

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 143
IA/118(AHM)2021 in CP(IB) 305 of 2018

Order under Section 42 IBC

IN THE MATTER OF:

J M Financial Asset Reconstruction Company LtdApplicant
V/s
Pradeep Kumar Kabra Liquidator of Pacific Pipe Systems PvtRespondent
Ltd & ors

Order delivered on ..04/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT-I**

**IA 118 (AHM)/2021 in
CP (IB) 305 (AHM) 2018**

[The Application under Section 42 of IBC, 2016]

In the matter of:

JM Financial Asset Reconstruction Company Ltd.
7th Floor, Cnergy Appasaheb Marathe Marg,
Prabhadevi, Mumbai-400025.

....Applicant

Versus

Mr. Pradeep Kumar Kabra,
Liquidator of Pacific Pipe Systems Pvt. Ltd.,
M-19/20, Metro Tower,
Ring Road, Surat-395002.

....Respondent

**Order reserved on 27th September, 2021
Order delivered on 04th October, 2021**

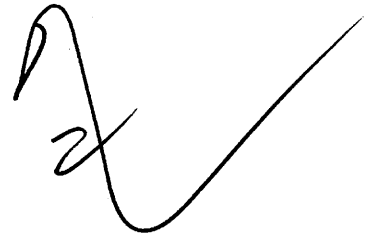
**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance...

Applicant : Advocate, Mr. Masoom Shah
Respondent : Advocate, Ms. Nitu Chaturvedi a.w. Advocate,
Mr. Aditya Raval.

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]



1. The Applicant is seeking a direction from this Adjudicating Authority to the Liquidator to consider the claim of the Applicant at Rs. 58,39,13,336.74/- and in the alternate, pending the final disposal of this application, the Liquidator be directed to accept a claim of Rs. 11,02,43,369.07/- as contingent claim.
2. The facts, in brief, are that the Corporate Debtor availed the financial assistance from the Applicant. Applicant filed its claims which were partially accepted. It is also to be noted that original Financial Creditor was Bank who had assigned the debt owed by the Corporate Debtor to M/s JM Financial Asset Reconstruction Company Limited who is the Applicant herein.
3. The reason for acceptance of partial claim is that the rate of interest charged by the Financial Creditor was much higher than agreed interest rate for Learned Counsel between Lender and the Corporate Debtor. Hence, the Liquidator admitted the claim by accepting interest at the rate applicable to working capital loans/term loan plus penal interest. In response, the Applicant provided the copy of the sanction letter, bank

circular and statement of accounts for devolved LC in respect of which interest rate was mentioned. However, the Liquidator did not accept this contention of the Applicant.

4. The learned counsel for the Applicant appeared and drew our attention to page 18 of the paper book and contended that for ILC/FLC sub limit under the term loan the rate of interest was to be applied as per circulars. Thereafter, he drew our attention to page 156 of the paper book wherein the methodology for working out the interest rate had been mentioned and it was claimed that the maximum lending rate would be 20% p.a. Our attention was also drawn to page 136 containing copy of statement of accounts of the Corporate Debtor from 01.01.2014 to 03.12.2020 wherein interest was charged at the rate of 20%. The learned counsel pleaded that such statement was available to the Corporate Debtor and no disagreement of whatsoever nature had been shown by the Corporate Debtor at any stage. Hence, now the Liquidator is bound to accept this rate of interest and workout the claim made by the Applicant. It was also claimed that Liquidator was only to verify claims and was not competent to substitute his own view/calculation

on the ground that the claim is too high despite the proof for the basis of charging interest on such rate given to the Liquidator.

5. On behalf of Liquidator, it has been stated that the sanction letter was provided interest to be charged for CC account but for LC facility the sanction letter itself state that the rate of interest has to be charged as per circulars, however, the specific circular applicable to LC facility had not been provided to the Liquidator. It is also claimed that in case of devolvement of LC the amount is debited in CC account and rate applicable to CC facility are made applicable to LC overdue amount. It was also claimed that in spite of repeated communications, the Applicant failed to provide mutual agreement between the lender and the Corporate Debtor which provides specific clause for determining the rate of interest, being chargeable in case of LC devolvement. It has also been stated that maximum rate has been specified as per circular and not as per sanction letter/mutual agreed terms between the Lender and the Corporate Debtor. Thus, the Liquidator's action is perfectly

justified and Liquidator has fairly calculated the rate of interest on devolved LC.

6. In the written submissions, it has also been claimed that application is barred by limitation and no condonation of delay has been sought under Section 5 of Limitation Act, 1963. Hence, liable to be dismissed.
7. In the rejoinder, it has been claimed that limitation for filing of applications had been extended by the Hon'ble Supreme Court on suo moto basis due to pandemic situation prevailing over the country. Hence, the application filed is well within limitation. As regard to the claim of the Liquidator no documentary evidence has been provided by the Applicant, it is argued that sanction letter and statement of accounts had been given and the rate is reflected in the past transactions of the Corporate Debtor with the Bank and the Liquidator has failed to consider the same.
8. We have considered the submissions made by both the sides and material on record.

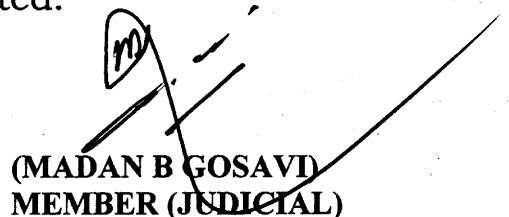
9. The short dispute involved in this application is regarding rate of interest which is to be applied to compute the amount of claim. It is noted that the amount of loan given by the Original Financial Creditor has been assigned to one ARC. The Applicant has relied on the terms and conditions mentioned in sanction letter dated 11.06.2008 whereby various credit facilities have been sanctioned in respect of the Corporate Debtor. As per this letter, the rate of interest to be charged on devolved LCs which is to be determined as per circular(s) which means that the rate of interest would be applicable as per circulars issued from time to time. It is to be noted that at the relevant point of time rate of interest was much higher and gradually the rate of interest has decreased. The use of word "Circulars" itself indicates that rate may be revised from time to time both upward and downward. The circular dated 17.08.2013 is in relation to upward revision in base rate. The rate of interest payable in 2008 has not been brought on record. Further, no other circular has been brought on record to show that the circular dated 17.08.2013 is only binding and applicable to all times to come. Thus, reliance on one circular

by the Applicant is not sufficient to justify its claim. Even on the Bank statement no counter signature or acceptance by Corporate Debtor exists. Financial Statements of the Corporate Debtor have also not been brought on record. In these circumstances, we are of the view that the Applicant has failed to establish its claim for charging interest on such a high rate without bringing any corroborative material to substantiate the same. As per Rule 8(2)(b)(i) of CIRP Regulations, 2016, apart from loan agreement, Financial Statements are required to establish the fact of debt which essentially would include accrued interest thereon. In absence of such agreement and denial of Resolution Professional on behalf of Corporate Debtor, it is incumbent upon the Applicant to prove its claim by adducing necessary evidence.

10. Accordingly, this application stands rejected.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Abhishek