
(2020) 02 NCLT CK 0161

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : (IB) No. 190(PB) Of 2017, Company Application No. 2184, 2185, 2497 Of 2019

Union Bank Of India

APPELLANT

Vs

Era Infra Engineering Limited

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 3(6), 29
Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2020) 02 NCLT CK 0161

Hon'ble Judges : B.S.V. Prakash Kumar, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : A.K. Singh, Adarsh Tripathi, Anish Gupta, Nikhil Knandpal, Ankur Singhi, Konark Rishi Bhatnagar, Nitin Kaushik, Shashank, Zoheb Hossain, Agni Sen, Agarwal, Abhishek Anand, Mohak Sharma, Manushaw Anand, Manneet Singh, Abhilash Khanna, R.P. Vats, Manas Shukla, Arijit Mazumdar, Shambo Nandy, K. Datta, Rahul Gupta, Udita Singh, Anjali Sharma, Raju Chokrobarty, Nitin Pandey, Sunil Malhotra, Vivek Kumar, Uday Arora, Chitranshul A. Sinha, Sonali Khanna, Anshuman Mohit Chaturvedi, Vivek Kumar Karm, Ritin Rai, Aditi Mittal, Aditya Narayan Mahajan

Final Decision : Dismissed

Judgement

B.S.V. Prakash Kumar, J

CA-255(PB)/2019, CA-199(PB)/2019, CA-389(PB)/2019, CA-390(PB)/2019 & CA-391(PB)/2019

1. There are five applications (CA-255(PB)/2019, CA-199(PB)/2019, CA-389(PB)/2019, CA-390(PB)/2019 & CA-391(PB)/2019) filed by various PSUs seeking reliefs.

2. CA-255(PB)/2019 filed by NTPC Ltd. (Simhadri Project) filed by asking

following reliefs:-

- a. Allow the present application and set aside the list of creditors prepared and published by the IRP which has been displayed on the website of the corporate debtor so far as it relates to the rejection of claim of the Applicant; and/or
- b. Direct the Insolvency Resolution Professional/resolution Professional/Liquidator accept the claims of the applicant as an Operational Creditor and include the same in the list of approved claims;
- c. Call for the entire records of the IRP maintained with respect to the present petition;
- d. Pass any other such order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

3. CA-199(PB)/2019 filed by NTPC Ltd. (Formally Known as National Thermal Power Corporation Ltd.) filed by asking following reliefs:-

- a. Direct the Respondent Interim Resolution Professional to accept the entirety of claims filed by the Applicant, specifically the dues arising from the contractual obligations between the applicant and corporate debtor, and/or;
- b. Pass any other order(s) or direction as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

4. CA-389(PB)/2019 filed by NTPC Ltd. (Sipat project.) filed by asking following reliefs:-

- a. Allow the present application and set aside the list of creditors prepared and published by the IRP which has been displayed on the website of the corporate debtor so far as it relates to the rejection of claim of the Applicant; and/or;
- b. Direct the Insolvency Resolution professional/Resolution Professional/Liquidator to accept the claims of the applicant as an Operational Creditor and include the same in the list of approved claims;
- c. Call for the entire records of the IRP maintained with respect to the present petition;
- d. Pass any other such order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

5. CA-390(PB)/2019 filed by Aravali Power Company Pvt. Ltd. filed by asking following reliefs:-

- a. Allow the present application and set aside the list of creditors prepared and published by the IRP which has been displayed on the website of the corporate debtor so far as it relates to the rejection of Claim of the Applicant; and/or;
- b. Direct the Insolvency Resolution Professional/Resolution Professional/Liquidator to accept the Claim of the applicant as an Operational Creditor and

include the same in the list of approved claims;

c. Call for the entire records of the IRP maintained with respect to the present petition;

d. Pass any other such order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

6. CA-391(PB)/2019 filed by NTPC Ltd. (Ramagundam Project) filed by asking following reliefs:-

a. Allow the present application and set aside the list of creditors prepared and published by the IRP which has been displayed on the website of the corporate debtor so far as it relates to the rejection of claim of the Applicant; and/or;

b. Direct the Insolvency Resolution Professional/Resolution Professional/Liquidator to accept the claims of the applicant as an Operational Creditor and include the same in the list of approved claims;

c. Call for the entire records of the IRP maintained with respect to the present petition;

d. Pass any other such order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

7. On perusal of these applications, since we are of the view that factual aspects of these applications as well as the legal point being the same, this common order has been passed.

8. The claims of these applicants are that since this corporate debtor failed to complete the projects as mentioned in respective agreements, these applicants sought for damages owing to the delay and also owing to failure to complete the projects as set out in these agreements therefore these claimants shall be awarded damages, in view thereof, the claimants made their respective calculations, initiated arbitration proceedings before the arbitrator.

9. In this background, we are unable to understand that how this Bench could get into the issue pending before a valid forum for pronouncement of final orders. With respect to CA-390(PB)/2019 (Aravali Power Company Pvt. Ltd.), award has been passed but whereas Section 34 of Arbitration and Conciliation Act proceedings have been pending before Hon'ble Delhi High Court.

10. As to factual aspect is concerned, the RP initially admitted all these claims, at a later point of time, these claims have been revised saying that they are not admissible claims against the corporate debtor for the reason dispute pending before the Arbitrator.

11. As against this factual aspect, the applicant's counsel submits that since the claim has been defined as right to remedy for breach of contract under any law for the time being in force and such breach gives rise to right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured,

disputed, undisputed, secured or unsecured. On reading the clause u/s 3(6) of the Code, the right to payment as to damages will arise only after determination of such loss or damages. If such loss or damage has not been determined in the agreement itself or by any Court of law, right to payment will not arise because it is not been determined whether payable or not, and if payable, quantum has not been determined, in this case arbitration proceedings have not to logical end determining the quantum and payability.

12. Perhaps, for the above reason, the RP has rightly decided with regard to the claims of the applicants for the reason they are not admissible at that juncture.

13. The counsel further taken us to the definition of operational debt to say operational debt means:- "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

14. On analysis of this definition, it appears that operational debt arises with regard to provision of goods and services, a debt will arise on an obligation to pay money by the Corporate Debtor to a creditor. In the present factual scenario, payment will arise only after determination as to whether losses or damage occur to the applicants or not, unless the point is decided it cannot be called as operational debt. However while I am dictating this order, my Learned brother, Technical Member has raised a valid point saying RP can only collate claims but cannot determine the losses or damages. It is a valid point therefore, I conquer with the point supplemented by my colleague.

15. Moreover, since the applicant counsel have taken to me to explanation to Section 29 of the Code, saying at the time of preparing information memorandum, the Resolution shall disclose even the information relating to the disputes with the Corporate Debtor, this disputed claim shall also to be specified in the Information Memorandum.

16. At present, since it is not the case of these applicants that this information has not been disclosed in the information memorandum prepared by the Resolution Professional, we are of the view that this point is not for a decision before this Bench. However, we are of the view that the Resolution Professional takes this point into consideration at the time of preparing information memorandum reflecting all these disputes with particulars in the information memorandum.

17. In view thereof, there being no merit in the applications moved by these applicants, these applications are hereby dismissed with liberty in accordance with law.

CA-947(PB)/2020, CA-948(PB)/2020, CA-950(PB)/2020, CA-951(PB)/2020 & CA-964(PB)/2020

List on 03.03.2020.