

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV

IA-4891(MB)2023 IN C.P.(IB)/738(MB)2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016.

Bharatiya Kamgar Sena

.... Applicant

Vs.

Mr. Indrajit Mukherjee

.... Resolution Professional/
Respondent

In the matter of

Srinidhi Comprint Private Limited

...Petitioner

Vs.

First Flight Couriers Limited

...Corporate Debtor

Ordered pronounced on: 07.05.2024

Coram:

Ms. Anu Jagmohan Singh

Shri Kishore Vemulappalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances :

For the Applicant

: Ld. Counsel Pranil Pawar i/b Adv. Vaishali Bhilare
present.

For the Respondent

: Mr. Pulkit Sharma a/w Mr. Vinod Kothari and Mr.
Chinmay Bhojane i/b Apex Law, Ld. Counsel for

the Resolution Professional present. Adv. Manish
Jha, Ld. Counsel Present.

ORDER

1. The instant Application has been filed by Bharatiya Kamgar Sena (recognized Trade Union representing majority of the workmen on the rolls of M/s First Flight Couriers Limited hereinafter referred to 'Corporate Debtor')("Applicant herein") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with section 30 of the IBC, 2016 seeking admission of claim amount by Resolution Professional for the Corporate Debtor ("Respondent herein") for an amount of Rs.52,82,36,891/- (Rupees Fifty Two Crore Eighty Two Lakh Thirty Six Thousand Eight Hundred and Ninety One only).
2. The Applicant had sought the following reliefs:
 - (a) That the Respondent herein be called upon to re-adjudicate the claims of the members of the Applicant;
 - (b) That the Respondent herein be called upon to disclose any EOI submitted for revival of the Corporate Debtor;
 - (c) That the Respondent herein be directed not to act upon any EOI which is prejudicial to the interest of the workmen;
 - (d) Pending the hearing and final disposal of the Interlocutory Application, the Respondent be directed not act upon EOI submitted by M/s Auto pe;

Submissions on behalf of the Applicant

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3. The Applicant submits that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) on 03.10.2022 and Respondent herein was appointed as Interim Resolution Professional (IRP)
 4. The Applicant submits that on or about 2019, the Corporate Debtor indulged into illegal lock-out thereby not providing work to the members of the Union. They, therefore approached the Industrial Court, Mumbai by filing a complaint and thereby seeking various reliefs. While deciding the matter the Hon'ble Industrial Court observed that there was unfair labour practices and the Corporate Debtor did not pay them wages or allowances as per the agreement, therefore the Hon'ble Industrial Court directed the Corporate Debtor to deposit an amount of Rs. 5,16,46,585/- with the Industrial Court towards employees pending wages, PF and ESIC dues.
 5. The Applicant submits that the total claim of the workmen was to the tune of Rs. 52 crore and after adjudication by RP, the claim of Rs. 41,44,29,727/- was rejected and Rs. 11,38,07,164/- has been admitted by the Respondent.
 6. The Applicant submits that the Respondent herein has invited Expression of Interest (EOI) and one M/s Auto pe has responded and submitted its EOI with the Respondent herein. It has only offered 1% of the admitted claim of the workmen dues thereby violated the essential provision of section 53 of the IBC.
 7. The Applicant states and submits that the respondent herein is therefore required to be called upon to utilize his powers casted under section 30

of the IBC thereby sending back the EOI submitted by said M/s Auto pe and called upon the said Auto pe to re-submit the said EOI with reasonable offer to repay the hard-earned dues of the workmen of the Corporate Debtor.

Submissions on behalf of the Respondent

8. The Respondent submits that the Applicant Union has submitted the total claim of Rs. 52,82,36,891/- (Rupees Fifty-Two Crores Eighty-Two Lakhs Thirty-Six Thousand Eight Hundred and Ninety-one only), towards the following:
 - a. Wages of Rs. 39,61,05,852/- (Rs. Thirty-Six Crores Sixty- One Lakhs Five Thousand Eight Hundred and Fifty-Two) for the period from February 2019 till December 2022.
 - b. Bonus of Rs. 1,10,66,290/- (Rs. One Crore Ten Lakhs Sixty-Six Thousand Two Hundred and Ninety only).
 - c. Balance leave payment of Rs. 1,12,54,585/- (Rs. One Crore Twelve Lakhs Fifty-Four Thousand Five Hundred and Eighty-Five only).
 - d. Gratuity of Rs. 10,98,10,164/- (Rs. Ten Crores Ninety-Eight Lakhs Ten Thousand One Hundred and Sixty-Four only).
9. It is submitted that, out of the above claim the Respondent had admitted the claim of Rs. 11,38,07,164/-, in the following manner:
 - i. Claims towards wages have not been admitted as those pertains for the period from February 2019 till December 2022, during which the Corporate Debtor was not in operation.

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- ii. Claim towards the bonus has been admitted of Rs. 39,97,000/- (Rupees Thirty-Nine Lakhs Ninety-Seven Thousand only) as per the Industrial Court Order dated 5th November 2019.
 - iii. Overtime and Balance leave payment (Leave encashment) has not been admitted as no proof has been attached in support of these claims.
 - iv. Gratuity amount of Rs. 10,98,10,164/- (Rupees Ten Crores Ninety-Eight Lakhs Ten Thousand One Hundred and Sixty-Four only) has been admitted.
10. The Respondent submits that the claim of the Applicant is proven to be fictitious nature and that the Respondent has made every endeavor and rightfully admitted the claims of the workers of the Applicant Union.

Findings

11. Heard the Learned Counsel(s) for the Applicant(s) and the Respondent.
12. The Bench takes notes of the reply of the Resolution Professional wherein it is stated that the records of the Corporate Debtor show that pursuant to order of the Industrial Court in 2019 the amount Rs. 5,16,46,585/- has already being deposited with the Court as directed
13. The Bench also notes that it is undisputed fact that there were no operations of the Corporate Debtor from February,2019 to December,2022 and all offices of the Corporate Debtor were shut down and therefore the claim of wages, etc., of the workers during this period cannot be entertained. Hence, the Resolution Plan has rightly calculated the dues to the workers as per records of the Corporate Debtor.

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14. Upon perusal of the record files, we are of the considered view that the Resolution Professional has scrutinized the present claim-form(s) on merits and has correctly admitted the claims as per records.
15. The applicant also prays that the respondent be directed not to act upon the EOI submitted by the Prospective Resolution Applicant, since the entire admitted claims have not been provided therein. This Bench is of the view that this is a premature prayer as the Plan is yet to be adjudicated. The issue of payout in the plan will be examined as and when the plan is put before the Committee of Creditors/Adjudicating Authority for approval. Breach of rules & regulations if any, in the proposed Resolution Plan will be dealt with at that stage.

ORDER

16. Resultantly, the present application viz. I.A. 4891/2023 in Company Petition (IB) No. 738/MB/2021 stands dismissed.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Sd/-

Kishore Vemulappalli
Member (Judicial)

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH: C-IV**

IA-3397(MB)2023 IN C.P.(IB)/738(MB)2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016.

**Maharashtra Samartha Kamgar
Sanghatana**

.... Applicant

Vs.

Mr. Indrajit Mukherjee

.... Resolution Professional/
Respondent

In the matter of

Srinidhi Comprint Private Limited

...Petitioner

Vs.

First Flight Couriers Limited

...Corporate Debtor

Ordered pronounced on: 07.05.2024

Coram:

Ms. Anu Jagmohan Singh

Shri Kishore Vemulappalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances :

For the Applicant : Ld. Counsel Rahul D. Oak present through VC.

For the Respondent : Mr. Pulkit Sharma a/w Mr. Vinod Kothari and Mr.
Chinmay Bhojane i/b Apex Law, Ld. Counsel for

the Resolution Professional present. Adv. Manish
Jha, Ld. Counsel Present.

ORDER

1. The instant Application has been filed by Maharashtra Samartha Kamgar Sanghatana (recognized Trade Union representing majority of the workmen on the rolls of M/s First Flight Couriers Limited hereinafter referred to 'Corporate Debtor')("Applicant herein") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with section 30 of the IBC, 2016 seeking admission of claim amount by Resolution Professional for the Corporate Debtor ("Respondent herein") for an amount of Rs.12,64,21,074/- (Rupees Twelve Crore Sixty Four Lakh Twenty One Thousand and Seventy Four Rupees only).
2. The Applicant had sought the following reliefs:
 - (a) That the Respondent herein be called upon to re-adjudicate the claims of the members of the Applicant;
 - (b) That the Respondent herein be called upon to disclose any EOI submitted for revival of the Corporate Debtor;
 - (c) That the Respondent herein be directed not to act upon any EOI which is prejudicial to the interest of the workmen;
 - (d) Pending the hearing and final disposal of the Interlocutory Application, the Respondent be directed not act upon EOI submitted by M/s Auto pe;

Submissions on behalf of the Applicant

3. The Applicant submits that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) on 03.10.2022 and Respondent herein was appointed as Interim Resolution Professional (IRP)
4. The Applicant submits that on or about 2019, the Corporate Debtor indulged into illegal lock-out thereby not providing work to the members of the Union. They, therefore approached the Industrial Court, Mumbai by filing a complaint and thereby seeking various reliefs. While deciding the matter the Hon'ble Industrial Court observed that there was unfair labour practices and the Corporate Debtor did not pay them wages or allowances as per the agreement, therefore the Hon'ble Industrial Court directed the Corporate Debtor to deposit an amount of Rs. 5,16,46,585/- with the Industrial Court towards employees pending wages, PF and ESIC dues.
5. The Applicant submits that the Applicant Union submitted the claim on behalf of its members for their pending dues by filing a claim of Form E along with supporting documents with the Respondent herein, the said 2 Form E was filed for the dues of different set of the members of the Applicant Union and that the queries was raised by the Respondent for filing additional documents to which the applicant duly submitted for the same.
6. The Applicant submits that the said claims of the workmen were mainly pending for the period between February 2019 to December 2022, bonus amount from the year 2016 to 2018, overtime for the concerned period,

leave travel allowance, gratuity and PF. It was submitted that the total claim of the workmen towards their legal dues were to the tune of Rs. 12,64,21,074/- and after adjudication, the claim of Rs. 11,41,82,021/- was rejected.

7. The Applicant submits that the Respondent herein has invited Expression of Interest (EOI) and one M/s Auto pe has responded and submitted its EOI with the Respondent herein. It is further stated that the said M/s Auto pe has offered petty amount of Rs. 1,22,391/- against the admitted claim of Rs. 1,22,39,053/- submitted. It has only offered 1% of the admitted claim of the workmen dues thereby violated the essential provision of section 53 of the IBC.
8. The Applicant states and submits that the respondent herein is therefore required to be called upon to utilize his powers casted under section 30 of the IBC thereby sending back the EOI submitted by said M/s Auto pe and called upon the said Auto pe to re-submit the said EOI with reasonable offer to repay the hard-earned dues of the workmen of the Corporate Debtor.

Submissions on behalf of the Respondent

9. The Respondent submits that the Applicant Union has submitted the total claim of Rs. 1,26,421,074/- towards the following:
 - a. Wages of Rs. 8,11,65,569/- for the period from February 2019 till December 2022.
 - b. Bonus of Rs. 35,04,000/- for the period of 2016, 2017 and 2018.

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- c. Overtime of Rs. 29,85,000/- for overtime for the period 2016, 2017 and 2018.
- d. Bal. leave payment of Rs. 35,12,801/- for the period 2016, 2017 and 2018.
- e. Gratuity of Rs. 2,29,02,104/-.
- f. PF of Rs. 1,23,51,600/- for the period from February 2019 till December 2022
10. It is submitted that, out of the above claim the Respondent had admitted the claim in the following manner:
- i. Claims towards wages have not been admitted as those pertains for the period from February 2019 till December 2022, during which the Corporate Debtor was not in operation.
- ii. Claim towards the bonus has been admitted of Rs. 4,97,000/- as per the Industrial Court Order dated 5th November 2019.
- iii. Overtime and Balance leave payment (Leave encashment) has not been admitted as no proof has been attached in support of these claims.
- iv. Gratuity amount of Rs. 1,14,27,899/- (Rupees One Crore Fourteen Lakhs Twenty-Seven Thousand Eight Hundred and Ninety-Nine only) has been admitted.
- v. PF amount has not been admitted as the relevant EPFO Departments have also submitted their claims, which have been processed and admitted separately.
11. The Respondent submits that the claim of the Applicant is proven to be fictitious nature and that the Respondent has made every endeavor and rightfully admitted the claims of the workers of the Applicant Union.

Findings

12. Heard the Learned Counsel(s) for the Applicant(s) and the Respondent.
13. The Bench takes notes of the reply of the Resolution Professional wherein it is stated that the records of the Corporate Debtor show that pursuant to order of the Industrial Court in 2019 the amount Rs. 5,16,46,585/- has already being deposited with the Court as directed.
14. The Bench also notes that it is undisputed fact that there were no operations of the Corporate Debtor from February,2019 to December,2022 and all offices of the Corporate Debtor were shut down and therefore the claim of wages, etc., of the workers during this period cannot be entertained. Hence, the Resolution Plan has rightly calculated the dues to the workers as per records of the Corporate Debtor.
15. Upon perusal of the record files, we are of the considered view that the Resolution Professional has scrutinized the present claim-form(s) on merits and has correctly admitted the claims as per records.
16. The applicant also prays that the respondent be directed not to act upon the EOI submitted by the Prospective Resolution Applicant, since the entire admitted claims have not been provided therein. This Bench is of the view that this is a premature prayer as the Plan is yet to be adjudicated. The issue of payout in the plan will be examined as and when the plan is put before the Committee of Creditors/Adjudicating

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Authority for approval. Breach of rules & regulations if any, in the proposed Resolution Plan will be dealt with at that stage.

ORDER

17. Resultantly, the present application viz. I.A. 3397/2023 in Company Petition (IB) No. 738/MB/2021 stands dismissed.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Sd/-

Kishore Vemulappalli
Member (Judicial)