

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**IA Nos. 249/2020, 659/2020,
667/2020, 707/2020, 265/2020,
266/2020, 462/2020, 466/2020,
817/2020 & 816/2020**

In

**CP (IB) No. 250/Chd/Pb/2018
(Admitted Matter)**

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016 and under
Regulation 25 and 26 of the IBBI (IRP
for CP) Regulations, 2016**

In the matter of:-

Central Bank of India ...Petitioner

Vs.

KSM Spinning Mills Limited ...Respondents

And in the matter of IA No. 249/2020:-

Nilkanth Cotton Fibers
through its Partner ...Applicant

Vs.

Shri Nipan Bansal,
Resolution Professional of
M/s KSM Spinning Mills Limited ...Non-applicant

And in the matter of IA No. 659/2020:-

Anjani Cotton Industries
through its PartnerApplicant

Vs.

Sh. Nipan Bansal

IA Nos. 249/2020, 659/2020,
667/2020, 707/2020, 265/2020,
266/2020, 462/2020, 466/2020,
817/2020 & 816/2020

In

CP (IB) No. 250/Chd/Pb/2018
(Admitted Matter)

Resolution Professional of
M/s KSM Spinning Mills Limited ...Non-applicant

And in the matter of IA No. 667/2020:-

Tirupati Cotton
through its PartnerApplicant

Vs.

Sh. Nipan Bansal
Resolution Professional of
M/s KSM Spinning Mills Limited ...Non-applicant

And in the matter of IA No. 707/2020:-

Glossey Cotex
through its PartnerApplicant

Vs.

Sh. Nipan Bansal
Resolution Professional of
M/s KSM Spinning Mills Limited ...Non-applicant

And in the matter of IA Nos. 265/2020, 266/2020, 462/2020 & 466/2020:-

Sarish Mittal,
Suspended Director
of KSM Spinning Mills Ltd. ...Applicant

Vs.

Nipan Bansal,
Resolution Professional of
KSM Spinning Mills Ltd.Respondent

And in the matter of IA No. 817/2020 & 816/2020:-

Sarish MittalApplicant-Director of
Suspended Board

Vs.

Assets Care & Reconstruction
Enterprise Ltd. & others ...Financial Creditor/COC Member/
JLM/Respondent 1

Order delivered on: 27.07.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:-

For the applicant in IA Nos. : Mr. Jatin Singal, Practising
249/2020, 659/2020, Company Secretary
667/2020 & 707/2020

For the non-applicant- : Mr. Harsh Garg, Advocate
respondent-Resolution
Professional in IA Nos.
249/2020, 659/2020,
667/2020 & 707/2020

For the applicant in IA Nos. : Mr. Atul Sharma, Advocate
265/2020, 266/2020,
462/2020 & 466/2020

For the respondent- : Mr. Harsh Garg, Advocate
Resolution Professional in IA
Nos. 265/2020, 266/2020,
462/2020 & 466/2020

For the Applicant-Suspended : Mr. Aalok Jagga, Advocate
Board of Directors in IA Nos.
817/2020 & 816/2020

For the respondent- : 1). Mr. Harsh Garg, Advocate
Resolution Professional in IA : 2). Mr. Pulkit Goyal, Advocate
Nos. 817/2020 & 816/2020

For the respondent Nos. 1 to : Mr. Yash Pal Gupta, Advocate
8-COC in IA Nos. 817/2020
& 816/2020

For the respondent No. 16 in : Mr. G.S. Sarin, Practising
IA Nos. 817/2020 & Company Secretary
816/2020

For the Resolution Applicant : 1). Ms. Munisha Gandhi, Senior
Advocate
2). Ms. Salina Chalana, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No. 249/2020

1. Nilkanth Cotton Fibers represented through its Partner Shri Kunal Pravinbhai Sakarwadia, an operational creditor, filed the instant IA against the Resolution Professional (**RP**) of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC Code, 2016 seeking a direction to admit its claim.

2. It is the case of the applicant that Corporate Insolvency Resolution Process (**CIRP**) has been initiated against the respondent-corporate debtor on 17.12.2019 when CP (IB) No. 250/Chd/Pb/2018 filed by the Central Bank of India, a financial creditor, was admitted by this Adjudicating Authority and an IRP was appointed thereon. The applicant, an operational creditor of the respondent-corporate debtor could not file its claim before the last date of submission of claims which was 31.12.2019, as it had no knowledge about the initiation of CIRP against the corporate debtor at the relevant point of time, however it has submitted its claim on 07.01.2020. Since the said claim was not in the proper

Form B, the respondent suggested to the applicant through mail dated 14.01.2020 to file the claim in Form B (Annexure 1). On receipt of the said mail, the applicant resubmitted its claim in the proper Form, as an operational creditor on 30.01.2020 (Annexure 2). However, the respondent-RP vide the impugned Annexure 3 e-mail dated 04.02.2020 rejected the claim of the applicant by stating that "its claim of Rs. 1,42,70,259/- and interest of Rs. 1,07,68,953/- is not admissible since it is outstanding for more than three years and is a time barred debt, barred by limitation". Hence, the IA.

3. Heard Mr. Jatin Singal, the learned authorized representative for the applicant and Mr. Harsh Garg, the learned counsel for the respondent-Resolution Professional and perused the pleadings on record.

4. It was not in dispute that the invoices raised by the applicant-operational creditor belonged to the period of 27.05.2015 to 11.06.2015 but the applicant basing on the said invoices filed a Commercial Civil Suit No. 112/2016 in the Commercial Court, Rajkot and obtained a decree and judgment dated 17.12.2016 against the corporate debtor (Annexure 4). It is not the case of the respondent that the said judgment was set-aside or modified by any higher court till date. Since the claim form submitted by the applicant clearly mentioned about the said judgment in favour of the applicant and since the time for execution of the said decree and judgment had not yet expired, rejecting the claim of the applicant on the ground that the same was time barred is untenable and unsustainable.

5. It is also to be seen that even as per the respondent even in the event of allowing the IA directing admission of the claim of the applicant, the resolution

plan is in no way to be affected, since the resolution plan which was already approved by the Committee of Creditors (**COC**) of the corporate debtor, provided a lump-sum of Rs. 50 lakhs for all the operational creditors.

6. In these circumstances and for the aforesaid reasons, the instant IA No. 249/2020 is allowed and the respondent is directed to admit the claim of the applicant, in accordance with the Code and Regulations made thereunder.

7. Accordingly, IA No. 249/2020 is disposed of.

IA No. 659/2020

8. Anjani Cotton Industries represented by its Partner Shri Rajdeep Nagjibhai Saradava, an operational creditor of the respondent-corporate debtor filed the instant IA under Section 60(5) of the IBC 2016 seeking a direction to the RP to admit its claim with regard to interest amount also.

9. It is submitted that CIRP has been initiated against the corporate debtor on 17.12.2019 when CP (IB) No. 250/Chd/Pb/2018 filed by Central Bank of India, a financial creditor, was admitted and an Interim Resolution Professional (**IRP**) was appointed thereon. The applicant, an operational creditor of the corporate debtor, had no knowledge about the same could not submit its claim before the last date of submission of claims which was 31.12.2019 however, the applicant submitted its claim dated 16.06.2020 on 19.06.2020 in the prescribed Form B (Annexure 1). The respondent vide Annexure 2 (Colly) e-mail dated 25.06.2020 sought certain clarifications and documents for verification of the claim from the applicant. Accordingly, the applicant submitted the required documents on 05.07.2020. The respondent vide Annexure 2 (Colly) e-mail dated 07.07.2020 partially admitted the claim of the applicant i.e. only for the principal

amount of Rs. 47,05,238/- and rejected the claim of interest of Rs. 32,16,842/- by stating that there was no written agreement between the applicant and the corporate debtor for payment of any interest.

10. Heard Mr. Jatin Singal, the learned authorized representative for the applicant and Mr. Harsh Garg, the learned counsel for the respondent-Resolution Professional and perused the pleadings on record.

11. It is submitted on behalf of the applicant that though there was no written agreement between the parties for payment of interest on the due amount for the delayed period but the applicant being an MSME, is entitled for interest of three times on the bank rate if payment is delayed, in terms of Section 16 of The Micro, Small and Medium Enterprises Development Act, 2016 (**MSME Act**). The respondent submits that unless and until the MSME Council grants/orders payment of any specific amount towards interest, on filing an appropriate application before it by the applicant, no interest is payable by the corporate debtor, in terms of Section 18 of the MSME Act.

12. The relevant provisions of MSME Act, 2016 read as under:-

“15. Liability of buyer to make payment.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. *Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.*

18. *Reference to Micro and Small Enterprises Facilitation Council.—*
 (1) *Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*

(2) *On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.*

(3) *Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.*

(4) *Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.*

(5) *Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”*

13. A bare perusal of the above provisions of the MSME Act clearly shows that in the event of any dispute, the same requires to be referred to the MSME Facilitation Council and the *lis* is to be decided by the said Council. Therefore, unless the applicant obtains an appropriate order from the MSME Facilitation Council for payment of any amount towards interest the same cannot be admissible by the RP.

14. In the circumstances and for the aforesaid reasons, we do not find any merit in the IA No. 659/2020 and accordingly, the same is dismissed.

IA No. 667/2020

15. This application has been filed by Tirupati Cotton through its Partner Shri Popatlal Vallabhdas Makadiya, an operational creditor of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC 2016 seeking a direction to the RP to admit its claim.

16. It is submitted that the CIRP against the corporate debtor M/s KSM Spinning Mills Limited was initiated when the CP (IB) No. 250/Chd/Pb/2018 filed by Central Bank of India, a financial creditor of the corporate debtor was admitted on 17.12.2019 and an IRP was appointed thereon. Since the applicant was not aware of the fact of the initiation of CIRP proceedings against the corporate debtor, it could not file its claim before the last date of submission of claims which was 31.12.2019, however, it has submitted its claim on 21.08.2020 in proper Form B (Annexure 1). On receipt of the said claim, the respondent-RP had rejected the same vide the impugned Annexure 2 e-mail dated 22.08.2020 by stating that the claim was outstanding for more than three years and is a time barred debt and barred by limitation and that the claim has been submitted after 90 days of the initiation of the CIRP.

17. Heard Mr. Jatin Singal, the learned authorized representative for the applicant and Mr. Harsh Garg, the learned counsel for the respondent-Resolution Professional and perused the pleadings on record.

18. In so far as the stand taken by the RP with regard to the submission of the claim belatedly i.e. submission of the claim after 90 days of CIRP, the same

is unsustainable. In view of the settled principles of law, fixation of time limit for submission of claims is not mandatory and it is only directory, the RP cannot reject the claim of the applicant, unless the same is abnormally delayed and made after the approval of the resolution plan. But in the instant case the submission of claim was prior to the approval of the plan by the COC and hence, the action of the RP in rejecting the claim on the ground of belated submission i.e. beyond 90 days of the initiation of CIRP is unsustainable.

19. In so far as the other reason given by the RP for rejection of the claim of the applicant i.e. the claim was outstanding for more than three years and is a time barred debt and barred by limitation, the applicant failed to state how his claim is still enforceable against the corporate debtor as on the date of initiation of the CIRP. Once the claim, *prima facie*, cannot be treated as an enforceable debt, it is not admissible. Hence, in this regard, the action of the RP cannot be found fault with.

20. In these circumstances and for the aforesaid reasons, we do not find any merit in the IA No. 667/2020 and accordingly, the same is dismissed.

IA No. 707/2020

21. When this IA is taken up for hearing, both the learned counsels are *ad idem* that the instant IA is identical to that of the IA No. 659/2020 and since both the counsels argued the said IA elaborately, the instant IA may be disposed of in terms of the order in IA No. 659/2020.

22. In view of the said submission, the instant IA No. 707/2020 is dismissed for the identical reasons in IA No. 659/2020.

IA Nos. 265/2020, 266/2020, 462/2020 & 466/2020

23. IA No. 265/2020 has been filed by Shri Sarish Mittal, a Suspended Director of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC 2016 against the RP seeking the following reliefs:-

“It is therefore prayed that the present application be allowed and Shri harsh Garg be restrained from representing the RP in the matter.

That it is further prayed that Shri Harsh Garg is a qualified resolution professional who is supposed to be well aware of the process and provisions of the code. That the matter smacks of mala fides dn conflict of interests. That the Tribunal may also be pleased to take such appropriate action as the tribunal may deem fit in the facts and circumstances of the case.

It is further prayed that the court be pleased to take such further action on account of the reasons and facts mentioned above.”

24. IA No. 266/2020 has been filed by Shri Sarish Mittal, a Suspended Director of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC 2016 against the RP seeking the following reliefs:-

“It is prayed that there has been gross violation of sections 22, 24A, of the Insolvency And Bankruptcy, 2016, IBBI Circular No. IP/005/2018 dated 16th January, 2018, Regulation 25, 26, 27 of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, regulation 7, 7(2)(h), 12 of the Code of Conduct For Insolvency Professionals and others

It is therefore prayed that the present application be allowed and the present Resolution Professional, Nipan Bansal be ordered to be removed and all expenses incurred after the 11.2.2020 be called back and he be directed to compensate the CD accordingly.

It is further prayed that the court be pleased to take such further action against the RP, Nipan Bansal on account of the reasons and facts mentioned above.”

25. IA No. 462/2020 has been filed by Shri Sarish Mittal, a Suspended Director of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC 2016 and Regulation 25 and 26 of the IBBI (IRP for CP) Regulations, 2016 against the RP seeking the following reliefs:-

“It is prayed that the court may be pleased to;

a. That it be declared that Nipan Bansal was neither appointed as a RP nor can be permitted to continue as such.

b. restrain the said Nipan Bansal from continuing any further action as an RP

c. pass such other orders as the court may deem fit in the facts and circumstances of the case.”

26. IA No. 466/2020 has been filed by Shri Sarish Mittal, a Suspended Director of the corporate debtor M/s KSM Spinning Mills Limited under Section 60(5) of the IBC 2016 against the RP seeking the following reliefs:-

“That the Court may be pleased to set aside the appointment of the RP and take appropriate action thereof.

That the tribunal may pass such order as may be necessary and issue directions to ensure that the COC and the IRP/ RP (challenge is made separately to the continuation of Nipan Bansal as RP) take adequate steps to ensure that the electricity supply is restored so that the company may be brought back to working.”

27. All the above referred IAs were filed by Shri Sarish Mittal, a Suspended Director of the corporate debtor M/s KSM Spinning Mills Limited against Shri Nipan Bansal, the RP of corporate debtor under various provisions of law seeking not to appoint him as RP and for his removal as RP and for restraining him from acting as RP and also for removal of Shri Harsh Garg, the learned counsel representing Shri Nipan Bansal, as the counsel for the RP and for seeking action against both of them under the applicable laws and rules.

28. The CIRP has been initiated against the corporate debtor M/s KSM Spinning Mills Limited on 17.12.2019 when CP (IB) No. 250/Chd/Pb/2018 filed by Central Bank of India, a financial creditor was admitted and Shri Nipan Bansal was appointed as an IRP. Thereafter, the said IRP was confirmed as the RP by

this Adjudicating Authority. In pursuance of the same, the RP invited resolution plans and placed the same before the COC and the COC finally approved a resolution plan in its meeting held on 13.11.2020. Shri Nipan Bansal as the RP of the corporate debtor has also filed IA No. 914/2020 under Section 30(6) read with Section 31 of the IBC 2016 seeking approval of the said resolution plan and the same is pending for approval before this Adjudicating Authority.

29. Heard Mr. Atul Sharma, the learned counsel for the applicants and Mr. Harsh Garg, the learned counsel for the respondent-RP in all the above referred four IAs and perused the pleadings on record.

30. In short, it is the case of the applicant that the respondent-Shri Nipan Bansal is ineligible to be appointed as the RP of the corporate debtor and his counsel Shri Harsh Garg also not eligible to appear as the counsel for Shri Nipan Bansal, for the reasons mentioned in the applications. The applicant levelled serious allegations against both of them. The learned counsel appearing for the applicant, when the matters are taken up for hearing while not pressing the relief against Shri Harsh Garg, the learned counsel representing Shri Nipan Bansal, the RP, submits that the applicant has made complaint against Shri Nipan Bansal to the IBBI, as per the applicable rules and regulations and the said complaint is pending consideration before the IBBI.

31. It is to be seen that now the process of CIRP against the corporate debtor has reached its finality since a resolution plan was already approved by the COC and that an application under Section 30(6) read with Section 31 of IBC 2016 had already been filed and is pending before this Adjudicating Authority. The role of the RP, almost came to an end and that no further action is required

to be taken by the RP, unless in the event of rejection of the resolution plan by this Adjudicating Authority. It is also to be seen that when allegations of *mala fides* or corruption or professional misconduct or any other sort are alleged against a RP, the same are to be adjudicated by the IBBI and basing on the orders passed by the IBBI, appropriate action would be taken by this Adjudicating Authority. Since, admittedly the applicant made complaint against the respondent-RP to the IBBI, at this stage, we are not inclined to adjudicate and give any finding on these IAs.

32. Accordingly, IA Nos. 265/2020, 266/2020, 462/2020 & 466/2020 are disposed of with a liberty to the applicant to take appropriate steps, once the IBBI decides his complaint made against the respondent-RP.

33. Accordingly, IA Nos. 265/2020, 266/2020, 462/2020 & 466/2020 are disposed.

IA No. 817/2020

34. Shri Sarish Mittal, a Suspended Director of the Corporate Debtor M/s KSM Spinning Mills Limited filed this application under Section 60(5) of the IBC 2016 seeking the following reliefs:-

"It is therefore prayed that this hon'ble Tribunal may be pleased to;

- a. *Pass, ad-interim, direction or injunction/ relief restraining the aforesaid Respondents, agents or representatives from approving the Resolution Plan of the H1 Bidder being against the interest of the Applicant who have submitted much higher bid to the tune of Rs. 45 Crore that too as desired by the Lead Lender, Consortium of CD i.e. "AC&REL"(R-1), until disposal of the this application of the Applicant;*
- b. *Further direction be given to the COC/JLM to consider the OTS proposal of the applicant at amount an amount already agreed by all the secured lenders i.e Rs 45 Cr. For Secured Lenders which is 21.42% (amounting to Rs 7.94 Crores) higher than the Proposed H1 Resolution Plan (wherein financial creditors are getting 37.06 Cr) and that too in shorter period, without insisting the deposit of the*

entire offered amount and consider the same with the upfront amount of Rs. 2.5 Crore already deposited by the applicant and grant 85 days time period to the applicant to deposit the same as per OTS plan; and set aside rejection letter of OTS proposal dated 13.11.2020 place at Annexure 35 ;

- c. Restrain the respondents from alienating or leasing out the assets of the CD to any other person;*
- d. Pass any other order or direction as this Hon'ble Tribunal may deem appropriate in the present circumstances.*

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL FOREVER PRAY."

35. Heard Mr. Alok Jagga, the learned counsel for applicant-Suspended Board of Directors, Mr. Harsh Garg, the learned counsel for respondent-Resolution Professional, Ms. Munisha Gandhi, the learned senior counsel for the Resolution Applicant, Ms. Reena Chaudhary, the learned counsel for Dissenting Financial Creditors and Mr. Yash Pal Gupta, the learned counsel for COC and perused the pleadings on record.

36. The applicant, in short sought for a direction to the COC/Lenders of the corporate debtor to reconsider its OTS proposal of Rs. 45 Crores, on the main ground that the same was more than the amount of the resolution plan which was approved by the COC.

37. In our considered view the instant IA is not maintainable before this Adjudicating Authority, as no provision under the IBC 2016 was shown to us which dealt with the One Time Settlement proposals of any corporate debtor with its lenders. Further, it is for the lenders of any corporate debtor to consider or not to consider an One Time Settlement proposal of any borrower/corporate debtor. The merits or demerits of an One Time Settlement proposal vis-à-vis the merits

and demerits of a resolution plan approved by the COC cannot be compared, as the scope and ambit of the both are different and distinct.

38. In this view of the matter, we are of the view that the instant IA is liable to be dismissed as the same is not maintainable and accordingly, there is no need to delve upon any other merits of the IA.

39. In these circumstances and for the aforesaid reasons, the instant IA No. 817/2020 is dismissed.

40. Accordingly, IA No. 817/2020 is dismissed.

IA No. 816/2020

41. This IA also filed seeking the same relief as that of IA No. 817 of 2020 and hence, the instant IA No. 816/2020 is also dismissed for parity of reasons.

42. Accordingly, IA No. 816/2020 is dismissed.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

July 27th, 2021
YP