

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 40

IA 5683/2023 IA 50/2024 In C.P. (IB)/530(MB)2020

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 12.04.2024

NAME OF THE PARTIES: UNION BANK OF INDIA V/s ROLTA
INDIA LIMITED

Section 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

IA No. 5683/2023 –

1. Mr. U. Karunakaran, Advocate appeared for the Applicant.
2. Mr. Sandeep Bajaj, Advocate appeared for the Resolution Professional.
3. The present application is filed by ETA General Pvt. Ltd. (Operational Creditor) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 to admit the claim of the Applicant.
4. It is submitted that the Corporate Debtor as well its other Company have placed purchase orders with the Operational Creditor i.e ETA General Private Limited. The Principal outstanding amount due and payable to the Operational Creditors is Rs. 39,45,971/- and interest was payable as on 30.11.2012 i.e., before filing the suit No. O.S. No. 227/2013 and the same is calculated as on 31.03.2023 to be Rs. 1,84,50,209.12/-. Further, the Operational Creditor is entitled to Rs. 29,36,559/- towards the wrongful encashment of Bank Guarantee including a principal amount of Rs. 26,05,864/- from the Corporate Debtor and interest of Rs. 3,30,695/- calculated thereon @ 24% p.a. from 21.05.2011 to 30.11.2021. Further,

the Corporate Debtor is liable to pay interest thereon @ 24% p.a. for outstanding amount of Rs. 26,05,864/- from 01.12.2011 till filing of the application which comes to Rs. 38,32,977.08/-. Thus, it is submitted that Corporate Debtor is liable to pay total sum of Rs. 2,22,83,186.20/- to the Operational Creditor i.e. ETA General Pvt. Ltd.

5. On the other hand, Respondent no. 1 had filed their affidavit in reply and stated that Respondent no. 1 in the capacity of Resolution Professional of Respondent no. 3, had duly informed the Applicant vide e-mail dated 01.09.2023, that the said claim amount to Rs. 2,22,83,186/- has not been admitted on the account of the said claim being contingent, the reason for which was contained in Note 1 in the list of creditors on the following grounds:

- i. Claims made with respect to the TDS amount deducted by the Corporate Debtor is not admitted as TDS amount is being dealt separately with in the claim of Income tax Department.*
- ii. Claim on the basis of Invoices, if the same is not accounted in the books of Corporate Debtor is not admitted, in absence of any additional documents shared by the claimant for substantiating their claim.*
- iii. Claim with regard to Interest on outstanding amounts, is not admitted where documents/agreements substantiating Interest amount is not available.*

6. It is further submitted that it is well settled law that a debt/claim is a sum of money which is now payable or will be payable in future by reason of a present obligation debitum in prasenti solvendum in future. Furthermore, the Applicant's claim is contingent on future event which might or might not happen.

7. Heard the Counsel and perused the material available on record.

8. On perusal of list of creditors version 6.0 filed in IA No. 5569/2023 on 05.12.2023 we note that name of the Applicant is appearing at Sr. No. 35 of Annexure-8 attached to the application and sum of Rs. 2,22,83,186/- has been admitted as contingent in nature in terms of note 1 appended to said list. Note 1 appended to list clarifies that i) TDS amount is being considered as part of Income Tax Department's claim, ii) Invoices not accounted in the books of account can be admissible on production of additional evidences, and iii) claim on account of interest is admissible only if there is an agreement to that effect.
9. Per contra the clamant is stated to have filed a Civil Suit O.S. No. 227/2013 for recovery of the claimed amount and the matter is still subjudice.
10. We are of the considered view that RP has correctly admitted the claim as contingent in nature in the absence of corroborating evidences having been filed by the Applicant to substantiate the right to claim these amounts having accrued to the Applicant. Since, the RP does not have adjudicating power and the Applicant has taken the matter before Civil Forum for adjudication of his claim, we consider it appropriate to direct RP to provide for contingency in the plan to deal with the liabilities becoming payable by the Corporate Debtor after final adjudication of the contingent claims.
11. In alternate, the claims against the invoices not accounted for in books of corporate debtor, the Applicant shall be at liberty to produce corroborative evidences to enable the RP to verify the same for its admissibility. In such case, the RP shall consider additional evidences produced by the applicant and admit if such claim is verifiable in light of those evidences.
12. In view of aforesaid, **IA No. 5683/2023 is disposed of.**

IA No. 50/2024 –

1. Mr. Manoj Harit, Advocate a/w Ms. Pooja Harit, Advocate appeared for the Applicant.

2. Learned Counsel for the Applicant may seek employment letter from each person to demonstrate the job contents or any other documents.
3. Learned Counsel for the RP informs that all the employees were terminated as stated and resigned in each employee as is placed at “Annexure - A1”. Learned Counsel for the Applicant objected the same submission.
4. List this IA on **03.05.2024** for hearing.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

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