THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

I.A. 1138 OF 2020

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules 2016

The Best Towers Private Limited

…Applicant

In the matter of

C.P.(IB) No. 1387/MB/2017

Ericsson India Pvt Ltd

Financial Creditor

Vs.

Reliance Communications Ltd.

Corporate Debtor

Order delivered on: 26/10/2023

Coram:

Shri Prabhat Kumar Hon'ble Member (Technical)	**Justice V.G. Bisht (Retd.)** Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Ms. Priyanka Dadpe i/b Agam Doshi, Advocate
For the Respondent/RP	:	Mr. Rishabh Jaisani a/w Ms. Kriti Kalyani, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 1138/2020 was filed by M/s Best Towers Private Limited ("Applicant") in the matter of M/s Reliance Communication Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking direction to the Resolution Professional ("Respondent") for admission of supplementary claim, direction for payment in priority and for provision of copy of the Resolution Plan in the Corporate Insolvency Resolution Process ("CIRP") and for direction.

2. The Corporate Debtor was admitted into the CIRP process vide order dated 15.05.2018 passed by this Tribunal. The Interim Resolution Professional made a Public Announcement in Form A on 8.5.2019, and the last date for filing of claim was 01.06.2019.

3. The Applicant filed a claim in Form B on 18.05.2019 for Rs. 103,20,44,352/- (Rupees One Hundred Three Crores Twenty Lakhs Forty Four Thousand Three Hundred and Fifty Two Only), being the amount of Common Award passed by the Micro, Small and Medium Enterprises Facilitation Council, Patna in favour of the Applicant in Reference Case nos. 05/2015 and 01/2016 on 6 February 2018. The said decree has attained finality upheld by the Division Bench of Patna High Court vide Order dated 16.10.2019,

and the Review Petition of Corporate Debtor was dismissed. No further appeal was filed.

3.1. The Applicant had moved an Application MA 404 of 2020 seeking direction to the Resolution professional for admission of the claim, however, the said Application was disposed of in view of the statement made by the RP before this Tribunal on 25 February 2020 that the claim of Applicant to the extent of Rs. 103,20,44,352 has been admitted by the RP. The Order dated 25.02.2020 also records that nothing survives in the Application.

3.2. On 17 March 2020, the Applicant realized that Claim Form dated 18 May 2019 contains the claim for the period up to 15 May 2018 (rather than 7 May 2019). The Applicant submits that error in computation of claim in Claim Form was due to mistake, inadvertence and oversight. One of the reasons for error was reference of two dates i.e. 15 May 2018 and 7 May 2019 as date of commencement of Insolvency, in the Public Announcement dated 7 May 2019. Immediately, the Applicant computed the additional claim / revised claim for the period upto 15 March 2020 and filed the additional claim / revised claim with RP. Vide email dated 17 March 2020 RP refused to admit the additional claim / revised claim and directed to approach NCLT. Hence, the present Application.

4. We have heard the Counsel and perused the material available on record.

4.1. It is the case of the Applicant that the said Application also contained prayer for Preferential payment in view of Applicant being a MSME entity, and the prayer also contained prayer for admission of claim alongwith interest after 15.05.2018. It is undisputed fact that the Order dated 25.02.2020 passed in MA 404 of 2020 was not challenged in appeal and has attained finality.

4.2. On perusal of Form B filed by the Applicant on 18.5.2019, we find that the Applicant had stated total claim amount of Rs. 103,20,44,352/- (Rupees One Hundred Three Crores Twenty Lakhs Forty Four Thousand Three Hundred and Fifty Two Only) at Sl. No. 4 of the Form which seeks "The Total Amount of Claim (Including any Interest as at the Insolvency Commencement Date)", came to be admitted in full and there is no dispute on these facts.

4.3. On 17.03.2020, the Applicant wrote to the Respondent to seek revision of the claim, the subject matter of present petition that –

> *Our Due Amount has already been upgraded as verified amount of Rs 103,20,44,352.00 (Rupees 103 Crores 20 Lakhs 44 Thousands 03 Hundred 52).*
> *The above Judgemental amount pronounced by Double Bench of Patna High Court, attained Finality as RCom didn't Appeal to Supreme Court, has provision of Interest payment U/S 16 of MSMED Act - 2006.*

We attach a calculation Chart for Payable Amount , Interest up to 15-03-2020, as Rs 168,38,03,192 .00 (Rupees 168 Crores 38 Lakhs 03 Thousands 192).

Please incorporate this amount of Rs168,38,03,192 .00, in your records & related Website.

4.4. The Respondent wrote on 26.3.2020 that as per Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), the interim resolution professional/resolution professional is required to verify claims as on insolvency commencement date; these claims, upon verification and consequent admission by the resolution professional, would be settled within the contours of the Insolvency and Bankruptcy Code, 2016 ("Code") in terms of the resolution plan or in liquidation of the corporate debtor; as per the provisions of the CIRP Regulations (as applicable to the Corporate Debtor), creditors who fail to submit claims within the timeline stipulated under the Public Announcement may submit the same until the approval of a resolution plan by the committee of creditors; and pursuant to the meeting of the committee of creditors of the corporate debtor dated March 2, 2020, a resolution plan submitted by a resolution applicant for the corporate debtor has been approved by the committee of creditors of the corporate debtor and the application for approval of the resolution plan is currently pending the order of the National Company Law Tribunal, Mumbai Bench ("NCLT"). Accordingly, the Respondent informed that the claims or revisions, if any, in respect thereof submitted until the approval of the resolution plan by the committee of creditors have been verified and consequently accepted by the resolution professional; the claim verification process has been concluded in light thereof; and the claim submitted by you in [Form B] has been admitted and the same has been duly informed to you vide our email dated 18th February 2020. However, in light of the aforesaid provisions of the Code, the resolution professional is not in a position to accept any further claims/revisions, unless so directed by the NCLT.

4.5. On perusal of Common Award passed by the Micro, Small and Medium Enterprises Facilitation Council, Patna in favour of the Applicant in Reference Case nos. 05/2015 and 01/2016 on 6 February 2018, we find that the said order mandates the Corporate Debtor to pay the amount held to be payable under the said award within 30 days, however, the said Award does not contain any mandate for payment of interest on such award amount, in case it is not paid within 30 days. Accordingly, it can not be said that the Applicant's right to claim interest, as made vide e-mail dated 26.03.2020 is tenable on its face. Further, since the plan was approved by CoC on 2.3.2020, the revision in the claim can not be accepted in view of Hon'ble Supreme Court's decision in the case of ***M/s. RPS Infrastructure Ltd vs. Mukul Kumar & Another CIVIL APPEAL NO. 5590 OF 2021,*** wherein it was held that ***"****The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned* *against allowing claims after the resolution plan has been accepted by the COC.*

4.6. Nonetheless, we also feel that the Applicant, if aggrieved by the Order dated 25.02.2020 passed by this Tribunal had a remedy in form of appeal before the Hon'ble NCLAT in terms of Section 61 of the Insolvency & Bankruptcy Code, 2016. The e-mail dated 17.03.2020 was meant to bypass the appellate process, which can not be permitted. We do not find any infirmity in the decision of the Resolution Professional communicated vide e-mail dated 26.03.2020 that the claim can not be accepted without leave of this Court. However, this Bench is not inclined to interfere in the said decision for the reasons stated above. Similarly, the issue of preferential payment to MSME was before this Tribunal in MA 404 of 2020, and by Order dated 25.02.2020 that MA was disposed of as infructuous. No appeal is filed against that Order, accordingly, this prayer in this IA is barred by Res-judicata. Nonetheless, there is no provision in the Code providing for preferential treatment to MSME creditors.

5. In view of the foregoing, IA 1138 of 2020 is dismissed.

Sd/- Sd/-

Prabhat Kumar **Justice V.G. Bisht**
Member (Technical) Member (Judicial)