



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT II  
KOLKATA**

**I.A. (IB) No. 232/KB/2021  
in  
C.P. (IB) No. 184/KB/2018**

*Under section 7 of the Insolvency and Bankruptcy Code, 2016.*

In the matter of:

Sangita Fiscal Services Private Limited and Others

... Financial Creditor

-Versus-

Duncans Industries Limited

... Corporate Debtor

**I.A. (IB) No. 232/KB/2021**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with rule 11 of the National Company Law Adjudicating  
Authority Rules, 2016.*

In the matter of:

**Vinar Systems Private Limited**

... Applicant

Versus

**Duncans Industries Limited**

**Represented by Mr. Ram Ratan Modi,**

**Resolution Professional of Duncans Industries Limited**

... Respondent

Date of pronouncing the order: 05 January 2024

**Coram:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via hybrid mode):**

For the Resolution Professional : Mr. Joy Saha, Senior Advocate

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Mr. Dipankar Das, Advocate

Ms. Sanjana Nandi, Advocate

Mr. Ram Ratan Modi, RP

For Applicant : Ms. Urmila Chakraborty, Advocate  
Mr. Aditya Kanodia, Advocate

**ORDER**

**Per : Balraj Joshi, Member (Technical):**

1. This Court convened through hybrid mode.
2. The present I.A. has been filed by Vinar Systems Private Limited against the Resolution Professional of Duncans Industries Limited seeking the following reliefs:
  - a. Appropriate orders be passed admitting the totality of the claim of the applicant thereby including the name of the applicant in the list of Creditors with 1.25% voting percentage in the CoC;
  - b. Alternatively, appropriate orders be passed directing the RP to verify and collate the entirety of the claim of the applicant in accordance with the Regulations after affording an opportunity to the applicant to substantiate its claim;
  - c. Ad-interim orders in terms of prayers above;
  - d. Costs;
  - e. Such further or other orders be passed and/or directions be given as to this Learned Tribunal may deem fit and proper.
3. ***Submissions of the learned Counsel appearing for the Applicant***
  - 3.1. The learned Counsel submits that the I.A. has been filed challenging the decision of the Resolution Professional dated 19 December 2020 refusing to collate the entire claim of the Applicant arising out of the Inter-Corporate debt given to the Corporate Debtor. It is submitted that the Applicant is an unsecured Financial Creditor having a total claim of Rs.2,19,34,545.97 (Rupees Two Crore Nineteen Lakh Thirty Four Thousand Five Hundred and Forty Five and Ninety Seven Paise only) inclusive of interest as on 05 March 2020.

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- 3.2. The Financial Creditor submitted its proof of claim before the Resolution Professional on 08 September 2020. It is further submitted that the Applicant had lodged its claim when C.P. (IB) No. 1371/KB/2019 was admitted on 19 November 2019 and also when C.P. (IB) No. 573/KB/2018 was admitted on 18 December 2019. After the commencement of Corporate Insolvency Resolution Process (“CIRP”) was set aside, C.P. (IB) No. 184/KB/2018 was admitted.
- 3.3. The Resolution Professional *via* email dated 25 October 2020 asked for additional documents in supports for the Financial Creditor’s claim and the Financial Creditor provided all the details in an email dated 28 October 2020. The Resolution Professional *vide* email dated 19 December 2020 only admitted Rs.8,12,633/- (25% of the claim) and that too without allowing the claim of interest. Such decision of part rejection of the claim was made on the basis of Clause 15.15(b) of the Board for Industrial and Financial Reconstruction’s (“BIFR”) order dated 16 January 2012 and the books of accounts of the Corporate Debtor and not on the basis of the documents submitted by the Applicant. Due to such rejection of claim, the Financial Creditor had only 0.05% of the voting share in the CoC.
- 3.4. It is submitted that the Resolution Professional can only vet and verify the claims and has no power or authority to adjudicate upon the claims of the creditors. Reliance was placed on **Swiss Ribbons Private Limited & Anr. V. Union of India & Ors.**<sup>1</sup>.
- 3.5. It is submitted that Clause 15.15(b) of the First Rehabilitation Scheme that was sanctioned by BIFR stipulated that the unsecured loan including Inter-Corporate Deposit would be paid for settlement as per the terms of the Scheme, i.e. an amount of Rs.7.59 Crore would be paid under this head to the extent of 25% of the principal amount outstanding as on cut-off date in three equal annual interest free instalments after a moratorium of one year from the date of sanction of the Scheme in full and final settlement of all the claims of ICD lenders


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<sup>1</sup> (2019) 4 SCC 17, paragraphs 88 to 91

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and that interest/compound/penal interest/liquidated damages, balance of the principal amount etc. shall stand waived. The Corporate Debtor paid one instalment out of the three instalments to the Applicant *vide* cheque dated 30 July 2014 for a sum of Rs.4,06,317/-.

3.6. The Resolution Professional has contented that by virtue of the First Rehabilitation Scheme, the claim of the Applicant is allowed to the extent of 25% of the principal amount.

3.7. The BIFR later opined that the Corporate Debtor is neither serious nor resourceful for reviving it and hence declared the First Rehabilitation Scheme to have failed. The Appellate Authority for Industrial and Financial Reconstruction passed an order on 29 November 2016 clarified that the observation of BIFR declaring the First Rehabilitation Scheme as failed will be taken as a prima facie opinion only. It is submitted that the orders dated 27 July 2016 of the BIFR and 29 November 2016 by the Appellate Authority has failed and hence, rejecting the part claim of the Applicant by placing reliance on the First Rehabilitation Scheme by the Resolution Professional is wholly erroneous and unreasonable.

3.8. It is further submitted that SICA was repealed on 01 December 2016 and the Corporate Debtor has not implemented the First Rehabilitation Scheme, hence the claim of the Applicant was neither adjudicated nor crystallised in any manner. The First Rehabilitation Scheme provided for haircut regarding the payment of liability but was never enforced by the Corporate Debtor.

3.9. The learned Counsel further submitted that after the dissolution of BIFR by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 with effect from 01 December 2016, the question of any reliance on BIFR's orders cannot arise.

3.10. It is further submitted that this Adjudicating Authority passed an order on 17 May 2021 directing the Resolution Professional to reconsider and admit the entirety of the claim. After such direction was

given, the Resolution Professional filed a Supplementary Affidavit and changed its stance and introduced new facts.

3.11. The Resolution Professional has contended that Kanpur Fertilizers & Cement Limited had demerged from the Corporate Debtor and the claim of the Applicant pertains to Kanpur Fertilizers & Cement Limited. In reply to this contention the learned Counsel submits that the claim of the Applicant is in respect of the Corporate Debtor. It is not a disputed fact that the Corporate Debtor had issued a cheque dated 30 July 2014 to the Applicant.

3.12. It is further submitted that in the previous two occasions when the Corporate Debtor was admitted to CIRP on 19 November 2019 and 18 December 2019, the Applicant had filed its claim which were duly admitted.

**4. *Submission of the learned Senior Counsel for the Respondent***

4.1. The learned Senior Counsel submitted that the First Rehabilitation Scheme was sanctioned on 16 January 2012. The First Rehabilitation Scheme provided that the Fertilizer Unit of the Corporate Debtor would be demerged and merged with Kanpur Fertilizers and Cement Limited.

4.2. The BIFR on 27 July 2016 passed an order and declared that the First Rehabilitation Scheme had failed and it would be just, equitable and in public interest that the Corporate Debtor be wound up under section 20(1) of SICA.


4.3. It is further submitted that paragraph 2.5.4 of the order dated 27 July 2016 records that specific liberty was given to all the creditors of the Company to file suits and other proceedings in appropriate forums to recover their outstanding dues.

4.4. The learned Senior Counsel led us through section 22 of SICA and submitted that the bar under section 22 of SICA was specifically removed with effect from 27 July 2016 and as such the Applicant was required to lodge its claim within the balance period of limitation i.e. from 27 July 2016 to 27 July 2019.




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- 4.5. Thereafter, *vide* Notification No. S.O. 3568E dated 25 November 2016, SICA was repealed and the proceedings before BIFR stood abated. Section 252 read with Schedule VIII of the Code provided that a Company in respect of which such appeal or reference or inquiry pending before the Appellate Authority or BIFR stands abated, may make reference to the National Company Law Tribunal under the Code within 180 days from the commencement of the Code. Hence, the Applicant ought to have instituted proceedings before the Adjudicating Authority within 180 days from the commencement of the Code.
- 4.6. It is further submitted that although the CIRP proceedings were initiated against the Corporate Debtor *vide* two orders dated 19 November 2019 and 18 December 2019, the learned Counsel submitted that the period of limitation came to an end on 27 July 2019 i.e. prior to the admission orders dated 19 November 2019 and 18 December 2019.
- 4.7. The learned Senior Counsel submitted that the First Rehabilitation Scheme sanctioned by BIFR on 16 January 2012 was with respect to the fertilizer unit of the Corporate Debtor i.e. Kanpur Fertilizers and Cement Limited had already been given effect to and hence the order of the BIFR dated 27 July 2016 stating that the First Rehabilitation Scheme has failed has no bearing on Kanpur Fertilizers and Cement Limited.
- 4.8. It is further submitted that Schedule VIII of the First Rehabilitation Scheme which deals with the Liabilities of Fertiliser Undertaking has an amount of Rs.3010.24 Crore under Loans from Bodies Corporate and the Applicant's claims forms a part of this amount.
- 4.9. It is further submitted that on 27 July 2016, the BIFR formed a prima facie opinion that the Corporate Debtor is neither serious nor resourceful enough for reviving the Corporate Debtor and hence declared that the First Rehabilitation Scheme had failed and was of the opinion that it would be just, equitable and in public interest that it would be wound up under section 20(1) of SICA.

*Analysis and Findings*

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5. Heard the learned Counsel appearing on behalf of the Applicant and the learned Senior Counsel appearing on behalf of the Respondent and perused the records.
  6. The learned Counsel appearing on behalf of the Respondent raised three contentions:
    - 6.1. The claim was barred by limitation;
    - 6.2. The claim was against the Kanpur Fertilizers and Cement Limited;
    - 6.3. The failure of the Rehabilitation Scheme was only a prima facie view of the BIFR.
  7. The first argument of the Resolution Professional is a feeble one as he himself has accepted the claim of the Applicant, and has further stated in its email dated 19 December 2020 that an amount of Rs.8,12,633/- reflected in the books of accounts of the Corporate Debtor, hence we do not accept that the claim is barred by limitation.
  8. Let us now consider the second and third contention raised by the Resolution Professional. There is no doubt that the Applicant had lent Inter Corporate Deposit to the Corporate Debtor. The subsequent events have to be considered, the BIFR had sanctioned a Rehabilitation Scheme, wherein the Corporate Debtor had to make payments to its creditors and the fertiliser unit was demerged and a portion of the liability of the Corporate Debtor was shifted on Kanpur Fertilizers and Cement Limited along with the Fertiliser undertaking. The remaining claim remained in the books of the Corporate Debtor.
  9. It is a fact that BIFR had declared that the Rehabilitation Scheme had failed but it had failed only to the extent that of the payments that were to be made by the Corporate Debtor. There is no mention about the failure of the demerger of the Fertilisation unit, which was in fact fructified thereby all the liabilities pertaining to the fertiliser undertaking being transferred to the Kanpur Fertilizers and Cements Limited.

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10. Hence, the Rehabilitation Scheme was not a complete failure and hence the Resolution Professional has not erred in admitting only part claim of the Applicant.
11. In view of the above, I.A. (IB) No. 232/KB/2021 is hereby dismissed, with the liberty to seek its remedy that may be available to it under any other law.
12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Counsel for information and for taking necessary steps.
13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

The order is pronounced on the 5<sup>th</sup> day of January 2024.

GGRB\_LRA