

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

IA(I.B.C)/289(KB)2023

In

C.P. (IB)/204(KB)2021

*An application 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:

Suasth Health Care Foundation, an existing Company within the meaning of the Companies Act, 2013, having its registered office at Plot No. X-1, 2 & 3, Block-EP, Sector-V, Salt Lake City, Kolkata – 700091, West Bengal.

... .. Corporate Debtor

And

In the matter of :

M/s. BCL Secure Premises Pvt. Ltd.

... .. Applicant

Versus

Suasth Health Care Foundation

... .. Respondent

Date of pronouncement: 26th April, 2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Arun Kathpalia, Sr. Adv.] For the Applicant in

Ms. Sweta Dubey, Adv.] IA (I.B.C)/324(KB)2024

Ms. Kanishka Prasad, Adv.]

Ms. Ishita Srivastava, Adv.]

Ms. Ichchha Kalash, Adv.]

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Mr. Rajat Jain, Adv.] For the Applicant in] IA(I.B.C)/1639(KB)2023
Mr. Sumit Biswal, Adv. Mr. Shreyan Das, Adv.] For the Applicant in] IA(I.B.C)/289(KB)2023
Mr. Rishav Banerjee, Adv. Ms. Shreya Choudhary, Adv.] For the Respondent No.1 in] IA(I.B.C)/1025(KB)2022
Mr. Jishnu Chowdhury, Adv. Mr. Rajarshi Banerjee, Adv.] For the Respondent Nos. 6, 8 and 9 in] IA(I.B.C)/1025(KB)2022
Mr. Shaunak Mitra, Adv.] For the Respondent Nos.3, 4, 5, 7, 10] and 11 in IA(I.B.C)/1025(KB)2022
Ms. Manju Bhuteria, Adv. Mr. Pramit Chakraborty, Adv. Mr. Arindam Mrinal Pal, Adv. Mr. Adwitya Das, Adv.] For the COC in IA(I.B.C)/1308(KB)2022]]]
Mr. Ramji Srinivasan, Sr. Adv. Mr. Deep Roy, Adv. Ms. Namrata Saraogi, Adv. Mr. Kartik Pandey, Adv. Mr. Rahul Auddy, Adv. Mr. Dhaval Savla, Adv. Mr. Aditya Gooptu, Adv.] For the Resolution Professional and] Implementation and Monitoring] Committee in IA(I.B.C)/324(KB)2024]]]]]
Mr. Deep Roy, Adv. Mr. Dhaval Savla, Adv. Mr. Aditya Gooptu, Adv.] For the Erstwhile Resolution] Professional in IA(I.B.C)/1911(KB)2023,] IA(I.B.C)/1308(KB)2022,] IA(I.B.C)/1639(KB)2023,] IA(I.B.C)/1025(KB)2022 and] IA(I.B.C)/289(KB)2023
Mr. Patita Paban Bishwal, Adv.] For Shristi Infrastructure Development] Corpn. Ltd. in IA(I.B.C)/1025(KB)2022

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court convened in a hybrid mode.
- 2.** Heard both the learned Counsel for the parties.
- 3.** The application has been preferred by the Applicant praying for the following reliefs:
 - (a) Pass an order directing the Resolution Professional for clearing the dues of Rs.88,18,503.68/- of the Applicant along with 18% of interest till the realization of the said amount;*
 - (b) Pass any further order as this Hon'ble Tribunal deems fit in this regard;*
- 4. Facts in a nutshell :**
 - (a)** The Tribunal vide its order dated 31st August, 2021 initiated the Corporate Insolvency Resolution Process in respect of the Corporate Debtor. Mr. Ravi Sethia was appointed as Resolution Professional.
 - (b)** The Applicant claims to have rendered security services and housekeeping services in accordance with the terms of the relevant agreements during the CIRP of the Corporate Debtor and raised the relevant invoices for the services rendered by it. The Resolution Professional made payments for several invoices raised by the Applicant during the CIRP of the Corporate Debtor.
 - (c)** The CIRP of the Corporate Debtor is at a stage wherein a resolution plan has been approved by this Adjudicating Authority vide IA(I.B.C)/1381(KB)2022 under Section 30 (6) read with Section 31 of the Code.

(d) The present application was filed by the Applicant seeking an order directing the Resolution Professional to clear the dues of Rs.88,18,503.68/- for the services rendered by the Applicant for the period prior to the initiation of CIRP of the Corporate Debtor and post the initiation of CIRP of the Corporate Debtor.

5. Submission of Resolution Professional :

In response to the contentions raised by the Applicant, the Resolution Professional has made the following submissions:

(a) Dues of the Applicant prior to initiation of CIRP

(i) In pursuance to the initiation of CIRP in respect of the Corporate Debtor and the issuance of Form A by the Insolvency Resolution Professional, the Applicant has filed its claim for a sum of Rs.60,69,586/- (Rupees Sixty lakh sixty-nine thousand five hundred and eighty-six only), under Form B as an Operational Creditor on September 7, 2021.

(ii) That the allegation by the Applicant that the said claim has not been admitted by the Resolution Professional is completely false and misconceived. Rather, the claim of the Applicant has been duly verified and, admitted by the Resolution Professional to the tune of Rs.60,58,378/- (Rupees Sixty lakh fifty-eight thousand three hundred and seventy-eight only). The said admission is reflected in the list of creditors of the Corporate Debtor uploaded in the website of the Corporate Debtor. This was duly

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informed to the Applicant by the Resolution Professional, vide his e-mail dated March 17, 2022. (A copy of the said e-mail dated March 17, 2022 is marked as **Annexure-B**).

(iii) It is trite law that all claims filed by the creditors of the Corporate Debtor shall be paid in accordance with the terms of the resolution plan approved by the CoC and, thereafter, by this Tribunal.

In support the direction of the Hon'ble Supreme Court of India in the case of **Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) SCC OnLine SC 313** has been cited. Hon'ble Apex Court therein has clearly held that –

“Once a resolution plan is duly approved by the adjudication authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan shall stand extinguished and no person will be entitled to initiate or continue

any proceedings in respect to a claim which is not part of the resolution plan.”

(iv) Accordingly, it is submitted that in the light of the admitted claim of the Applicant for a period prior to the CIRP amounting to Rs.60,58,378/- (Rupees Sixty lakh fifty-eight thousand three hundred and seventy-eight only), the payment shall be made in accordance with the terms and stipulated under the resolution plan and the provisions of the Code.

(b) Dues of the Applicant post initiation of CIRP

(i) It is an undisputed fact that the Applicant continued to render the security services and housekeeping services under the relevant contracts even after the commencement of CIRP of the Corporate Debtor and raised the relevant invoices for the service rendered by it. As per the books and records of the Corporate Debtor, the amount payable to the Applicant under the said invoices for the services rendered after the commencement CIRP is Rs.23,70,727/- (Rupees Twenty-three lakh seventy thousand seven hundred and twenty-seven only).

(ii) Reference is made to Section 5 (13) that defines Insolvency Resolution Costs to mean:

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*

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- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board.

(iii) Accordingly, it is clarified that the amounts payable to the Applicant under the invoices raised in relation to the services rendered by the Applicant after the initiation of CIRP of the Corporate Debtor shall be treated as Insolvency Resolution Process Costs (“CIRP Costs”) and shall be paid in accordance with the provisions of the Code and that the Resolution Professional has made payments for several invoices raised by the Applicant during the CIRP of the Corporate Debtor.

(iv) It is submitted that pursuant to the initiation of CIRP, the Corporate Debtor has been struggling with several operational issues and no substantial revenue is currently being generated. In spite of the poor financial condition of the Corporate Debtor, the Resolution Professional has undertaken all possible efforts to ensure payment of the amounts due under the relevant invoices raised by the Applicant after the initiation of CIRP of the Corporate Debtor. This is evident from the e-mails dated February 18, 2022

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and September 6, 2022 sent by the Corporate Debtor to the Applicant annexed as **Annexure-C** and **Annexure-D** respectively.

(v) It is assured by the Resolution Professional that the entire sum of Rs.23,70,727/- (Rupees Twenty-three lakhs seventy thousand seven hundred and twenty-three only), payable to the Applicant for the services rendered after initiation of CIRP of the Corporate Debtor shall be treated as CIRP cost and after approval of the resolution plan, such dues shall be paid in full and in priority over other payments being made under the resolution plan as per the provisions of the Code and the applicable regulations framed thereunder.

6. In view of the above, we dispose of IA(I.B.C)/289(KB)2023 with directions to act in terms of the assurance as noted above and in accordance with law.
7. Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 26th day of April, 2024.

Sayon (Steno)