(2023) 02 NCLT CK 0052

In the National Company Law Tribunal

Case No : IA No.481 of 2021 In CP(IB) No.198/Chd/Chd/2018

Shree Balaji Stone Industries Vs Desh Deepak ?

Date of Decision : 21-02-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 12(3), 18, 60(5)Limitation Act 1963 — Section 14
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 7, 10, 12(1), 12(2), 13

Citation : (2023) 02 NCLT CK 0052

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Himanshu Raj, Arun Kumar

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 481/2021

1. In the present application, the applicant is seeking direction against the respondent to accept the claim, and condone the delay, if any, in the filing of the claim in view of the order dated 10.12.2019 passed by the Hon’ble Punjab & Haryana High Court. Further, the direction to the respondent to set aside the rejection order dated 24.06.2020, and to prepare the list of creditors in accordance with Regulation 13 of the IBBI (CIRP) Regulations, 2016

2. In the main company petition, the Resolution Professional has filed an application i.e., IA No. 731/2019 for liquidation of the corporate debtor, which is pending as of the date before this Adjudicating Authority. It is submitted that the applicant had filed a writ Petition before the Hon’ble High Court of Punjab & Haryana for winding up of the corporate debtor and in the meantimeCIRP has been initiated against the corporate debtor vide order dated 11.12.2018 of this Adjudicating Authority, in view of the same the applicant withdrew the petition before the Hon’ble High court, vide order dated 10.12.2019, wherein the

applicant was given liberty to file the claim before the respondent, further excluding the time spent in prosecuting the petition before the Hon'ble High Court. the relevant part of the order is extracted herein below for reference purposes.

"The petition is dismissed as withdrawn and the petitioner is at liberty to approach the IRP. The period spent in prosecuting this petition in this Court shall be excluded from the period of limitation by way of exemption under Section 14 of the Limitation Act 1963 so that its claims are decided on merits."

3. It is further submitted by the applicant that in view of the aforesaid order of the Hon'ble High court, the applicant submitted its claim in Form B dated 07.03.2020 through post as well as email dated 11.03.2020 with the Resolution Professional for an amount of Rs 10,24,885/- as principal amount along with interest of Rs. 10,63,847.78/-. However, the respondent-Resolution Professional rejected the same on 24.06.2020 on the following grounds

I. The Declaration and the accompanying verification documents attached to your communication do not depict the methodology adopted to establish the quantum of indebtedness of Rs 10,24.885/- plus interest of Rs 10,63,847.78/- of the Ria Constructions Limited towards you on the CIRP commencement date of 11th December 2018.

II. Verification of the Books of Accounts of the Company provided as on 11.12.2018 depict Shri Bola Ji Stone Industries to be having an entry of Rs 8,57,962.00 in the list of creditors.

III. Your communication/claim cannot be considered by the RP in view of the provisions of Regulation 12(1) as well as under regulation 12(2) of IBBI CIRP Regulations, 2016.

IV. Your communication/claim cannot be considered by the RP in the absence of any explicit provision in the Code and the Relevant Regulations framed there under to do so in view of the fact that your claim has been submitted after the expiry of a maximum of 330 days allowed for CIRP as per the provisions of section 12(3) of the Code.

4. It is stated by the applicant that with regard to point No. 1, the applicant has attached all the documents as required under Regulation 7 of IBBI(CIRP) Regulations, 2016 which includes the invoices, balance sheet, purchase orders, debit/credit note, and ledgers. Further, the resolution professional has not sought any clarification under Regulation 10. The Resolution professional at one point rejected the claim and simultaneously admitted the applicant's name for an amount of Rs 8,57,962.00 in the list of creditors. The variation between Rs. 10,24,885 & Rs. 8,57,962.00/- is the service tax that has been imposed. The respondent has rejected the claim of the applicant without appreciating that an amount of Rs 8,57,962.00 has been admitted to the list of creditors.

5. It is submitted by the applicant that as per point No.3, the respondent

rejected the claim on the basis that the applicant has not submitted the proof on or before the expiry of the Public Announcement as well as till the approval of the Resolution plan by the committee. Further, the applicant's delay in filing the claim on 11.03.2020 in terms of the orders of the Hon'ble High Court dated 10.12.2019 was bonafide, and the same be considered. In this context, a reference has been made to the decision of Principal Bench NCLT New Delhi, in the matter of Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd. and held as follows:

"The rejection of claim on the ground of delay is not sustainable because the provisions has been held to be directory. We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory."

6. The applicant has further placed reliance on the Judgement of the Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. Writ Petition (Civil) No. 99 of 2018' wherein it is held that the 'Resolution Professional' has no adjudicatory power. Therefore, the Resolution Professional has no adjudicatory powers but administrative ones only.

7. Recorded in our daily order dated 13.01.2023, the learned counsel for the respondent-Resolution Professional has stated that there is no need to file any reply to the application as the facts are already mentioned in the application.

8. We have heard the learned counsel for the applicant and the respondent and carefully perused the record available. We note that:

I. The Audited Certificate of the books of account of the applicant indicating the balance of Rs. 10,24,885 as of 31.03.2020 standing against the corporate debtor.

II. Purchase orders, indicate CST will be charged extra as applicable against Form C

III. Form C and corresponding Tax invoices for delivery of the goods are attached to the application and the summary of the same is as below:

S. No.

Date

No.

Amount

1

9-Jan-2012

248

108104.00

2

25-Jan-2012

263

107908.00

3

27-Jan-2012

266

120776.00

4

21-Jan-2012

285

61318.00

5

4-Jan-2012

293

124481.00

6

10-Jan-2012

297

123799.00

7

16-Jan-2012

303

92326

Total Amount

758712

IV. There are conditions mentioned on the invoices but no interest component chargeable on the due amount has been mentioned.

9. It may be noted that under the provisions of the code, the applicant is required to file his claim by 11.03.2019 but at that time the matter was subjudice before Punjab & Haryana High Court & the matter was finally

withdrawn on 10.12.2019. Under Regulation 12(2) of the CIRP Regulations, he can file the claim within 90 days of the insolvency commencement date. We note that the Hon'ble Punjab and Haryana High Court, in its order dated 10.12.2019 has directed that the period spent in prosecuting the petition before thai High Court shall be excluded from the period of limitation by way of exemption under Section 14 of the Limitation Act, 1963 so that its claims are decided on merits. As the petition before the Hon'ble High Court was initiated in 2015, and withdrawn on 10.12.2019, the applicant is required to file its claim within 90 days of the withdrawal of the petition. The applicant herein has filed its claim through mail on 11.03.2020. In view of the above facts, the Resolution Professional is directed to admit the claim of the applicant for an amount of Rs 10,24,885/- as the principal amount. As no evidence of prior agreement on the chargeable interest was placed before us, hence no order on the interest component.

10. In the result, the present application is allowed and disposed of accordingly.

