

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**I.A. (IB) No. 456/KB/2022
C.P. (IB) No. 1214/KB/2018**

In the matter of:

The Insolvency and Bankruptcy Code, 2016;

And

In the matter of

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;

And

In the matter of
State Bank of India

...Financial Creditor

-Versus-

Rohit Ferro Tech Limited

...Corporate Debtor

And

In the matter of
Angaraj Vanijya Private Limited, having its registered office at 12, Park Lane,
Kolkata- 700 016

... Applicant

-Versus-

Rohit Ferro Tech Limited & Ors.
... Respondents

Date of hearing: 14/06/2022

Date of Pronouncement: 22/06/2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Counsel appeared through physically/video conference

For Applicant : Ms. Manju Bhuteria, Advocate

Mr. Tridib Bose, Advocate

Mr. Sourv Roy, Advocate

For Respondent : Ms. Pooja Chakrabarti, Advocate

Ms. Kiran Sharma, Advocate

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through physically/video conference.
2. This is 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, filed by the applicant seeking for the following reliefs:
 - a. The respondent nos. 1, 2 and 3 be jointly or severably be directed to forthwith make good the losses suffered by the applicant for a sum of Rs. 5,70,90,760/-;
 - b. The losses as suffered by the applicant for a sum of Rs. 5,70,90,760/- be considered as part of the CIRP cost and be accordingly disbursed to the applicant;
 - c. In the alternative, the respondent No. 1 be directed to deliver 2764 MT of stainless steel flat in terms of the purchase orders immediately.
 - d. The respondent No. 3 be directed to set apart a sum of Rs. 5,70,90,760/- from the fund allocated for CIRP Cost till disposal of this instant application;
3. The applicant has stated in this application that it has raised some claims with the Corporate Debtor vide communication dated 17th December, 2021 and the same is mentioned in Annexure- C with this application. It is stated that the applicant addressed an email dated 17th January, 2022 to the respondent No. 1 & 2, thereby informing the respondents no. 1 and 2 that due to their failure to supply the quantity of goods as agreed,

the Applicant had failed to fulfil its business commitments. Copy of email dated 17th January 2022 is annexed to the application as Annexure D.

4. It is stated in paragraph 11 of the application that applicant reiterated its request on 22nd of February, 2022 then the applicant vide an email dated 25th of April, 2022 asked the respondent No. 2 to make good of the losses suffered by it because of the alleged short supply of some materials. Copies of emails dated 22nd February 2022 and 25th April 2022 are annexed to the application as Annexure D.
5. Respondent No. 2 vide an email dated 25th of April, 2022 informed the applicant for the first time that the debit note has raised in pursuance to communication dated 17th of December, 2021 cannot be accepted since Bishnupur plant was shut down on 3rd October, 2021, in view whereof, all the purchase orders of the applicant stood cancelled. This e-mail is annexed as Annexure- E to this application. The applicant has stated that in terms of the losses suffered due to contractual breach by the Corporate Debtor, applicant is entitled to be compensated.
6. The applicant has stated that while respondent No. 1 was undergoing CIRP, the applicant had raised 16 purchase orders upon the respondent No. 1 for purchasing of total quantity comprising of 4323 MT of stainless-steel flat from the respondent no. 1 which was being represented by the respondent no. 2 during the CIRP.
7. The applicant was regularly following up with the Respondent No. 2 who was the Resolution Professional, regarding the supply of entire consignment. Respondent No. 2 continued to assure the applicant that sooner or later the entire quantity of consignment would be delivered. Despite receiving assurances from respondent No. 2, the Applicant by way of letter dated 15th December, 2021 requested respondent No. 2 to expedite the supply of the above referred material. Copy of letter dated 15th December 2022 is annexed to the application as Annexure B.
8. The applicant issued debits notes upon respondent No. 1 on 17th December, 2021 for making good of losses amounting to Rs. 5,70,90,760/- suffered by the applicant on account of the failure of the

respondent No. 1 to supply 2764 MT of stainless-steel flat in terms of the purchase orders raised upon the respondent no. 1. Copies of the said Debit notes have been annexed to the application as Annexure C.

9. Despite repeated communications, the Applicant did not receive any reply from respondent No. 1 or 2. The Applicant again vide its e-mail dated 25th of April, 2022 requested respondent No. 2 to make good of the losses suffered by it.
10. To the applicant's surprise, vide an e-mail dated 25th of April, 2022 respondent No. 2 informed the applicant for the first time that the debit note has raised pursuant to communication dated 17th of December, 2021 cannot be accepted in view of the shutdown of the plant on 3rd of October, 2021.
11. Suffice it to say that respondent No. 2 and 1 failed to deliver the above referred quantity of stainless steel and the applicant has suffered on this count. It is the case of the applicant that because of the contractual breach by Corporate Debtor, applicant is required to be compensated out of the CIRP cost. It is to be noted here that respondent No. 1 went under CIRP. The Resolution Plan was approved by this Adjudicating Authority on 7th of April, 2022.
12. We have heard the Ld. Counsel for the parties and perused the record, we find that;-
 - i. The Resolution Plan was approved by this Adjudicating Authority on 7th of April, 2022. This Resolution Plan has been annexed with this IA at page- 66.
 - ii. As is evident from this approval, few IAs whereby different claims were made by the applicant therein were also came to be decided. Admittedly the applicant in the present IA under consideration was not applicant before this Adjudicating Authority when the plan was filed by the Resolution Professional and was considered.
 - iii. It is an admitted position that the present applicant never approached the Adjudicating Authority when the Resolution Plan was pending approval.

iv. It is not understood in what capacity Resolution Professional could have addressed any communication after the approval of the Resolution Plan on 7th of April, 2022, thereby advising the applicant to do anything as stated in his e-mail dated 25th of April, 2022. It is an established position of law that once the Resolution Plan is approved the role of Resolution Professional comes to an end. In regard to this reliance is placed on judgment of Hon'ble High Court of Delhi in the matter of **Venus Recruiters Private Limited vs. Union of India & Ors.** [2020 SCC OnLine Del 1479] wherein it was held that:

“Once a Resolution Plan is approved, the moratorium order under Section 14 shall cease to have effect and the RP shall forward all the records relating to the CIRP and the Resolution Plan to the Board to be recorded on its database. Thus, the role of a RP comes to an end here.” [Para 51]

In view of the law laid by the above judgment, we are of the considered opinion the role of the RP came to an end after the Resolution Plan was approved and therefore, he could not have addressed the communications being relied upon by the applicant in this application.

v. Further, the judgment of the Hon'ble Supreme Court in **Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.** [2021 SCC OnLine SC 313] has laid down that:

“once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue

any proceedings in respect to a claim, which is not part of the resolution plan” [Para 95]

Considering the abovementioned judgment, and in view of the admitted position the applicant did not approach this Adjudicating Authority when the Resolution Plan was under consideration and had come before this Adjudicating Authority after the approval of the plan, this Adjudicating Authority is of the opinion that he has no right to file any application or seek any relief at this stage.

13. The present application being **I.A. (IB) No. 456/KB/2022** is therefore **rejected**.
14. Certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on 22nd of June, 2022

Zia/ SM(LRA)