

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

**I.A. No. 3803 of 2023
IN
C.P. (IB) No. 1389/MB/2020**

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Filed by:

Tejendrakumar Patel

...Applicant

v/s.

Mr. Prabhat Jain, Resolution Professional
of Vikas Procon Pvt. Ltd.

...Respondent

In the matter of:

Tejendrakumar Patel

...Operational Creditor

v/s.

Vikas Procon Pvt. Ltd.

...Corporate Debtor

Order Pronounced on: 22.02.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Mr. Ashish Verma, Ld. Counsel for the Applicant
For the Respondent	:	Mr. Akshay, Ld. Counsel for the Respondent

ORDER

1. The instant Application has been filed by Mr. Tejendrakumar Patel (“**Applicant**”) on 19.08.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”), seeking admission of its Claim as against the Resolution Professional for the Corporate Debtor (“**Respondent / RP**”), for the claim amount of INR 6,61,69,594/- (Rupees Six crores, sixty-one lakhs, sixty-nine thousand, five-hundred and ninety-four only).

Submissions on behalf of the Applicant

2. The Applicant is a sole proprietor of M/s. Comprehensive Design Architects, which is in the business of architecture and allied services. The Applicant submits that it was appointed by Vikas Procon Pvt. Ltd. (“**Corporate Debtor**”) *vide* Letter *dated* 20.02.2015 in furtherance of architecture and consultancy services for its day to day requirements and as such, the latter agreed to pay the service charges to the Applicant for the same.
3. The Applicant submits that an amount of INR 4,24,56,016/- (Indian Rupees Four crores, twenty-four lakhs, fifty-six thousand, and sixteen only) was due and payable to it by the Corporate Debtor as on 01.07.2019, which included the service charge and interest thereon. The Applicant consequently issued a Notice *dated* 12.11.2020 *u/s.* 8 of the IBC, 2016, and thereafter filed the captioned Company Petition bearing C.P. (IB) No. 1389/MB-IV/2020. The Corporate Debtor herein was thereby admitted into Corporate Insolvency Resolution Process (“CIRP”) *vide* Order *dated* 19.04.2023 under Section 9 of the IBC, 2016 by this bench and accordingly; Mr. Vinod Radhakrishnan Nair, having Registration Number IBBI/IPA-001/IP-P-01352/2018-2019/12083, was appointed as the Interim Resolution Professional of the Corporate Debtor.

4. The Applicant submits that it filed its claim before the Interim Resolution Professional in Form-B dated 27.04.2023, along-with supporting documents, whereby the said claim consisted of the following:

S. No.	Category of Claim	Amount (in INR)
01	Principal Amount	3,31,94,320
02	Interest upto 19.04.2023 (@ 18% as per MSME Act)	3,23,76,774
03	Litigation Costs, out of pocket expense and filling fees	5,98,500
		Total: 6,61,69,594

5. This Tribunal vide Order dated 22.06.2023, appointed the Respondent herein as the Resolution Professional of the Corporate Debtor (“RP”). The Applicant submits that the Respondent RP vide E-mail dated 08.05.2023 raised concerns on the work carried out by the Applicant for various projects of the Corporate Debtor and sought clarifications in relation to the same. Accordingly, the Applicant via E-mail dated 10.05.2023 duly rendered explanation as to how the different projects to which the applicant had rendered services were being operated by the Corporate Debtor only and how the dues had been clearly admitted by Corporate Debtor’s directors.
6. The Applicant submits that the RP vide Letter dated 27.05.2023 informed the former that the afore-stated clarifications necessitated enquiries with the ex-directors of the Corporate Debtor, and per the same, the RP admitted the claim of the Applicant to the extent of INR 2,34,69,846/-, thereby keeping the balance claim amount of INR 4,26,99,748/- under verification. The Applicant further submits that despite repeated communications from its end regarding the balance claim amount, the RP declined to entertain the same on account of the said claim being allegedly based on works done by the

applicant for different entities, and not the Corporate Debtor herein. The Applicant vehemently disputes this contention and contends that the Respondent RP is has acted in a manner contrary to that as prescribed under law. The Applicant thereby has sought revision and admission of the entire claim amount of INR 6,61, 69,594/-. Hence, the present application.

Submissions on behalf of the Respondent

7. The Respondent *viz.* Resolution Professional for the Corporate Debtor submits that this Tribunal *vide* Order *dated* 22.06.2023 appointed the Respondent herein as the Resolution Professional of the Corporate Debtor, and that he received handover of the requisite documents and information from the Interim Resolution Professional as on 29.06.2023 and thereby submits that the allegation of delay by the Applicant is unsubstantiated.
8. The Respondent submits that the claim in FORM-B submitted by Applicant *dated* 27.04.2023, encloses within itself invoices and letters pertaining to services provided by the Applicant herein to the Corporate Debtor amounting to a sum of INR 6,61,69,594/-. Pursuant to the same, the RP has admitted the claim of the Applicant to the extent of INR 2,34,69,846/- on the basis of acknowledgement of dues by the erstwhile directors of the Corporate Debtor *vide* letter dated 10.07.2019.
9. The Respondent RP submits that the Applicant herein failed to furnish any concrete document/ invoice/ letter substantiating the existence of the aforementioned dues in the name of the Corporate Debtor. Further, the Account Statement enclosed by the Applicant, per the Respondent, has not been acknowledged by the Corporate Debtor or any of the suspended members of the Board of the Corporate Debtor, thereby allegedly rendering such statement unreliable for the purpose of consideration of claim.

10. The Respondent RP therefore contends that in light of the aforesaid insufficiency in the supporting documents, the RP has not considered the partial claim amounting to INR 4,26,99,748/- of the Applicant herein.

Findings

11. Heard the Learned Counsel(s) for the Applicant(s) and the Respondent.

12. Upon perusal of the record files, we are of the considered view that:

12.1. The Corporate Debtor herein has expressly admitted the Applicant's claim *via* Letter *dated* 08.02.2020, as against the Invoice *dated* 01.07.2019 provided by the latter pertaining to all sixteen (16) projects. The said invoice amounts to a claim amount of INR 298.68 Lakhs. However, the respondent RP has only admitted the claim amount of INR of INR 2,34,69,846/-. Further, the RP's contention pertaining to the Applicant's claim with regards to "*..various projects that are not related to Vikas Procon Pvt. Ltd.*" is without any merits. We therefore direct the Respondent Resolution Professional to deal with the claims of the Operational Creditor herein in due consonance with the Corporate Debtor's Acknowledgement Letter *dated* 08.02.2020.

12.2. In so far as the afore-stated claim is concerned, the Operational Creditor is duly entitled to interest thereupon. We therefore direct the Respondent RP to duly deal with the same in consonance with the relevant statutory provisions/ circular(s).

12.3. Notwithstanding the afore-stated, in so far as the Operational Creditor's claim pertaining to "Litigation Costs, out of pocket expense and filing fees" amounting to INR 5,98,500/- is concerned, there is no provision under IBC to warrant for the same. The said claim

amount therefore, under the titular head “Litigation Costs, out of pocket expense and filing fees” is without any basis whatsoever.

Ordered accordingly.

ORDER

13. The present application *viz.* I.A. 3803 of 2023 in Company Petition (IB) No. 1389/MB/2020 is hereby **Disposed-Of**.
14. The Respondent Resolution Professional is hereby directed to revise and consequently admit the Applicant’s claim in full, to the extent as duly invoiced.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

22.02.2024

Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
