

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB)/1372(KB) /2023

In CP No. 82/(KB) /2019

*Application under Section 60(5) of the IBC, 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Rahul Carbon Commercial Private Limited

....Operational Creditor

Vs.

Kohinoor Steel Private Limited

....Corporate Debtor

And

In the mater of:

IFCI Limited

.....Applicant

Vs.

Ashok Kumar Sarawgi, RP of Kohinoor Steel Private Limited

....Respondents

Date of Pronouncement of order: 03.04.2024

Coram:

Smt Bidisha Banerjee

: Member (Judicial)

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Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Ms. Urmila Chakraborty, Adv.] For the Resolution Professional

Mr. Rachit Lakhmani, Adv.] For the Applicant in

IA(I.B.C)/1372(KB)2023

Ms. Sanjana Nandi, Adv.

Ms. Archana Sinha, Adv.] For the Applicant in IA(I.B.C)/1417(KB)2023

Ms. Amrita Pandey, Adv.]

Ms. Bopasha Sanyal, Adv.

Mr. Akash Sharma, Adv.] For JVBNL

O R D E R

Per Bidisha Banerjee, Member (Judicial):

- 1. The Court convened through hybrid mode.*
- 2. Heard the Ld. Counsel for the parties at length.*

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3. This application has been preferred by IFCI Limited having its office at IFCI Tower, 61, Nehru Place, New Dehli – 700 0071 to seek the following reliefs:

a. The Respondent Resolution Professional of Kohinoor Steel Private Limited be directed to forthwith admit the Applicant's entire claim of Rs. 171,75,49,875.60 as stated in the proof of claim dated 11.12.2019.

b. To condone the delay, if any, in submitting the Applicant's claim dated 11.12.2019 before the Respondent.

4. It is submitted that the Applicant filed a proof of claim on 01.11.2019 against Kohinoor Power Private Limited with the Resolution Professional of Kohinoor Steel Private Limited (hereinafter referred to as KSPL).

5. On 20.11.2019, CIRP was initiated in respect of the Corporate Debtor namely Kohinoor Steel Private Limited (In short KSPL). The Applicant filed its proof of claim on 11.12.2019 for an amount of Rs. 171,75,49,875.60.

6. The Respondent / Liquidator communicated vide its email dated 31.01.2021, its inability to accept the claim citing two decisions of the Hon'ble NCLAT in *State Bank of India Stressed Assets*

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Management Branch Vs. Athena Energy Ventures Private Limited (Company Appeal (AT) (Ins) No. 633 of 2020 and Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprise Limited in Company Appeal (AT) (Ins) No. 346 & 347 of 2018 on 16.03.2023, the Resolution Professional finally rejected the entire proof of claim and refused to admit any part or portion thereof.

- 7. Aggrieved the Applicant by way of this application is seeking condonation of delay in filing the claim before the Resolution Professional of Kohinoor Steel Private Limited.*
- 8. By way of Reply, the RP would submit as under:*
 - a. That the CIRP commenced on and from 20.11.2019 against the Corporate Debtor.*
 - b. The Corporate Debtor is the Corporate Guarantor in respect of a loan availed by one Kohinoor Power Private Limited (in short Kohinoor Power).*
 - c. The Applicant lodged its claim on 11.12.2019 by way of an email dated 18.12.2020.*
 - d. The RP has already rejected the claim of the Applicant upon verification of such claim from the books of accounts,*

available records and the details shared by the Management of the Corporate Debtor and other relevant information.

- e. Since the present claim relates to the same set of claim that stands rejected on 18.02.2020, it is not entertainable.
- f. The Communication dated 18.02.2020 as contained in page 13 of the Reply Affidavit is extracted hereunder for clarity:

“After verification of the same from the books of accounts, available records and the details shares by the management of the corporate debtor and other relevant information sought from the liquidator of Kohinoor Power Pvt Ltd, we understand that the aforesaid amount have already been claimed by you in separate corporate insolvency resolution process of Kohinoor Power Pvt Ltd – now under liquidation which relates to the same set of debt and which has been duly admitted by the liquidator of the said company.”

- g. It is submitted that the Applicant has repeatedly renewed its prayer of admission of its claim, whereas it was rejected way back on 18.02.2020.

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- h. It is alleged that the applicant has grossly suppressed the said rejection letter and has not come with clean hands. It has not raised any dispute until 22.01.2021, which was rejected once again on 26.03.2021 by an email dated 09.01.2023 which is almost two years after rejection vide email dated 26.03.2021 and thereby the repeated prayers would not cure delay or give a fresh lease of life to the belated claim.*
- i. Further, it is submitted that Resolution Plans have already been received from Prospective Resolution Applicants which are being voted upon. The claim of the Applicant being long after the rejection communicated on 18.02.2020 and 03.03.2020 cannot be entertained.*
- 9. We have considered the rival contentions, perused the records.*
- 10. We would note that probably Liquidator of Kohinoor Power Private Limited have already admitted the same claim of the Applicant in the aforementioned case. Further, we would note that revised plans have been submitted on 26.05.2023, voting lines was open for approval of the Resolution Plan till 30.01.2024 and*

therefore, at this advanced stage of CIRP the claim of the Applicant cannot be entertained. The CIRP being a time bound process.

11. We would also note the decisions in *Company Appeal 1340 of 2022 in the matter of Deputy Commissioner, UTGST, Daman Vs. Rajeev Dhingra*, Hon'ble NCLAT has noted the following decisions:

i. In *Harish Polymer Product Vs. George Samuel & Anr.* In CA (AT) (Ins.) No. 420 of 2021, it has been held that:

"....if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated."

ii. In *M/s. Innovative Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407* and *Arcelr Mittal India Private Limited Vs. Satish Kumar Gupta (2019) 2 SCC 1*, Hon'ble Apex

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Court emphasized on the legislative fiat of timeliness in the conduct of CIRP and that the model timelines provided in Regulation 40A of the CIRP Regulations needs to be adhered to by all the parties as closely as possible.

- 12. In view of above and as per the available records, the claim of the Applicant being rejected on 18.12.2020 itself, at this belated stage, after 3 years, it cannot be entertained to frustrate the timely conclusion of the CIRP.*
- 13. Accordingly, IA (IB)/1372(KB) /2023 is rejected.*
- 14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.*
- 15. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.*

*D. Arvind
Member (Technical)*

*Bidisha Banerjee,
Member (Judicial)*

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Signed on this, the 03rd day of April, 2024

M. Jana (P.S.)