IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

IA. No. 2877/2022

In

CP(IB)No. 472/MB/C-III/2020

(Application filed under section 60(5) of Insolvency and Bankruptcy Code, 2016.)

PSL Engineering Pte. Ltd.

...Applicant

V/s

Mr. Navin Khandelwal, RP

(RP of K.H. Forges India Pvt. Ltd.)

... Respondent

In the matter of

Arvind Pipes and Fittings Industries Pvt. Ltd.

...Operational Creditor

V/s

K.H. Forges India Pvt. Ltd.

...Corporate Debtor

Order Reserved on: 17.10.2023
Order delivered on: 09.11.2023

CORAM:

SHRI CHARANJEET SINGH GULATI — **HON'BLE MEMBER (T)**

SMT LAKSHMI GURUNG — **HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Mr. Manoj Mishra, Advocate

For the Respondent : Mr. Aniruth Purusothaman, Advocate

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. It is an application filed by the PSL Engineering Pte. Ltd. under sections 60(5) of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') against Mr. Navin Khandelwal, Resolution Professional of K.H. Forges India Pvt. Ltd., challenging the rejection of its claim as a Financial Creditor of the Corporate Debtor by the Respondent vide email dated 27.09.2022. The Applicant is seeking following reliefs:

   i.) That this Hon'ble Tribunal be pleased to condone the delay of 109 days in filing its claim with the Respondent.

   ii.) To quash and set-aside the Impugned E-mail dated 27th September, 2022;

   iii.) To direct the Respondent and the Committee of Creditors to start the CIRP process afresh after including the Applicant's claim in the information memorandum;

   iv.) To order and direct the Respondent to admit the Applicant's claim amounting to Rs. 2,18,10,908/- (Rupees Two Crores Eighteen Lakhs Ten Thousand Nine Hundred and Eight only) in the CIRP of the Corporate Debtor and recognize the Applicant as a financial creditor of the Corporate Debtor;

v.) *To stay the effect, operation and implementation of the Impugned E-mail dated 27th September, 2022;*

vi.) *To order and restrain the Respondent and/or Committee of Creditors of the Corporate Debtor from accepting any Resolution Plan and/or approve liquidation of the Corporate Debtor without admitting the Applicant's claim amounting to Rs. 2,18,10,908/- (Rupees Two Crores Eighteen Lakhs Ten Thousand Nine Hundred and Eight only) in the CIRP of the Corporate Debtor.*

<u>Background Facts:</u>

2. On perusal of the Application, it reveals that the Applicant is a private limited company incorporated under the provisions of the Singapore Companies Act situated and carrying out business in Singapore.

3. The Applicant had issued Stand By Line of Credit ("SBLC") of SGD 1,000,000 each, aggregating to SGD 2,000,000 through its banker i.e. United Overseas Bank in favour of the Corporate Debtor through its bank DBS Bank vide Agreement dated 08.07.2016. On the strength of the aforesaid SBLCs, the Corporate Debtor had availed working capital loan and subsequently invoked the above SBLC in May 2019. The said invocation amounting to Rs. 9 crores were paid by the Applicant.

4. The relevant clauses of the Agreement dated 08.07.2016 are mentioned below:

   a. Clause 6 of the Agreement:

      6) Event of Default
      In the event of Default by the Barrower in relation to its obligation under this agreement or a failure to pay the respective banks/FI which are guaranteed by the Lender under this agreement, the Lender shall have an exclusive right and lawful ownership of the inventories/receivables assigned or lien marked to the Lender.

   b. Clause 7 of the Agreement:

      7) Default Interest
      The Lender will charge interest @12% p.a. (compounded on a monthly basis) to the Borrower from the date of default/date of invocation of SBLC till the date of repayment of the amount of loan against the SBLC by the Barrower.

   c. Clause 8 of the Agreement:

      8) Lien on Inventory and Receivables on Default:
      In the event of Default, the ownership on inventory will get transferred to the Lender as legal and absolute owner of the same. The collection rights over the receivables will get transferred to the Lender and the Borrower will be the legal lien holder on the same. All the collection from the receivables shall be paid into the bank account of the lender. Any collection received by the Borrower after the default date, shall immediately be transferred to the Lender.

5. Meanwhile, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 13.12.2021 passed by this Adjudicating Authority in CP(IB)/472/MB/2020 u/s 9 of the code filed by an Operational Creditor viz. Arvind Pipers and Fittings Industries Pvt. Ltd. The Respondent was appointed as the Interim Resolution Professional ("IRP").

6. In compliance with Section 15 of the Code and Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) for corporate Regulations, 2016, the Respondent/IRP carried out the publication of a public announcement in Form-A inviting Claims on 09.01.2022 in daily newspapers in both English and Hindi. As per the public announcement the last date to submit the claim form was 21.01.2022.

7. Further, on the appointment of IRP as Resolution Professional ("RP), the RP published the expression of interest- Form G on 21.03.2022 in Financial Express and Navkal Newspaper in Mumbai edition. As per Form-G, the Prospective Resolution Applicant ("PRA") has to submit the expression of interest by 05.04.2022.

8. The 180 days of the CIRP get completed on 06.07.2022. therefore, the RP filed an application under Section 12(2) of the Code, 2016 for the extension of 90 days and same was granted by this adjudicating authority vide order dated 25.07.2022.

9. Meanwhile, Raj Darshan Enterprise submitted a Resolution Plan which was put for voting e-voting for the period from 29.08.2022 to 01.09.2022. The same was not approved by the CoC.

10. On 14.09.2022, the Applicant filed the claim in Form C as a Financial Creditor via email dated 14.09.2022. In response to this, the RP rejected the claim on the ground that the 252 days of CIRP process was already completed and as per regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 maximum period to submit the claim to the IRP/RP is within 90 days from the commencement of CIRP, which is completed on 07.04.2022.

Submissions of the Applicant:

11. In such circumstances, the Applicant has filed the present application before us and submitted that the Applicant is having its office at Singapore and conducting its business from there. Therefore, the Applicant was not aware with regards to the commencement of CIRP against the Corporate Debtor and only came to know about the same on or around September, 2022.

12. The SBLC was invoked in May, 2019 and as part of the loan agreement, the Corporate Debtor had assigned a few debtors including *(1) Shiv Amar Realty Ltd. and (2) Raheja International* to the Applicant and in accordance with the Agreement, in the event the debtors did not respond to the

claims of the Applicant, the Applicant was entitled to recover the same from the Corporate Debtor.

13. The Applicant submitted that in August, 2022, two debtors of the Corporate debtor namely (1) Shiv Amar realty Ltd. and (2) Raheja International indebted to the Corporate Debtor (and accordingly liable to pay to the Applicant) for Rs. 1,00,00,000/- and Rs. 61,00,000/- respectively (aggregating to Rs. 1.61 crores) were not responding to the demands of the Applicant. When the Applicant contacted the Corporate Debtor with respect to the defaults of (1) Shiv Amar Realty Pvt. Ltd. and (2) Raheja International and demanded the Corporate Debtor to make the payment, the Applicant was apprised of the fact that the Corporate Debtor was already admitted in CIRP since December, 2021.

14. Thereafter, the Applicant vide email dated 14.09.2022 submitted its claim before the RP and same was rejected by him vide email dated 27.11.2022 on the ground that the claim is beyond limitation.

15. The Applicant further submitted that the public announcement was published in India and the news of the initiation of CIRP did not reached to the Applicant. Moreover, due to the travel restrictions even the Key Managerial Persons of the Applicant were not frequently travelling India for a long time. Hence, the Applicant was completely unaware of the situation in India.

Findings:

16. Heard the parties and perused the material on record. We observe that as per regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, maximum period to submit claim to the IRP/RP is within 90 days from the commencement of CIRP, which in this case should have been done by 07.04.2022. Therefore, there is a delay of 163 days in filing the claim before the RP.

17. The CIRP period of 270 days (including the extension period) was completed on 04.10.2022, and the CoC neither approved the Resolution Plan nor the Liquidation of the Corporate Debtor. We are of the view that delay of 163 days should be condoned on the grounds that the Applicant is situated in Singapore, and the Public Announcement made by the Respondent was published in India. Further, we agree with the submission of the Applicant that due to international travel restrictions, even the Key Managerial Persons of the Applicant were not frequently travelling to India. Therefore, the Applicant was not aware of the Corporate Debtor's CIRP. Furthermore, no resolution plan has been approved by the CoC till now.

18. Accordingly, and in view of above facts the delay of 163 days in filing the claim before RP is condoned, and RP is directed to verify the claim of the Applicant and proceed

further in the matter in accordance with the provisions of the Code and applicable Regulations.

19. Accordingly, the IA/2877/2022 is **allowed**.

Sd/-	Sd/-
CHARANJEET SINGH GULATI	**LAKSHMI GURUNG**
MEMBER (Technical)	**MEMBER (Judicial)**

Arpan, LRA