IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

INTERLOCUTORY APPLICATION. No. 3541/2022

In

CP(IBC)No. 3434/MB/C-V/2019

Application filed under Section 60(2) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Mr. Satish Kumar Gupta, Resolution Professional

...Applicant

V/s

UTI Structured Debt Opportunities Fund-I

And Others ...Respondents

In the matter between:

Halliburton Offshore Services Inc ....Petitioner

v/s

Mercator Petroleum Limited ...Corporate Debtor

Order Pronounced on: - 02.11.2023

Coram:

Smt. Anuradha Sanjay Bhatia : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances:

For the Applicant : Adv. Amir Arsiwala.

For the Respondent : I.C. Legal

ORDER

Per: Shri. Kuldip Kumar Kareer (Judicial Member)

1. This is an application filed under Section 60(5) read with sections 19,50,51,66,67,70,71 & 235-A of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T. Rules, 2016 as according to the Applicant, it has been found that the Respondent No.01 has acted in connivance with the Respondent Nos. 02 to 14 for the fraudulent purpose by creating backdated/forged documents/events to inflate its claim amount to grab 66% majority in the committee of creditors of the Corporate Debtor and thereafter becoming the prospective resolution applicants to acquire the corporate debtor at the cost of other creditors of the corporate debtor.

Case of the Applicant in brief:

2. The case of the Applicant, who happens to be a Resolution Professional of the Corporate Debtor in the above-captioned matter, in brief is that the penal interest of 2.5% per month compounded monthly by the Respondent No.01 ('UTI') is an extortionate credit transaction u/s 50 of the Insolvency

and Bankruptcy Code, 2016. According to the Applicant, only the claim of penal interest at the rate of 2% p.a. should be included in the claim of the UTI without any compounding with effect from 01st October, 2019 subject to the receipt of proof of satisfactory documents that the notice of default was actually served on 01st October, 2019. It is also the case of the applicant that the back dated penal interest has been fraudulently charged by the Respondent No.01-UTI including for the period before Loan Recall Notice with a view to defraud the other creditors of the Corporate Debtor which includes the Respondent No.15-Bank of Baroda and government dues including the dues of the Director General of Hydrocarbons. The Applicant has accused the UTI of concealing the material fact relating to the recovery of INR 10.18 crores from the Corporate Debtor-Mercator Limited and failure of the UTI to provide satisfactory evidence with respect to the legal expenses of INR 2.18 crores incurred by it to recover Rs. 10.18 crore from the Corporate Debtor. On 25th October, 2022 the Respondent No.01 did not provide the copy of requested information but only two certificates from Advocates to prove the legal expenses. Hence, based on the available information, it is the case of the Resolution Professional ('RP') that the transaction with the Respondent No.01 was found to be extortionate as well as fraudulent under the provisions of IBC.

3. **Case of the Respondent:** The Respondent has objected to this application filed by the Applicant on the following grounds:

i. The entire re-verification exercise initiated by the Applicant is a counterblast to the action of the Respondent No..01 of not accepting an increase in the fees of the Applicant. Therefore, the Applicant had already created a bias in his mind while verifying or adjudicating the claim.

ii. The transaction in question does not fall within the relevant time and is beyond the look back period u/s 50 of the Code. The C.I.R.P was initiated against the Corporate Debtor on 31st August, 2020. Thus, the relevant time and/or the look back period u/s 50 would be 2 years, that is to say, the period commencing from 01st September, 2018. Admittedly, the Debenture Trust Deed, the Deed of Corporate Guarantee and other documents under the transaction were executed on 26th March, 2018. The Debenture Certificates, the Addendum and the disbursement of funds are all prior to 2 years from the insolvency commencement date. The Respondent humbly submits that transaction under which the funds were received is well beyond the relevant time/look back period as mandated u/s 50, the present IA is liable to be summarily dismissed.

iii. Under Section 50 of the Code, any debt extended by a person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

iv. The Applicant has sought a relief seeking to recall an undated order in IA 1628 of 2020. It is respectfully submitted that no jurisdiction in vested under the law or the rules to recall an order and that too, more than 6 months later at this belated stage.

v. It is submitted that the present application appears to be a collusive attempt by the Applicant and the Respondent No.15 against the Respondent No.01 and its claims. It is apparent that the Respondent No.15 acting in concert with the Applicant is seeking not only to reduce the Respondent No.01's claims, but also to defeat or to prolong the CIRP and send the Corporate Debtor into liquidation.

vi. The Applicant completely failed to appreciate that there is no adjudication contemplated at the stage of even submitting the claim and the claim being verified. The power of adjudication vests only at the stage of liquidation scenario. Therefore, there was no question of adjudication. The Respondent No.01 submits that the claims being upheld by this Hon'ble Tribunal cannot be now re-verified by the Applicant on a query by the Bank of Baroda.

FINDINGS

4. The Applicant has made the allegations of fraud allegedly perpetrated by the Respondent No.01 with a view to defraud the other creditors. However, the Application of the Applicant does not contain any relief in respect of the alleged fraud. The reliefs sought by the Applicant are mainly restricted

to further reducing the claim of the Respondent No.01 by change in the rate as well as the frequency of interest. Since no relief in respect of the alleged fraud has been claimed in the I.A., we do not consider it necessary to foray into that part of the controversy. Hence, we are also restricting ourselves to the reliefs sought by the Applicant without getting into unnecessary facts, unnecessary documents, pleadings and details of this case. Even otherwise the allegations with regard to the fraud appear to be spurious and wild in nature which have not been substantiated.

5. The Applicant has prayed for rejecting the penal interest of 2.5% p.m. compounded monthly, as claimed by the Respondent No.01, because if the same is allowed, the effective rate of interest will be about 4.22% p.m. and more than 50% p.a. that is extortionate u/s 50 of the IBC. The Debenture Trust Deed has been annexed to this Application by the Applicant. On perusal of the clauses of Debenture Trust Deed, we find that the penal interest rate has been added to the dues in accordance with Clause 1.1.53 of the Debenture Trust Deed read with Clause 11.1(ii) of the Terms of Debentures contained in Annexure A to the Debenture Trust Deed. **Clause 1.1.53** of the aforesaid Deed **has fixed the penal interest rate at 2.5% per month** payable on the Debentures. Clause 11.1(ii) of the Terms of Debentures as per the Annexure A of the Debenture Trust Deed lays down that *if an event of default relating to payment of the Interest or Redemption Amount, has occurred and is continuing,* ***the penal interest shall accrue on all the amount***

of Interest and/or the Redemption Amount *from the date of occurrence of the Event of Default up to the date on which such Event of Default is remedied*. Even the Debenture Trustee namely the Axis Trustee Services Limited in its Letter to the Borrower Mercator Ltd (in which the Corporate Debtor has been marked as CC) dated September 01, 2020 has added the interest, redemption premium and penal interest to the principal value of INR 126,44,94,464/-, totalling the claim of the Respondent No.01 to INR 257,84,25,381/- as on 31st August, 2020. As the compounding of penal interest on monthly basis has been done in conformity with the terms and conditions of the Debenture Trust Deed, the same cannot be considered as an extortionate credit transaction. Therefore, the prayer in terms of Para IX(B), clause (iii) seeking rejection of penal interest of 2.5% per month compounded month, stands rejected in its entirety.

6. The Applicant has prayed to include in the claim of the Respondent No.01 a penal interest of 2% per annum without any compounding w.e.f. 01st October, 2019. Clearly, the Resolution Professional has traversed beyond his authority and brief in treating the penal interest of 2.5% per month as extortionate and reducing it to 2% **per annum** without any compounding. Explanation to Section 50 of the Insolvency and Bankruptcy Code, 2016 is reproduced hereunder: ***"Explanation. —For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt***

shall in no event be considered as an extortionate credit transaction." Neither the Insolvency and Bankruptcy Code, 2016 nor the Rules and Regulations laid thereunder give any power or authority to the Resolution Professional to treat the agreed penal rate of interest which is defined in the Debenture Trust Deed, as extortionate and substitute it with his own rate of interest which he deems to be reasonable. The prayer sought by the Applicant-Resolution Professional in terms of Para IX(B), clause (iv) seeking to include in the claim of the Respondent No.01, a penal interest of 2% p.a. without compounding w.e.f. October 01, 2019 accordingly stands rejected.

7. The Applicant has alleged that the Respondent No.01 has fraudulently charged back dated penal interest for the period before the Loan Recall Notice with a view to defraud the other creditors of the Corporate Debtor. Clause 11.1(ii) of the Terms of Debentures as per the Annexure A of the Debenture Trust Deed states that *if an event of default relating to payment of the Interest or Redemption Amount, has occurred and is continuing,* ***the penal interest shall accrue*** *on all the amount of Interest and/or the Redemption Amount* ***from the date of occurrence of the Event of Default up to the date on which such Event of Default is remedied***. Therefore, there is no merit in the contention that back-dated penal interest has been fraudulently charged by the Respondent No.01 to defraud the creditors of the Corporate Debtor.

8. We express our anguish at the way and the manner in which the Applicant has proceeded in the matter. The Resolution Professional ought to have been aware of the terms and conditions of the Debenture Trust Deed, as also the provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations laid thereunder. Besides, he has no adjudicatory power while dealing with the claims.

9. The Resolution Plan has already been approved by the Committee of Creditors and is now pending for the approval of the Hon'ble Adjudicating Authority u/s 31 of the Code in IA No. 1124 of 2023. It is not the case of the Resolution Professional ('RP') that the UTI is not entitled to the principal amount of INR 126 crores and the interest thereon. The dispute is only in respect of the penal interest and its compounding effect. Therefore, in any event, if the claim of the Respondent No.01 is further reduced on the grounds of discarding of the penal interest, then the voting right of the UTI will further reduce from 58% and the same is of no consequence now, as the resolution plan has already been approved by the CoC comprised of the UTI (i.e. Respondent NO.01) and the Bank of Baroda. The resolution plan has already been approved and the Bank of Baroda as well as the UTI have agreed to share the proceeds given by the Resolution Applicant in the ratio of 60:40 in which the UTI's share will be 40%. Therefore, any increase or decrease in the amount of claim is of no consequence now.

10. No allegation of the fraudulent and extortionate credit transactions with the Respondent No.01 has been substantiated by the Resolution Professional to our satisfaction nor any relief has been sought in this regard in the IA under consideration. Hence, no case is made out for giving directions to the Respondent No.16 i.e. SEBI, the Respondent No.17 i.e. IBBI and the Respondent No.18 i.e. the Ministry of Corporate Affairs to initiate the appropriate proceedings against the Respondent Nos.01 to 14. Even otherwise, the Respondents No.02 to 14 have been unnecessarily and unjustifiably impleaded without any plausible reason. Therefore, the reliefs sought by the Applicant in terms of prayers in Para IX-B, Clauses (vi) to (ix) are hereby rejected and dismissed.

11. The Applicant has prayed that the Order passed in I.A. No. 1628/2020 should be recalled on the grounds of concealment of material facts and further that the claim was not adjudicated on merits. We do not wish to offer any comments, explanation or clarification on the Order dated 16th March, 2022 passed in the aforementioned IA, as it is clear and self-explanatory. There is no vagueness or ambiguity in the aforesaid Order. There is no manifest error apparent on the face of the record. It is well settled proposition in law that the Adjudicating Authority cannot sit in appeal on its own orders. Further, for the sake of repetition, it is once again reiterated that the UTI (Respondent No.01) and the Bank of Baroda (Respondent no.15) have already settled their differences and the

Resolution Plan has been approved by them, which is now pending for the approval of the Adjudicating Authority u/s 31 of the Code. In view of the above, there is no need to recall the order(s) passed in I.A. No. 1628/2020 on the grounds stated by the Applicant. Accordingly, we reject the prayer of the Applicant to recall the order passed in I.A. No. 1628/2020.

12. In view of the aforesaid discussions and in the light of the facts and circumstances of the case, we are inclined to pass the following orders:

ORDER

a. The Interlocutory Application No.3541 of 2022 in Company Petition (IB) No. 3434 of 2019 is hereby **dismissed.**
b. There shall be no order as to costs.
c. Accordingly, this I.A. stands disposed off.

Sd/-	**Sd/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**