

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)  
KOLKATA**

**I.A. (IB) No. 1014/KB/2023  
in  
CP (IB) No. 891/KB/2020**

*In the matter of*  
**Bank of India**

... Financial Creditor

Versus

**McNally Bharat Engineering Company Limited**

... Corporate Debtor

And

**I.A. (IB) No. 1014/KB/2023**

*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*

**Proton Steels Limited**

... Applicant

Versus

**Anuj Jain,**

**Resolution Professional of McNally Bharat Engineering Company  
Limited**

... Respondent

***Coram:***

Shri Rohit Kapoor : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

***Appearances (via hybrid mode):***

For the Applicant in I.A. (IB) No. 1014/KB/2023 : 1. Mr. Aniruddha Bhattacharya,  
Advocate

2. Mr. Arnab Roy, Advocate

For the Resolution Professional in : 1. Ms. Shweta Dubey, Advocate

I.A. (IB) No. 1014/KB/2023 : 2. Mr. Atul Sureka, Advocate

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)

Proton Steels Ltd. v. Anuj Jain, RP  
I.A. (IB) No. 1014/KB/2023 in CP (IB) No. 891/KB/2020

Order pronounced on: 19 December 2023

**ORDER**

*Per Coram*

1. This Court convened through hybrid mode.
2. The I.A. has been filed by Proton Steels Limited, represented through Mr. Niraj Agarwal, its Director against Mr. Anuj Jain, Resolution Professional of McNally Bharat Engineering Private Limited under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) seeking the following reliefs:
  - i) *That the decision of the Respondent admitting only Rs.6,62,404.54 (Rupees Six Lakhs Sixty-Two Thousand Four Hundred and Four and Fifty-Four Paise) be set aside and the entire claim of Rs.11,22,71,322.64 (Rupees Eleven Crores Twenty-Two Lakhs Seventy-One Thousand Three Hundred Twenty-Two and Sixty-Four Paise) as made by the Applicant in its Proof of Claim dated May 18, 2022 be admitted;*
  - ii) *That the decision of the Respondent admitting only Rs.6,62,404.54 (Rupees Six Lakhs Sixty-Two Thousand Four Hundred and Four and Fifty-Four Paise) as “operational debt” be set aside and the entire claim of Rs.11,22,71,322.64 (Rupees Eleven Crores Twenty-Two Lakhs Seventy-One Thousand Three Hundred Twenty-Two and Sixty-Four Paise) as made by the Applicant in its Proof of Claim dated May 18, 2022 be admitted as “financial debt”;*
  - iii) *That the Applicant herein be treated/declared as a Financial Creditor of the Corporate Debtor and be made part of the Committee of Creditors if otherwise entitled to in law;*
  - iv) *Pass ad-interim orders in terms of i) to iii) above;*
  - v) *Award costs of and/or incidental to the instant application including legal expenses to the Applicant;*
  - vi) *Any other order/orders that this Hon’ble Tribunal may deem fit.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)**

**Proton Steels Ltd. v. Anuj Jain, RP  
I.A. (IB) No. 1014/KB/2023 in CP (IB) No. 891/KB/2020**

---

**3. *Submissions of the learned Senior Counsel appearing on behalf of the Applicant***

- 3.1. The learned Counsel submitted that between the years 1992-1997, the Applicant had entered into a contract with the Corporate Debtor for the supply of steel casting, but the CD failed to pay the entire dues and hence the applicant became entitled to a sum of Rs.8,48,711.45/- pursuant to which the applicant filed an application before Micro, Small Enterprise Facilitation Council at Cuttack, Orissa (MSMEFC).
- 3.2. Thereafter the matter was referred for arbitration and an award dated 30.11.2011 was passed in favour of the applicant amounting to Rs. 8,48,711.45/-. Again an application for modification of the said award was made by the Applicant wherein the applicable interest under the MSMED Act, 2006 on the principal sum of Rs.6,62,404.54/- was at three times the bank rate as notified by RBI as per the MSMED Act was to be paid from April 1,1997 to June 18, 2006 and thereafter the applicable interest under MSMED Act was to be paid by CD on the sum of Rs. 8,48,711.45/- alongwith interest compounded at three times the bank rate as notified by the RBI w.e.f June 19, 2006 till payment. The said modification was done vide an order dated 13.09.2013.
- 3.3. CD filed a writ against the said award before Orissa High Court but no order for stay was passed and the same was dismissed as withdrawn vide order dated 22.02.2023.
- 3.4. The Applicant filed an Execution Petition before DJ at Sundargarh, Orissa as no payments and the said court passed an order wherein it attached some properties of the CD and subsequently a notice for Proclamation for Sale dated 22.03.2017 was also issued but the sale could not take place till date due to subsequent orders of the High Court.
- 3.5. Thereafter the CD by suppressing about the first writ petition which was filed challenging the arbitral award, again filed another writ petition before Orissa High Court for obtaining the self same order.
- 3.6. Again on 18.07.2019, the CD filed an application under Section 34 of A & C Act, 1996 before the Calcutta High Court to set aside the arbitral award.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)**

**Proton Steels Ltd. v. Anuj Jain, RP  
I.A. (IB) No. 1014/KB/2023 in CP (IB) No. 891/KB/2020**

---

3.7. Before the execution proceedings pending before the DJ, Sundargarh at Orissa could be concluded, this Tribunal admitted the section 7 application against the CD vide order dated 29.04.2022.

3.8. IRP had made public announcement and the applicant submitted its Proof of claim dated 18.05.2022 for a sum of Rs. 11,22,71,322.64/-. Upon visiting the website, the applicant was shocked to see that the RP had only admitted an amount of Rs.6,62,404.54/-.

3.9. The applicant filed I.A 1011 of 2022 to direct the Respondent to give reasons for partially admitting the claim of the applicant but during the pendency of the said IA, the Respondent vide emails wrote to the applicant that as the amount of Rs.6,62,404.54/- was admitted in the books of accounts of CD and the interest was not admitted as an application challenging the arbitral award was still pending before the Calcutta High Court. Therefore, the interest amount has been admitted as a contingent claim with a notional value of Rs.1/-.

3.10. The applicant is also aggrieved by the fact that it has been included as an operational creditor and wills to be included as a financial creditor so that it can become a member of the CoC.

**4. *Submissions of the learned Counsel appearing on behalf of the Respondent***

4.1. The Respondent states that an amount of Rs.6,62,404.54/- has been admitted as because the same was reflected in the books and accounts of the CD and as far as interest component is concerned, the same has been admitted as a contingent claim at notional value of Rs.1/- as because an application u/s 34 of A & C Act is pending before the Calcutta High Court.

4.2. It was further contended that RP does not have adjudicatory powers and only an administrative role of collating, verifying, updating and determining the claims filed by creditors and even this Tribunal is not empowered to enter into determination of such issue in terms of the judgment of NCLAT in M/s Roma Enterprises v. Martin S.K. Golla, RP.

4.3. He also contended that the nature of transaction pertaining to the claim categorizes whether the claim is a financial or an operational debt and merely

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)**

**Proton Steels Ltd. v. Anuj Jain, RP  
I.A. (IB) No. 1014/KB/2023 in CP (IB) No. 891/KB/2020**

---

the interest component of the claim as per the award does not make it a financial debt. The debt arose due to the supply of goods therefore it is an operational debt.

**5. Heard the ld. counsel for parties, perused the record.**

**Analysis and findings:**

6. The principal argument in the matter is that once the RP has admitted the principal claim of Rs.6,62,404.54/- which is a subject matter of an arbitral award under MSME Act, therefore, by operation of law, the applicant becomes entitled for claiming interest at a rate which is three times of the normal interest rate as also awarded in the arbitral award. In this regard the provisions of Section 16 of the MSME are reproduced below:

***16.Date from which and rate at which interest is payable.—***  
*Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.*

[Emphasis supplied]

7. It is also the contention of the applicant that the challenge to the arbitral award under section 34, is hopelessly time barred. Further for sustaining a challenge to the award given under the aegis of MSME act, the appellant is obliged to deposit 75% of the amount of the award with the court, which admittedly has not been done. Thus, when two necessary conditions for sustaining a challenge have not been fulfilled, there is no valid challenge. Therefore, there is no valid challenge to section 34 existing as on date. Moreover, the very fact that the RP has admitted the claim of the applicant in so far as the principal is concerned, the amount of the interest then automatically follows as a corollary by the operation of law(supra). It has

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (COURT-I)**

**Proton Steels Ltd. v. Anuj Jain, RP  
I.A. (IB) No. 1014/KB/2023 in CP (IB) No. 891/KB/2020**

---

- been therefore concluded and averred that the action of the RP in treating the amount of the interest claimed as a contingent liability due to a pending challenge before Hon'ble High Court, is without the rhyme or reason.
8. Be that as it may, the factual situation as of today is that there is a challenge to the arbitral award under section 34 pending before Hon'ble High Court. Therefore, it is evident that the award is yet to attain finality. In so far as the admittance of the principal amount under the arbitral award by RP is concerned, it is clear that the amount claimed has been categorised as a contingent liability, pending the final decision in the matter of challenge. The acceptance of the principal as a contingent liability is therefore merely for the accounting purpose following the principle of Complete disclosure. By the very definition of the contingent liability, if the condition precedent for confirming the entry as an expense is fulfilled, a reverse entry is made to treat the liability as an expense, otherwise the same is reversed. Thus, making a mere accounting entry, which is not irreversible, of the principal claim as a liability does not mean the acceptance of the claim. Since the matter is receiving consideration of the Hon'ble High court, it would be premature to make a confirmed entry towards the claim or reverse it, as the case may be.
9. In light of the foregoing reasons, we do not find any infirmity in the decision of the RP and therefore this IA is rejected.
10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**This Order is signed on the 19<sup>th</sup> day of December 2023.**