

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 801

CA 1466/PB/2019

IN CP (IB) 737/PB/2018

IN THE MATTER OF:

**M/s. Twenty First Century Wire Rods Ltd. V/s. M/s. Rohit and
Company**

Order under Section 60(5) of Insolvency and Bankruptcy Code, 2016

Order delivered on 14.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CA 1466/PB/2019 in CP (IB) 737/PB/2018 stands dismissed.

SD/-

(Rahul Bhatnagar)

Member Technical

SD/-

(Bachu Venkat Balaram Das)

Member Judicial

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

C.A. 1466/PB/2019

IN

Company Petition No. (IB) – 737/(PB)/2018

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

Twenty First Century Wire Rods Ltd

.... PETITIONER / CORPORATE
DEBTOR

AND IN THE MATTER OF-

M/s. Rohit & Company
Operational Creditor of Corporate Debtor

.... APPLICANT

CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Adv Siddharth Buxy, Adv

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 14.09.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by M/s. Rohit & Company, Operational Creditor of the Corporate Debtor against the RP for not informing the Applicant about the status of claim filed by the applicant and further not furnishing the Applicant with a copy of the Information Memorandum and Resolution Plan, as prepared and filed before this Tribunal.

2. The applicant in the present application has prayed for the following relief(s)

- a. *To direct the Resolution Professional to provide the details and status of the claim filed with him by the Applicant;*
- b. *To direct the Resolution Professional to supply a copy of the Information Memorandum and Resolution Plan, as filed with this Hon'ble Tribunal, to the Applicant;*
- c. *To direct the Resolution Professional to include in the Information Memorandum and the Resolution Plan(s),*

- I. *the entire claim made by the Applicant in Form-B dated 01.10.2018 and*
- II. *The amount of Rs. 39,31,791/-, on account of the Resolution Professional not issuing 'C' Forms to the Applicant along with interest at an appropriate rate from 01.07.2019 till the Form B is so amended; and*
- d. *Pass such other and further order(s) as this Hon'ble Adjudicating Tribunal may deem fit and proper in the facts and circumstances of the case.*

3. The brief facts of the case as mentioned in the instant application, which are relevant for adjudication, are as follows:

- i. That the applicant was supplier of iron and steel products including HC Ferro Chrome Fines and Lumps. During the normal course of their business transactions, the Corporate Debtor raised Purchase Orders and goods were supplied to the Corporate Debtor against invoices, to its complete satisfaction, during the period from 29.07.2013 to 06.04.2015. Accordingly, 28 tax invoices ranging from 03.11.2014 to 31.12.2014 as well as 5 debit notes were issued by the Applicant to the Corporate Debtor against the goods delivered. However, payment amounting to Rs.

3,80,67,628 were not made by the Corporate Debtor to the Applicant. The aforesaid invoices provided for a payment of interest @36% p.a. in case of delayed payments.

- ii. That the Corporate Debtor filed an application under section 10 of the IBC, 2016 to initiate CIRP against itself which was admitted by this Tribunal vide order dated 12.09.2018 and Mr. Rupesh Agarwal was appointed as IRP in the matter.
- iii. That on 01.10.2018, the Applicant submitted its Proof of Claim (Form B) as an Operational Creditor for a claim of Rs 12,17,96,9251- (including Rs 3,80,67,628/-, being the principal amount and Rs 8,37,29,300/- towards interest payable against the Tax Invoices raised by the Applicant to the Corporate Debtor).
- iv. That the applicant had not received any intimation regarding its claim hence the Applicant personally met the RP and thereafter sent an email dated 15.01.2019 to the RP asking for the status of its claim. The said email was responded to by the RP vide email dated 30.01.2019 wherein the RP acknowledged the proof of claim in Form B filed by the Applicant. The Resolution Professional sought supplementary documents being 1. Ledger confirmation

from Corporate Debtor, 2. Any document to substantiate interest payment, and 3. Debit Notes raised by the Corporate Debtor. The applicant promptly replied to the RP via email.

- v. That since the applicant was supplier of the Corporate Debtor hence the applicant was entitled to get Form C from the Corporate Debtor under the tax invoices raised therein. The Corporate Debtor had not issued 'C' Forms against various invoices relating to the period 2013-2015. While such 'C' Forms were pending, the concerned revenue authorities had indicated to the applicant that penalty and interest will be charged due to non-submission of Form C. Therefore, on 06.03.2019, the Applicant wrote a letter to the Resolution Professional of the Corporate Debtor requesting him to issue the necessary 'C' Forms so that the Applicant may submit them to the jurisdictional Sales Tax Authority.

- vi. That the RP had met the Applicant and informed that he will intimate the further course of action to be taken in relation to issue of 'C' Forms after consulting his legal team.

However, despite several reminders from the Applicant, the

RP of the Corporate Debtor did not proceed further. Meanwhile the Central Sales Tax Authorities had issued a demand notice to the Applicant for an amount of Rs. 84,44,492/-. Therefore, the Applicant on 22.03.2019 immediately sent an email to the Resolution Professional of the Corporate Debtor requesting him to urgently issue the relevant 'C' Forms. Since the Resolution Professional did not respond, the Applicant sent multiple reminders via email on 28.03.2019, 01.04.2019, 08.04.2019, 24.04.2019 and 02.05.2019.

- vii. That the applicant informed the RP vide letter dated 21.06.2019, that, the Applicant would be constrained to go through an Amnesty Scheme to clear Sales Tax Dues on account of non-submission of 'C' Forms by paying an amount of Rs. 39,31,7911 and recover the same as a further liability from the Corporate Debtor.
- viii. That the RP did not care to respond to the Applicant or to issue the relevant 'C' Forms. As a result, the Applicant was constrained to avail of the aforesaid Amnesty Scheme by paying an amount of Rs. 39,31,791/- to clear sales tax dues on account of non-submission of 'C' Forms on 01.07.2019.

Consequently, the Applicant's operational debt against the Corporate Debtor increased by an amount of Rs. 39,31,791/-, being the amount that the Applicant had to pay on account of the Corporate Debtor (through the Resolution Professional) not issuing the 'C' Forms to the Applicant.

- ix. The Applicant submitted that this amount of Rs. 39,31,791/- is a debt in respect of the repayment of dues arising under the CST Act, 1956 and payable to the Central or the State Government. As such it is an operational debt under Section 5(21) of the Insolvency and Bankruptcy Code, 2016. This operational debt has come into existence recently, much after the Applicant had submitted Form-B. Since a moratorium is in operation against the Corporate Debtor, the Applicant has no other remedy except to revise its claim in Form B to add an amount of Rs. 39,31,791/- along with interest at an appropriate rate from 01.07.2019 till the Form B is so amended.
- x. That the applicant met with the RP and it was informed by the RP that only the principal amount was included in the

Information Memorandum (IM) of the Corporate Debtor and whole interest component was not part of the IM.

- xi. The applicant was informed that the RP had filed the Resolution Plan before this Tribunal. Since the entire claim of Operational Creditor was not part of IM hence the Resolution Applicant would only consider partial claim of the Operational Creditor
- xii. The Resolution Plan, if approved, would directly impact the Applicant herein and, if aggrieved, the Applicant has the right to file an appeal from the Adjudicating Authority's order of accepting or rejecting such Resolution Plan to the Appellate Tribunal under Section 61 of the Code. Therefore, the Applicant cannot be deprived of its right to get a copy of the Information Memorandum and Resolution Plan so that the Applicant can safeguard its interest.
- xiii. The applicant submitted that receipts issued to the CD clearly stated that 36% interest will be charged if amount was not paid on time.
- xiv. The Applicant further submitted that 'interest' is payable to any person as compensation for deprivation of any amount due to him. The Applicant is entitled to interest on the

unpaid amount from the Corporate Debtor on the basis of the receipts that form a contract between the parties. Therefore, denial of the interest on the part of the Resolution Professional of the entire claim made by the Applicant is unlawful and arbitrary. Hence the present application is filed.

4. The Resolution Professional has filed its reply to the averments and stated as under

I. That the Applicant filed its claim under Form B as an Operational Creditor for an amount of Rs. 12,17,95,928/- comprising of Rs. 3,80,67,628/- as principal operational debt (Operational Debt) and Rs. 8,37,29,300/- as alleged interest payable @ of 36% p.a. on Operational Debt, against the tax invoices raised by the Applicant on the Corporate Debtor. It is submitted that receipt of claim was duly acknowledged by the RP vide email dated 30.01.2019. For verification and collation of the claim form submitted by the Applicant, the RP sought certain documents/information from the Applicant including documents to substantiate the alleged claim of interest.

II. Pursuant to verification and collation of claim, the RP admitted the principal operational debt of Rs. 3,80,67,628/- under Form B of the Applicant. However, the alleged amount of Rs. 8,37,29,300/- claimed as interest by the Applicant, could not be found admissible by the RP, as on perusal of the purchase orders which were submitted by the Applicant with its claim form the RP could not find any provision entitling the Applicant to charge any interest on the invoice amount and that too @36% pa. It is submitted that no consensus with respect to the rate of interest as allegedly claimed by the Applicant was arrived at between the parties as can be seen from the perusal of the purchase orders. Solely mentioning the rate of interest on its own accord, in the invoices would not make it binding upon the Corporate Debtor as nowhere the purchase orders bear the signature of the Corporate Debtor.

III. Moreover, the amount allegedly claimed as interest in the Form B cannot be admitted by the RP as the records of the Corporate Debtor on collation thereof do not in any manner reflect any understanding or any provision for

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payment of interest to the Applicant. It is also pertinent to mention herein that the books of account of the Corporate Debtor contains record only to the extent of the principal amount as claimed by the Applicant and admitted by the RP. Thus, keeping in view the terms of the purchase orders and the books of account of the Corporate Debtor, the RP has not accepted the claim of the Applicant as regard, the alleged interest

IV. That it is a unilateral figure mentioned and arrived at by the Applicant, which was never accepted by the Corporate Debtor.

V. That pursuant to the directions of this Adjudicating Authority vide its Order dated 29.08.2019 and post receipt of a confidentiality undertaking from the Applicant on 09.09.2019, the Resolution Plan as approved by the Committee of Creditors in its Tenth meeting held on 04.06.2019 was provided electronically by way of a pen-drive at the office of Applicant on 09.09.2019 by hand delivery. Therefore, the contention of the Applicant that the RP did not provide him with a copy of the Resolution Plan is completely false and misleading.

VI. It is pertinent to point out that this Adjudicating Authority vide Order dated 30.03.2022 had remanded back the Resolution Plan to the CoC for fresh consideration limited to approval of the clause related to the release of the personal guarantee. Further, the Appeal filed by the Resolution Applicant before the Hon'ble National Company Law Appellate Tribunal (hereinafter "NCLAT") challenging the Order dated 30.03.2022 passed by this Adjudicating Authority has been dismissed. The Resolution Plan submitted by the Resolution Applicant is presently pending before the CoC for consideration of modification of the Resolution Plan and approval thereof.

VII. It is submitted that the RP after duly verifying and collating the records and in compliance of the duty conferred upon the RP, the claim of the Applicant, could not be admitted with respect to the alleged interest portion of the amount claimed. It is most humbly submitted herein that the prayer with respect to the admission of the entire claim in the Form B thus deserves to be rejected for the reasons aforementioned.

VIII. With respect to the averments raised in respect of the failure to issue 'C' Form under the Central Sales Tax Act, 1956 by the RP, the same are denied as false and incorrect and no fault in this regard lies with the RP. It is not denied that the Corporate Debtor was obligated to issue the 'C' Forms to the Applicant against the invoices raised by the Applicant for the supply of products that happened during the period from 2013-15. However, the C Forms for the purpose of Central Sales Tax Act, as requested by the Applicant relates to the period of 2013-2015 i.e. pre-CIRP period. It is submitted that the RP after repeated efforts and enquiries with the suspended management of the Corporate Debtor with respect to the 'C Forms' that was to be issued much prior to commencement of CIRP, however the RP could not locate the same and due to which the same could not be provided to the Applicant by the RP. However, the relief sought in the Application as regard alleged liability with respect to the Sales Tax dues on account of non-submission of the 'C'- Form is concerned, admittedly no claim in this regard was filed by the Applicant at the time

of submission of Form B nor any updated proof of claim was received from the Applicant taking into cognizance of said liability, hence the same cannot be considered at this stage and the claim of Rs 39,31,791/-sought cannot be looked into and verified by the RP.

IX. That no fresh claim can be entertained at this stage as the Resolution Plan earlier approved by the CoC has been remanded back to the CoC for consideration on limited grounds pursuant to the Orders passed by this Adjudicating Authority. That reliance is placed on the Judgment passed by the Hon'ble Supreme Court in *Committee of Creditors Essar Steel India Limited Vs Satish Kumar Gupta*' 2019 SCC Online SC 1478 and *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020* {refer para 135 & 135.1} which lays down the law that belated claim as filed by the Applicant cannot be considered by the RP at the stage where the Resolution Plan has already been approved by the CoC.

X. It is further stated that the prayer with respect to supplying a copy of the Information Memorandum is wholly untenable as being an operational creditor and not being a member or participant in the CoC, the provisions of the Code do not permit sharing of copy of the Information Memorandum with it.

XI. In the view of the aforesaid background, it is submitted that the present Application filed by the Applicant is not maintainable and misconceived and deserves to be rejected.

5. We have gone through the documents on record filed by both the parties and have heard the parties on merits.

6. The RP has already provided the copy of the Resolution Plan on 09.09.2019 to the Operational Creditor pursuant to the order of this Tribunal dated 29.08.2019. Therefore, there is no need to consider prayer (b) of the applicant

7. With respect to the issue of claim filed by the Operational Creditor, it is observed that merely citing the interest rate in the invoices by itself wouldn't render it legally binding for the Corporate Debtor, as the purchase orders do not bear the

signature of the Corporate Debtor anywhere. The RP has taken a conscious view by verification of claim keeping in view the terms of the purchase orders and the books of account of CD (which only included the principal amount) and the principal amount was duly admitted by the RP and was part of IM.

8. Regarding the issue of not providing Form C for the Central Sales Tax Act, as requested by the Applicant to the RP, it is observed that the Form C relates to the period of 2013-2015, which is before the commencement of CIRP. The RP stated that despite his best efforts, he couldn't locate those documents. The Applicant should have obtained Form C from the erstwhile management of the Corporate Debtor during that time.

9. Taking into consideration the facts and circumstances of the present case, this Adjudicating Authority **dismisses** the application filed by the Operational Creditor.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)