

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

**I.A No. 2041/2024
IN
Company Petition No. (IB) – 11/(ND)/2021**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

SKYSTEP TRADING LIMITED

.... OPERATIONAL CREDITOR

VERSUS

SANCO INDUSTRIES LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF-

CORDS CABLE INDUSTRIES LIMITED

.... APPLICANT

VERSUS

ARUNAVA SIKDAR
RESOLUTION PROFESSIONAL
SANCO INDUSTRIES LIMITED & ANR

.... RESPONDENTS

Order Pronounced on: 07.05.2024

MEMO OF PARTIES

**IA- 2041 of 2024
IN
CP(IB) No. 11/ND/2021
Order Delivered On: 07.05.2024**

Cords Cable Industries Limited

94, 1st Floor, Shambhu Dayal Bagh Marg,
Near Okhla Industrial Area,
Phase- III, Old Ishwar Nagar,
New Delhi- 110020

Applicant

Vs.

Arunava Sikdar

Resolution Professional
SANCO Industries Limited
Office at C-10 Lajpat Nagar,
Part- III, New Delhi- 110024

Respondent No. 1

Sanco Industries Limited

Corporate Debtor
D- 161, Surajmal Vihar,
Delhi- 110092

Respondent No. 2

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant: Mr. Anubhav Goel, Ms. Preeti Goel, Advs.

For the Respondent:

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on

behalf of the Applicant i.e. Cords Cable Industries Limited seeking appropriate directions for the Resolution Professional to consider and accept the claim of the Applicant.

2. The applicant in the present application has prayed for the following reliefs: -

- a) *Direct the Respondent No. 1 to admit the claim of the Applicant filed with the Respondent No. 1 in Form B on 29.12.2023 as an Operational Creditor;*
- b) *Pass any other relief that this Hon'ble Tribunal may deem fit, in the facts and circumstance of the present case.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

- i. The CIRP proceedings against the Corporate Debtor was initiated in a petition filed against Section 9 of Insolvency and Bankruptcy Code, 2016 vide order dated 29.07.2022 passed by this Adjudicating Authority in CP (IB) No. 11/ND/2021, pursuant to which the IRP was appointed. The IRP so appointed by this Adjudicating Authority was replaced by the Resolution Professional, which was approved by this Adjudicating Authority vide order dated 19.09.2022.
- ii. The present Application has been filed by the Applicant seeking appropriate directions for the Resolution Professional from this Adjudicating Authority against the email dated 05.01.2024 by the Respondent No. 1/ Resolution Professional whereby the claim of the Applicant was rejected in a callous and arbitrary manner without examining the merits of the claim of the Applicant.
- iii. The Applicant in the instant case is a public limited company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at 94, 1st Floor, Shambhu Dayal Bagh Marg, near Okhla Industrial Area Phase- III, Old Ishwar Nagar, New Delhi -110020. The Respondent no. 2 entered in sale and purchase of the various insulated wires and cables and other goods with the Applicant. Further, the Applicant and the Respondent No.2 entered into sales contract for the supply of the various goods. Pursuant to that, Applicant on various occasion raised Purchased Orders to buy various goods from the

Respondent No.2 and the Respondent No.2 in lieu of these Purchase Orders raised invoices that have been duly paid by the Applicant.

- iv. The Respondent No.2 also, on various occasions has been placing orders to buy goods from the Applicant and the Applicant in lieu of these goods purchased by the Respondent No.2 raised invoices for the same and delivered the said goods to the Respondent No.2 by way of agreed terms in the Purchase Orders. However, Respondent No.2 had made multiple defaults in the payment against the invoices raised by the Applicant for the goods sold to the Respondent No.2. Further, after factoring the above-mentioned transactions, as per the ledger of Corporate Debtor/Respondent No.2 in the books of accounts of the Applicant, as on 31.03.2023, the Applicant has a net receivable of Rs. 54,64,790/- (Rupees Fifty-Four Lakhs Sixty-Four Thousand Seven Hundred and Ninety Only) from the Corporate Debtor/Respondent No.2. Moreover, in the meantime, an application under Section 9 of IBC was filed against the Corporate Debtor/Respondent No.2, which was admitted by this Adjudicating Authority vide order dated 29.07.2022, and moratorium period commenced and no proceedings whatsoever could be filed against the Respondent No.2 against the said amount Rs. 54,64,790/- (Rupees Fifty-Four Lakhs Sixty-four Thousand Seven Hundred and Ninety Only) receivable from the Respondent No.2.
- v. The Applicant remained unaware about the initiation of CIRP against the Corporate Debtor/Respondent No.2 and was following up with the Respondent No. 2 for its pending invoices. That the Applicant was not at all aware of any such publication made inviting claims from any creditors of the Corporate Debtor. The Applicant was shocked and astonished to know about the CIRP of the Corporate Debtor. The Applicant first filed its claim as Operational Creditor in Form B with the Respondent No.1 on 29.12.2023, for an amount of Rs. 1,05,96,003/- (Rupees One Crore Five Lacs and Ninety Sixty Thousand and Three only) being the aggregate of the unpaid principal amount along with interest @ 24% p. a, owed by the Corporate Debtor/Respondent No.2 to the Applicant. A copy of claim form i.e.

Form B filed by the Applicant with the Respondent No.2 is placed on record as Annexure A-6.

- vi. The Applicant received an email dated 05.01.2024 from the Respondent No.1 stating that the claim submitted by the Applicant cannot be accepted due to delay and being after expiry of a period of 90 days from the date of CIRP, which is in contravention of the regulation 12(2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The Respondent No.1 in the same mail also stated that Resolution Plan has already been approved by the Committee of Creditors in the present case and an Application for the approval of the Resolution Plan has filed by the Respondent No.1 before this Adjudicating Authority and therefore, the Respondent No.1 is in no position to consider the claim of the Applicant as the insolvency resolution process has reached an advanced stage.
 - vii. The Respondent No.1 without delving into the merits of the claims, out rightly rejected the claim of the Applicant on the basis of the delay of filing claim. Hence, the present application.
4. We have gone through documents on record filed and arguments advanced by counsel for the Applicant. We have also heard the Ld. Counsel for the Resolution Professional who submitted that the Resolution Plan has already been approved by the CoC and it cannot be admitted at this stage.
5. In the present case, the instant Applicant is seeking appropriate directions for the Resolution Professional from this Adjudicating Authority against the email dated 05.01.2024 by the Resolution Professional, whereby the claim of the Applicant was rejected by the Resolution Professional. It is pertinent to mention that, the instant Applicant states that the Applicant remained unaware about the initiation of CIRP of the Corporate Debtor i.e. Sanco Industries Limited. Further, the Applicant states that the Applicant was not at all aware of any such publication made inviting claims from any creditors of the Corporate Debtor.

6. Later, the applicant filed its claim as Operational Creditor in Form B with the Respondent No.1 on 29.12.2023, for an amount of Rs. 1,05,96,003/- (Rupees One Crore Five Lacs and Ninety Six Thousand and Three only) being the aggregate of the unpaid principal amount along with interest @ 24% p. a, owed by the Corporate Debtor/Respondent No.2 to the Applicant. The Applicant received an email dated 05.01.2024 from the Respondent No.1 stating that the claim submitted by the Applicant cannot be accepted due to delay and being after expiry of a period of 90 days from the date of CIRP, which is in contravention of the regulation 12(2) of the Insolvency Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The Respondent No.1 in the same mail also stated that Resolution Plan has already been approved by the Committee of Creditors in the present case and an Application for the approval of the Resolution Plan has filed by the Respondent No.1 before this Adjudicating Authority and therefore, the Respondent No.1 is in no position to consider the claim of the Applicant as the insolvency resolution process has reached an advanced stage.

7. Further, this Adjudicating Authority is of the view that, the Applicant was a commercial entity, and not being vigilant and unaware about the initiation of CIRP of the Corporate Debtor, is not a valid ground for filing such belated claim. In the present case, the current scenario is that the Resolution Plan has already been approved by the Committee of Creditors and the Application for the approval of the Resolution Plan is pending before this Adjudicating Authority. We further observe that, since the Application for the approval of the Resolution Plan has already been filed, any claim at this advanced stage cannot be entertained. Further, the Hon'ble Supreme Court in **M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. [Civil Appeal No. 5590 of 2021]** decided on 11.09.2023 has opined that new credit claims cannot be admitted when Resolution Plan is approved by COC and is pending approval from the Adjudicating Authority. The relevant extract of the said judgment is extracted below for ready reference:

19. *The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. **We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP.** The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.*

20. **Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant.** *In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.*

21. **The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process.** *This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.*

8. In light of the above Hon'ble Supreme Court judgment, it is therefore concluded by this Adjudicating Authority that the instant Applicant was a commercial entity and was not vigilant enough to exercise its rights and find out whether the Corporate Debtor was undergoing CIRP. Further, IBC is a time bound process, and the sole ground that Applicant was not aware about the CIRP of the Corporate Debtor and

was not aware about any such publication made, inviting claims from any creditors of the Corporate Debtor, does not hold ground in the instant case. Therefore, the instant application bearing IA- 2041 of 2024 stands dismissed.

9. Accordingly, IA 2041 of 2024 in CP (IB) /11/(ND)/2021 stands disposed off.

Let a copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)