

(2024) 05 NCLT CK 0014

In the National Company Law Tribunal

Case No : I.A. No. 2428/2023 in CP (IB) No. 174/Chd/Chd/2018

Industrial Conbuild Co Private Limited

APPELLANT

Vs

Sumat Kumar Gupta

RESPONDENT

Date of Decision : 16-05-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 30(2)(b)(ii), 53(1)(a), 53(1)(b), 60(5)

Citation : (2024) 05 NCLT CK 0014

Hon'ble Judges : Harnam Singh Thakur, Member (J); L.N. Gupta, Member (T)

Bench : Division Bench

Advocate : Mayank Wadhwa, Dr. Rajansh Thukral, Dr. Surekha Thukral, Sudhharth Thukral

Final Decision : Disposed Of

Judgement

L. N. Gupta, M (T) & Sh. Harnam Singh Thakur, M (J)

1. The present application has been filed by Industrial Conbuild Co. Private Limited (hereinafter referred to as the "Applicant"), against the Resolution Professional (for brevity "Respondent No. 1/RP") and the the Committee of Creditors (for brevity "Respondent No. 2/CoC", under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") with the prayers to disapprove/reject the Resolution Plan approved in the 23rd meeting of Respondent No. 2 on 25.02.2020, and to direct Respondent No. 1 and Respondent No. 2 to review and modify the same; and to stay further proceedings in the ongoing CIRP of the Corporate Debtor till the pendency of the present application.

2. It is averred in the application:

i. The petition filed under Section 7 of the Code for initiation of CIRP of the Corporate Debtor was admitted by this Bench vide order dated 28.02.2019, and Respondent No. 1 was appointed as the IRP.

ii. In furtherance of public announcement made by Respondent No. 1/RP, the applicant, being the operational creditor of the corporate debtor, submitted its claim for an amount of Rs. 2,67,00,081/- (Rupees Two Crores Sixty-Seven Lakhs and Eighty-One Only) in Form-B vide email dated 13.03.2019 to Respondent No. 1/RP, whose claim was admitted to an extent of Rs. 53,52,598/- (Rupees Fifty-Three Lakhs Fifty-Two Thousand Five Hundred and Ninety-Eight Only) by Respondent No. 1/RP.

iii. Earlier, an application bearing no. CA No.1122/2019 titled "M/s Industrial Conbuild Co. Private Limited vs. Sumat Kumar Gupta" was filed before this Bench by the Applicant, seeking directions to be issued to the Respondent No. 1/RP to admit the claim of the Applicant amounting to Rs. 2,67,00,081/- and to stay the proceeding of the ongoing CIRP and not to approve the resolution plan qua the Corporate Debtor, which was dismissed by this Bench vide order dated 22.12.2022.

iv. The CoC in its 23rd meeting held on 25.02.2020, approved the resolution plan submitted by the Resolution Applicant, namely, Mr. Ajay Yadav & Co., allowing only 1.40%, i.e., Rs. 19,87,00,000/- (Rupees Nineteen Crores Eighty-Seven Lakhs only), of the alleged admitted claims of the operational creditors; out of which the proposed amount for realising this figure as per the said resolution plan is Rs. 28,00,000/- (Rupees Twenty-Eight Lakhs only) and a portion of Rs. 3,20,00,000/- (Rupees Three Crores Twenty Lakhs Only), amounting to 16.1%, is the admitted claims for statutory dues, thereby leaving inconsiderate amount of Rs. 23,49,200/- (Rupees Twenty-Three Lakhs Forty-Nine Thousand and Two Hundred Only) for the Operational Creditors.

v. The admitted claim of Rs. 53,52,598/- of the Applicant constitutes only 2.69% of the total claims admitted for the operational creditors, and only an amount of Rs. 75,320/- (Rupees Seventy-Five Thousand Three Hundred and Twenty) would be disbursed to the Applicant.

3. Respondent No.1/RP filed its reply dated 26.10.2023, vide diary no. 03359/2, wherein it is submitted that the applicant submitted a false and exaggerated claim of Rs. 2,67,00,081/- which could not be collated as the original claim as per the books of accounts, which, as of the date of commencement of CIRP was Rs. 53,62,598/- only. The suspended Directors, in connivance with the applicant, made backdated entries in the books of account and exaggerated the amount payable to the applicant to Rs. 2,67,00,081/-.

4. Respondent No.1/RP further submitted that an I.A. bearing no. 1122/2019 was filed by the Applicant, regarding the admission of a claim of Rs. 2,67,00,081/-, which was dismissed vide order dated 22.12.2022. The Company Appeal (AT) (INS) 3944 of 2023 filed by the applicant was also dismissed by the Hon'ble NCLAT vide order dated 13.09.2023, and the order dated 22.12.2022 attained finality. Thus, the present application is barred by resjudicata as held by the Hon'ble NCLAT in the matter of Committee of Creditors of Educomp Solutions

Ltd. vs. Ebix Singapore Pte. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 203 of 2020.

5. Respondent No.1/RP further stated that the payment of operational debts has been provided in the Resolution Plan as per the provisions of Section 30(2)(b)(ii) read with Section 53(1)(a) & (b). As per the liquidation value, no amount is payable to the Operational Creditors. The liquidation value of the Corporate Debtor is Rs. 57.61 crore as against the admitted claims of Financial Creditors of Rs. 109.72 crore. The admitted claims of Operational Creditors are to the tune of Rs. 19.87 crore, and payment proposal to them is Rs. 0.28 crore. The said payout is as under:

Name of creditor

Admitted Amount (Rs. in lakhs)

As a % of total Admitted debt (Rs. in lakhs)

Proposed Payment (Rs. in lakhs)

% of proposed payment to admitted amount

Statutory Dues

328.00

16.51

4.62

1.40%

All operational creditors except the applicant

1605.48

80.80

22.62

1.40%

Applicant

53.52

2.69

0.75

1.40%

Total

1987.00

100.0

28.00

6. Respondent No.1/RP has relied upon the Hon'ble NCLAT's judgment in the matter of Damodar Valley Corporation vs. Dimension Steel and Alloys, Company Appeal (AT) (Insolvency) No. 62 of 2022, wherein it was held that the mere fact that the operational creditor and financial creditor are not paid the same percentage, cannot be held to be inequitable. Further, Respondent No.1/RP also brought up the Supreme Court's decision in Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited, 2021 SCC Online SC 313, wherein the Hon'ble Apex Court held that on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not a part of the resolution plan.

7. No reply has been filed by Respondent No.2/the CoC.

8. Arguments have been heard. During the course of arguments, the applicant reiterated its claim and reliefs sought. It is pertinent to note that previously another application C.A. No. 1122 of 2019 was filed by the Applicant before this Bench with the same prayer and same grounds. The key difference between both the applications filed is that the earlier application was filed before approval of the Resolution Plan by the CoC, whereas the present application has been filed after approval of the Resolution Plan by the CoC in its 23rd meeting held on 25.02.2020.

9. The ground taken for filing the present application is the non-consideration of the claim of Rs. 2,67,00,081/- of the applicant by Respondent No.1/RP. In the earlier application filed, C.A. 1122 of 2019, it was observed by this Bench as under:

10. As per the information available in Form-B in CA No. 889/2019, the debt accrued on account of final unpaid bills and civil works contracts and in CA No. 1122/2019, the debt was related to the work done and invoices/bills raised for executing work orders. In its application and subsequently, during the proceedings, the operational creditors relied on the account statements of the corporate debtor, invoices/bills raised towards the supply of material and Form-C issued (in CA No. 889/2019) and on settlement note dated 10.05.2018 (in CA No.1122/2019).

11. The bills, vouchers, bank statements and various supporting details filed by the applicants have been carefully perused, while the Resolution Professional has claimed that the rejection of the claims of both applicants are based on the entries in the books of accounts of the corporate debtor. The applicants have alleged that the books of accounts relied on by the Resolution Professional do not reflect the true state of affairs. It is also claimed by the Resolution Professional

that in the transaction audit under Regulation 35 of the CIRP Regulations of the books of accounts of the corporate debtor, it is found that back-dated entries have been made in the books relating to the applicants and hence, the relief claimed based on such fictitious entries are not maintainable. In CA No. 889/2019, the corporate debtor has also stated that there was a dispute on the quality of the work executed by the applicant, and therefore, there was an initial restriction on carrying away the leftover construction material of the applicant. Further, it is claimed that the applicant did not re-do the work originally done by him.

12. In the reply to IA No. 889/2019, the contents of so-called settlement note dated 10.05.2018 have been summarily rejected by the corporate debtor as an unsolicited and unilateral act of the applicant. In short, in both these applications, there are many claims and counter claims made by the parties concerned which cannot be decided with reference to any reliable documents acceptable to both sides. This Adjudicating Authority is not in a position to examine the veracity of the claims and counter-claims made in a summary proceedings. We follow the decision of the Hon'ble NCLAT in the case of Oyster Steel and Iron Pvt. Ltd. Vs. Laxmi Foils Pvt. Ltd. Company Appeal (AT) (Ins) No. 1209 of 2019 dated 04.08.2022 on similar facts that these disputes are better settled by the trial Court /Civil Court. In view of the aforementioned discussion, the prayers made by the applicants in these applications are not acceded to. In the result, both the applications bearing CA Nos. 889/2019 & 1122/2019 are dismissed.

10. Further, it is seen from the record that the Hon'ble NCLAT, in its order dated 13.09.2022 dismissed the Appeal filed by the Applicant against the above-mentioned order dated 22.12.2022, passed by this Bench, rejecting the Applicant's claim.

11. In light of the discussion foregoing and in view of the earlier order dated 22.12.2022 passed by this Bench in C.A. 1122 of 2019, which has been duly upheld by the Hon'ble NCLAT, we find that the present application is not maintainable. It is barred by the principle of resjudicata as the material issues of facts and law involved in the present application have already been decided by this Tribunal on merits. Thus, there is no reason to accede to the prayer of the Applicant.

12. Thus, I.A. No. 2428 of 2023 is dismissed and disposed of accordingly.