

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.8

IA/540(AHM)2021 in CP(IB) 563 of 2018

Order under Section 60(5) IBC,2016

IN THE MATTER OF:

Metropolitan Industries

.....Applicant

V/s

Chandra Prakash Jain RP of E Complex Pvt Ltd

.....Respondent

Order delivered on: 18/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

COURT-1

**IA/540(MP)2021
in**

[CP(IB)/563/9/AHM/2018]

IA/540(MP)2021

(An application under Sec. 60(5) of IBC, 2016)

M/s Metropolitan Industries

512 Vyapar Bhavan, 49, P. D Mello Road,
Carnac Bunder,
Mumbai-400 009.

...Applicant

Versus

Mr. Chandra Prakash Jain

Interim Resolution Professional of
E-Complex Private Limited,
D-501, Ganesh Meridian,
Opp. Gujarat High Court,
S.G. Road, Ahmedabad-380 060.

.....Respondent No. 1

In the main matter of: [CP(IB)/563/9/AHM/2018]

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

AP Securitas Private Limited,

Building No. 10, DDA Commercial Complex,
Nangal Raya, New Delhi-110 046.

..... Operational Creditor

Versus

E-Complex Private Limited,

Survey No. 658, Village: Rampara II,
Taluka Rajula, Gujarat 363 560.

..... Corporate Debtor

Order Pronounced On: 18.10.2023



Coram: Sammi Khan, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant : Mr. Saurabh Soparkar, Sr. Adv. a/w Mr. Monaal Davawala, Adv. Mr. Maulik Nanavati, Adv. (Sr. No. 117-118)

For Respondent: Ms. Hirva Dave, Adv. for Mr. Jaimin Dave, Adv.

For the CoC : Mr. Manish Bhatt, Sr. Adv. a.w.
Mr. Yuvraj Thakore Adv.

For the RA : Mr. Rashesh Sanjanwala, Sr. Adv. a.w. Mr. Kunal Vaishnav Adv.

ORDER

1. The present application has been filed by the applicant **M/s Metropolitan Industries** against the rejection of its claim of financial debt in entirety by the Resolution Professional (RP) in the Corporate Insolvency Resolution Process (**'CIRP'**) of the corporate debtor **E-Complex Pvt Ltd**. The corporate debtor **E-Complex Pvt Ltd** was admitted in (**'CIRP'**) vide order dated 09.12.2020 in CP(IB) 563/9/AHM/2018. Following that, the applicant had filed its claim amounting to Rs 11,40,30,215/- along with 16% interest thereon.

2. The applicant is a partnership firm and is the promoter of the **SKIL Group** of companies, namely, SKIL Infrastructure Ltd, SKIL Shipyard Holdings Ltd, Grevek Investments and Finance Ltd. The SKIL Group was the erstwhile promoter and Reliance Naval and Engineering Ltd (formerly Pipavav Defence and Offshore Engineering Pvt Ltd) (RNEL) and its 100% subsidiaries including the corporate debtor.

3. As stated in the application, the applicant as the promoters of the SKIL Group and in turn of the corporate debtor, had pledged shares in SKIL Infrastructure Ltd on behalf of the corporate debtor as security for the facilities availed by the corporate debtor from Religare Finvest Limited (RFL).



The liability of the applicant under the pledge was to the extent of the value of the pledged shares to this extent. The applicant's obligation under the pledge agreement was also that of a guarantor in respect of the loan outstandings of the corporate debtor.

4. It is submitted that as per purchase agreement dated 4th March 2015 executed between the SKIL Group and Reliance Infrastructure Ltd (RFL), Reliance Defense System Pvt Ltd (the Reliance Group), the control and management of RNEL and its subsidiaries including the corporate debtor had shifted to the Reliance Group and the Reliance Group was obligated to ensure the release of securities furnished by the SKIL Group within three months upon change in management. However, that was not done and in the event of default committed by the Reliance Group, the lenders of RNEL and the corporate debtor began enforcing the securities furnished by the applicant and the SKIL Group. In the context, it is further stated that on behalf of the failure of the corporate debtor to abide by the terms of the sanction, IDBI Trusteeship Services Ltd (ITSL), being the security trustee appointed by the lender (RFL) invoked 44,02,711 equity shares of SKIL Infrastructure Ltd held by the applicant firm valued at Rs 11,40,30,215/-.

5. In its reply, the RP stated that he did receive a claim from the applicant on 18.02.20221 amounting to Rs 11,40,30,215/- together with 16% interest thereon. However, on *prima facie* examination of books on accounts of the corporate debtor no such outstanding from the applicant was found. It is submitted that in view thereof, he had sought certain information from the suspended management as well as clarification from the applicant. He had asked the applicant to furnish a copy of the credit note, if any, issued by the lender Religare Finvest Ltd (RFL) on invocation of the shares as the applicant had only shared the Demat Account Statement, which on its own could not be considered sufficient proof that the amount was in fact adjusted by the said lender. In its rejoinder, the applicant states that irrespective of whether the corporate debtor has admitted, accepted and booked the applicant's claim or not, the fact is that the applicant's securities were invoked by the IDBI Trusteeship Services Ltd at the behest of the lender Religare Finvest Ltd; and



as such its claim is admissible. The applicant also states that upon the invocation of its pledged shares in SKIL Infrastructure Ltd, the share stood transferred from the applicant to IDBI Bank and the same is reflected categorically in the Demat Account Statement as on 21st June 2016. In its reply, the RP has also stated that the applicant is a related party of the corporate debtor and thereby could not be considered as a member financial creditor of the CoC.

6. We have heard learned Sr. counsels appearing for both sides and have also perused the relevant documents placed on record. It is noted that the RP has carried out due verification and sought required clarification from the applicant. We are of the considered view that RP could not have accepted its claim based on the Demat Statement as the statement only reflects a transfer of the share on invocation from the applicant to the IDBI Bank. The statement does not reflect the value at which such transfer is made. It is noteworthy, that the IDBI Trusteeship Services Ltd (ITSL) at the behest of the lender had invoked the pledged shares and in pursuance thereof, the shares were transferred to the IDBI Bank simply. At what value such transfer was made is not placed on record. The applicant has estimated its value based on the prevailing market price on the day of transfer as on the date of invocation as available on the website of the Bombay Stock Exchange. However, the applicant could not produce/submit the credit note issued by RFL in that regard. Indeed, the credit note would reflect the amount of adjustment and to that extent only the applicant's claim can be admitted. Even during the present proceedings before us, the applicant could not place the required credit note on record and therefore, in the fact of the case, we are of the considered view, that the decision of RP for rejection of the claim is fully justified and that cannot be faulted with.

The applicant being the promoter of SKIL Group was also in turn the promoter of **RNEL** and its 100% subsidiaries including the corporate debtor. It also held substantial shares of **RNEL** and the corporate debtor even after the control was shifted to **Reliance Group** as the relevant time. Moreover, the loan was taken when the **SKIL Group** was promoter. Thus, the applicant is a related



party of the corporate debtor and being the related party it cannot be taken as a member of the CoC. As such the various relief sought in paras 4 of the application cannot be granted.

7. Accordingly, **IA/540 of 2021** stands **dismissed** and **disposed of**.

-SD-

Kaushalendra Kumar Singh
Member (Technical)
Neeraj Gupta/Steno

-SD-

Shammi Khan
Member (Judicial)