(2022) 07 NCLT CK 0023

In the National Company Law Tribunal

Case No : IA(I.B.C) 1379/KB/2020 In C.P.(IB) 634/KB/2017

?Rajesh Gupta APPELLANT

Vs

Abhilash Lal RESPONDENT

Date of Decision : 06-07-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 60(5)
Micro, Small and Medium Enterprises Development Act, 2006 — Section 16
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2022) 07 NCLT CK 0023

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Ratnanko Banerji, Mamta Binani, Anindita Roy Chowdhury, Rohit Sharma, Raghav Chadha, Kanishk Kejriwal, Abhilash Lal, Vaijayant Paliwal, Nikhil Mathur, Prabh Simran Kaur, Shekhar Sharma

Final Decision : Dismissed

Judgement

Rohit Kapoor, Member (Judicial)

1. The instant application has been filed by applicant under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Rule 11 of NCLT Rules, 2016 seeking for the following reliefs;-

i. The Hon’ble Court may direct Resolution Professional to accept the remaining claim of 67,79,661/- (Rupees Sixty Seven Lakh Seventy Nine Thousand Six Hundred and Sixty) along with interest in terms of Section 16 of M.S.M.E Act, 2006 up to the date of actual realization.

2. The contentions of applicant in the application are summarized hereinafter;-

i. The Corporate Debtor M/s Jhabua Power Limited issued purchase order to the applicant of items/services for sum or Rs. 47,16,354 and Rs. 95,11,857. The said items were supplied by the applicant in August, 2015. Copies of the work orders have been annexed as Annexure- A3 and A4 with this application.

ii. For releasing the payment of executed work, applicant time and again contacted the officials of the Corporate Debtor. The copies of the letters are referred in Para 5 of the application.

iii. Applicant on account of inordinate delay from 1st of August, 2015 till 1st of March, 2019 has suffered the loss of interest as per Section 16 of MSME Act, 2006 which comes to Rs. 43,15,000. Applicant claims this as time value of money and profit @ 10% for the same period coming to Rs. 18 Lakhs.

iv. Resolution Professional has erred in law by rejecting the complete claim amount. Due to oversight amount of Rs. 3,77000/- was not claimed before Resolution Professional. This is mentioned in Para 11 of this application.

v. The Interim Resolution Professional rejected the remaining claims without assigning reasons for rejection reference has been made to letter dated 26th of December, 2019 which is Annexure-17 with this application.

vi. The applicant is aggrieved of status of the remaining claims submitted by the applicant.

3. The Resolution Professional has filed his reply to the application of the applicant. The contentions of the Resolution Professional are summarized hereinafter;-

i. Applicant being an Operational Creditor of Corporate Debtor filed its claim in Form-B on 27th of May, 2019 for an amount of Rs 1,23,50,000/-. The supporting documents filed along with the claim only as substantiated claim for an amount of Rs. 59,47,339/- which has been accepted by the Resolution Professional. The balance amount of Rs. 64,01,661 was claimed by applicant towards loss of interest and profit legal fee and other expenses and the same was not admitted by the Resolution Professional as the same was not substantiated by any proof. Therefore, the said claim could not be verified.

ii. Further the claim of loss or profit interest and expenses etc. will be construed as remote damages and the same are not crystallized and it is the subject matter of adjudication.

iii. Applicant never disclosed in claim documents to the answering respondent that he is claiming an amount of Rs. 679,661 being a Micro Small and Medium Enterprises (MSME). This was never disclosed in any claim documents submitted to the answering respondent and applicant has taken its plea only in the present application.

iv. It is stated by the Resolution Professional, he does not have any adjudicatory authority to decide any claim under MSME. The same jurisdiction is under Facilitation Council which provide the dispute resolution mechanism under MSME Act. This was upheld by NCLT in various matters. In the present case of applicant, there is no adjudication by Facilitation Council. Thus, the Resolution Professional has no option except to reject these claims.

4. We have heard the Ld. Counsel for the parties and perused the record. After consideration we find that;-

a. From the perusal of Annexure-17 at page- 83 of the instant application, it is clear that the Resolution Professional conveyed the status of the claims of the applicant upon review of documents submitted by applicant. He was asked to submit additional information within 7 days thereafter.

b. It is also significant to note, according to the applicant in paragraph 5, the contract was completed somewhere in August, 2015 and the claim for loss of profit damages etc. in delayed payments has been claimed for the first time before the Resolution Professional only somewhere in 2019. The alleged default, at page 6 of the application is stated to have taken place on 1st of August, 2015. It is clear that the applicant never took any steps for adjudication of his claims before any forum competent for this and notwithstanding, apparently failed to furnish the required information/documents before Resolution Professional.

c. This Adjudicating Authority cannot adjudicate upon the question of loss or profit interest etc. This Tribunal in its summary jurisdiction can in no way go into crystallizing the alleged claims. It is clear from the above position that the works were executed somewhere in 2015 and the claims have been raised for the first time before the Resolution Professional and that too has been observed by Resolution Professional without the required documents in support.

5. For the foregoing reasons, IA/1379/KB/2020 is hereby rejected.

6. Urgent Certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

