

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

IA-513/2023
In
(IB)-1083(PB)/2018

Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF CP(IB)1083(PB)/2018:

M/s. Edelweiss Asset Reconstruction Co. Ltd. Financial Creditor
Vs.
M/s. Adel Landmarks Ltd. Corporate Debtor

AND IN THE MATTER OF IA-513/2023:

Securities and Exchange Board of India Applicant
Vs.
Sri Udayraj Patwardhan Respondent

Order Pronounced On: 25.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Abhishek Puri, Ms. Surbhi Gupta, Mr. Sahil Grewal,
Mr. Rahat Afridi, Advs.
For Respondent : Mr. Sanjay Bhatt, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. Securities and Exchange Board of India under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - i. This Hon'ble Tribunal be pleased to set aside the Email dated 02.11.2022 issued by the Resolution Professional rejecting the Form B-Proof of Claim.*
 - ii. This Hon'ble Tribunal be pleased to condone the delay of 235 days in filing the Form B Proof of – Claim.*

iii. This Hon'ble Tribunal be pleased to direct the Resolution Professional to admit the claim of the Applicant of Rs. 1,00,000/- (Rupees One Lakh only) along with interest 1% per month which is due and payable by the Corporate Debtor in terms of the SEBI Regulations, Rules, Bye-Laws and Regulations of the Applicant, Circulars issued by the Applicant/from time to time.

iv. This Hon'ble Tribunal be pleased to pass such other or further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity.

2. The facts that are relevant for the determination of the issues involved in these applications are stated as under:

i. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Edelweiss Asset Reconstruction Company Ltd., against the Corporate Debtor i.e. M/s. Adel Landmarks Ltd. and the said application was admitted by this Adjudicating Authority vide order dated 05.12.2018 and a moratorium was declared including appointment of Mr. Udayaraj Patwardhan as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Udayaraj Patwardhan was confirmed as Resolution Professional.

ii. The Resolution Plan was submitted by the Successful Resolution Applicant namely M/s. Art Constructions Private Limited which was approved by the CoC in its 27th meeting dated 15.09.2022 by 82.66% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Udayaraj Patwardhan, the Resolution Professional of M/s. Adel Landmarks Ltd. filed IA-1817-2023 for seeking approval of Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.01.2023, which is pending adjudication before this Adjudicating Authority.

3. The Applicant i.e. Securities and Exchange Board of India (hereinafter referred to as "SEBI") is a statutory authority under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act,

1992"), being a creditor of the Corporate Debtor – M/s. Adel Landmarks Limited has preferred the present Application challenging the Respondent/Resolution Professional's decision vide email dated 02.11.2022 rejecting the Applicants Form B - Proof of Claim of Rs.1,00,000/- (Rupees One Lakh Only) along with interest 1% per month and a consequential direction to the Resolution Professional to admit the claim of the Applicant.

4. The Applicant has also sought for condonation of delay of 235 days in submission of its Form B - Proof of Claim before the Respondent/Resolution Professional and also prayed for inclusion of its Claim in the Resolution Plan approved by the Committee of Creditors.
5. The Corporate Debtor, i.e. M/s. Adel Landmarks Limited is a listed public limited company incorporated on 24.03.2005 under the Provisions of the Companies Act, 1956 and having its registered office at B 292, Chandra Kanta Complex, Shop No. 8, Near Metro Pillar No. 161, New Ashok Nagar, Delhi, New Delhi-110096.
6. It is the case of the Applicant that pursuant to an investigation conducted by SEBI during the period from 01.06.2012 to 12.12.2013 w.r.t. M/s. Era Infra Engineering Limited (in short EIEL), SEBI initiated adjudication proceedings under Section 15HA of the SEBI Act, 1992 against the Corporate Debtor and other entities for the alleged violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Market) Regulations 2003 (in short PFUTP Regulations).
7. A show cause notice dated 04.03.2021 was issued to the Corporate Debtor and other entities through several layers. It was alleged that EIEL transferred funds to the suspected entities through several layers and those funds were used in trading of shares of EIEL in connivance with the Corporate Debtor. Therefore, the Corporate Debtor was alleged to have been in violation of provisions of Section 12A (a), (b), (c) of the

SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d) of the PFUTP Regulations.

8. The Corporate Debtor failed to appear and respond to the show cause notice and was proceeded ex-parte. The Adjudicating Officer in exercise of its powers under Section 15-I of SEBI Act, 1992 read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, vide Adjudication Order No: Order/MC/VS/2021-22/14819-14852 dated 28.01.2022 ("Adjudication Order") imposed penalty of Rs.1,00,000/- (Rupees One Lakh Only) upon Corporate Debtor for violating Section 12A (a), (b), (c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d) of the PFUTP Regulations. The Corporate Debtor was provided 45 days to remit the amount of penalty imposed failing which interest thereon would be payable.
9. It is submitted that the CIRP against the Corporate Debtor was initiated vide order dated 05.12.2018 passed by this Adjudicating Authority. The Resolution Professional published a public announcement on 07.12.2018, in Form-A calling upon the stakeholders to file their claims. The last date for filing the submissions was 10.12.2018.
10. It is submitted that the Applicant came to know about the initiation of CIRP against the Corporate Debtor on 06.10.2022 and served a copy of the Adjudication Order dated 28.01.2022 upon the Resolution Professional.
11. The Resolution Professional on 18.10.2022 informed the Applicant that in the 27th meeting of the Committee of Creditors of the Corporate Debtor, the Resolution Plan submitted by M/s. Art Construction Private Limited has been put for voting for approval of Committee of Creditors under Section 30(4) of the Code. The Resolution Professional has considered all the claims received from the Insolvency Commencement Date i.e. 05.12.2018 till the date of 27th COC meeting i.e.15.09.2022.
12. On 21.10.2022, the Applicant filed its Form B Proof of Claim for an amount of Rs. 1,00,000/- (Rupees One Lakh Only) along with interest

@1% per month ("Claim Amount") towards penalty imposed on account of violation of the SEBI Act, 1992 and PFUTP Regulations, 2003. The Form B Proof of Claim was received by the Resolution Professional on the same day.

13. The Resolution Professional vide email dated 02.01.2022 rejected the claim of the Applicant on the ground that the Resolution Plan submitted by Art Construction Pvt. Ltd. had been put for voting for approval by the Committee of Creditors as per the provisions under section 30(4) of IBC, 2016 in their 27th meeting held on 15.09.2022.

Hence this Application.

14. The Respondent/Resolution Professional has filed its reply affidavit denying the allegations made by the Applicant and submitted that the adjudication proceedings carried out by the SEBI are in violation of the moratorium imposed under Section 14 of the Code and are *null* and *void ab initio* and the filing of the claim by SEBI tantamount to execution/recovery against the Corporate Debtor during the CIRP.
15. It is contended by the Respondent that vide order dated 06.06.2019, this Adjudicating Authority had issued a general direction to the Respondent not to reject any claim on the grounds of delay. Accordingly, the Respondent duly considered all the claims received from the date of Insolvency Commencement date i.e. 05.12.2018 till 15.09.2022, i.e. the date when the Resolution Plan was put forth before the CoC for its approval. However, the claim from the Applicant was received on 21.10.2022 and therefore, the Resolution Professional was unable to consider the said belated claim. Particularly, because the Resolution Plan was placed before the CoC for its approval. This fact was communicated to the Applicant vide email dated 18.10.2022 and 02.11.2022. It is submitted that the Resolution Plan has been approved by the CoC on 06.12.2022 and it is under consideration before this Adjudicating Authority.

16. Therefore, the Resolution Professional has submitted that in view of the legal maxim "*vigilantibus non dormientibus jura subveniunt*" (the law will not help those who sleep on their rights), the Applicant who was sleeping over the right without filing the claim within the time stipulated under law, cannot be permitted to file a belated claim.
17. The sole issue required to be determined in this application is as to whether the claim submitted by the Applicant/SEBI can be accepted.
18. The Applicant's case is that it has initiated certain proceedings under the provisions of the SEBI Act, 1992 against the Corporate Debtor herein and imposed a penalty of Rs. 1,00,000/- upon the Corporate Debtor for violation of Section 12A (a), (b), (c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d) of the PFUTP Regulations vide order dated 28.01.2022.
19. The CIRP w.r.t. the Corporate Debtor was initiated on 05.12.2018 which was much prior to the date when the order imposing penalty was passed by the SEBI. Admittedly, the SEBI filed its claim on 21.10.2022 nearly four years after the last date of submission of claims as per the public announcement issued by the IRP. In the meantime, the Resolution Plan has already been approved by the CoC. Under normal circumstances, such a belated claim could not have been admitted. However, the Applicant being a Statutory Authority and the penalty imposed against the Corporate Debtor being by virtue of a proceedings envisaged under the statute. We have to examine whether such a levy of penalty can be held to be outside the purview of the CIRP or in the alternative, the belated claim filed by the Applicant can be considered and admitted.
20. The Resolution Professional in its reply affidavit has categorically stated that the moratorium in terms of Section 14 came into force from the date when the CIRP was initiated by this Adjudicating Authority vide order dated 05.12.2018 and therefore, the SEBI could not have initiated any action and proceeded against the Corporate Debtor in view of the

moratorium and therefore, the levy of penalty is null and void in the eyes of law.

- 21.** Another objection raised by the Resolution Professional is that, in terms of Section 238 of the Code, the proceedings under the Code will have overriding effect over the proceedings of any other statute and therefore, the proceedings under the IBC cannot be given a go by.
- 22.** We also note the contention raised by the Ld. Counsel appearing for the Resolution Professional that this Adjudicating Authority vide order dated 06.06.2019 issued a general direction to the Resolution Professional not to reject any claim on the ground of delay. Accordingly, the Resolution Professional considered all claims received from the date of insolvency commencement i.e. 05.12.2018 till 15.09.2022 i.e. the date when the resolution plan was placed before the CoC for its approval. However, the Applicant submitted its claim on 21.10.2022 and therefore, the Resolution Professional was not in a position to consider the said claim.
- 23.** We find force in the arguments of the Ld. Counsel appearing for the Resolution Professional. It is settled principal of law that once the CIRP is initiated and moratorium in terms of Section 14 of the Code is declared, institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgement, decree or order in any Court of Law, Tribunal, Arbitration Panel or other authority is prohibited. Therefore, in our considered view, the Applicant SEBI could not have initiated the proceedings as has been done in the present case against the Corporate Debtor during the moratorium period, even though the Applicant is a Statutory Authority and the penalty imposed for the Violation of the provision of the SEBI Act.
- 24.** We are also of the view that under Section 238 of the Code, the Provisions of the Code shall prevail over any other provision or law that is contrary or inconsistent with any of its provisions. We are therefore of

the opinion that the proceedings under the SEBI Act, 1992 are in violation of Section 14 read with Section 238 of the Code.

- 25.** It is an admitted fact that the CIRP of the Corporate Debtor is on the verge of conclusion since the Resolution Plan is pending final adjudication before this Adjudicating Authority.
- 26.** Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty's involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.
- 27.** In view of the above facts and circumstances, the present application is therefore **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT III

IA-1241/2023
In
(IB)-1083(PB)/2018

Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF (IB)-1083(PB)/2018:

M/s. Edelweiss Asset Reconstruction Company Limited

..... Financial Creditor

Versus

M/s. Adel Landmarks Private Limited

..... Corporate Debtor

AND IN THE MATTER OF IA-1241/2023:

M/s. Gujarat Urja Vikas Nigam Limited

..... Applicant

Versus

Sri Udayraj Patwardhan

..... Respondent

Order Pronounced On: 25.04.2024

CORAM:

SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)

SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)

PRESENT:

For the Applicant : Mr. Aneesh Bajaj, Adv.

For the Respondent : Mr. Sanjay Bhatt, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. Gujarat Urja Vikas Nigam Limited, the Applicant herein, seeking a direction to the Respondent/Resolution Professional to reconsider the claim of the Applicant to the tune of Rs. 3,36,09,886/-.
2. The facts that are relevant for the determination of the issues involved in these applications are stated as under:

- i. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Edelweiss Asset Reconstruction Company Ltd., against the Corporate Debtor i.e. M/s. Adel Landmarks Ltd. and the said application was admitted by this Adjudicating Authority vide order dated 05.12.2018 and a moratorium was declared including appointment of Mr. Udayaraj Patwardhan as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Udayaraj Patwardhan was confirmed as Resolution Professional.
 - ii. The Resolution Plan was submitted by the Successful Resolution Applicant namely M/s. Art Constructions Private Limited which was approved by the CoC in its 27th meeting dated 15.09.2022 by 82.66% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Udayaraj Patwardhan, the Resolution Professional of M/s. Adel Landmarks Ltd. filed IA-1817-2023 for seeking approval of Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.01.2023, which is pending adjudication before this Adjudicating Authority.
3. The Applicant namely, M/s. Gujarat Urja Vikas Nigam Limited ("GUVNL") is a Company incorporated under the provisions of the Erstwhile Companies Act, 1956 and undertakes the functions of Bulk Purchase of Electricity from the generators and other sources and Bulk Supply of Electricity to the distribution licensees in the State of Gujarat for maintaining the retail supply to the consumers in the State.

4. The Corporate Debtor namely, M/s. Adel Landmarks Limited (Erstwhile M/s. Era Landmarks Limited) had proposed supply of 1.65 MW of wind energy to the Applicant (the Project).
5. The Applicant and the Corporate Debtor Company executed a Power Purchase Agreement (PPA) dated 29.05.2007 with the Corporate Debtor and a supplementary PPA dated 13.01.2014 with the Corporate Debtor for the supply of power to the Applicant from the project.
6. It is submitted that there was a breach of the Power Purchase Agreement by the Corporate Debtor. The Applicant issued a default notice dated 15.06.2019 calling upon M/s. Era Landmarks Limited (subsequently changed to M/s. Adel Landmarks Limited) to rectify the defects within the stipulated period of 90 days failing which the Applicant shall terminate the PPA. The Applicant terminated the PPA vide "Termination Notice" dated 25.11.2019, since, the Corporate Debtor failed to give any response to the default notice and also failed to rectify the default within the stipulated period. The Applicant sought compensation amounting to Rs. 3.36 crores as per Article 9.3.1 of the PPA from M/s. Era Landmarks Limited on the basis of the formula provided in the PPA to which the parties had agreed.
7. Since, the Applicant did not receive any response, the Applicant filed Petition No. 1880/2020 before the Hon'ble Gujarat Electricity Regulatory Commission (GERC) for recovery of aforesaid outstanding amount towards Termination Compensation payable to the Applicant.
8. The Applicant came to know about the initiation of CIRP against the Corporate Debtor after filing of the Petition No. 1880/2020. However,

since, the Applicant did not receive any intimation regarding the change of the name of M/s. Era Landmarks Limited to M/s. Adel Landmarks Limited nor did receive any intimation regarding initiation of CIRP against M/s. Adel Landmarks Limited. However, after coming to know about the Insolvency proceedings, the Applicant withdrew Petition No. 1880/2020 filed before the Gujarat Electricity Regulatory Commission. The Applicant filed its claim in Form-B with the Resolution Professional of the Corporate Debtor on 01.07.2021. The Resolution Professional accepted the claim of the Applicant. However, based on a response only on 13.01.2022, the Resolution Professional called upon the Applicant to revoke/recall the termination of the PPA. In response to the letter dated 13.01.2022 issued by the Resolution Professional, the Applicant gave a reply vide letter dated 25.02.2022 clarifying that the termination of the PPA was because of the breach committed by the Corporate Debtor much before the initiation of CIRP. Thereafter, the Applicant did not receive any communication from the Respondent till September, 2022. However, the Applicant received a letter dated 26.09.2022 from the Resolution Professional rejecting the Applicant's claim on the ground that the same was not due on the date of initiation of CIRP.

9. The Resolution Professional has filed a detailed reply affidavit denying the allegations made by the Applicant. It is stated by the Resolution Professional that the Applicant was required to file the claim on or before the 90th day of the commencement of the CIRP i.e. on or before 05.03.2019 as per Regulation 12 of CIRP Regulations. However, the

Applicant filed the claim of Rs. 3,36,09,886/- in Form-B only on 01.07.2021 i.e. after 849 days of the last date of submissions of the claim.

- 10.** It is also submitted that in compliance with the order dated 06.06.2019 passed by this Adjudicating Authority, wherein, the Resolution Professional was directed not to reject the claim on the ground of delay, the claim of the Applicant was considered and after due verification and collation of merits, the claim was found inadmissible based on reason as communicated to the Applicant vide email dated 26.09.2022. It is further stated that the present application was filed on 10.01.2023 when the Resolution Plan was already considered by the CoC. Further, the CoC has already approved the Resolution Plan in the 27th meeting held on 15.09.2022 which was approved with 82.66% votes. The Resolution Professional further contended that the Applicant terminated the PPA vide "Termination Notice" dated 25.11.2019 which was issued after initiation of CIRP and declaration of moratorium under Section 14 of the Code.
- 11.** We have heard the submissions made by the Learned Counsel appearing for both the parties and perused the record.
- 12.** It is an admitted position that the CIRP of the Corporate Debtor was initiated on 05.12.2018. The Applicant was required to file the claim on or before 90th day of the commencement of the CIRP proceedings i.e. on or before 05.03.2019 as per Regulation 12 of CIRP Regulations. The Applicant filed the claim of Rs. 3,36,09,886/- in Form-B only on 01.07.2021 i.e. after 849 days of the last of submissions of the claim.

- 13.** Further this Adjudicating Authority vide order dated 06.06.2019 directed the Resolution Professional not to reject any claim on the ground of delay and accordingly, the Resolution Professional considered all claims received from the date of insolvency commencement i.e. on 05.12.2018 till 15.04.2022 i.e. date when the Resolution Plan was placed before the CoC for its approval.
- 14.** The Applicant filed its claim in Form-B only on 01.07.2021 which is 849 days from the last date of submission of the claim from the date of public announcement. The Resolution Professional considered the claim in compliance with the order 06.06.2019 passed by this Adjudicating Authority and rejected the same on the ground that the Applicant terminated the PPA vide Termination Notice dated 25.11.2019 which was given during the operation of the moratorium declared under Section 14 of the Code, vide dated 05.12.2018 passed by this Adjudicating Authority. Further, the alleged claim was non-existence as on the insolvency commencement date against the Corporate Debtor and therefore, the claim is not admissible. Admittedly, the Applicant submitted its claim only after the termination of the PPA on 25.11.2019 and during the CIRP of the Corporate Debtor and the compensation claimed by the Applicant because of the termination of the PPA and the question of claiming compensation arose only on because of the termination of the PPA during the CIRP and the moratorium period. Therefore, this makes it amply clear that the Applicant had no claim as on the date of the insolvency commencement date.

- 15.** It is an admitted fact that the CIRP of the Corporate Debtor is on the verge of conclusion since the Resolution Plan is pending final adjudication before this Adjudicating Authority.
- 16.** Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty's involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.
- 17.** In view of the above facts and circumstances, the present application is devoid of any merit and therefore **dismissed**.

Sd/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

Sd/-

**BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**