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(2022) 05 NCLT CK 0059

In the National Company Law Tribunal

Case No : CA No.568/2019, IA No.548/2020, 550/2020 & 194/2022 in CP (IB) No.391/Chd/Pb/2018

Vikram Jain APPELLANT

Vs

Sumat Gupta RP Vallabh Textile Company Limited RESPONDENT

Date of Decision : 24-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14(2), 14(2)(A), 60(5)
Companies Act, 2013 — Section 185, 197, 197(3)
Companies Act, 1956 — Section 295, 297, 372A
Insolvency and Bankruptcy Of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 — Regulation 12(2), 27(2)

Citation : (2022) 05 NCLT CK 0059

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

Bench : Division Bench

Advocate : Manmeet Singh, Amandeep Singh Talwar, Nishtha Chaturvedi, Munisha Gandhi, Vaibhav Sharma, Chetan Mittal, Alok Kumar Jain, Nahush Jain, Dr. Rajansh Thukral, Dr. Surekha Thukral

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. All these applications bearing CA No.568/2019, IA No.548/2020, 550/2020 and 194/2022 have been taken up together for discussion as these have been filed in the same CP (IB) No.391/Chd/Pb/2018. It is pertinent to mention here that the resolution plan in this case filed by application bearing IA No.458/2020 has been rejected and the matter is referred back to the Committee of Creditors (CoC).

1. CA No.568/2019

The present application has been originally filed by Vardhman Industries Limited through its Resolution Professional, Mr. Ashok K. Gulla against Mr. Sumat Kumar

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Gupta, Resolution Professional of Vallabh Textiles Company Limited, under Section 60(5) of the IBC, 2016. Subsequently, under the direction of this Bench vide order dated 02.02.2022, an amended memo of parties was filed by Diary No.00823/2 dated 02.03.2022 by way of affidavit and the present application is now by Vardhman Industries Limited through Mr. Rajiv Negandhi, Authorised Signatory against Mr. Sumat Kumar Gupta, Resolution Professional of Vallabh Textiles Company Limited.

2. In the present application, the applicant prays to direct the Resolution Professional to admit the claim of the applicant submitted on 26.04.2019 as a financial debt owed by the corporate debtor to Vardhman Industries; In the alternative, to direct the Resolution Professional to accept and verify the claim of the applicant submitted on 24.05.2019; to direct the Resolution Professional to include the name of Vardhman Industries in the list of financial creditors of the corporate debtor; to direct the Resolution Professional to re-constitute the Committee of Creditors of the corporate debtor with the applicant as a member thereof, and to pass ad interim ex-parte directions in terms of the above prayers.

3. In the present application, it has been stated that the applicant filed a claim of Rs.10,77,47,444/- (Rupees Ten Crores Seventy Seven Lakhs Forty Seven thousand Four Hundred Forty Four only) within a timeline prescribed in the public announcement in Form C. Shortly after certain additional details were requisitioned by the RP on 01.05.2019 and as the same was rejected by the RP through his e-mail dated 02.05.2019 on the ground that (a) the claim was filed with an old authorization letter; (b) the claim should be filed by the RP of Vardhman Industries on account of its own ongoing CIR Process; and (c) the account statement provided was allegedly not enough to authenticate the amount claimed. Subsequently, the applicant submitted a new Form C dated 20.05.2019 along with supporting documents duly signed by Mr. Anil Surya, as sought by the RP. This Form C was submitted well within the 90 days period under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ("CIRP Regulations''). Subsequently, on 04.06.2019, the RP emailed Mr. Anil Surya stating that information was sought via email on 01.05.2019 and as the same was not provided, the RP was rejecting the claim a day later on 02.05.2019. The Resolution Professional also referred to Regulation 12(2) of the CIRP Regulations and admitted that the claim of the applicant was filed within the prescribed time period and subsequently rejected and that no belated claim may be filed. Subsequently, the applicant sent another e-mail on 05.06.2019 duly providing a detailed explanation as to how the claim was arbitrarily rejected. The applicant had submitted that its claims are borne out and evident by the audited accounts of the corporate debtor and also the audited accounts of Vardhman Industries Limited. It is also submitted that such accounts of Vardhman Industries Limited were prepared much before the applicant took over the management as the RP and when Vardhman Industries Limited was under the common management with the corporate debtor. It is further pointed out that the applicant had requested the RP on 27.12.2017 to confirm the

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balance amount as on 16.11.2017, a date prior to the CIR Process of the Corporate Debtor between Vardhman Industries Limited and the corporate debtor, and in response, a handwritten confirmation showing a credit amount of Rs.10,79,90,954/- confirming outstanding balance had been handed over. A copy of the said letter dated 27.12.2017 and subsequent confirmation has been attached to this application as Annexure A-7. It is, thus, stated that the RP has most unreasonably rejected the claim of the applicant within 24 hours of the receipt of the same especially when it is filed within time. It is also stated that Vardhman Industries Limited is a financial creditor of the corporate debtor. It is asserted that a review of the books of accounts of Vardhman Industries Limited evidences that the relationship between Vardhman Industries Limited and the Corporate Debtor is unequivocally financial in nature. This is especially when the balance of financial transactions between Vardhman Industries Limited and the corporate debtor is Rs.10,69,75,000/- in the previous 12 years since 2007 while the balance of operational transactions between Vardhman Industries Limited and the corporate debtor is significantly lesser at Rs.7,66,570/-. A copy of the financial statement of Vardhman Industries Limited and a financial statement of the corporate debtor are annexed to the application as Annexures A-8 and A-9. It is prayed that the RP be directed to accept and verify the claim of the applicant submitted on 24.05.2019 and also to include the name of the Vardhman Industries Limited in the list of financial creditors of the corporate debtor.

4. In the reply filed by the respondent vide Diary No.5544 dated 14.10.2019, it is stated that the entire transactions between the parties are to be properly bifurcated into the transactions on account of supply of goods and services and transactions on account of loans and the applicant is also required to demonstrate as to how the consideration of time value of money is satisfied with respect to alleged financial transactions of loan. The respondent has claimed that the transactions are not properly verified and has also pointed out that even at the face value there are glaring discrepancies between the closing balance as on 31.03.2009 and the opening balance as on 01.04.2009 amounting to almost Rs.6 Crores. It is also stated that the applicant is required to demonstrate how the provisions of Section 295 of the Companies Act, 1956 or Section 185 of the Companies Act, 2013 are satisfied with respect to giving of loans to related parties. The respondent further averred that the applicant has not supplied information with respect to transactions recorded in the statement of account since 2007 and there are no supporting vouchers and documents with respect to such transactions. It is also stated that the applicant failed to satisfy the RP with respect to compliance of the provisions with respect to Section 297 and 295 of the Companies Act, 1956 and the corresponding provisions of the Companies Act, 2013.

5. In the rejoinder filed by Diary No.5880 dated 29.10.2019, the applicant has further averred that in the teeth of the decision of the Hon’ble Supreme Court of India in the judgement of Swiss Ribbons Private Limited and Anr. Vs. Union of India and Ors. in Writ Petition (Civil) No.99 of 2018, the Resolution Professional

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has no adjudicatory powers insofar as claims of creditors are concerned in CIRP.

6. It is also stated that the respondent has never before taken the defence of time value of money or for that matter that of the contraventions of the provisions of Section 295 and 297 of the Companies Act, 1956 and Section 185 of the Companies Act, 2013. The applicant has also submitted in para 18 of its rejoinder, a reconciliation of the opening and closing balance of the corporate debtor in the books of Vardhman Industries Limited as on 31.03.2009 and 01.04.2009 and further stated that the said dues stand duly reconciled in view of this reconciliation account.

7. In the written submissions filed by the respondent by Diary No.00823/4 dated 07.02.2022, the additional factors mentioned is that the claim could not be admitted in view of the nature of the claim being operational debt and not financial. It is also submitted that once the RP had decided not to admit the claim on 02.05.2019, he was advised that he could not review his own order. It is also stated that the claims are over-exaggerated and were not verifiable. The provisions of Section 297 of the Companies Act, 1956 has been invoked to underline that no transaction of sale or purchase could be carried out without the approval of the Central Government. Even for inter-corporate loans compliance with Section 372A of the Companies Act, 1956 was required. Reliance has been placed on the decision of the Hon'ble NCLAT in Earth Gracia Buildcon Pvt. Ltd. Versus Earth Infrastructure Ltd. In Company Appeal (AT) (Ins.) No.351 of 2020 dated 08.06.2021 where the grounds for identifying a sham transaction while admitting a financial claim have been laid down.

8. Further, the applicant in its written submissions filed by Diary No.00823/5 dated 02.03.2022 has made the following statements in addition to its earlier averments:

(a) The RP's rejection of the claim in one day is untenable and subsequent rejection of the claim filed within 90 days as per Regulation 12(2) of the CIRP Regulations by email dated 04.06.2009 goes against the provisions of the Code and the Regulations made therein;

(b) The RP cannot add grounds not taken while rejecting the claim in its email dated 02.05.2019 and 04.06.2019 for the first time in its reply to the caption proceedings. In rejecting the claim, the RP has exercised adjudicated powers that are not given to him under the Code.

9. We have heard the learned counsel for the applicant and respondent and perused the records carefully.

10. In the present case, the issue that falls for our consideration is whether the claims of the applicant have been properly verified before the rejection of the same by the Resolution Professional. To reiterate, the applicant has submitted the relevant copies of the audited accounts of Vardhman Industries Limited (Applicant) in respect of Vallabh Textiles Company Limited (Respondent). We

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have closely perused the financial statements annexed as Annexure A-8 and A-9 with the application. From the correspondence between the parties, it is clear that no serious effort was made by the Resolution Professional to classify the debts into financial and operational debts of the applicant. There is no denying the fact that the Resolution Professional needs documents and supporting evidence to decide on the nature of a claim for the purpose of admission of the same. The documents brought on record have not shown any kind of non-compliance by the applicant to any query raised by the Resolution Professional in this regard.

11. The very fact that prior to the CIRP both the applicant and the respondent were under the same management would have ensured a better appreciation of the facts presented by the applicant relating to its claim. In the course of the present proceedings, the Resolution Professional could not justify the rejection of the detailed claim made by the applicant and also his inability to classify the same into operational and financial debts. The Resolution Professionals' statements that after receiving details of the claim he could not change his earlier decision to reject the same on the ground that he was advised not to review his original rejection is against the tenets of equity. To sum up, this rejection of the claim of the applicant could not be justified by the Resolution Professional during the present proceedings. The reliance placed on the decision of the Hon’ble NCLAT in the case of Earth Gracia Buildcon Pvt. Ltd. Versus Earth Infrastructure Ltd. in Company Appeal (AT) (Ins.) No.351 of 2020 dated 08.06.2021 also does not come to the rescue of the respondent as in Para 23 of the said order, the Hon’ble NCLAT has laid down detailed grounds for holding a given transaction as a sham. In the present case, we note that no fact relating to any such ground has been brought on record by the respondent to disprove the genuineness of the claims made by the applicant.

12. In the result of the aforementioned discussion, this Bench is of the view that the Resolution Professional has failed in his duty to analyze the evidence placed before him regarding the nature of transactions of the applicant reflected in the books of the corporate debtor and present the complete facts regarding the admissibility of the claims made by the applicant before the CoC. The Resolution Professional in the present case was duty-bound to verify these transactions and put the same before the CoC with the complete factual and legal position rather than reject it summarily. In view of the foregoing, this Bench directs the Resolution Professional to reconsider the claims made by the applicant with reference to the evidence already before him. He may call for additional evidence if required and decide in the light of the discussions in the foregoing paragraphs. Based on the evidence before him, he is directed to also evaluate the claim of the applicant to be classified as a financial creditor and to reconstitute the COC with the applicant as a member. With the above said observations, CA No.568/2019 is allowed and disposed of accordingly.

2. IA No.548/2020

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This is an application filed by Vikram Jain, Lata Jain, Dr. Zarqa Jain and Anil Goyal, against Mr. Sumat Kumar Gupta, Resolution Professional of Vallabh Textiles Company Limited, under Section 60(5) of the IBC, 2016.

2. In the present application, the applicants seek inter alia to issue a direction to the respondent-Resolution Professional to forthwith release the salaries of Applicant Nos.1-2 for the period from August 2019 till date in the case of Applicant No.1, and July 2019 till date in the case of Applicant No.2; and also to release the dues of the Applicant Nos.1-4 as filed in respective Form – Ds; or at least makes a provision for the dues payable to the Applicant Nos.1-4, based upon the claims filed in the person with the Resolution Professional during June 2019 itself.

3. In the present application, it is stated that the CIRP in the present case commenced from April 2019 and the Committee of Creditors (CoC) had resolved to keep the company a running concern. It is stated that the CoC had fixed the salary of Mr. Vikram Jain, Suspended Managing Director and Mrs. Lata Jain, employee of the company, at Rs.1,00,000/- (Rupees One Lakh Only) per month each and did not approve the salary payable to Mrs. Zarqa Jain. It is further stated that consequent to directions issued by the CoC in its meeting dated 21.05.2019, applicant No.1 was paid the monthly salary determined by the CoC until August 2019, whereas applicant No.2 was paid her salary until June 2019. Applicant No.4 worked for a period of two months after initiation of the CIRP as per the directions of the RP, i.e. until 31.05.2019 but was only paid his salary till March 2019. It is also stated that the claim forms in response to the advertisement issued for various dues towards pending salaries, gratuity etc. were handed over to the Resolution Professional (RP) but subsequently the RP took a stand that the claim was never furnished before him. The RP had also proceeded to state that on merits also these claims cannot be entertained. In this application, the applicant has tried to make out a case of serious bias by the RP towards the applicants by citing several instances which allegedly took place after the RP took over. It is also alleged that the RP has misled the CoC on the issue of payment of salary etc. to applicants and has ignored the direction of the CoC to pay salary and other dues to the applicants. The RP is also accused of changing his earlier stand and informing the applicant No.1 on 08.07.2020 that his services were retained only upto August 2019, despite the fact that the applicant had worked tirelessly for the company much after the said period.

4. In its reply filed by Diary No.01460/01 dated 25.01.2021, the respondent has stated that the claim of salary has not been granted because applicant No.1 left the service of the company w.e.f. 31.03.2019 and that the RP used his good offices to obtain the permission of the CoC to make a consolidated payment of Rs.1 Lakh but this should not be wrongly projected by the applicant as a mandate of the CoC. It is further stated that the payment of salary of an employee and not his recruitment as an employee is within the competence of CoC. There was no provision for any payment of gratuity or leave with wages in

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the appointment order. It is pointed out that the applicant has also failed to produce any letter/document to prove the contrary. The RP has terminated the services of applicant No.1 and the same has not been challenged in any forum. It is also stated that applicant No.1 has not rendered any service to the company after termination of the services and hence, is not entitled to any remuneration. As regards, applicant No.2, it is stated that admittedly she has received salary upto 30th June 2019, though she ceased to be an employee of the company w.e.f. 31.03.2019. Her services were secured by the RP, who obtained the permission of the CoC in this regard, and the respondent states that the RP is the final authority to decide whether to retain or not to retain applicant No.2. A case of non-attendance of office and unacceptable behaviour on the part of applicant No.2 has also been made out by the respondent. It is also pointed out that this termination by the RP was not set aside by CoC and the RP has already clarified to the CoC that salaries will be released to her only if any specific directions are issued. As regards applicant No.3, it is stated that he left the services of the company on 31.03.2019 prior to the commencement of the CIRP on 12.04.2019. It is further submitted that Applicant No.4 resigned from the services of the company w.e.f. 31.05.2019 without serving three months' mandatory notice in accordance with the terms and conditions of employment. A copy of the resignation dated 24.07.2019 sent by e-mail dated 08.08.2019 submitted by applicant No.4 is attached as Annexure R-3 to the Respondent’s reply.

4.1 The respondent has further stated that Form D alleged to have been submitted by applicant No.1 is not maintainable and not liable to be admitted in view of the provisions of Section 197 of the Companies Act, 2013. As there are no profits in the company and no remuneration is liable to be paid. In view of the financial position of the corporate debtor, the payment of remuneration was conditional and hence such a claim cannot be admitted. Similarly, the company has created no fund for payment of gratuity or payment of leave with wages. Moreover, there is no record of unavailed leaves. In the absence of any specific earmarked fund for such payment, no such claim can be entertained. Regarding Applicants No.2 and 3, it is stated that no claim for leave with wages or payment gratuity or such dues can be considered because of the lack of availability of funds and also the absence of any rule or bye-laws of the corporate debtor for such payment. The dues of applicant No.4 has also been denied, and the liability to pay the dues for the applicant No.4 has also been denied for similar reasons along with the additional fact that the corporate debtor has to recover amounts from applicant No.4 because he had not given three months notice before leaving. The respondents have made several allegations regarding the conduct of these applicants while they were at the helm of affairs of the corporate debtor, levelling charges ranging from siphoning of funds to misusing the assets of the company and worse.

5. In the written submissions filed by Diary No.01460/5 dated 22.02.2022 by the applicant, the following issues have been highlighted in addition to the facts already stated in the pleadings: (i) The RP has failed to attach even a single

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document to show that he has informed the CoC that the services of applicant Nos.1 and 2 had been terminated despite the mandate of the CoC issued in the second meeting, even though he was bound by the mandate issued by the CoC on this issue in its second meeting. It is also stated that the stand of the RP that the dues on account of salary are hit by Section 197 of the Companies Act, 2013 has not been taken earlier and that the status of the Applicant No.1 and 2 was that of an employee of the corporate debtor and not that of managerial personnel. It is also stated that Section 197 of the Companies Act, 2013 does not bar payment of salary to managerial personnel even in a loss-making company subject to the condition that the permission of the financial institutions where the default has occurred and the permission of the shareholders have to be obtained. Various alleged factual discrepancies regarding the claim of salary during particular months were highlighted by the applicants. It is also stated that a judgment of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.1229 of 2019, cited by the respondent to argue that no gratuity is payable unless there is a specific gratuity fund has been completely misread as the said case relates to a situation where liquidation of the corporate debtor had been ordered whereas in the present case, a resolution plan has been approved by the CoC and does not require any payment to be made from the liquidation asset but only requires that such dues are to be accounted for in the resolution plan.

6. In the written submissions filed vide Diary No.01460/6 dated 22.02.2022 by the respondents, it has been strenuously argued that a number of documents like the claim form of all the applicants, letter of termination dated 17.05.2019 and various other documents produced before this Adjudicating Authority have been fabricated by the applicants. It is also stated that though the termination of the Applicant No.1 has been alleged to be wrong the same has been never challenged in any forum. The respondent has also repeated its earlier assertions that the payment of salary to the Applicant No.1 is hit by the provisions of Section 197(3) of the Companies Act, 2013. It is also pointed out that the applicant has wrongly levelled allegations against the appointment of the independent Chartered Accountant to certify the cash flow for the CIRP period and a copy of the order dated 13.03.2020 of IBBI relating to disciplinary proceedings of Mr. Arun Kumar Gupta, Insolvency Professional has been attached to underline the contention that the RP should not compromise his independence and seek approval of CoC for appointment of forensic Auditor and thereby abdicating his authority in favour of the CoC.

7. We have heard the learned counsel for the applicants as well as the respondent and perused the records carefully.

8. Before coming to the merits of the case, it is noted that there are claims and counter-claims regarding the genuineness of the documents submitted before this Bench especially those relating to the terms and duration of employment and resignation of the applicants. In this context, it is made clear that this Bench does not provide the forum for deciding on the genuineness of the documents

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placed in the course of the proceedings.

9. Here, it is worthwhile to refer to the Judgment of Hon'ble NCLAT in the matter of M/s. Global Infonet Distribution Pvt. Ltd. Vs. M/s. Tespa Infotech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 185 of 2019, dated 08.08.2019, wherein the following is observed: "4. Learned Counsel for the Appellant submits that the records which were submitted by the Respondent before the Adjudicating Authority were fictitious. Therefore, such a document could not have been relied upon to come to a conclusion that there is no debt payable. However, such dispute could not have been decided by the Adjudicating Authority nor can be decided by this Appellate Tribunal as to whether the documents were fictitious or are of the earlier period which could be decided only by the forum of competent jurisdiction…"

10. It is further observed that in CIRP proceedings, under the provisions of Regulation 27(2) of the Insolvency Resolution Process for Corporate Persons Regulation 2016, the Resolution Professional may appoint any professional, in addition to registered valuers under sub-regulation (1) to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor. Once the terms and conditions of the employment are decided by the Resolution Professional, the amounts due to the Professional are then calculated in terms of those terms and conditions. This can also be monitored by the CoC.

11. Keeping in mind the discussion above, the Resolution Professional is directed to reconsider the claims made by the applicants regarding the payments of their salary, gratuity, and other perks strictly as per the terms and conditions laid down at the time of their employment and put up his findings before the CoC. This Bench, however, cannot decide on the claims and counter-claims made regarding the genuineness of the documents relied upon during the present proceedings and the parties may take up these issues before the Competent Judicial Authorities, if they decide to do so. It is further clarified that this Bench has expressed no view regarding the genuineness or otherwise of these documents. With the above said observation, the present IA No.548/2020 is partly allowed and accordingly stands disposed of.

3. IA No.550/2020

1. The present application is filed by Mr. Vikram Jain against Mr. Sumat Kumar Gupta, Resolution Professional of Vallabh Textiles Company Limited, under Section 60(5) of the IBC, 2016.

2. It is prayed by the applicant to issue a direction to the Respondent-Resolution Professional to not interfere in the usage Vodafone-Idea Mobile Numbers 9814311111, 9876116161, 9646711111 and 9646242424 belonging to the applicant; with a further prayer to restrain the respondent from in any manner harassing the applicant or his immediate family by moving false and frivolous

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complaints, directly or indirectly.

3. The brief facts as stated in the application are that the applicant is the Suspended Managing Director of the Corporate Debtor against which CIRP was initiated on 12.04.2019. The applicant is stated to be using the aforesaid mobile numbers under the corporate plan from the last 10 years. The applicant has subsequently requested Vodafone-Idea (the Telecom Operator of the phone number) to transfer the phone numbers under the personal plans in the name of the applicant. The operator has sought a No Objection Certificate from the company and the same was duly issued by the corporate debtor which is attached as Annexure A-5 of the application. The NOC was issued for all the six numbers and the applicant has transferred four phone numbers in the month of July 2020. It is submitted by the applicant that later on in the month of October 2020, RP has started alleging that NOC issued by the Company is fabricated by the applicant through its employees. The applicant and his family has been using the aforesaid phone numbers for decades and the same are also linked with bank accounts, Income Tax Department, online account, and such other places. The RP has never objected to the usage of such phone numbers for almost 1.5 years of the CIRP process but after the approval of the resolution plan, the RP has started alleging the wrong usage of phone numbers.

4. It is further submitted by the applicant that the RP was the consultant to the group companies of the applicant and the RP has ceased to be associated with the corporate debtor since December 2018 and the CIRP was initiated on 12.04.2019. The Resolution Professional is not acting in a good faith due to the past business relationship between the applicant and the RP. The RP is misusing his position which caused a huge loss to the company and other stakeholders. The e-mails circulated by the Punjab National Bank expressing strong opposition to the language used by the RP in the CoC meeting is also attached as Annexure A-2 of the application.

5. The Respondent has filed its reply by Diary No.01500/01 dated 28.10.2021, in which all the allegations levelled by the applicant are denied. It is stated that the respondent came to know about the transfer of the phone numbers only when the advance copy of this application was given to the respondents on 16.10.2020. The applicant in connivance with the employee has got the mobile connections transferred in the name of the applicant. The signatory authority i.e. Mr. Shiv Pankaj, Manager (IT) of the corporate debtor has left the services of the company on 28.10.2020. The Manager (IT) has also written an e-mail dated 16.01.2021, in which it is stated that he has given the NOC regarding the change of ownership of phone numbers under the pressure from the applicant, and the same is attached as Annexure R-4 of the reply.

6. We have heard the learned counsel for the applicant as well as the respondent and perused the records carefully.

7. After considering all the facts before us, the Resolution Professional is directed

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not to interfere in the usage of the above mobile numbers and allow the applicant to continue the usage of the SIM cards mentioned in his prayer in his private capacity. Accordingly, IA No.550/2020 is allowed and stands disposed of.

4. IA No.194/2022

1. This application is filed by K K Spinners Pvt. Ltd. against Mr. Sumat Kumar Gupta, Resolution Professional of Vallabh Textiles Company Limited, under Section 60(5) of the IBC, 2016.

2. In the present application, the applicant prays to direct Resolution Professional to pay the outstanding amount of Rs.51,35,294/- against the goods supplied by the applicant during CIRP period at preference; to direct Resolution Professional to pay the outstanding amount of Rs.51,35,294/-along with interest @18% p.a. till the date of payment; to direct Resolution Professional to consider the outstanding amount of Rs.51,35,294/- against the goods supplied by the applicant during CIRP, towards CIRP cost and further prayed to not to approve the resolution plan of the corporate debtor, without addressing the present issue of the applicant.

3. In the present application, it is stated by the applicant that it has been supplying yarn both prior and after the initiation of the CIRP on 12.04.2019. It is also stated that an amount of Rs.51,35,294/- is still outstanding and payable by the corporate debtor and the same forms part of CIRP cost. In support of its contention, the applicant has attached a copy of the ledger account for supply of yarn against payment of money and the supply of towel by the corporate debtor. It is also stated that the RP/Corporate Debtor had acknowledged having received all the goods and materials. It is further stated that outstanding amounts of Rs.13,63,188.20 and Rs.37,72,106.42 pertain to the supply of cotton yarn against payment of money and for getting job work done for making of towels respectively. It is further stated that these payments have been withheld by the respondent citing some vague and false reasons. The RP has cited quality issues but according to the applicant, the particular lot of yarn having quality issues has not been identified and the yarn supplied by the applicant was utilized by the respondent-RP in finished goods (towels) supplied to other customers. The applicant has also claimed interest of Rs.18% on the alleged outstanding amount of Rs.51,35,294. In this application, the applicant prayed for payment of the outstanding dues of Rs.51,35,294/- along with interest of 18% per annum.

4. In its reply filed vide Diary No.00420/01 dated 08.04.2022, the respondent has stated that the issues involved are primarily under dispute with respect to the quality of material which resulted in the non-payment of the amounts involved. The Respondent also states that this Adjudicating Authority does not have jurisdiction to entertain or try an application of this nature which is a recovery suit. It is also asserted that no amount is payable by the corporate debtor and on the contrary an amount of Rs.3,57,985/- is recoverable from the applicant. The respondent has attached copies of communication received from

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its buyers regarding the defective material supplied. It is also stated that the applicant was asked to furnish USTER test reports to prove the quality of yarn supplied by it. The same has, however, not been complied by the applicant. It is further stated that the RP does not involve himself in the day-to-day matters like this and the entire quality check and the payment schedule has been set by the respective teams of the corporate debtor. The RP has introduced appropriate control measures through the MIS process to ensure that operations are secure and every item of material is accounted for. It is also stated that all these transactions pertain to a period after the application for approval of the plan was filed on 29.06.2020 and this does not qualify for any inclusion in the resolution plan.

5. In the written submissions filed by Diary No.00420/2 dated 18/04/2022, the applicant has attached several tables showing transactions, sale of yarn and also reiterated its earlier contentions that the corporate debtor has admitted the supply of the entire quantity of yarn and the same should be included towards the CIRP cost in terms of the ratio of the decision of the Hon'ble NCLAT in the matter of MV Projects Vs. DivyaJyoti Sponge Iron Pvt. Ltd. & Ors. (NCLAT) Company Appeal (AT) (Ins.) No.156 of 2018 dated 24.04.2019. It is also reiterated that as per the provisions of Section 14(2) and Section 14(2)(A) of the IBC, it is the duty of the RP to pay for services provided to the supplier of goods and services which are essential for keeping the corporate debtor as a going concern.

6. In the written submissions filed by Diary No.00420/3 dated 18.04.2022, the respondent placed reliance on the decision of the Hon'ble NCLAT, Chennai Bench in the matter of Mr. Sumit Binani (RP of M/s KSK Mahanadi Power Company Ltd.) Vs. Mr. V. Venkatachalam, RP, M/s KSK Water Infrastructures Pvt. Ltd. & Ors. in Company Appeal (AT) (CH) (Insolvency) No.234 of 2021 wherein it is held that "..this Tribunal is not expected to function as original and Appellate Jurisdiction to decided and adjudicate upon the disputes pertaining to the contractual obligations''. It is also underlined that there are only six invoices which are under dispute in the present application. The respondent has also attached copies of various e-mails dated 14.04.2021, 15.04.2021, 16.04.2021, and on many other dates clearly pointing at, among other things, disputes on quality issues. A detailed table has also been submitted on page No.4 of the said submissions showing the net amount recovered from the applicant at Rs. 37,45,224/-.

7. We have heard the learned counsel for the applicant as well as the respondent and perused the records carefully.

8. A perusal of the facts of the present application indicates that there is a continuing dispute regarding a few transactions of supply of cotton yarn made by the applicant to the corporate debtor after the initiation of the CIRP. It is also observed that most payments regarding yarn supplies made by the applicant have been made except in the cases of the disputed transactions of supply of yarn. The reasons for the non-payment by the corporate debtor is attributed to

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the low quality of yarn supplied by the Applicant. The parties have made claims and counterclaims on the quality issue. In this context, We emphasize that this Tribunal does not provide a forum to settle commercial disputes between the parties nor can it be used as a recovery mechanism. A reference is made to the decision of the Hon'ble Supreme Court in the case of M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd Vs. M/s Girnar Fibres Ltd. (2022) ibclaw.in 26 SC, Civil Appeal No. 3033 of 2022, dated 25-Apr-22, wherein it is observed as under:

"Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant"

9. In view of the aforementioned facts and judicial decisions, this Bench is of the view that the prayers made by the applicant cannot be acceded to. The applicant, however, is at liberty to take up this dispute before the competent Judicial Authority for relief, if any. It is further clarified that this Bench does not express any opinion on the merits of the claims made by either party in this application.

10. Accordingly, IA No.194/22 stands dismissed and disposed of.

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