

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CA Nos. 889/2019 & 1122/2019  
In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)**

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

**In the matter of:**

Small Industries  
Development Bank of India

...Financial Creditor

Vs.

M/s International  
Mega Food Park Limited

...Corporate Debtor

**And in the matter of CA No. 889/2019:**

**M/s S.P. Constructions,**  
having its registered office at  
House No. 571, Sector 16-D,  
Chandigarh through its  
Partner Shri Harpal Singh

....Applicant

Vs.

- Sumat Kumar Gupta**  
Resolution Professional of  
International Mega Food Park Limited  
Manmohan House 281/3B/1,  
Ghora Factory Road,  
Industrial Area-A, Ludhiana  
Punjab-141001

....Respondent/Resolution Professional

- Manoj Dham**

- Dhiraj Attri**

Both Nos. 2 & 3 Representatives of Shri Sumat Kumar Gupta  
Resolution Professional of

CA Nos. 889/2019 & 1122/2019  
In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

International Mega Food Park Limited  
Manmohan House 281/3B/1,  
Ghora Factory Road,  
Industrial Area-A, Ludhiana  
Punjab-141001 ....Respondents

**And in the matter of CA No. 1122/2019:**

**M/s Industrial Conbuild Co. Private Limited,**  
having its registered office at  
104-105, Vakil Chambers,  
A-115, Vikas Marg, Shakarpur,  
Delhi through its duly  
Authorized Representative  
Shri Parmod Kumar Sharma. ....Applicant/Operational Creditor

Vs.

**Sumat Kumar Gupta**  
Resolution Professional of  
International Mega Food Park Limited  
Manmohan House 281/3B/1,  
Ghora Factory Road,  
Industrial Area-A, Ludhiana  
Punjab-141001 ....Respondent/Resolution Professional

**Order delivered on: 22.12.2022**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing:**

For the applicant in CA Nos.  
889/209 & 1122/2019 : Mr. Kamal Satija, Advocate

For the respondent-  
Resolution Professional in  
CA Nos. 889/2019 & 1122/2019 : Dr. Rajansh Thukral, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

Since, the nature of the dispute in CA Nos. 889/2019 and 1122/2019 being identical, both these applications are taken up together for consideration.

**CA No. 889/2019**

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by M/s S.P. Constructions (hereinafter referred to as 'Applicant') against Mr. Sumat Kumar Gupta - Resolution Professional (RP) of International Mega Food Park Limited (hereinafter referred to as 'IMFPL')-Shri Manoj Dham and Shri Dhiraj Attri, Representatives of Shri Sumat Kumar Gupta (hereinafter referred as 'Respondent') seeking direction to the RP to admit the claim of the Applicant amounting to Rs. 67,32,542/- and admit applicant as operational creditor of the corporate debtor, to stay proceedings in ongoing Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') and not to approve any Resolution Plan qua the corporate debtor or allow liquidation of the corporate debtor. Further to stay the working of Shri Sumat Kumar Gupta as Resolution Professional.

2. The brief facts as submitted are that the applicant firm is the partnership concern. The CIRP against corporate debtor was admitted by this Adjudicating Authority vide order dated 28.02.2019 and Shri Sumat Kumar Gupta was appointed as IRP (Annexure A-2). The public announcement was made inviting claims from the creditors. In response to the announcement, the applicant submitted its claim of Rs. 67,32,542/- in Form-B vide e-mail dated 14.03.2019 based upon the settlement note dated 10.05.2018 entered into between IMFPL

and the applicant. The IRP sought additional information from the applicant firm CA Nos. 889/2019 & 1122/2019

In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

but it is claimed that due to some medical problem of the partner, the applicant firm was not able to provide the information. Vide e-mail dated 07.05.2019, applicant supplied the information sought. The respondent was intimated that without the sanction of his office, the IMFPL team was denying the applicant firm a copy of their account statement including the ledger of payments/accounts undertaken by the applicant firm. Vide e-mail dated 23.08.2019 the respondent rejected the claim of applicant firm and, on the contrary, informed that a sum of Rs. 59,06,517/- is recoverable from the applicant firm, for some extraneous reason the books of IMFPL failed to reflect the applicant firm's dues. It is submitted that the RP was called upon to furnish the copy of the Forensic Audit report in view of the absence of amount in the settlement note dated 10.05.2018. It is further submitted that the proper books of accounts have not been maintained due to some intentional or inadvertent error made by the Board of Directors of IMFPL. The legal notice dated 12.09.2019 was sent to the respondent. A complaint dated 25.09.2019 to IBBI against behaviour and attitude of RP for extraneous financial demands was filed.

3. In the reply filed vide Diary No. 2015 dated 16.03.2020 wherein it is stated that respondent Nos. 2 & 3 are employed by RP to assist him in various assignments and are not directly answerable or liable. The borrower is classified as suspected fraud based on the findings of Forensic Audit Report. It is alleged that in the books of accounts, it was found that the entries were made back dated and books of accounts reflected an amount of to Rs. 61,38,420/- as payable to corporate debtor as against actual recoverable of Rs. 59,06,517/-. It is submitted that the settlement note was manufactured ante dated in connivance with the promoters of the corporate debtor. A legal notice sent by the applicant was replied CA Nos. 889/2019 & 1122/2019

In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

by respondent No. 1 through his counsel in terms of reply dated 26.09.2019. The alleged unpaid final bills were not attached to substantiate the claim. The RP asked the applicant to furnish the information including the details of another partner, bill wise detail of outstanding amount and a copy of the account of IMFPL. The applicant deliberately avoided furnishing information to the RP for processing of claim.

4. The rejoinder was filed vide Diary No. 01414/3 dated 22.09.2022 wherein it is stated that the IBBI passed an order suspending the respondent to continue to work as IRP/RP. The Hon'ble High Court had granted stay upon operations of the order passed by the IBBI against respondent No. 1 and respondent No. 1 is still continuing to work as RP. The respondent Nos.2 and 3 are proper and necessary parties to the present lis. They are not filed any reply to the application despite the issuance of notice. The fraud had been played by Ex-Management, Accountants and Key Personnel of the corporate debtor by not making the payments due. The amount payable by corporate debtor was dubiously either deleted or otherwise tampered with and thereafter the amount due and payable by corporate debtor to the applicant in terms of settlement note was again not reflected in the books of account of corporate debtor. The respondent No. 1 refused to share the books of accounts of the corporate debtor. The Ex-Management or the Key Personnel did not make entries in the books of accounts of corporate debtor for the matter by not depositing the TDS. The TDS can only be deducted in the case the amount is paid by the corporate debtor. Respondent No. 1 is duty bound to investigate the bills raised by the applicant. Instead of doing his duties diligently he had acted with malice and had fabricated the books of accounts of corporate debtor in connivance with the Ex-Management CA Nos. 889/2019 & 1122/2019  
In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

to cause huge financial loss to the applicant. The reply to the legal notice was received in the office of counsel representing the applicant.

Now coming to the facts of CA No. 1122/2019.

**CA No. 1122/2019**

5. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by M/s Industrial Conbuild Company (hereinafter referred to as 'Applicant') against Mr. Sumat Kumar Gupta - Resolution Professional (RP) of International Mega Food Park Limited (hereinafter referred to as 'IMFPL') (hereinafter referred as 'Respondent') seeking direction to the RP to admit the claim of the Applicant amounting to Rs. 26,700,081/- and to stay proceedings in ongoing CIRP and not to approve any Resolution Plan qua the corporate debtor or allow liquidation of the corporate debtor. Further to stay the working of Shri Sumat Kumar Gupta as Resolution Professional.

6. The brief facts as submitted are that the applicant is the body corporate. The CIRP against corporate debtor was admitted by this Adjudicating Authority vide order dated 28.02.2019 and Shri Sumat Kumar Gupta was appointed as IRP (Annexure A-2). The public announcement was made inviting claims from the creditors. In response to the announcement, the applicant submitted its claim of Rs. 26,700,081/- in Form-B vide e-mail dated 13.03.2019 based upon the work orders/Letter of Intent issued by corporate debtor, invoices/bills issued by applicant for supplying of material for Rs. 69,629,647/-, invoices/bills towards erection work for Rs. 1,56,74,987/- Form-C for Rs. 6,54,11,042/- towards supply of material. Vide e-mail dated 09.10.2019, the respondent unilaterally cut short the claim and accepted only a claim of Rs. 53,52,598/- and rejected the claim of Rs.

2,13,47,483/- without assigning any reason, for some extraneous reason that the CA Nos. 889/2019 & 1122/2019

In  
CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

account of IMFPL failed to reflect the applicant dues. The misdemeanour of Sh. Sumat Kumar Gupta is well established in rejecting a major portion of the lawful claim of the applicant company and not rectifying the same even when he was sent e-mail dated 14.10.2019.

7. The reply was filed vide Diary No. 2016 dated 16.03.2020 wherein it is stated that the respondent has obtained a soft copy of accounts of the IMFPL at the time of initiation of CIRP and as per this copy of accounts an amount of Rs. 53,62,598/- was payable by the corporate debtor to the applicant. It is submitted that this entry is verifiable very easily from the email accompanying the soft copy of accounts. The corporate debtor has made back dated entry of Rs. 88,55,823/- ante dated 01.04.2018 resulting into balance payable of Rs. 1,42,18,421/- in the books of account. The corporate debtor provided the documents which belong to the period between 01.04.2014 to 31.03.2016. The corporate debtor had not entered these documents in the books of account at the time of occurrence of the transaction. It is further submitted that it came to the knowledge of the respondent about the backdated entries having been fraudulently made in the books of account. It is submitted that the transaction audit under Regulation 35 of CIRP Regulations of the books of account of the corporate debtor has already been conducted and it has been found that anti-dated entries have been made in the books of account of the corporate debtor in the account relating to the applicant in respect of which the answering respondent has already moved an application before the Authority to declare the ante-dated entries as illegal while seeking other consequential reliefs. The claim that was represented by the books of account of the corporate debtor has been admitted; the rest of the claim could not be admitted because the same is not verifiable and appears to be just concocted.

CA Nos. 889/2019 & 1122/2019

In

CP (IB) No. 174/Chd/CHD/2018  
(Admitted Matter)

The applicant has suddenly woken up to agitate against the answering respondent by putting before him the very old documents most of which are not even readable.

8. The rejoinder was filed vide Diary No. 01412/2 dated 22.09.2022 wherein it is stated that the IBBI passed an order suspending the respondent to continue to work as IRP/RP. The Hon'ble High Court had granted stay upon operations of the order passed by the IBBI against respondent No. 1 and respondent No. 1 is still continuing to work as RP. It is submitted that there is no denying the fact that the applicant had executed work orders as well as supplied materials to the corporate debtor and in lieu, thereof, the applicant had raised its invoices/bills and infact, Form 'C' were also issued by the corporate debtor to the applicant for an amount of Rs. 6,54,11,042/- and despite the same, the respondent has chosen to partly reject the lawful claim of the applicant by making false and concocted allegations against the applicant. It is alleged that the respondent has joined hands with the ex-management of the corporate debtor by fabricating the books of accounts of the corporate debtor whereby the amount payable by the corporate debtor to the applicant amounting to Rs. 2,67,00,081/- was dubiously altered or otherwise tampered with and thereafter the amount due and payable by the corporate debtor to the applicant was clandestinely reduced to Rs. 53,52,598/- without assigning any reason whatsoever. Without properly investigating the claim of the applicant, a huge amount of the claim submitted by the applicant has been summarily rejected by the respondent under false pretexts.

9. We have heard the counsel and pursued the evidence on record carefully.

10. As per the information available in Form-B in CA No. 889/2019, the debt accrued on account of final unpaid bills and civil works contracts and in CA No. 1122/2019, the debt was related to the work done and invoices/bills raised for executing work orders. In its application and subsequently, during the proceedings, the operational creditors relied on the account statements of the corporate debtor, invoices/bills raised towards the supply of material and Form-C issued (in CA No. 889/2019) and on settlement note dated 10.05.2018 (in CA No. 1122/2019).

11. The bills, vouchers, bank statements and various supporting details filed by the applicants have been carefully perused, while the Resolution Professional has claimed that the rejection of the claims of both applicants are based on the entries in the books of accounts of the corporate debtor. The applicants have alleged that the books of accounts relied on by the Resolution Professional do not reflect the true state of affairs. It is also claimed by the Resolution Professional that in the transaction audit under Regulation 35 of the CIRP Regulations of the books of accounts of the corporate debtor, it is found that back-dated entries have been made in the books relating to the applicants and hence, the relief claimed based on such fictitious entries are not maintainable. In CA No. 889/2019, the corporate debtor has also stated that there was a dispute on the quality of the work executed by the applicant, and therefore, there was an initial restriction on carrying away the leftover construction material of the applicant. Further, it is claimed that the applicant did not re-do the work originally done by him.

12. In the reply to IA No. 889/2019, the contents of so-called settlement note dated 10.05.2018 have been summarily rejected by the corporate debtor as an unsolicited and unilateral act of the applicant. In short, in both these applications, CA Nos. 889/2019 & 1122/2019

there are many claims and counter claims made by the parties concerned which cannot be decided with reference to any reliable documents acceptable to both sides. This Adjudicating Authority is not in a position to examine the veracity of the claims and counter-claims made in a summary proceedings. We follow the decision of the Hon'ble NCLAT in the case of ***Oyster Steel and Iron Pvt. Ltd. Vs. Laxmi Foils Pvt. Ltd.*** Company Appeal (AT) (Ins) No. 1209 of 2019 dated 04.08.2022 on similar facts that these disputes are better settled by the trial Court /Civil Court. In view of the aforementioned discussion, the prayers made by the applicants in these applications are not acceded to. In the result, both the applications bearing CA Nos. 889/2019 & 1122/2019 are dismissed.

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

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

December 22, 2022

TB