

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT-V**

**I.A. 1300 OF 2022**

**IN**

**C.P.(IB) No. 3703/MB/2019**

Under Section 60(5) of the Insolvency &  
Bankruptcy Code, 2016

**Engineering Mazdoor Parisad Dewas,**

...Applicant

Vs

**Mrs. Teena Saraswat Pandey,**

378-F, 114, Scheme Part 1, Behind  
Diksha Boys Hostel, Sant Nagar, Indore  
452010

...Respondent no. 1

In the matter of

**Rani Agro Private Limited,**

...Financial Creditor

Vs

**S & H Gears Private Limited**

...Original Respondent/  
Corporate Debtor

**Order Pronounced on: 10.07.2023**

**Coram:**

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

***Appearances***

**For the Petitioner:**

Adv. Manoj Munshi

**For the RP:** Ms. Teena Saraswat Pandey  
**For the Applicant:** Mr. Dheeraj Singh Panwar  
**For the Worker:** Adv. Louis

**Per: Kuldip Kumar Kareer, Member (Judicial)**

### **ORDER**

1. The present Application is filed by the Applicant, namely, **Engineering Mazdoor Parisad Dewas**, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") seeking directions to Mrs. Teena Saraswat Pandey, the Resolution Professional for considering and settling the claims of the Applicant workers.

### **FACTS OF THE CASE**

2. The Applicant is the representative union of the workers of the M/s. S&H Gears Pvt. Limited (hereinafter referred to as "**Corporate Debtor**"). The Corporate Debtor is a registered company under the provisions of Companies Act, 1956 and is currently undergoing resolution process.
3. The Company Petition no. 3703 of 2019 was admitted vide order dated 24.01.2020 by this Tribunal and the Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor. Pursuant to the same, Mr. Navin Khendelwal (Erstwhile IRP) was appointed as the Interim Resolution Professional.
4. The Applicant had submitted statement of workers claim of Rs.26,87,06,324/- before the Interim Resolution Professional on 06.03.2021. After the appointment of the Respondent herein as Resolution Professional by the order of this Tribunal dated 24.06.2021, the applicant have again submitted claim / representation through counsel dated 24.08.2021 which was returned as undelivered. The applicant again

submitted their claim through counsel on 10.11.2021 to the Resolution Professional.

5. It has submitted that the Resolution Professional has not apprised the applicant about any of the proceedings undertaken in respect of the Corporate Debtor. It has been further submitted that the dues of the workers are required to be taken care of in the ongoing insolvency resolution process as per orders of this Tribunal.
6. Despite repeated requests and notices of applicants, the respondent has not considered workers` claims nor has replied in the matter which necessitated the Applicant to file the present Interlocutory Application.

**REPLY FILED BY THE RESPONDENT**

7. The Respondent denied all the allegations and contentions made by the Applicant in the present Application.
8. It has been submitted that the applicant is trying to mislead this Tribunal and has wrongfully impleaded the Respondent in the present matter.
9. It has been submitted by the Respondent that vide order dated 24.01.2020, Mr. Navin Khandelwal was appointed as the Interim Resolution Professional of the Corporate debtor and subsequently, the public announcement was duly published on 18.03.2020 calling upon the creditors to submit proof of claim.
10. The IRP received the claims from the various creditors and accordingly constituted Committee of Creditors. The Union Engineering Mazdoor Parishad had filed Form E dated 08.07.2020 and 28.07.2020 on behalf of the Workmen and Employees of the Corporate Debtor wherein an amount of Rs. 14,84,627/- was claimed by the Workmen and total amount of Rs. 12,77,85,914/- was claimed by the Employees of the Corporate Debtor.

11. It has further been submitted that out of the claimed amount of Rs. 12,92,70,541/-, the Erstwhile RP had admitted an amount of Rs. 96,83,497/-.
12. Subsequently, this Tribunal vide order dated 24.06.2021 appointed the Respondent, Ms. Teena Saraswat Pandey as Resolution Professional of the Corporate Debtor.
13. It has been submitted that the Respondent, since the time of her appointment as the Resolution Professional of the Corporate Debtor, had always sent notice of CoC meetings to the General Secretary of Union Engineering Mazdoor Parishad of the Corporate Debtor. However, due to lack of 10% of total dues, no Operational Creditor had ever attended the meeting of the CoC.
14. It has been submitted by the Respondent that the Applicant tried to apprise the Respondent regarding the pending dues of workers through the letter dated 06.03.2021.
15. Since the Corporate Debtor had declared lay off in the year 2016, no employees were employed by the Corporate Debtor thereafter other than the handful people whose wages were already paid. The Erstwhile RP despite lack of sufficient documents had accepted the amount of Rs. 96,83,497/- which was outstanding as per the balance sheet of the Corporate Debtor.
16. It has been submitted that despite sending the notices of the CoC meetings, the Applicant did not approach the Respondent in time and the Applicant with the male fide intention filed the instant petition after the approval of the Resolution plan by the CoC members. It has further submitted that Resolution Plan specifically covers the claim amount of the Workers & Employees and the Successful Resolution Applicant has also proposed to

pay an amount of Rs. 96,83,497/- i.e., full amount against the admitted amount.

17. With the above averments, the Respondent has prayed for the dismissal of the present Interlocutory Application.

**REJOINDER FILED ON BEHALF OF THE APPLICANT**

18. The Applicant has denied all the averments made by the Respondent in its Affidavit-in-reply.
19. It has been submitted that the Erstwhile IRP never communicated the constitution of Committee of Creditors nor appraised any development regarding any meeting. It has further submitted that the admission of applicant claim amount of Rs. 96,83,497/- has come to the knowledge of the Applicant only through the Affidavit-in-reply filed by the Respondent.
20. It has submitted by Applicant that erstwhile IRP never responded to applicant's letters nor granted any opportunity to represent the interest of stakeholders.
21. The Applicant has further submitted that Mr. Ajay Goswami, who was the General Secretary had expired on 25.04.2021, but even before his death, no communication has ever been sent to him, which was confirmed by the family members of Mr. Ajay Goswami.
22. It has further submitted that the Respondent has not placed any documents by which the workers claim was allegedly accepted for only amount Rs. 96,83,497/- and the same was never communicated to the Applicant.
23. It has been submitted that the Applicant has submitted representation dated 17.10.2022 and 17.11.2022. The Resolution Professional has refused

to even receive the representation and has been returned with the postal remark 'Refused'.

24. The Applicant has submitted that there is no delay in pursuing the workers claim as the circumstances arisen due to Covid-19 Pandemic were beyond control of the Applicant workers.

**SUR REJOINDER FILED ON BEHALF OF THE RESPONDENT**

25. The Respondent has submitted that the Applicant has fallen under the category of Operational Creditors and as per law, the Operational Creditors do not find place in the CoC except in case if the debt of the Operational Creditors is more than 10%. Since the Applicant claim is below 10% of the total debt claimed, the Respondent or the Erstwhile RP was not obliged to share the copy of the minutes with the Applicant. It has further submitted that due to a typographical error, it was wrongly mentioned that the notices were sent to the Applicant.

26. It has further submitted that the Applicant could have raised the grievances of not informing about the admission of claim to an extent of Rs. 96,83,497/- to the erstwhile Resolution Professional. However, the provisions of the Code do not allow the newly appointed Resolution Professional to revisit or revise the claims already admitted by the erstwhile Resolution Professional.

27. The Respondent has further submitted that the email dated 27.10.2020 sent by the suspended management has mentioned that the Corporate Debtor Company had declared a lay off in 2016 and only few employees and workmen were called to finish the third-party jobs. Hence, the Erstwhile RP had admitted the claim to an extent of Rs. 96,83,497/- after verifying the same.

28. It has further submitted that the representations of the Applicant were never refused by the Respondent. Further, the Applicant should have

arrayed the erstwhile resolution professional as party to the present Application and he would be the best person to answer the grievances of the Applicant.

29. With the above averments, the Respondent has prayed for the dismissal of the present Interlocutory Application.

### **FINDINGS**

30. We have heard the Ld. Counsel appeared for the parties and perused all the documents placed on record.
31. The present Interlocutory has been filed by the Applicant seeking directions to the Resolution Professional of the Corporate Debtor for considering and settling the claims of the Applicant workers. The Applicant has claimed the workmen' dues of Rs. 26,87,06,324/- before the Interim Resolution Professional on 06.03.2021. However, the Applicant has not substantiated the averments that the claims of workmen actually amounts to Rs. 26,87,06,324/-.
32. It has been submitted by the Applicant that after the appointment of the New Resolution Professional, the Applicant again made claims on 24.08.2021 and 10.11.2021 which have not been appraised by the Resolution Professional and the applicant has no knowledge since no response was issued to the Applicant in this regard.
33. On the other hand, the Respondent has submitted that the erstwhile Resolution Professional has admitted the claim amount of Rs. 96,83,497/- on account of claims of workmen and employer on the basis of the books of accounts and other records available with the Corporate Debtor.
34. Having heard the Counsel for the parties, we are of the considered view, that the IA is without any merit. It has been claimed that there were outstanding dues of workmen amounting to Rs. 26.87 Crores. However, the

Applicant has not substantiated this part of the claim by way of any supporting document. On the contrary, it is the definite case of the Respondent/Resolution Professional that after verifying the records of the Corporate Debtor a sum of Rs. 96,83,497/- was found to be due towards the outstanding dues of the workmen and the erstwhile RP admitted the claim to that extent. Without any substantive record, it cannot be said that workmen dues of Rs. 26.87 Crores were outstanding which has been left out. It has also been pointed by the Counsel for the Respondent/Resolution Professional that the Corporate Debtor had declared a lay off in the year 2016 following which, only a handful employees were left in the Corporate Debtor. Therefore, it cannot be said that claims of Rs. 26.87 Crores has not been considered and have been wrongly rejected by the Respondent/RP.

35. As a result of the above discussion, the above IA No. 1300 of 2022 is **dismissed** being devoid of merit.

**Sd/-**  
**Anuradha Sanjay Bhatia**  
**Member (Technical)**

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**