

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.147
IA/255(AHM)2022 in CP(IB) 321 of 2020

Orders under Section 60(5) IBC, 2016

IN THE MATTER OF:

Shrine Engineering Pvt Ltd
V/s

.....Applicant

Chandra Prakash Jain RP of Sintex Prefab & Infra Ltd

.....Respondent

Order delivered on: 21/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

SD/-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

SD/-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA/255(AHM)/2022
IN
CP (IB) 321 of 2020**

IA/255(AHM)/2022

(An application under Section 60 (5) of the IB Code read with rules 11 and 14 of the National Company Law Tribunal Rules, 2016)

In the Matter of;

Shrine Engineering Private Limited,

Through its authorised person,

Mr. Divyesh Kotecha

Having its registered office at;

3rd Floor, Kuber Plus,

Near Hotel Kuber,

Porbandar- 360575

..... Applicant

Versus

Mr. Chandra Prakash Jain,

The Resolution Professional of

M/s Sintex Prefab and Infra Limited

Having his office at:

D-501, Ganesh Meridian, Opp. Gujarat High Court,

Sola, SG Highway, Ahmedabad

Pin- 380060

.....Respondent

In the matter of:

CP (IB) 321 of 2020

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016)

M/s. Bank of Baroda

....Financial Creditor

Versus

M/s. Sintex Prefab and Infra Limited

....Corporate Debtor

Order delivered on 21.12.2022

Coram: **Dr. Madan B. Gosavi, Member (Judicial)**
Kaushalendra Kumar Singh, Member (Technical)

Appearance:

Mr. Jaimin Dave, Adv a.w with Mr. Priyank Dave for the Applicant.

Mr. Monaal Davawala, Advocate for the Respondent.

ORDER

1. The instant application has been filed by M/s Shrine Engineering Private Limited through its authorized person Mr. Divyesh Kotecha under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 [**“IB Code”**] read with rules 11 and 14 of the National Company Law Tribunal Rules, 2016 [**“NCLT Rules”**] for direction to the respondent for admitting the claim of the applicant.

2. The averments made by the applicant are summarized as under:-

(i) The applicant herein in the capacity of the operational creditor had filed its claim in Form-B before the respondent for due consideration on 19.02.2022 and the respondent rejected the claim of the applicant on 22.02.2022 on the ground that the Corporate Insolvency Resolution Process [**“CIRP”**] is at an advanced stage and the Information Memorandum cannot be updated.

(ii) The Corporate Debtor was admitted in the CIRP vide order dated 24.02.2021 on the application of the Bank of Baroda under section 7 of the IB Code in CP (IB) No. 321 of 2020. The applicant has come to know about the initiation of CIRP in the month of April 2021 through its trade circle. Soon after coming to know the CIRP against the Corporate Debtor, the applicant initiated the process for filing the claim in Form-B to the respondent. But, during the second wave of the COVID-19 pandemic the family members of the applicant (authorized person) were infected with COVID-19, therefore, the applicant had to remain under quarantine for a considerable period of time. Thereafter, the applicant started gathering the documents to substantiate the claim as the documents with respect to the claim amount date back from the year 2016-17.

(iii) During the 3rd wave of the COVID-19 pandemic, the authorized person and his family members again tested positive for Covid-19 infection and again the authorized person had to remain under quarantine.

(iv) The Hon'ble Supreme Court vide order dated 10.01.2022 in Miscellaneous Civil Application No. 21 of 2022, in Miscellaneous Civil Application No. 665 of 2021 and in suo moto writ petition (c) No. 03 of 2020 has specifically excluded the period from 15.03.2020 to 28.02.2022 for computation of limitation as may be prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings. The applicant with due regard to the order dated 10.01.2022 passed by the Hon'ble Supreme Court file its claim on 19.02.2022. Instead of accepting the claim of the applicant keeping in mind the aforesaid order of the Hon'ble Supreme Court, the respondent went ahead and rejected the claim of the applicant on the ground

that a CIRP is at an advanced stage and the Information Memorandum cannot be updated.

3. The respondent has filed his reply and made the submission which is summarized as under;

(i) In compliance with sections 13, 15 and other relevant provisions of the IB Code read with regulation 6 of the IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016 [**“CIRP Regulations”**] a public announcement made on 03.03.2021 in two newspaper i.e., “Business Standard” English newspaper and “Divya Bhaskar” Gujarati newspaper regarding initiation of CIRP process against the Corporate Debtor inviting claim from the creditors. The applicant had submitted its claim of Rs. 1,96,60,166/- along with all the documents on 18.02.2022, after 350 days delay after the public announcement. The respondent after considering the circumstances rejected the claim of the applicant.

(ii) The respondent has no intention to go against the order of the Hon’ble Supreme Court. Now, the resolution plan has been approved by the CoC and is pending before this Adjudicating Authority bearing application No. 404 of 2022 for approval of the resolution plan. Hence, any interruption in the CIRP at this stage by including a delayed claim would mean setting the clock back and sending the matter back to the CoC. If the claim of the applicant is accepted then other creditors would also demand the same in spite of the ordinate delay.

4. Heard the Ld. Counsels of both parties perused the material on record. It is noted that the Corporate Debtor was admitted into the CIRP on 24.02.2021. The applicant had filed its claim to the resolution applicant in Form- B dated 18.02.2022 and it is not in dispute that the claim of Rs. 1,96,60,166/- has not been filed by the applicant and

the same was rejected by the respondent on 22.02.2022 on the ground that the CIRP process is in advance stage and prospective resolution applicants have also submitted their resolution plan. Information Memorandum which includes the final status of the claims admitted can be updated only once by the Resolution Professional and which the Respondent has already updated. Hence, updating the same or admitting the new claim is not possible. It is noted that presently the resolution plan is under consideration before this Adjudicating Authority for approval.

5. The Hon'ble Supreme Court vide order dated 10.01.2022 has excluded the period of limitation from 15.03.2020 till 28.02.2022 for the purpose of limitation as may be prescribed under any general or special laws. The Hon'ble Supreme Court further directed that in the case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. The relevant paras of the order dated 10.01.2022 passed by the Hon'ble Supreme Court are reproduced hereunder;

“.....5. XXXX

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. In case where the limitation would have expired during the period between 15.03.2020 till 18.02.2022 notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days 01.03.2022. In the event the actual balance period of limitation

remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

6. Hence, upon considering the fact of the present matter we are of the considered view that the applicant is an operational creditor and the proposal and disbursement of the amount to the operational debt will not lead to any substantial change in the resolution plan in case the present application is allowed. Moreover, the resolution applicant will not require adding additional funds to the resolution plan for the claim of the applicant. In view of the above, we direct the resolution professional to verify and consider the claim of the applicant.

7. Accordingly, **IA/255 (AHM)/2022 in CP(IB) 321(AHM)/2020** is allowed and stands disposed of in terms of the above directions.

8. A certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

SD/-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

SD/-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Ramashish