IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

INTERLOCUTORY APPLICATION. No. 3191/2022

In

CP(IBC)No. 3434/MB/C-V/2019

Application filed under Section 60(2) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of

UTI Structured Debt Opportunities Fund-I

...Applicant

V/s

Mr. Satish Kumar Gupta, Resolution Professional and Others

...Respondent

In the matter between:

Halliburton Offshore Services Inc ....Petitioner

v/s

Mercator Petroleum Limited ...Corporate Debtor

Order Pronounced on :- 02.11.2023

Coram:

Smt. Anuradha Sanjay Bhatia : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

I. A. No. 3191/2022

In

CP No. 3434/MB/C-V/2019

Appearances:

For the Applicant : I.C. Legal Advocate.

For the Respondent : Adv. Amir Arsiwala.

ORDER

Per: Shri. Kuldip Kumar Kareer (Judicial Member)

1. This is an application filed under Section 60(2)/(5) of the Insolvency and Bankruptcy Code, 2016 by the Applicant herein against the Resolution Professional of the Corporate Debtor challenging the incorrect, wrongful, and malafide re-verification and reduction of the Applicant's financial debt claims from INR 2,57,84,25,381/- (Rupees Two Hundred Fifty Seven Crores Eighty Four lacs Twenty Five Thousand Three Hundred Eighty One Only) to approximately Rs. 231 crores, by the Respondent No. 1, despite the claims being admitted by an order of this Hon'ble Tribunal and the illegal conduct warranting investigation, with costs.

2. The Applicant is a financial services provider and a Category II - Alternate Investment Fund registered as per the applicable laws. The Respondent No. l is the Resolution Professional (RP) of the Corporate Debtor. The Respondent No.2 is the Hon'ble Insolvency and Bankruptcy Board of India

formed under the provisions of the Code. Mercator Limited ("ML"), presently in Liquidation is a private limited company engaged, inter-alia, in the business of shipping and mercantile operations. The Corporate Debtor-Mercator Petroleum Limited ("Corporate Debtor"/ "MPL") herein is a subsidiary company of ML.

Submissions of the Applicant in brief:

3. The Applicant agreed to subscribe to the Debentures that were being issued by ML. Axis Trustee Services Limited was appointed as the Debenture Trustee ("Debenture Trustee"). A Deed of Corporate Guarantee dated 26th March, 2018 was also entered into by the Debenture Trustee (on behalf and for the benefit of the Applicant) and the Corporate Debtor, along with the Debenture Trust Deed, on 26th March, 2018, wherein the Corporate Debtor irrevocably and unconditionally guaranteed to pay any amounts due as if it were the principal obligor and in addition thereto shall also pay all interest, penal interest, premium, charges, costs, fees, dues and/ or expenses payable by ML.

4. ML defaulted in its obligations. As a result, the Debenture Trustee called an event of default (occurring on 4th October, 2018) by its Notice dated 01st October, 2019 inter alia to the Corporate Debtor and informed levy of the

penal interest rate as agreed and informed the Obligors that penal interest, if not paid, will continue to accrue and compound as per the agreed terms.

5. Thereafter, on 24th September, 2020, the Applicant lodged its claims of Rs.2,57,84,25,381/- in the prescribed form i.e. Form C. On 2nd October, 2020 the erstwhile RP refused to admit the Applicant's claim. The Applicant filed an Interlocutory Application No.1628 of 2020 ("IA 1628") for upholding its claim of over Rs.257 Crores and the erstwhile RP filed an Interlocutory Application No.1746 of 2020 ("IA 1746") seeking to declare the Applicant's transaction and claim as preferential. The first COC Meeting was held on 5th October, 2020 wherein the erstwhile RP informed the BOB ("BOB") that the claims of this Applicant of Rs.2,57,84,25,381/- were rejected and that the Applicant had filed an application for admission of its claim and inclusion in the COC. By an order dated 7th January, 2021, this Hon'ble Tribunal was pleased to pass an order and referred the IA 1628 and IA 1746 to the Hon'ble Third Member, since the Hon'ble Members had differed in their opinion. 10. In the meantime, the process was proceeding without the Applicant, in February, 2021, the Applicant filed an appeal before the Hon'ble NCLAT, wherein vide order dated 8th February, 2021 granted a Status Quo against the CIRP of the Corporate Debtor. Thereafter, by an Order dated 16th March, 2022, this Hon'ble Tribunal was pleased to uphold the financial claims of Rs.2,57,84,25,381/- (Rupees Two Hundred Fifty-Seven Crores Eighty-Four Lacs Twenty-Five Thousand Three Hundred Eighty-One Only) of the Applicant and

Applicant's right to be included in the COC. As also, by Order dated 5th May, 2022. The Applicant was admitted to the COC from 01st April, 2022 with 68.20% voting rights.

6. Subsequently, in furtherance to the resolution passed in the 11th COC Meeting, by an order dated 11th August, 2022, this Hon'ble Tribunal was pleased to allow the Interlocutory Application No.2075 of 2022 filed by the Applicant and appoint the Respondent No. 1, replacing the erstwhile RP. After taking charge, the Respondent No. 1 proposed an agenda for re-quantification of its fees at Rs.6 lacs per month contrary to the prior understanding. This was not approved. 15. Thereafter, Respondent No. 1 scheduled another COC Meeting on 26th September 2022 solely with the agenda to discuss and fix the fee of the Respondent No. 1. The Applicant again abstained on voting on the said increased fee proposed by the Respondent, due to which the said agenda did not come to be passed. On 03rd October, 2022 BOB addressed an email dated 3rd October, 2022 to the Respondent No.1 stating that the Applicant had received a sum of Rs.10.18 Crores by sale of vessel Prem Mala and requested that such claims ought to be reduced from the Applicant's claim. On 5th October, 2022, since the issues on fees remained unresolved, the Applicant addressed an email proposing an agenda for replacement of the Respondent with a professional who was agreeable to the fee of Rs. 3 lacs per month. In response thereto, the Respondent then agreed to the fees originally agreed and dropped his request for increase of fees to Rs.5.5 lakhs.

7. Thereafter, the Respondent addressed an email to the Applicant dated 5th October, 2022 to the Applicant requesting for documents, calculations and to verify and update its claim in connection with the proceeds of Prem Mala. On 7th October, 2022, the BOB sent an email annexing an order of the Hon'ble Bombay High Court in respect of sale of Prem Mala and quoting some paragraphs. On 7th October, 2022, BOB also separately addressed an email to the Respondent No. l seeking "revisit the claim along with the calculations submitted by UTI and BOB" on flimsy grounds and on its whims and fancies.

8. To the shock and surprise of the Applicant, the Respondent No. 1 addressed an email to the Applicant dated 10th October, 2022 stating that it had embarked on a re-verification exercise, at the instance of the BOB, and stated that the COC could not vote and sought to unilaterally hold the COC's voting rights including of the Applicant which were admitted pursuant to orders of this Hon'ble Court. Unsurprisingly, by an email dated 12th October, 2022 the Respondent No. I called for the 16th COC Meeting on 14th October, 2022, without any voting agenda. Thereafter, by an email dated 14th October, 2022, the Applicant provided the information sought by Respondent No. 1 in respect of recovery from Prem Mala and inter alia informed the Respondent No. I that there was no requirement or occasion for the Applicant to update its claims. Since, the proceeds from Prem Mala were adjusted towards claims outside of CIRP which were on the date of

receipt of proceeds from Prem Mala was in the range of over Rs. 385 Crores and otherwise there were legal expenses of approx. Rs. 2.92 Crores, no updation was required.

9. Thereafter, on 19th October, 2022, suddenly the Respondent No. 1 sought to reduce the claim of the Applicant from approx. 257 Crores to approx. Rs.231 Crores on flimsy grounds, without even seeking a response from the Applicant. Hence, this Application.

Submissions of the Respondent in brief:

10. It is stated and submitted that the present application is premature and has been filed only to derail the CIRP of the Corporate Debtor. The Applicant, while claiming to be a Financial Creditor of the Corporate Debtor, is also a prospective resolution applicant ("PRA"). Disputes with respect to the claim, voting share and Constitution of the Committee of Creditors (hereinafter referred to as the "COC' for the convenience of this Hon'ble Tribunal) are not to be agitated at this nascent stage but can be adequately dealt with at the stage of approval of resolution plan/liquidation. It is humbly submitted that this is a settled position of law and for this reason alone the present application ought to be dismissed and exemplary costs ought to be imposed upon the Applicant.

11. The claim of the Applicant against the Corporate Debtor is based on a Corporate Guarantee dated the 26th March, 2018, (hereinafter referred to as the "Corporate Guarantee" for the convenience of this Hon'ble Tribunal) executed by the Corporate Debtor in favour of the Applicant (acting through Axis Trustee Services Limited having its office at Axis House, Bombay Dyeing Mills Compound, Panduranga Budhkar Marg, Worli, Mumbai 400025) to secure the repayment of INR 130 crores. The said Corporate Guarantee was executed at New Delhi whereas the address of the both the parties is of Mumbai and thus none of the party was having address of New Delhi which is in violation of extant laws including for the evasion of stamp duty to defraud the State of Maharashtra. This Hon'ble Tribunal cannot grant any relief to the Applicant who is claiming to be a creditor of the Corporate Debtor based on the Corporate Guarantee which is admittedly insufficiently stamped under the Maharashtra Stamp Act, 1958. That it is now a settled position of law that no court can take cognizance of a document which is insufficiently stamped. The only correct course of action in such a situation is for the document to be impounded in accordance with the provisions of the Maharashtra Stamp Act, 1958. It is only after the deficiency in stamp duty is adjudicated by the Collector of Stamps, Mumbai, and the deficient stamp duty along with the penalty is paid, that the document can be taken cognizance of. It is humbly submitted that the Ahmedabad Bench of this Hon'ble Tribunal in the case of 'Hill View Hire Purchase Private Limited v. Satish Kumar Gupta, RP of Essar Steel

India Ltd [I.A. No. 482 of 2018] has also endorsed this view. That judgment was upheld by both National Company Law Appellate Tribunal and the Hon'ble Apex Court in Civil Appeal No. 7260 of 2019. Since the Corporate Guarantee of the Applicant is based on an insufficient stamped Corporate Guarantee, the claim as well as this Application is liable to be rejected solely on this ground.

12. The guarantee is sought to be enforced against the Corporate Debtor in its CIRP which is being undertaken within the city of Mumbai. As such, it is clear that the Applicant intends to rely upon the Deed of Corporate Guarantee in Mumbai which makes it liable to be stamped under the provisions of the Maharashtra Stamp Act, 1958. Even if it is the contention of the Applicant that the said Deed of Corporate Guarantee has been executed at New Delhi, it is humbly submitted that it is also settled position of law that a· document which is sought to be enforced in multiple jurisdictions would have to be stamped as per the laws applicable to each of those jurisdictions. In this regard, the Respondent craves the leave of this Hon'ble Tribunal to refer to and rely upon the judgement of the full bench of the Bombay High Court in the case of Chief Controlling Revenue Authority. Maharashtra State v. Reliance Industries Limited. Mumbai, 2016 SCC OnLine Bom 1428.

13. It is also stated and submitted that the present application is premature and has been filed only to derail the CIRP of the Corporate Debtor. The Applicant, while claiming to be a Financial Creditor of the Corporate Debtor, is also a prospective resolution applicant ("PRA") who is trying to make the CIRP a sham under the IBC to defraud the other creditors. Disputes with respect to the claim, voting share and Constitution of the Committee of Creditors (hereinafter referred to as the "COC' for the convenience of this Hon'ble Tribunal) are not to be agitated at this nascent stage but can be adequately dealt with at the stage of approval of resolution plan/liquidation. It was humbly submitted that this is a settled position of law and for this reason alone the present application ought to be dismissed and exemplary costs ought to be imposed upon the Applicant.

14. It is important to point out that the Applicant is a PRA and is actively competing for its own Resolution Plan to be approved by abusing the CIRP process to make it a sham under the IBC. This itself makes the true intentions of the Applicant clear that it desires to ensure that it has more than 66% of the total voting share of the COC so that it can vote upon its own resolution plan even if the same is sub-optimal, wherein the other COC member is offered only equity shares of the Corporate Debtor and all other creditors together are being offered only INR 1,79,800 (Indian Rupees One Lakh Seventy-Nine Thousand and Eight Hundred Only).

15. The inclusion of the Respondent No. 2 in the present application has been done only with the sole intention to threaten and intimidate me. The Applicant believes that by impleading the Insolvency and Bankruptcy Board of India in the present application and making a subliminal threat of proceedings being initiated against me, it can coerce the Respondent No.01, who is the Resolution Professional, into accepting its illegal and unlawful claims.

16. It is denied that the Applicant has any case to challenge the downward revision of its admitted claim for the reasons set out in the Respondent's Letter dated the 19th October, 2022. The Respondent particularly denies that this Hon'ble Tribunal has already adjudicated and admitted the quantum of the claim of the Applicant, as is sought to be alleged. Rather, as shall be clear from the contents of this affidavit, this Hon'ble Tribunal has not expressed any opinion on the merits of the quantum of claim being agitated by the Applicant. It is stated and submitted that the Respondent has already filed an affidavit in reply to Interlocutory Application No. 3191 of 2022, which shall be dealt with on its own merits at the time of its hearing. Without prejudice to the aforesaid, the Respondent has already filed IA 3541/2022 requesting this Hon'ble Tribunal to recall any such order obtained by fraud played on by the Applicant on this Hon'ble Tribunal.

17. It is therefore clear that issues pertaining to the amount/ quantum of the claim of the Applicant as well as whether its claim is fraudulent and/or extortionate were never an issue in question before this Hon'ble Tribunal. Accordingly, it is self-evident that there has not been any pronouncement on these issues. The assertion of the Applicant that its amount of claim has been explicitly admitted by this Hon'ble Tribunal, therefore, has no foundation in law in fact. Apart from this, it is humbly submitted that the RP is well within his rights under regulations 12A and 14 of the CIRP Regulations to update claims upon coming across additional information which warrants such updating. Thus, the earlier legal proceedings and the orders passed therein have no relevance to the issues identified by the Respondent in his letters to the Applicant.

18. The present case is not one of a guarantor disputing the liability of the principal debtor (which is a legally recognized defence) but one where the Applicant has been suppressing and withholding material documents and information pertaining to its claim. Further, the claim of the Applicant was purposefully inflated in order that it could have sole decision-making authority to acquire the 66% voting rights in the COC of the Corporate Debtor. As stated above, as well as in the correspondence with the Applicant, its claim suffers from serious legal defects and is also covered by sections 50 and 66 of the IBC for which IA 3541/2022 has been filed. However, the Applicant has conveniently failed to point out that the

Resolution Professional of Mercator has also reduced the claim of the Applicant by Rs. 10,17,66,553/- under regulation 12A of the CIRP Regulations on the same ground as mentioned in my letter dated the 19th of October, 2022. The Applicant herein has not challenged the decision of the Resolution Professional of Mercator. Therefore, it is clear that the Applicant has accepted that this receipt of amount and therefore reduction is in accordance with law.

19. By way of an email dated the 3rd October, 2022, the Bank of Baroda brought to the Respondent's attention the fact that the Applicant has already effected recovery of Rs. 10, 17,66,553/- through the sale of one of the assets mortgaged by Mercator (being the principal borrower), a vessel by the name of MT Prem Mala. On the very same day, the Respondent sent an email to the Applicant enquiring as to the truthfulness of the allegation being made by the Bank of Baroda. It is important to note that under regulation 12A of the CIRP Regulations, each creditor is under a statutory obligation to update its claim with the Resolution Professional when it is satisfied partly or fully from any source in any manner after the insolvency commencement date. Any infraction of this duty is likely to cause grave and irreparable harm and prejudice to the CIRP of the Corporate Debtor in question and its various stakeholders. RP followed a strange process and clearly exceeded the administrative role required in verification of claims to embark on the adjudicatory function. The manner in which the previous

RP proceeded to reject and supress the claims is perverse, wrongful and unjustified. The Applicant by its letter dated 20th October, 2022 provided an elaborate account of the events leading to wrongful partial rejection of the Claims by the previous RP and requested the Respondent to fully admit the claims. The Applicant has not received any response or affirmative action from the Respondent.

20. The Applicant has a vested interest in reducing the liquidation value of the Corporate Debtor since UTI Capital is also a prospective resolution applicant. It is also important to note that the Applicant, at that time, was in a position to approve any resolution plan placed before the COC on the basis of its own voting share alone. Any amount payable under the resolution plan would be distributed between the two secured creditors being the Applicant and the Bank of Baroda. By reducing the liquidation value of the Corporate Debtor, the Applicant could reduce the entitlement of Bank of Baroda under the resolution plan submitted by UTI Capital.

ANALYSIS AND FINDINGS

21. We have heard the learned counsels for the Applicant as well as the Respondent. We have also gone through the records, documents and the written submissions placed before us.

22. On perusal of this application and the records, we find that the Applicant is a financial service provider and a Category-II Alternate Investment Fund as per the SEBI rules and regulations. Mercator Ltd. presently in CIRP, is inter-alia, in the business of shipping and mercantile operations. The Corporate Debtor viz. Mercator Petroleum Limited is a subsidiary of Mercator Ltd. The Applicant agreed to subscribe to the debentures that were being issued by the Mercator Ltd. Axis Trustee Services Limited was appointed as the Debenture Trustee. A Deed of Corporate Guarantee was executed between the Corporate Debtor and the Debenture Trustee (on behalf of and for the benefit of the Applicant) on 26th March, 2018. On 01st October, 2019 Mercator Ltd defaulted in its obligations to pay interest. As a result, the Debenture Trustee called it as an event of default and issued notice to the Corporate Debtor informing it of its liability to pay the interest and the penal interest as per the agreed terms.

23. The Corporate Debtor was admitted to the corporate insolvency resolution process ('CIRP') by the Adjudicating Authority vide Order dated 31st August, 2020 in CP(IB) No. 3434 of 2019. On 24th September, 2020 the Applicant lodged its claims of INR 257,84,25,381/- in the prescribed Form C. On 02nd October, 2020 the erstwhile RP refused to admit the Applicant's claim. Thereafter, the Applicant filed an interlocutory application before this Tribunal vide I.A. No. 1628 of 2020 for upholding its claim. By an Order dated 16th March, 2022 in IA No. 1628/2020, the Applicant was

confirmed as a financial creditor and was consequently admitted to the Committee of Creditors with 68.20% voting rights. The RP-Respondent No.01 was appointed by the Tribunal vide Order dated 11th August, 2022 replacing the erstwhile RP. The RP addressed an email to the Applicant dated 10th October, 2022 stating that it had embarked on a re-verification exercise. On 19th October, 2022 the RP had sought to reduce the claim of the Applicant from Rs. 257 crores (approx.) to Rs. 231 crores approx. Being aggrieved by the action of RP reducing the claim of the Applicant, the Applicant had preferred IA No.3191 of 2022 inter alia impugning the aforesaid reduction of its claim.

24. There were several rounds of negotiations and discussions between the CoC and the Resolution Applicant. After arriving at an amicable solution, the CoC had approved a resolution plan that is now pending for approval of the Adjudicating Authority u/s 31 of the Code in IA No. 1124 of 2023.

25. If the application filed by the Applicant in IA Nos. 3191 of 2022 is allowed, it will result in reinstatement of the claim of the Applicant to over INR 257 crores and the impugned order/communication of the RP to reduce it to INR 231 crores will be set aside. Accordingly, the voting share of UTI will be reinstated to 68.20%. As far as exercising of voting rights is concerned, the same is of no use as on date, as the resolution plan has already been approved by the CoC. Also, as per the terms of resolution

plan, the entitlement from the proceeds to be received from the Resolution Applicant is also crystalised to 40% as the Applicant's share, and therefore, any increase or decrease in the amount of its claim is of no consequence. Therefore, the reliefs sought by the Applicant, if granted any, will not serve any practical, fruitful or meaningful purpose, and have now become infructuous. Hence, in view of the facts and circumstances of the case, and in our considered opinion, this I.A. should be dismissed as having become infructuous. Hence, we pass the following order:

ORDER

a. The Interlocutory Application No.3191 of 2022 in Company Petition (IB) No. 3434 of 2019 is hereby **dismissed as infructuous.**
b. There shall be no order as to costs.
c. Accordingly, this I.A. stands disposed off.

Sd/-	**Sd/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**