from the MIDC which includes the no due certificate after making the payment of Rs. 47,06,751/- towards water charges/service charges etc.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

15. The Applicant was also called upon Rs. 38,09,600/- towards transfer charges as a differential premium for getting temporary water connection without prejudice to right and contention.
16. The MIDC circulation dated 12.05.1998 describes that in circumstances which a transferor of MIDC and will be regarded as a formal transfer in which the case transfer charges would not be payable. All other circumstances categories of transfer are categorized as non-formal transfer in which transfer charges are payable. The Resolution Plan and provisions of the Code contemplate takeover of the Corporate Debtor and cannot be termed as involuntary and hence is a conscious and voluntary act on the part of Successful Resolution Applicant to assume the assets and liabilities of Corporate Debtor.
17. Since there is 100% change in shareholders of the Corporate Debtor the Applicant is required to apply and pay the transfer charges and differential charges/premium charges.
18. As per the Para 11 of the reply of the Government MIDC circular dated 12.05.1998 read with circular dated 01.01.2013, the change in shareholding of the Corporate Debtor in the present case is regarded as a case of “non-formal” transfer and in case of such a non-formal transfer, differential premium based on construction done is levied. The said differential premium / transfer charges is calculated in the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

present case as follows: [i.e. {87175.00 sq. meters x (Rs. 440 Rs. 60) per sq. meters. + (440-60) x 15%} x 10% which comes to Rs. 38,09,600/-.

19. The liability to pay the differential premium transfer charges after approval of Resolution Plan upon change of shareholdings in Corporate Debtor is not a pre-existing liability which can be subsumed in the Resolution Plan and therefore, the same is payable by the Corporate Debtor. Thus, the claim of Rs. 38,09,600/- towards differential premium and transfer charges is completely valid, legal and binding upon the Applicant with regard to the demand of Rs. 47,06,751/- towards water charges, if it is denied the Respondent MIDC will suffer a huge losses. The Respondent MIDC is charitable organization with the DIT (Exemption) Mumbai under Section 12AA of the Income Tax Act.

Findings:-

The issue arising for consideration is two folds:-

20. Regard to the pre-existing liabilities of water charges as claim by the Respondent No. 1 amounting to Rs. 47,06,751/- in respect of water charges and service charges.
21. The claim of Rs. 38,09,600/- towards differential premium and transfer charges.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

22. This bench is of the considered view that the claim of water charges and service charges amount of Rs. 47,06,751/- is in respect of pre CIRP period and as thus stands extinguished in view of the approval of the Resolution Plan and in view of the fact that the Respondent No. 1 has not made claim upon public announcement of initiation of CIRP against the Corporate Debtor.
23. As per the settled law claims arising pre CIRP cannot be claimed by the creditor. In the recent Judgment of *Ghanashyam Mishra and Sons Private Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)* the Hon'ble Apex Court laid down the law by giving rest to many legal issues and clarifying the legal position, under the Doctrine of "Clean Slate" that all claims against the Corporate Debtor prior to CIRP and after the transfer of the assets of the Corporate Debtor to the successful Resolution Applicant to be dealt with in terms of the Resolution Plan and if not forming part of such Resolution Plan shall extinguished. The relevant portion of the Supreme Court Judgment is reproduced herein below para 95 ;

***"95. In the result, we answer the questions framed by us as under:
(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including***

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan; (ii) 2019 amendment to section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect; (iii) Consequently all the dues including the statutory dues owned to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

24. In the light of the above judgement of Hon'ble Supreme Court, the claim of water charges of Rs. 47,06,751/- being pre CIRP charges, the same is extinguished and stands cancelled. Hence the claim of Rs. 47,06,751/- is rejected.
25. Further, in view of the approval of Resolution Plan by way of order of the Tribunal on 14.10.2019 and change of constitution of taking

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, SPECIAL BENCH, COURT II**

IA 1464/2020
In
CP No.1704(IB)/MB/C-II/2017

over of the Corporate Debtor and 100% change in shareholding of the Corporate Debtor, the Applicant is required to pay the differential premium and transfer charges of Rs. 38,09,600/-.

26. The Court doth orders as follows

- a) The Resolution Applicant is directed to pay amount of Rs. 38,09,600/- to the Respondent No. 1 towards differential premium and transfer charges.
- b) The claim of Rs. 47,06,751/- is thus extinguished and untenable.
- c) The Respondent No.1 is directed to reconnect the water connection to the Applicant upon payment of Rs 38,09,600/
- d) IA is disposed off with the above direction.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**SUCHITRA KANUPARTHI
MEMBER (JUDICIAL)**