

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

I.A No. 190 of 2020
In
C.P (I.B) No. 710/KB/2017

*An application under Section 42 of the Insolvency and Bankruptcy
Code, 2016, read with Rule 11 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016;*

In the matter of:

Jaiprakash Overseas Finance Limited, having its registered office
at 12, Waterloo Street, Kolkata – 700 069.

...Financial Creditor

-Versus-

Technofab Manufacturing Limited, registered office at 12,
Hemand Basu Sarani, 2nd Floor, Kolkata – 700 069.

....(in liquidation)

And the matter of:

Steel Authority of India

.....Applicant

Versus

Mr. Hrisikesh Dasgupta, Liquidator

.....Respondent

Order Pronounced on: 26/04/2024

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearance (via video conferencing/physically)

For the Applicant in IA 190 of 2020 : Mr. K. Banerjee, Adv.
: Ms. S. Chakraborty, Adv.

For the Liquidator : Mr. R. Banerjee, Adv.
: Ms. A. Khan, Adv.
: Ms. P. Choudhary, Adv.
: Mr. R. Banerjee, Adv.

O R D E R

Per: Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. This is an application filed by Steel Authority of India Limited ('Applicant' or 'Appellant') under Section 42 of the Insolvency and Bankruptcy Code, 2016('Code') against Mr. Hrisikesh Dasgupta, Liquidator of Technofab Manufacturing Limited ('Respondent No.1' or 'liquidator') inter alia praying for the following reliefs:-
 - a. *National Company Law Tribunal being the Adjudicating Authority be pleased to direct the Liquidator to allow the claim of the applicant being Rs.6,10,37,146/- and Rs.9,08,70,705/- along with interest thereon @ 18% per annum;*
 - b. *National Company Law Tribunal being the Adjudicating Authority be pleased to quash the order dated January 16, 2020 passed by the Liquidator;*
 - c. *National Company Law Tribunal being the Adjudicating Authority be pleased to direct the Liquidator to disburse Rs.6,10,37,146/- and Rs.9,08,70,705/- along with interest thereon @ 18% per anum in favour of the applicant;*
 - d. *National Company Law Tribunal being the Adjudicating Authority be pleased to direct the Liquidator not to proceed*

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with the liquidation process till the claim of the applicant is considered;

- e. National Company Law Tribunal being the Adjudicating Authority be pleased to direct the Liquidator not to disburse any sum of money to any other creditor till the adjudication of the claim of the applicant;*
- f. Ad interim order in terms of prayers (a) to (e) above;*
- g. Other or further order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

3. The brief facts of the matter are hereinbelow:

- a. The applicant had entered into a two contract bearing No.PEDD/EXPN-B/2007/USM/037 dated November 15, 2007 and No.PEDD/EXPN-B/BOF-SHS)/2009/92 dated March 4, 2009 with Techno Fab Manufacturing Ltd., having its registered office at 12, Hemanta Basu Sarani, 2nd Floor, Kolkata-700069 (presently in liquidation) (hereinafter referred to as the “company (in liquidation)”. The company (in liquidation) was part of a consortium with which the aforesaid contract had been entered into by applicant and was liable to make payment of all sums that would become due and payable to applicant in course of working out of the said contract. Copies of the aforesaid two contract are annexed herewith and marked as Annexure “A”.
- b. The applicant came to know that CIRP (Corporate Insolvency Restructuring Process) in respect to the company was initiated on February 16, 2018.
- c. An Interim Resolution Professional was appointed in the matter. The Interim Resolution Professional was thereafter appointed as the Resolution Professional by the Committee Of Creditor. Two several letters dated

April 2, 2018 and March 30, 2018 were written by the said Resolution Professional to applicant informing applicant that as per Section 17 of the Code the powers of the Board of Directors of the company stands suspended and stand vested with the Interim Resolution Professional. It was also purported to be stated in the said letters that on scrutiny a provisional accounts as on February 16, 2018 along with audited accounts for the year 2016-17 it was found that a sum of Rs.24,29,16,863/- and Rs.51,22,61,531/- respectively are due and payable by applicant to the company against the aforesaid two contracts. Copies of the said two letters dated April 2, 2018 and June 30, 2018 are annexed herewith and collectively marked as Annexure "B".

- d. By letter dated July 13, 2018 the applicant replied to the aforesaid letters written by the Resolution Professional denying the aforesaid claims for the reasons, inter alia, as stated in the said letter. On the contrary, the applicant pointed out that a sum of Rs.6,10,37,146/- and Rs.9,06,70,091/- is due and payable by the company (in liquidation) to the applicant for the reasons as stated in the said letters. It was made clear that, at that stage, the applicant reserved its rights to claim and recover the said sum from the company (in liquidation) after its claim had crystallised on successful completion of the facility. A copy of the said letter dated July 13, 2018 is annexed herewith and marked as Annexure "C".
- e. The applicant followed up its claim with the Resolution Professional by two further letters both dated October

- 5, 2018 whereby the applicant raised their claim of Rs.6,10,37,146/- and Rs.9,08,70,705/- respectively against the company (in liquidation) reserving their right to produce all supporting documents in relation to the said two claims at the appropriate time. Copies of the said two letters both dated October, 5 3018 are annexed herewith and marked as Annexure “D”.
- f. The company had gone into liquidation. An order of liquidation was passed on September 5, 2018 and Mr. Hrishikesh Dasgupta, Resolution Professional was appointed as the Liquidator.
- g. It is significant to note in the meantime the said Mr. Hrishikesh Dasgupta, Resolution Professional had already been officially appointed as the Liquidator in respect of the said company and both the two letters dated October 5, 2018 were addressed to the said Mr. Hrishikesh Dasgupta in his official capacity as the designated liquidator over the company.
4. Subsequently references were made by the Corporate Debtor on mediation through SFCA (Scope Forum for Conciliation and Arbitration) for resolving the disputes between the applicant and the company (in liquidation), however, it appears from the submissions that the same could not fructify and liquidator passed a reasoned order on 16th January, 2020.
5. The Applicant is aggrieved by the order dated January 16, 2020 passed by the Liquidator.
6. It is also averred that the applicant herein is concerned only in respect of the IISCO Steel Plant (The Indian Iron & Steel Company) whereas other claims being dealt with by other units of Steel Authority of India Limited shall be dealt with by

them. Finally in Paragraph-(v), the applicant/appellant has sought a relief for directing the liquidator to pay sum a sum of Rs.6,10,37,146/- and Rs.9,08,70,705/- respectively along with interest @ 18% per annum are due from the company (in liquidation).

7. It must be brought out here that a similar IA was preferred , by some other unit of SAIL and there was a confusion on the numbering of these IAs as some of the facts and reliefs seemed to be overlapping. When this matter was taken up on 31st August, 2023, the Ld. Counsel, Mr. Rishav Banerjee, appearing for the liquidator submitted that the prayers in both IA/190/2020 and IA/193/2020 are identical, as both were filed as appeals under Section 44 & the impugned order was the one passed by the liquidator on 16th January, 2020. Accordingly, this IA being IA190/2020 was reserved for orders. A snap shot of the daily order dated 31st August, 2023, is given below:-

5. IA(IBC)/190(KB)/2020 [IA(IBC)/193(KB)/2020] – It is submitted by the Ld. Counsel for the Liquidator that the prayers in both IA(IBC)/190(KB)2020 and IA(IBC)/193(KB)2020 are identical. **Heard. Reserved for order.**
6. List the main CP for filing further Periodical Progress Report on **10/10/2023**.

8. We have examined this aspect and note that the appeal in both the IAs is against the reasoned order mentioned above. The matter of the impugned reasoned order of the liquidator has already been dealt in detail in the order issued in IA/193/2020 on 01/05/2023. The same is reproduced hereinbelow: -

“ 7. Ld. Counsel appearing for the liquidator has submitted that a detailed reasoned reply to the claim of the applicant was given by him in which the reasons for rejections have been

duly elaborated. He also mentioned that to gauge the extent of reasoning given by him, suffice it to say that the answers setting out details reasons for rejection of the claim runs in two volumes. As such the liquidator has complied with the requirements of section 40 of the Code. It was also submitted by the ld. Counsel appearing for the applicant that matter has also been referred to arbitration which is yet to be culminated.

8. We have heard the rival contentions and observe that there were several allegations and counter-allegations by the parties against each other during the course of execution of the work, there by holding each other responsible for the lack of progress of the work. These differences resulted in the impeded progress of work and consequently the Operational Creditor decided to get the work done himself, through other agencies at the risk and cost of the Corporate Debtor. Since the issue of getting the work done by a Principal through another agency dueto the non-performance of Corporate Debtor, is an issue which has roots in the performance of Corporate Debtor, is an issue which has roots in the performance of a contract, this inter-alia envisages analysing the chronology of the events and examination of rights and duties of each of the parties as per the contract, in that conspectus.

9. Be that as it may, as has been contended by the liquidator, that the claim of the applicant has not been crystallised and under such circumstances the liquidator has rejected the claim of the applicant. It is also contended that the matter is before an arbitrator, who would naturally go into these questions. Thus, it is correct to conclude that the claim if any, has not yet been crystallised. While noting the same we have no inhibition in holding that since the liquidation like the insolvency resolution, is a time bound process and with each passing day, there is every likelihood of the value of the assets getting eroded, as such we cannot put a hold on to the process

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as the same would go against the well-defined and by now well-accepted precepts of the Code regarding maximisation of the value of the assets.

10. Thus the present matter cannot be adjudicated in a summary proceeding like IBC and the remedy of the applicant lies elsewhere and not with this Adjudicating Authority.

11. In view of the above, this application is hereby rejected. However, the applicant is free to resort to other remedies that may be available to him under any other law.

12. In view of the above IA No.193 of 2020 in CP(IB) No.710/KB/2017 stands rejected and the IA is accordingly disposed of.

13. Files be consigned to records”

9. In view of the above, IA(IB)190/KB/2020 is also disposed of on the same lines.
10. Certified copy of the order may be provided upon request and upon fulfilling requisite codal formalities.
11. File be consigned to records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 26.04.2024.

BD