(2023) 01 NCLT CK 0022

In the National Company Law Tribunal

Case No : ?IA(I.B.C) 36 Of 2022 IN C.P. (IB) 1390 Of 2020

Leighton India Contractors Pvt Ltd Vs Radius Estates and Developers Private Limited ?

Date of Decision : 09-01-2023

Acts Referred:

Citation : (2023) 01 NCLT CK 0022

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Rohit Gupta, Sandeep Sreekumar, Kamini Toprani

Final Decision : Dismissed

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

1. The above captioned has been filed by the Operational Creditor-Leighton India Contractors Private Limited, challenging the rejection of its claim to the extent of Rs. 20,76,16,886/- out of its total claim of Rs. 21,15,70,159/- with a prayer that the Resolution Professional be directed to admit the claim in toto for the purpose of Insolvency Resolution Process. According to the applicant, the claim has been rejected by the IRP/ RP wrongly and in its summary manner and the Corporate Debtor was liable to pay the same, as per the terms of the Project Alliance Agreement dated 04.10.2016. The Applicant has further claimed that the Applicant is liable to be treated at par with the similarly placed "Operational Creditors" under the Plan and therefore the RP be directed to verify the claim of the applicant and be treated on par with similarly placed creditors under the Plan. It has also been claimed by the applicant that as on 31st March, 2020 the applicant had raised a total 37 invoices aggregating to Rs. 293,55,74,414/- out of which an amount of Rs. 275,21,60,647/-was paid by the Corporate Debtor. However, the Corporate Debtor had failed to pay an amount of Rs. 18,34,13,770/- due on account of invoices dated 26.11.2019, 23.12.2019, 16.01.2020 and 20.02.2020 which have been annexed with the Application as exhibit 3 to 6. In this regard the applicant has further referred to certain interim

payment schedule which were duly approved by the Corporate Debtor for payment as per clause 8.3 of the Agreement. Thereafter, the applicant issued Suspension Letters dated 14.02.2020 suspending the work from 15.02.2020 onwards and despite the issuance of the suspension letters the Corporate Debtor failed to make the payment of Rs. 18,34,13,770/-. The applicant further claims that in addition to this amount, the Corporate Debtor was liable to pay an interest amount of Rs. 281,56,389/-. The rejection of claim is total arbitrary and unjustified.

Reply On Behalf Of The Resolution Professional:

2. The learned Counsel appearing on behalf of the Resolution Professional vide an Affidavit in reply filed on 24th March 2022 submitted that the Applicant had filed its Proof of Claim before the erstwhile IRP, who after perusing all the documents submitted along with the Proof of Claim and verifying the same in the books of the Corporate Debtor, rejected the Claim to the extent of Rs. 20,76,16,886/- and admitted an amount of Rs. 39,53,273/- out of the total claim. The claim was partially rejected by the erstwhile IRP and the list of Creditors was uploaded on the official website of the Corporate Debtor as on September 3, 2021.

3. It is further mentioned in the reply that the CIRP of the Corporate Debtor is at very advanced stage and the Plan filed by the Resolution Professional was approved by the COC of the Corporate Debtor on December 27, 2021, with a majority voting of 83.93%.

4. It is further stated that the Applicant, through their Advocate's email, dated November 11, 2021, had acknowledged the list of Creditors, published by the IRP as on September 3, 2021. It is pertinent to note that the Applicant has filed the present Application, on 30th December 2021, which is after the approval of the Resolution Plan by the COC. Hence, the present Application is hit by delay and latches.

5. It was brought to the notice to the Bench, that the erstwhile IRP partially rejected the Applicant's claim as "Operational Debt" amounting to Rs. 20,76,16,886/-. After perusing the books of the Corporate Debtor, only an amount of Rs. 39,63,273/- was found due and payable to the applicant. The Corporate Debtor was also informed by the RP, that an amount of Rs. 13,88,52,937/-, was uncertified and the invoices relied upon the applicant were not recorded in the books of the Corporate Debtor. The interim payments certificates were also not found reflected in the books of the Corporate Debtor nor the same were signed or acknowledged on behalf of the Corporate Debtor.

6. It is further stated in the reply that the list of Creditors was uploaded on September 3, 2021 by the erstwhile IRP and the same was available on the official website of the Corporate Debtor. In spite of the information available, the Applicant had filed the present Application on December 30, 2021, that too after the Plan has been approved by the COC.

FINDINGS

7. We have heard the learned counsel of the parties and have gone through the records.

8. The reasons assigned by the Resolution Professional in rejecting the claim of the Applicant are twofold.

i. The erstwhile IRP had verified/considered the Applicant's claim form as well as the supporting documents and it is only after due verification and consideration of the said documents/records of the Corporate Debtor, the claim was only partially accepted. The Interim Payment Certificates and other documents, on which the Applicant places heavy reliance, were also not found /reflected in the books of account of the Corporate Debtor. Therefore, the RP/IRP has rightly rejected the Applicant's claim amount.

ii. Secondly, the list of the creditors was uploaded on September 3, 2021, by the erstwhile IRP and the same was also available on the official website of the Corporate Debtor. In spite of the information available, the Applicant filed the present application on December 30, 2021, that too after the Plan was approval by the CoC. Therefore, the claim was filed at a much belated stage which further justified its rejection by the RP/IRP.

9. Looking at the aforesaid reasons, this Bench is of the view that t no illegality or irregularity seems to have been committed by the Resolution Professional while rejecting the claim of the Applicant.

Resultantly, the above Interlocutory Application 36 of 2022 is dismissed being devoid of any merit.

