
(2021) 09 NCLT CK 0033

In the National Company Law Tribunal

Case No : IA 206, 259 Of 2021 In CP No.02 (IB)/MB/C-II/2018

Subham Capital Private Limited

APPELLANT

Vs

Abhijit Guhathakurta Resolution Professional

RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 53, 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2021) 09 NCLT CK 0033

Hon'ble Judges : Ashok Kumar Borah, Member (J); Shyam Babu Gautam, Member (J)

Bench : Division Bench

Advocate : Sachin Mandlik, Meghna Rajadhyaksha

Final Decision : Partly Allowed

Judgement

Shyam Babu Gautam, Member (Technical)

1. The present Interlocutory Applications IA 206/2021 filed by Subham Capital Private Limited and IA 259/2021 filed by Shyam Sel & Power Limited, filed Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") r/w 11 of National Company Law Tribunal Rules, 2016 ("Rules") against the Resolution Professional (RP) to condone the delay of 20 days in submitting the Claim Form and also direct the RP to consider the Claim Form filed by the Applicant on 07.12.2020.

IA 206/2021

2. The Applicant states that the Corporate Debtor has a substantial amount outstanding due and payable to the Applicant. The Corporate Debtor had approached the Applicant for placing an Inter Corporate Deposit for a sum of Rs. 3,00,00,000/- (Rupees Three Crores Only) carrying interest @ of 16% p.a. amounting to Rs. 32,35,068/- (Rupees Thirty-Two Lakhs Thirty Five Thousand Sixty Eight Only). The Applicant agreed to provide the said deposit for a period of

183 days and advanced it on 28.07.2016 by way of RTGS to the Corporate Debtor.

3. After receiving the said deposit, the Corporate Debtor issued a receipt dated 28.07.2016 and also executed and issued a Demand promissory Note and a letter dated 28.07.2016. The said Inter Corporate Deposit was renewed from time to time and was last renewed on 03.10.2017 for a period up to 31.12.2017. the Corporate Debtor had also paid interest amount against the said Inter Corporate Deposit up to the period 02.10.2017.

4. The Corporate Debtor in discharge of its liability and debt, had forwarded several cheques dated 01.01.2018 drawn on State Bank of India towards repayment of the said Inter Corporate Deposit and the interest for the period 03.10.2017 to 31.12.2017. However, the said cheques were dishonoured for insufficiency of funds. Thereafter, the Applicant made several requests to the Corporate Debtor for making payment of the said outstanding dues but despite repeated assurances, the Corporate Debtor failed and neglected to make the payment.

5. The Applicant on coming to know that the Corporate Debtor has been admitted to undergo "CIRP" it had contacted to the legal advisor. The Applicant prepared and finalized claim form dated 07.12.2020 along with the relevant documents and submitted the claim form to the Resolution Professional on 07.12.2020 by speed post as well as through email.

6. The Applicant sent a reminder email to the RP on 17.12.2020 to ascertain the status of the claim form submitted by the Applicant. The Applicant contacted the RP over phone and enquired about the claim form but the RP informed the Applicant that their claim could not be possessed because of time lapsed.

7. The Applicant further states that the Applicant Company is based in Kolkata and were unaware of the CIRP against the Corporate Debtor until November, 2020. Thereafter, the Applicant came across a notification issued by the RP on 11.11.2020 wherein the RP had requested the Creditors to submit their claim by 17.11.2020. Immediately on coming to the knowledge and attention of the Applicant, the claim form was submitted to the RP.

8. The Applicant further states that there is an inadvertent and unintentional delay in submitting the claim form before the RP by a period of 20 days. Therefore, the Applicant prays that delay in submitting the claim form be condoned.

IA 259/2021

9. The Applicant states that the Corporate Debtor has a substantial amount outstanding due and payable to the Applicant. The Corporate Debtor had approached the Applicant for placing an Inter Corporate Deposit for a sum of Rs. 2,00,00,000/- (Rupees Two Crores Only) carrying interest @ of 16% p.a. amounting to Rs. 18,25,314/- (Rupees Eighteen Lakhs Twenty-Five Thousand

Three Hundred Fourteen Only). The Applicant agreed to provide the said deposit for a period of 182 days and advanced it on 08.02.2016 by way of RTGS to the Corporate Debtor.

10. After receiving the said deposit, the Corporate Debtor issued a receipt dated 08.02.2016 and also executed and issued a Demand promissory Note and a letter dated 08.02.2016. The said Inter Corporate Deposit was renewed from time to time and was last renewed on 03.10.2017 for a period up to 31.12.2017. the Corporate Debtor had also paid interest amount against the said Inter Corporate Deposit up to the period 02.10.2017.

11. The Corporate Debtor in discharge of its liability and debt, had forwarded several cheques dated 01.01.2018 drawn on State Bank of India towards repayment of the said Inter Corporate Deposit and the interest for the period 03.10.2017 to 31.12.2017. However, the said cheques were dishonoured for insufficiency of funds. Thereafter, the Applicant made several requests to the Corporate Debtor for making payment of the said outstanding dues but despite repeated assurances, the Corporate Debtor failed and neglected to make the payment.

12. The Applicant on coming to know that the Corporate Debtor has been admitted to undergo "CIRP" it had contacted to the legal advisor. The Applicant prepared and finalized claim form dated 07.12.2020 along with the relevant documents and submitted the claim form to the Resolution Professional on 07.12.2020 by speed post as well as through email.

13. The Applicant sent a reminder email to the RP on 17.12.2020 to ascertain the status of the claim form submitted by the Applicant. The Applicant contacted the RP over phone and enquired about the claim form but the RP informed the Applicant that their claim could not be possessed because of time lapsed.

14. The Applicant further states that the Applicant Company is based in Kolkata and were unaware of the CIRP against the Corporate Debtor until November, 2020. Thereafter, the Applicant came across a notification issued by the RP on 11.11.2020 wherein the RP had requested the Creditors to submit their claim by 17.11.2020. Immediately on coming to the knowledge and attention of the Applicant, the claim form was submitted to the RP.

15. The Applicant further states that there is an inadvertent and unintentional delay in submitting the claim form before the RP by a period of 20 days. Therefore, the Applicant prays that delay in submitting the claim form be condoned.

16. Further the Applicant states that the Respondent in its Affidavit in reply, admitted that if this Tribunal is inclined to allow the present Applications, the Tribunal should allow the Respondent to verify the Claim Form as submitted by the Applicant. The Respondent further submits that despite this the Respondent proceeded with the Application for approval of the Resolution Plan and has failed

to bring to the knowledge of the Tribunal about the pendency of the present Applications.

17. Further the Applicant has expressed the Respondents dishonest and mala fide conduct in dealing with the claims of the Applicant. The conduct of the Respondent has effectively rendered the Applicant remediless.

18. The Resolution Professional has filed its reply dated 23.03.2021 and has set out their defence as under.

19. The Respondent states that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated on 06.06.2018. Subsequently, on 08.08.2019, consolidation of CIRP of the 13 Videocon Group entities including the Corporate Debtor. The Respondent states that he was appointed as the RP on 25.09.2019 and took over the charge of the Corporate Debtor Company since 27.09.2019.

20. The Respondent submits that the Claim form was dispatched by the Applicant on 07.12.2020 by Speed post and through email and was received by the Respondent. The Respondent submits that post the initiation of the CIRP, claims were invited by the Interim Resolution Professional (IRP) Mr. Anuj Jain by way of public announcement. The said public announcement called upon the creditors to file their claim with the IRP on 21.06.2018.

21. Thereafter, after the consolidation of the CIRP of the 13 group companies of the Corporate Debtor and vide the said Order one Mr. Mahender Khandelwal was appointed as the RP. However, in the first CoC meeting on 16.09.2019 replaced Mr. Mahender Khandelwal as RP and appointed the Respondent herein as the RP. On appointment of the new RP, a notice was published about the appointment of the new RP with its contact details, email id, residential address including for submissions of claims was also published.

22. The Respondent submits that from the time of the initiation of the CIRP and also after the commencement of voting by the CoC on the Plan, the Applicant failed to file its claim. The Applicant filed its claim on 07.12.2020 which is one week prior to filing of the Application for approval of the Resolution Plan. The Resolution Plan was placed before the CoC on 11.11.2020 for voting which commenced on 14.11.2020. The Respondent submitted that it would be difficult to complete the CIRP if the Respondent entertained to admit the claim even when the voting on the Plan was at the stage of conclusion.

23. The Respondent further submits that when the claim form was filed by the Applicant, the CIRP was at an advance stage. The Application for approval of the plan was filed on 15.12.2020 after the conclusion of voting on the Resolution Plan on 11.12.2020.

FINDINGS

24. Having considered the submissions of the counsel appearing for the Applicant

and the Respondent and on perusal of the records placed before this Tribunal, we have noticed that the CIRP is going on since 06.06.2018. Post CIRP, claims were invited by the erstwhile IRP, Mr. Anuj Jain by way of an public announcement on 09.06.2018 submitted that the last date for submission of the claim was sated 21.06.2018.

25. Thereafter, the Respondent was appointed as the RP on 25.09.2019. Further the Respondent issued notification requesting the creditors to submit their claims latest by 17.11.2020. It is further noted that one of the Resolution Plan was selected by the Committee of Creditors (CoC) with majority vote on 14.11.2020 and an IA No. 196 of 2021 was filed by the Respondent before this Tribunal on 15.12.2020 seeking approval of the Plan.

26. It is noted that from the time of initiation till the voting of the CoC on the Resolution Plan, the Applicant failed to file its claim and filed its claim on 07.12.2020 one week prior to filing of the approval of the Resolution Plan.

27. Further the Applicant has established that the Applicant had provided the Inter Corporate Deposit to the Corporate Debtor and a substantial amount is outstanding from the Corporate Debtor.

28. The Applicant has produced on record the receipts issued by the Corporate Debtor in IA 259/2021 dated 08.02.2016 thereby acknowledging Rs. 2,00,00,000/- and also in IA 206/2021 issued receipt dated 28.07.2016 thereby acknowledging Rs. 3,00,00,000/-.

29. Hon'ble NCLAT in "Company Appeal (AT) (Ins.) No. 503 of 2021" filed by Bank of Maharashtra against the Corporate Debtor passed an Order on 19.07.2021 in which has stayed the Impugned Order passed by this Tribunal on 08.06.2021 in IA No. 196/2021 which reads as follows :-

"14 Considering the observations of the Adjudicating Authority and the submissions made by the Learned Sr. Counsel for Appellants in both these Appeals and the grounds raised in these Appeals and considering the exceptional facts of present matter the Impugned Order is stayed till the next date and status quo ante as before passing of the Impugned Order is directed to be maintained. Resolution Professional will continue to manage the Corporate Debtors as per provisions of IBC till the next date".

30. In view of the above Order of NCLAT and in the interest of justice, the delay if any, in filing the claim is condoned and the Resolution Professional is directed to verify the claim of the Applicant in terms of Section 53 of the Code. With the above directions and observations, prayer (a) in the Application 206/2021 & Prayer (a) in IA 259/2021 is allowed. In view of the above nothing survives in prayer b, c and d. Hence, this Bench is not inclined to allow prayer b, c and d.

31. Hence, IA 206/2021 and IA 259/2021 are partly allowed and accordingly the IA 206/2021 and IA 259/2021 are disposed of. Ordered Accordingly. File to be consigned to records.