

(2024) 04 NCLT CK 0017

In the National Company Law Tribunal

Case No : IA(I.B.C)/2545(CH)2023 In CP (IB) No. 315/Chd/Hry/2019

Bank of India

APPELLANT

Vs

Vikas WSP Limited

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 19(2), 29A, 53, 60(5), 66

Citation : (2024) 04 NCLT CK 0017

Hon'ble Judges : Dr. P.S.N. Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench : Division Bench

Advocate : Gaurav Bhardwaj, Munisha Gandhi, Salina Chalana, G.S. Sarin, Aalok Jagga, APS Madaan, Kanish Jindal, Darshan Singh Anand

Final Decision : Disposed Of

Judgement

Dr. P.S.N. Prasad, Member (Judicial)

Umesh Kumar Shukla, Member (Technical)

IA(I.B.C)/2545(CH)2023

This application has been filed by workmen through their authorized representative Shri Ranveer Singh under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs,

"a) Allow the present application and direct the Resolution Professional to accept and admit the claims of the applicant i.e. for Rs.57,43,51,846/- (Rupees Fifty-Seven Crore Forty-Three Lakh Fifty-One Thousand Eight Hundred Forty-Six Only/-) excluding the PF claim which is to be seen as a separate claim, without putting any claim in the category of contingent claim.

b) To consider the averments made in the present application whilst hearing on the approval of the resolution plan and to reject the resolution plan submitted by the resolution applicant, which resolution applicant is nothing but an earlier

management under new name.

c) To consider the averments and the documents on record, and to reject the resolution plan as put for approval by the resolution professional and to further direct the resolution professional to seek legal remedy, to either call for new resolution plans from companies which are not connected and are not 'related parties' in any manner as prescribed under section 29 (A) and/or to put the corporate debtor under liquidation owing to the assets being worth way more than the liabilities as per the financial statement.

d) Allow any further relief in favour of the applicant workmen and against the corporate debtor which this Hon'ble Tribunal deems fit."

FACTS OF THE CASE

2. The brief facts, as stated in the IA by the applicant are summarised below:

(i) The applicant is the authorised representative of 520 workmen, which were working with the Corporate Debtor i.e. M/s Vikas WSP Limited, till the time the Insolvency Resolution Proceedings got initiated against Corporate Debtor vide the order dated 02.02.2022 passed by this Hon'ble Adjudicating Authority.

(ii) The applicant had filed the I.A. No. 759/2022, as the claim submitted by the applicant were rejected by the resolution professional (hereinafter referred to as "RP") in utmost illegal and arbitrary manner vide email dated 11.04.2022, The above IA was disposed of by this Tribunal vide order dated 19.04.2023. The copy of the IA No.759/2022, copy of the order dated 19.04.2023 and copy of the email dated 11.04.2022 have been annexed with the present IA as Annexure 1, Annexure 2 and Annexure 5 respectively.

(iii) After the submission of Form-E, having the information and proof of the relevant financial claims pertaining to the operational creditors, the RP had sought and instructed the applicant to submit a fresh/ revised FORM-E having the requisite calculation of the claims excluding the provident fund, which has been annexed with the IA as Annexure A-4. The outstanding amount legally due and claimed and which stands payable by the Corporate Debtor to the claimants i.e. workmen is amounting to Rs.57,43,51,846/ (Rupees Fifty-Seven Crore Forty-Three Lakh Fifty-One Thousand Eight Hundred Forty-Six Only/-).

(iv) After the order dated 19.04.2023 of this Hon'ble Tribunal, vide which RP was directed to consider the above claim within three weeks and place on record the compliance of the order on affidavit in IA No.1538/2022 pertaining to the approval of the resolution plan, although the RP has submitted the requisite affidavit, however, did not provide any copy to the operational creditors stating as to whether the claims of the operational creditors i.e. workmen were admitted or rejected.

(v) The RP has sent e-mail on 17.09.2023 to the applicant stating as follows:

"In compliance with the order dated 19.04.2023 in the C.P. (I.B.) No.759/2022,

passed by the Hon'ble NCLT, Chandigarh Bench as well as after considering the legal opinion obtained by Advocate Mr. I.S.P. Oberoi (Bancom Legal), the RP has reassessed, recalculated and reconsidered the claims submitted by the Authorised Representative of workmen and also, based on the additional information made available to the RP and his teams by workmen and as per CD records, after due diligence it was observed that the 9 workmen whose claims were deemed to be settled in full, did not receive the settled amount. Hence, the claim of those 9 workmen has also been considered and admitted. Accordingly, the RP in consideration of the same has accepted the claim amount for Rs.49,62,76,200/- i.e. including wages, layoff period claim, Dharna bonus, allowances, PF as applicable and gratuity excluding interest thereon. Further, the details of the employee wise amount claimed and amount admitted has already been disclosed in disclosure to the Bombay Stock Exchange, Website of India Bankruptcy Board of India and CD, i.e. WSP Limited." The copy of the e-mail dated 17.04.2023 sent by RP to the applicant has been annexed along with the IA as Annexure A-6.

(vi) The RP, in another absolutely, arbitrary and fraudulent act, has filed a statement dated 19.09.2023 after the date of hearing for approval of the resolution plan in IA no. 1358/2022 on 18.09.2023 before the BSES, which categorically puts the claim of the applicant admitted to Rs.49,62,72,600/- (Rupees forty nine crore sixty two lacs seventy two thousand and six hundred only) and further has put the said claims in two categories, wherein, the liability of the company has been put only at Rs.23,34,76,371/- (Rupees twenty three crore thirty four lacs seventy six thousand three hundred and seventy one only) and rest of the amount i.e. Rs.26,27,99,829/- (Rupees twenty six crores twenty seven lacs ninety nine thousand eight hundred and twenty nine only) has been stated as a contingent liability, which argument and adjudication has been made in application bearing IA no. 759/2022, and which application has been disposed of by this Hon'ble Tribunal vide order dated 19.04.2023. The aforementioned information memo sent by RP to BSES dated 19.04.2023 has been annexed along with the IA as Annexure A-7.

(vii) The RP on 04.10.2023 had submitted another information memorandum to BSES, wherein, wherein RP has submitted as follows that 'due to delay in finalization of the financial statements of the financial year 2021-2022, the finalization of accounts for the subsequent financial years that is 2022-2023 and 2023-2024 have got delayed. Presently we are in the process of finalizing the internal audit for the quarter/half year/year ended 30th September, 2022, 31st December, 2022, 31st March, 2023, 30th June, 2023 and 30th September 2023 respectively and shall publish these results at the earliest.' The copy of the communication dated 04.10.2023 sent by RP to BSES has been annexed with the IA as Annexure A-8.

(viii) The RP without even finalizing financial statement and accounts have sought a resolution plan and has put the same before the CoC. On 11.09.2021,

the director of the Corporate Debtor had filed a revised Annual Report of the Corporate Debtor for financial year 2020-2021, which categorically puts the current assets of the company at Rs.1,58,453.24 lakhs and the liabilities at Rs.54,881.61 lakh. Despite the company having the assets way larger in capitalization than the debts which the company has to serve, the RP without finalizing the financial statement and calling for the resolution plan is nothing but an incompetence and/ or in the present case as the resolution plan pertains to the earlier management itself a sheer fraud played upon the operational creditors as well as this Hon'ble Adjudicating Authority. An excerpts of the financial statement put forth by the Corporate Debtor, which is revised annual report for the financial year 2020-2021 has been annexed with the IA as Annexure A-9.

(ix) The very act of the RP of denying the claims of the operational creditors vide e-mail dated 11.04.2022, which constrained the applicants herein to file I.A. No. 759/2022, which got disposed of vide order dated 19.04.2023, goes on to show that despite the Corporate Debtor having entered into an agreement with the operational creditors, and that the claims filed by the applicants/ operational creditors workmen are admitted claims by the corporate debtor, the act of the RP seems to be in connivance with the management of the Corporate Debtor, which does not want to pay the admitted claims and is trying to put one or the other hurdle to an extent that the RP is even misleading this Hon'ble Adjudicating Authority. A copy of the agreement entered into between the Corporate Debtor and workmen has been annexed with the IA as Annexure A-10.

(x) On 6th October, 2023, one Mr. Aman Chaudhary, who is said to be a 'related party' to the CD contacted the applicant stating that he has filed the resolution plan, which is pending approval under I.A. 1538/2022 before this Hon'ble Adjudicating Authority, and further stating that he wants to visit the plant/ factory of the Corporate Debtor, since he wants to show the same to the bankers for availing loan facility on the same, came as shock and surprise to the workmen since, Mr. Aman Chaudhary belongs to the earlier management and has been negotiating the terms of settlement with the workmen on behalf of the management of the Corporate Debtor since the year 2019. The Resolution applicant Mr. Aman Choudhary is the person who worked under the management/ directors of the Corporate Debtor and has been continuously negotiating terms with the applicants on behalf of the management/ directors of the Corporate Debtor pertaining to their arrears and dues since the year 2019. It was Mr. Aman Choudhary who negotiated a settlement agreement on behalf of the directors/ management of the Corporate Debtor with the family of the deceased workmen who committed suicide in the plant/ factory premises of the Corporate Debtor on 29.01.2021. A copy of the newspaper pertaining to the same has been annexed along with the IA as Annexure A-11.

(xi) The resolution applicant is none other than the earlier directors and management in the garb of Mr.Aman Chaudhary and the RP has the knowledge of the same, since the records of the Corporate Debtor on the basis of which the

RP has rejected the claims of the workmen stating that few workmen has settled their accounts with the Corporate Debtor, on those settlement agreements, the signatory was none other than Mr. Aman Chaudhary and has the RP done his duty with any diligence the same could be drawn by bare perusal of the said settlement documents. Thus, not only this plan cannot be approved, the very wilful acts of negligence and the act of RP to deprive the creditors of their admitted debt with the Corporate Debtor and putting the resolution plan before the CoC, which resolution plan is filed by the earlier management is not just an inadvertent error on the part of the RP, but the same shows a consistent effort on the part of the RP to provide undue financial gains to the management of the Corporate Debtor by illegally not admitting the legal and binding debt of Corporate Debtor.

(xii) It is inconceivable that the plant, which has land value worth more than Rs.750 crores and plant and machinery of the same value, where the assets are stated to be worth more than Rs.1578 crores, the RP is putting the resolution plan of Rs.127 crores for the approval, that to by the earlier management, which is neither heard of, nor can be comprehensible thus, is nothing but an act to deprive the rightful creditors of their money and an illegal attempt to write off the debt to the company.

(xiii) The rejection of the claims by the RP stating that the gratuity payable is also not to be included since it's an ongoing concern itself is a perverse and illegal understanding of the law in general and IBC and labour laws in particular, which itself deserves the re-look by this Hon'ble Tribunal.

(xiv) The act of the RP of keeping contingent liability to the tune of Rs.26,27,99,829/- is an illegal act for which the resolution professional is required to provide information as well as legal precedent as to what contingency there is and/ or from whom/ which company this contingency would be made payable, when on the date of insolvency being declared of the Corporate Debtor, the liability of the workmen was already admitted by the Corporate Debtor under the agreement, which is annexed along with the application.

(xv) The RP in order to provide illegal gains to the Corporate Debtor, who had put the resolution plan through Mr. Aman Chaudhary, who is the person under the management and control of the directors of the Corporate Debtor in an utmost and arbitrary manner is rejecting the admitted claims of the workmen. The entire CIRP process since its inception is rigged with inconsistencies with the law, illegal and arbitrary rejection of legally admitted debts and when the resolution plan itself as accepted by the resolution professional without doing any due diligence of the person/ company filling the said resolution plan, itself showcase the illegality and arbitrariness on behalf of the resolution professional at the least and a connivance with the corporate debtor as the same can be drawn out very categorically. The very fact that the resolution professional has not prepared any financial statement pertaining to the assets under the Corporate Debtor and has accepted the resolution plan is incomprehensible and the same goes to show that

even the resolution applicant was a person/ company which is working directly with/ under the corporate debtor management and its directors as showcased by the applicants and with the common sensical understanding as to how a resolution applicant can put a bid or submit any resolution plan without even considering the capital, assets and liabilities under the management of the Corporate Debtor.

(xvi) The RP is illegally not admitting claims of bonus, gratuity, allowances, wages of the workmen, which does not come under the ambit of the jurisdiction provided by the IBC to the resolution professional. To the extent that the RP is asking the workmen to provide judgement and/ or any legal precedent for the interest part itself showcase the ambiguity and non-appreciation and understanding of the IBC and other relevant laws by the Resolution Professional. The afore-said casts an aspersion of biasness on the part of resolution professional, whereby, the resolution professional is arbitrarily rejecting the duly payable claims of the creditors.

(xvii) The same treatment is met to the other operational creditors i.e. the staff members and even to the effect of the tea vendors at the factory which are required to provide tea to the workmen twice a day. Such understanding is also missing from the working of the RP. The present is a case of absolute biasness showcased by the duly appointed RP in favour of the Corporate Debtor.

REPLY OF RESOLUTION PROFESSIONAL

3. The RP filed the reply vide Diary No.03527/1 dated 21.11.2023, which has been summarised as below:

(i) The Respondent in compliance with the Hon'ble NCLT Order dated 19.04.2023 in IA No. 759/2022, wherein the RP was directed to make the best estimate of the contingent part of claim as per Accounting Standard 29 as prescribed by the Ministry of Corporate Affairs. Accordingly, the claims were re-verified based on availability of further information and records from the CD, and legal opinion sought in the matter. Based on which the workmen's claim was accepted as per the NCLT order, including the claim of 9 (nine) workmen, who did not challenge/ rebut the claim rejection, to protect the interests of the stakeholders (workmen). Accordingly, the claims of all the 520 workmen were processed and admitted without any contingency classification. The same has been reported in the Compliance Affidavit filed by RP, which was taken on record by this Tribunal via order dated 24.08.2023.

(ii) The Compliance Affidavit filed by the RP on 01.08.2023, and 23.08.2023 along with the List of Creditor Version 8 were taken on record by this Hon'ble NCLT vide its order dated 24.08.2023. Subsequently, the RP also filed an additional Affidavit dated 25.10.2023.

(iii) Relying on the Order of Hon'ble NCLT, Mumbai Bench-I dated 26.10.2023 in I.A. 329/2021 filed by M/s. The Best Towers Private Limited, an Operational

Creditor in the main application C.P.(IB) No. 1387/MB/2017 in the matter of M/s. Ericsson India private Limited vs. M/s. Reliance Communications Limited, it has been argued that an operational creditor, whose claim has been admitted by the RP, cannot be given an opportunity to object on to the approval of the Plan.

(iv) The RP in compliance with Hon'ble NCLT order dated 19.04.2023 in IA No. 759/2022 reconsidered the claim submitted by the workmen and best estimates were made in compliance with Accounting Standard 29, prescribed by MCA. Henceforth, the claim of Rs.57,43,51,846/- was processed and admitted in compliance with NCLT Order dated 19.04.2023 and IBC, 2016. The Respondent submitted the Compliance Affidavit, which was taken on record by Hon'ble NCLT on 24.08.2023, the contents of which are self-explanatory. The Senior Counsel apprised the tribunal with the facts submitted on Affidavit by the Respondent and stated that earlier the RP had rejected the claim for the lay off period i.e. from 29.08.2021 to 02.02.2022, categorized as contingent claim due to ongoing litigation, but as directed by this Tribunal, the claim for the entire period has been processed and accepted based on Accounting Standard 29 and provisions of IBC, 2016.

(v) The List of Creditors updated to Version 8 dated 09.08.2023 is uploaded on the website of the Corporate Debtor and is filed with Hon'ble Tribunal along with the RP Compliance Affidavit i.e. taken on record by this Tribunal on 24.08.2023, the contents of which are self-explanatory.

(vi) As a matter of fact, no directions were passed by Hon'ble NCLT to inform the operational Creditors. In compliance with NCLT order dated 19.04.2023 and provisions of IBC, 2016, the claims of workmen were reassessed and admitted and the list of creditors version 8 was submitted with NCLT, BSE, and uploaded on the website of the CD, which is readily available in public domain.

(vii) There is no contingent claim as the amount of claim has been reassessed based on the best estimate and suitably incorporated in List of Creditors Version 8, as far as Resolution Plan is concerned. While, the incorporation of the same in the Books of Accounts of the CD as per the applicable laws of land can take effect only upon approval of the Resolution Plan by Hon'ble NCLT and its effective implementation. Therefore, based on Accounting Standard for disclosure, the facts have clearly been stated in the notes to the accounts. It has rightly been stated in the notes to accounts that, the claim of workmen has been admitted for Rs.49.62 Cr, which is more than the amount booked as payable to the workmen and accordingly, till the time an appropriate order is received in this behalf i.e. including approval of Resolution Plan, the excess liability cannot be incorporated and is therefore for the purpose of disclosure has been disclosed as contingent.

(viii) As entrusted under the code, the respondent has proceeded with section 19(2) and section 66 to maximize the value for the stakeholder. In the documents made available to the respondent and also shared by the applicant with this application, there is no provision for interest in the agreements and

therefore, only interest portion claimed by the workmen has not been admitted. The claim w.r.t. the amount of Provident Fund for the period up to August 2021 has already been claimed by EPFO and stands admitted, thus the PF amount claimed by workmen for the same period has not been admitted.

(ix) M/s. Arcbolt Space and Foods Private Limited is the Resolution Applicant and is section 29A compliant as per the Affidavit filed by the Resolution Applicant, due diligence by RP and independent Report from the Advocate. It is the discretion of the Resolution Applicant to take assistance of any expert or person well versed with the business of the CD. Based on the financials as on 02.02.2022 submitted with the RP, as required under IBC, 2016 two independent valuations were obtained from IBBI registered valuers. The value offered under the Resolution Plan is almost double the Average Liquidation Value, as provided by IBBI Registered Valuers. Further, necessary application under Section 66 have been filed and the same is duly incorporated in the Resolution Plan.

(x) It is the commercial decision of the CoC to negotiate and maximize the value for the stakeholder and approve a Resolution Plan. That the Gratuity claim has been admitted in full and is suitably covered in the compliance affidavit submitted by RP.

(xi) The mail dated 17.09.2023 reproduced by the applicant itself states that entire claim of wages, bonus, gratuity, allowances, including for the laid off period are admitted in full, except interest and the portion of PF which has been admitted in full in EPFO claim.

REPLY OF SUCCESSFUL RESOLUTION APPLICANT

4. This Tribunal, vide Order dated 27.10.2023, had directed the Ld. Counsel for the Applicant to implead the Successful Resolution Applicant (SRA) i.e. M/s Arcbolt Space and Foods Private Limited as one of the party respondent to the present IA. However, the Applicant has not taken any steps in this regard. However, the SRA has filed its reply vide Diary No.03527/4 dated 21.11.2023.

ANALYSIS AND FINDINGS

5. We have heard the arguments advanced by the learned counsels for the Applicant and the Respondents and have carefully gone through the pleadings filed by them in support of their claim and contentions.

6. The first issue for consideration is, "Whether the RP has admitted the legal claims of the Applicant-Workmen."

6.1 In terms of this Tribunal Order dated 19.04.2023 and 26.07.2023, the RP has submitted Compliance affidavit dated 23.08.2023, Para 4(viii) and 4(xi) of which states as under, "

"RP issued a notice of the 20th meeting of CoC, which was held on 13th July 2023 with the sole voting agenda to reconsider and revise the workers' claims in the light of directions given by Hon'ble NCLT in its Order dated 19.4.2023 in IA

No. 759/22....

xi. The matter was accordingly put up for voting in the 20th meeting of the Committee of Creditors held on 13th of July 2023, wherein in light of Legal Opinion, details shared by Labour Court Advocate, and discussion with the Labour Union Representative, a detailed reworking of the claim was shared with the members along with Notice and Excel sheet showing the detailed calculations. The main changes in the proposed claim vis-à-vis the earlier claim are as follows:

1. The workers' claim for lay off period, which was under litigation and was thus not accepted now stands admitted without interest.
2. The workers' claim for the Dharna period, which was kept as contingent now stands admitted without interest.
3. The workers' claim for Gratuity now stands accepted in full.
4. The workers' claim for Bonus and allowances stand accepted without interest thereon.
5. The workers' claim on PF stands accepted in full as they are being paid EPF for the period from September 2021 till the CIRP date, as EPF till August 2021 is already claimed by EPFO and their full claim has been ordered by Hon'ble NCLT to be admitted fully vide order dated 23rd January 2023.
6. 9 Workers' dues which were not earlier admitted now stand admitted after the review requested by the worker's union.
7. Interest on Wages, Bonuses and allowances has not been admitted.

Accordingly, the following resolution was put to vote.

Resolution:

To consider and if thought fit, to pass with or without modification, the following resolution:

"RESOLVED THAT consent of the committee of creditors be and is hereby accorded for admission of the claim of 520 workmen of the CD based on legal opinion and interpretation of the AS 29 as hereunder:

Particulars

Amount Claimed (Rs.)

Amount of Claim Admitted (Rs.)

Admitted Claim Amount for the period of 24 Mths preceding the CIRP commencement Date (02.02.2022)

(Rs.)

Remarks

Total Salary from Nov 2019 till Jan

2022

424177539

355910374

318159460

Out of Wages up to January 2022 have been admitted in full but the interest portion has not been considered. Further, the dues of PF up to August 2021 as already covered in the claim of EPF have been admitted in full as per the award of Hon'ble NCLT while here the dues of PF from September 2022 up to February 2022 have been

admitted.

Bonus and Allowances

62484005

52675524

9265969

Dues of Bonus and Allowances up to January 2022 has been admitted while interest portion has not been considered.

Further as per Legal Opinion, Bonus amount is not to be considered under Section 53 of IBC, 2016 read with Section 325 and

326 of Companies Act. 2013

Gratuity

87690302

87690302

87690302

Gratuity has been admitted

in Full

Total Payable to Workmen

574351846

496276200

415115731

xv. The RP has accordingly collated the votes cast by the members. The Minutes

of the 20th CoC Meeting, Revised Resolution on the Workmen matter, Record of Summary of the Decision taken at the 20th CoC meeting, and the Ballot Papers of the respective three members of the CoC are attached as Annexure A-9, Annexure A-10, Annexure A-11 and Annexure A-12. Accordingly, as per the foregoing the Resolution stands assented by the members having 100% voting rights."

6.2 The details of claims admitted in respect of operational creditors (Workmen) as per List of Creditors Version 8 as available on the website of Corporate Debtors are as below:

6.3 In the revised Form E annexed as annexure A-4 to the IA, a claim of Rs.57,43,51,846/- has been submitted by authorised representative of the workmen to the Resolution Professional, which is including the interest on the arrears of salary and bonus. The RP had sent an email communication to the authorized representative of the workmen dated 17.09.2023, wherein it had stated that the RP has accepted the claim amounting to Rs.49,62,76,200/- i.e. including wages, layoff period claim, Dharna bonus, allowances, PF as applicable and gratuity excluding interest thereon. RP has also submitted that there is no contingent claim as the amount of claim has been reassessed based on the best estimate and suitably incorporated in List of Creditors Version 8 and till the time an appropriate order is received in this behalf i.e. including approval of Resolution Plan, the excess liability cannot be incorporated and is therefore for the purpose of disclosure has been disclosed as contingent. RP has also stated that there is no provision for interest in the agreements and therefore, only interest portion claimed by the workmen has not been admitted.

6.4 After careful consideration of the aforementioned facts, this Adjudicating Authority is of the view that the Resolution Professional has already admitted the claim of Rs.49,62,76,200/- excluding the interest component. No case has been made out by the applicant to rebut the contention of the Resolution Professional that there is no provision for interest in the agreements from the Corporate Debtor nor has pointed out if such agreements, which would mandate the payment of interest, is available on the record of this Adjudicating Authority. Hence, no interference in this regard is called for, and there does not arise a need for this Adjudicating Authority to intervene and order the admission of the interest component in the present matter.

7. With regard to para (c) of the prayer, this Adjudicating Authority is of the view that it is premature to decide the same as the resolution plan is pending for approval by the Adjudicating Authority vide IA No. 1538 of 2022, therefore objections if any, may be filed in the aforementioned IA.

8. In view of the aforesaid discussions, IA No. 2545/2023 is dismissed and disposed of accordingly.