



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos. 614/2020 & 52/2022
In
CP (IB) No.97/Chd/Hry/2018
(Admitted)**

**Under Section 42 of the Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Oriental Bank of Commerce ...Financial Creditor
Vs.

Isolux Corsan India Engineering and Construction Private Limited
...Corporate Debtor

And in the matter of:

IA No. 614/2020

Man Structural Pvt. Limited
Head Office P.B. no. 189, Near Loco, Jaipur
Through its authorized signatory & Vice President
(Sales and Marketing) Mr. Pankaj sharma
Email: admin@manstructurals.com

Versus ..Applicant

Rajeev Bansal Liquidator of
Isolux Corsan India Engineering and Construction Private Limited
Reg Office at : 2163A, Srinagar Colony,
Jagadhri, Yamuna Nagar, Haryana-135 002
Email: carajeevbansal@yahoo.com, liquidator.isolux.corsanindia@gmail.com

..Respondent

And in the matter of:

IA No. 52/2022



M/s. Baaz Security Services

Through its Proprietor Mrs. Jaswinder Kaur
R/o H. No. 20, Malvia Nagar, Bhopal,
Madhya Pradesh-462003
Email: dhindsa71@yahoo.co.in

..Applicant

Versus

Rajeev Bansal Liquidator of

Isolux Corsan India Engineering and Construction Private Limited
Reg Office at : 2163A, Srinagar Colony,
Jagadhri, Yamuna Nagar, Haryana-135 002
Email: carajeevbansal@yahoo.com, liquidator.isolux.corsanindia@gmail.com

..Respondent

Judgement delivered on: 01.03.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

Present

For the applicant
in IA No. 614/2020 : Mr Sarvesh Jain with Mr. Pancham Surana,
Advocates.

For the applicant
in IA No. 52/2022 : Mr. Arun Bansal, Advocate
Mr Anubhav Bansal, Advocate
Mr Manveder Singh Sangwan, Advocate.

For the respondent
in IA No. 52/2022 : Mr Abhinav Mishra, Advocate
Ms Nivedita Chauhan, Advocate
Ms Jagriti Dosi, Advocate
Ms Komal Singh, Advocate

Per: Subrata Kumar Dash, Member (Technical)

JUDGMENT

IA No. 614/2020

The present appeal is filed by M/s Man Structurals Pvt. Ltd. (hereinafter referred to as "applicant") against Rajeev Bansal, Liquidator of M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. (hereinafter referred



to as “Respondent”) under Section 42 of Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant to set aside the decision of the Respondent-Liquidator dated 21.08.2020, rejecting the substantial claim of the applicant and to pass directions to the liquidator to consider the Claims of Rs. 11,46,45,242/- (Rupees Eleven Crore Forty Six Lacs Forty-Five Thousand Two Hundred Forty-Two only) in addition to the claim of Rs 3,95,38,721 already admitted by the respondent vide email dated 08.08.2020
3. The brief facts as stated in the application are that the Corporate Insolvency Resolution Process was initiated on 11.10.2018 and the liquidation of the Corporate Debtor was commenced on 06.02.2020. The liquidator published the Public Announcement inviting the claims and the last date for the submission of the claim was fixed as 07.03.2020. The applicant is involved in the business of manufacturing of transmission line towers, sub-station structures and railway electrification structures and the Corporate Debtor placed three purchase orders with the applicant dated 02/03/2012, 07/07/2014 and 08/08/2014. The applicant has provided services to the corporate debtor pursuant to the agreed terms and as per the purchase orders. Pursuant to the commencement of Liquidation proceedings by order dated 06.02.2020, The applicant sent a final claim amount to the tune of Rs 15,41,83,963.00 in Form-C before the Liquidator on 03.03.2020.



4. It is further submitted that during the process of scrutiny of the record/claim, the applicant submitted the clarifications and the proof of admission of claim to the satisfaction of the respondent by emails dated 28.05.2020, 29.05.2020 and 06.06.2020 (Annexure-5 of the application). The respondent-liquidator has rejected the claim of the applicant amounting to Rs. 11,46,45,242/- (Rupees Eleven Crore Forty Six Lacs Forty-Five Thousand Two Hundred Forty-Two only) on the ground that the PV Bills submitted by the applicant are proforma PV bills and not the original invoices/ bills sent to buyers in advance of a shipment or delivery of goods and the same cannot be equated as Invoices. The liquidator has also rejected the claim regarding the interest by stating that the Letter of Award dated 02.03.2012, Letter of Intent dated 07.07.2014, 08.08.2014 and 01.11.2010 are devoid of any clause pertaining to the interest payable by the Corporate Debtor. The applicant has also failed to provide the Last Inspection Charges as paid by the operational creditor to the Corporate Debtor.
5. The respondent has filed its reply by Diary No.00279/01 dated 25.08.2022 and written submission by Diary No. 475 dated 18.01.2023 stating that the applicant has miserably failed to substantiate its claim through any documentary proof as neither has it been able to give any proper bifurcation of the claimed amount. The claim regarding Interest due and payable by the Corporate Debtor to the applicant is invalid as the Letter of Award (“LOA”) dated 02.03.2012, Letter of Intent (“LOI”) dated 07.07.2014 & 08.08.2014 for Supply Contract, relied upon by the applicant to substantiate the claim do not contain any clause related to the claim regarding interest payable by the



Corporate Debtor to the applicant. The ledger account provided by the applicant contains a record of business transactions with the Corporate Debtor within the scope of the agreed contractual terms, pertaining to the UP-BOOT Power Project. The answering Respondent has duly admitted the closing balance to the tune of INR 3,95,38,721/- (Rupees Three Crores Ninety-Five Lakh Thirty-Eight Thousand Seven Hundred and Twenty-One Only), as reflected in the ledger account as it falls within the purview of Regulation 17(2)(b)(iv) of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. The invoice pertaining to the Last Inspection Charges provided by the applicant as proof of claim was unsigned and unstamped/unsealed and therefore, cannot be held valid in the eyes of law.

6. The impugned communication dated 08.08.2020 u/s 40(2) of the IBC, 2016 issued to the applicant by the answering respondent/Liquidator towards partly admitting the claimed amount of the applicant is valid, legal and meets all the necessary application of mind qua consideration of documents towards ascertaining the debt against the Corporate Debtor. .
7. In this context, reliance is placed by the respondent on the judgment of Hon'ble Kerala High Court in ***Karn Vir Mehta v. Collector of Customs (1997 SCC OnLine Ker 238)***, wherein it was held that:

“Proforma invoice is nothing more than a tentative statement of the seller for sale of the goods at the price mentioned therein. Until the buyer accepts it and enters into the actual transaction of sale and purchase, there can be no presumption that the goods must have been sold at that price. Such quotations or proforma invoices are not relevant evidence in the absence of an actual import in pursuance of the quotation. They are in the nature of offer and there is scope for negotiation to fix the final price for the import of the goods. Hence, no reliance can be placed on such quotations.”



8. The applicant has filed a rejoinder by Diary No.00279/01 dated 25.08.2022 stating that the applicant has claimed an amount of Rs 4,95,76,188.00 on account of Balance PV bills against the supplies already completed as per work orders. It is submitted that the payment of PV confirmed by Isolux was Rs. 4.32 crores + 12.5% (ED) + 2% (CST) = Rs. 4.95 crores. Joint reconciliation of account is already annexed at page no 131 of the applicant which bears the signature of the authorized representative of the Corporate Debtor. The applicant has attached an invoice of Rs. 69,054/- sent by Mr Guruswamy H M, Manager F & A of Quality Evaluation and System Team Pvt. Ltd to the applicant and the same was confirmed by the corporate debtor at page no 132 to 134 of the application. It is further averred that the confirmation email dated 05.12.2017 sent by the Director of Operations of Corporate Debtor to the Corporate Debtor confirming the interest to the tune of Rs 6.5 crores and the amount of Rs 6.5 crores on account of interest is attached at page no 140 of the appeal.
9. We have heard learned counsel for the applicant and respondent-Liquidator and have perused the record carefully.
10. In this connection, we have perused the relevant documents including the agreements and e-mails exchanged between the parties. A specific reference is made to the e-mails exchanged between employee of the corporate debtor and the applicant on 04.12.2017 and 05.12.2017 and the following extracts from those e-mails are reproduced below:-



"Email Dated 04.12.2017"

Sr no.	Particulars	As per ICI	As per MAN	Remarks
2.	Balance PV Bills	3.52	4.96	We do not agree with your view point as explained during the meeting as the PV is on manufactured tower which is a generic term for all material manufactured and has no co-relation to specific quantity. Moreover price variation is always paid on overall ceiling.
4.	Payment on interest calculated up to March, 2018	5.00	17.00	Vide your email dtd. 14-02-2017 you have agreed to a payment of Rs.6.50 crores towards interest. Since the word proportionate is misplaced and since we have already agreed to the proportionate figure we will stick to the position, that will have to have a terminal date which we take as June, 2016 after which interest on full value @12% would be payable. Total interest calculation upto March, 2018 is enclosed herewith.

Email Dated 05.12.2017

"From point 4, I can agree to a Final Interest Charges of 6.5 Cr INR as confirmed in my Email."

11. From the pursual of these e-mails and other documents, it is clearly indicated there is a dispute both over the payments to be made to the applicant and interest to be charged on the same. It is also seen from the communication made by the liquidator to the applicant under Section 40 (2) of the Insolvency and Bankruptcy Code, 2016 dated 08.08.2020 that the copies of original invoices to substantiate the amount claimed as per Proforma PV Bills have



not been provided to the liquidator by the applicant. Moreover, the applicant has not furnished the ledger account and the original invoices for substantiating the amount claimed in PV Bills.

12. Considering the above, we are of the view that one more opportunity needs to be given to the applicant and he is directed to furnish copies of original invoices to substantiate his claims regarding the proforma PV Bills accompanied by the Ledger Account and any other evidence in this regard before the liquidator for consideration of his claim by the liquidator. The parties are directed to complete this exercise within 15 days of receipt of this order.
13. Consequently, IA No. 614/2020 is allowed with aforesaid directions and disposed of, accordingly.

IA No. 52/2022

14. The present appeal is filed by M/s Baaz Security and Services (hereinafter referred as “applicant”) against Rajeev Bansal, Liquidator of M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. (hereinafter referred as “Respondent”) under Section 42 of Insolvency and Bankruptcy Code, 2016.
15. It is prayed by the applicant to set aside the decision of the Respondent-Liquidator dated 31.12.2021, rejecting the claim lodged by the applicant and to pass directions to the liquidator to consider the claim of the applicant.
16. The brief facts of the case as stated in the application are that the applicant has entered into an agreement with the corporate debtor for providing security services i.e. Guard & Security Personnel by Agreement dated 08.12.2014 and the Agreement was extended from time to time and continuing till 2017. The



corporate debtor was issuing purchase orders to the corporate debtor for providing services and the copy of the agreement dated 08.12.2014 and Purchase Orders are attached as A1 of the application. After the commencement of the liquidation of the corporate debtor, the applicant filed a claim before the liquidator on 12.01.2021 through Registered Post which was sent on 19.01.2021. The applicant has also withdrawn CA No. 551/2019 with the liberty to approach the liquidator for consideration of the claim and the same was allowed by the Tribunal by order dated 28.10.2021 granting 15 days time. The applicant submitted its claim on 13.12.2021 and the liquidator has rejected its claim on the ground that the same is not maintainable against the corporate debtor. It is submitted that while deciding the claims, the liquidator acts like a quasi-judicial authority and has to follow the principles of natural justice which has not been followed in the present case. The corporate debtor was releasing payments on the monthly submissions of the bills by the applicant Firm after verifying the deployment of securities personnel, and guards at different places in Madhya Pradesh.

17. The respondent had filed its reply vide diary No. 0067/2 dated 25.05.2022 stating that the present corporate debtor has set up two foreign entities namely Isolux Ingenieria SA and Corsam Corviam Construction SA. The corporate debtor is an independent entity and has remained independent since its constitution. The parent companies have also undertaken certain projects floated by Union and State Governments. The claim of the applicant lies against the parent company of the corporate debtor and the corporate debtor has never undertaken the liability of its parent company. Hence, the claim is not maintainable against the corporate debtor. The applicant has also



executed MoU and Agreement with the parent company and not with the corporate debtor. The project is awarded to its parent entity by Madhya Pradesh Power Transmission Company wherein the applicant has provided security services.

18. The applicant has filed rejoinder by Dairy No. 00067/3 Dated 16.09.2022 stating that an agreement dated 27.11.2013 was signed by the director of Isolux Corson India Private Limited. After the Corporate Debtor has sent the courier to the applicant for the continuation of the work contract and all official emails were also exchanged with the corporate debtor. The official emails exchanged with the employee of the corporate debtor are attached as Annexure A-19 to Annexure A-22 of the application. It is also submitted that the corporate debtor has also drawn cheques dated 09.07.2014 and 04.10.2016 in favour of the applicant which are clearly mentioned in the emails attached as Annexure A-22 to A-24 of the application.
19. We have heard learned counsel for Applicant and respondent-Liquidator and have pursued the records carefully.
20. We have closely perused the related documents and contracts of guarding services dated 27.11.2013 which has been entered by the applicant with Isolux Ingenieria SA - the parent entity of the corporate debtor. The documents also indicate that the employees of the parent entity have also discharged the responsibility for the corporate debtor. However, this cannot be construed to mean that a contract against the parent company is enforceable by law against the group companies. In view of the same, we do not accede to the prayers made by the applicant, However, he is at liberty to enforce his



claim against the actual party to whom services are rendered before the appropriate forum.

21. Consequently, IA No. 52/2022 is dismissed and disposed of, accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

March 01, 2023
SA/VN

Sd/-
(Harnam Singh Thakur)
Member (Judicial)