

(2023) 11 NCLT CK 0004

National Company Law Tribunal, Mumbai Bench, Court - V

Case No: Interlocutory Application. No. 597/2023 In CP(IB) No. 3434/MB/C-V/2019

Ministry of Petroleum and Natural

Gas

APPELLANT

Vs

Satish Kumar Gupta

RESPONDENT

Date of Decision: Nov. 2, 2023

Acts Referred:

- Insolvency and Bankruptcy Code, 2016 - Section 31, 60
- National Company Law Tribunal Rules, 2016 - Rule 11

Hon'ble Judges: Kuldip Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench: Division Bench

Advocate: Anil T. Agarwal, Amir Arsiwala

Final Decision: Dismissed

Judgement

Kuldip Kumar Kareer (Judicial Member)

1. This is an application filed under Section 60 of IBC read with Rule 11 of the N.C.L.T Rules, 2016 for directions to the Respondent to admit the remaining claims of the Applicant with respect to Block CB-ONN-2005/3 for a sum of USD 26,14,284.18 (equivalent to about Rs. 19,23,98,505.65).

2. The Applicant is a ministry of the Government of India responsible for the exploration, production, refining, distribution, marketing, import, export, and conservation of petroleum, natural gas, petroleum products, and liquified natural gas in the country. The office of Directorate General of Hydrocarbons was set up under the administrative control of the Ministry of Petroleum and Natural Gas for discharging all aspects connected to the regulatory functions of leasing and licensing, safety and environment and also development, conservation and reservoir management of

hydrocarbon resources in various oil & gas blocks/fields across India conferring various functions and responsibilities. The Corporate Debtor, Mercator Petroleum Limited ("Corporate Debtor") was incorporated under the provisions of the Companies Act 1956. By an order dated 31st August 2020, this Hon'ble Tribunal had directed initiation of corporate insolvency resolution process with respect to the Corporate Debtor. Ms. Pinkush Jaiswal ("Previous RP") was appointed as the interim resolution professional of the Corporate Debtor. Subsequently, by order dated 11th August 2022, Mr Satish Kumar Gupta, the Respondent to this Application was substituted in place of the Previous RP as the resolution professional of the Corporate Debtor.

Submissions of the Applicant

3. The Applicant on 26th July, 2021 (as amended by its letter dated 03rd September, 2021 to the previous RP) in Form B (Proof of Claim Form) submitted its claims ("Claims") to the previous RP in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") as under: i. Claim I for USD 1,72,789.27 (equivalent to Rs.127,16,443.60 calculated at the reference rate of 1 USD = Rs.73.5951) with respect to Block CB-ONN-2005/9 (comprised of the amount of shortfall of profit petroleum calculated for financial year 2018-2019 of USD 164432.29 and interest up to 31st August, 2020 of USD 8356.98). The Applicant sought revenue and profit petroleum related details from the previous RP /Respondent for calculating Applicant's share of profit petroleum for the period 2019-2020 for its additional claim entitlement from the Corporate Debtor;

AND

ii. Claim II for USD 78, 12,528.02 (equivalent to Rs.5,749,63,780.90 calculated at the reference rate of 1 USD = Rs.73.5951) with respect to Block CB-ONN-2005/3 (comprised of the balance costs of unfinished minimum work programme (after deducting the amount of Rs.4,69,25,000 received by the Applicant from the invocation of bank guarantee given by Corporate Debtor) of USD 67,96,626.40 and interest up to 31st August 2020 of USD 1,015,901.62)

4. On 2nd May 2022, the Applicant was shocked and surprised to receive a letter dated 2nd May 2022 from the Previous RP, unilaterally, wrongfully and unjustifiably selecting her own preferred basis of calculation, substituting it with the basis of calculation made by the Applicant in terms of Article 5.6 of the production sharing contract for block CB-ONN-2005/3 dated 22nd December, 2008 (as amended), and consequently, partially rejecting the Claims of the Applicant made with respect to the cost of unfinished minimum work programme for block CBONN-2005/3. While with respect to the Claims relating to block CB-ONN- 2005/3, the Previous RP indulged into unnecessary, improper and detailed exercise. In contrast, the previous RP did not show similar promptness in sharing Corporate Debtor's revenue and profit petroleum related details for the period

2019-2020 sought by the Applicant to assess its further claims for the block CB-ONN-2005/9. These details were belatedly provided to the Applicant during October 2022. The Applicant has noted various discrepancies in the audited account shared by the Respondent and the Respondent was requested to have the discrepancies resolved and provide the corrected audited accounts of the Corporate Debtor. The Applicant will only be in a position to submit its additional claims (though provisionally filed recently) with respect to the block CB-ONN-2005/9 after receipt of the corrected audited account of the Corporate Debtor for the period 2019-2020. The Respondent has not refused providing the corrected audited accounts for the period 2019-2020 to the Applicant and therefore, the Applicant has not sought any relief herein and it reserves right to file proceedings for its Claims for block CB-ONN-2005/9 comprehensively raising all issues against the Applicant including wrongful non-consideration of interest.

5. Ex-facie, the previous RP followed a strange process and clearly exceeded the administrative role required in verification of claims to embark on the adjudicatory function. The manner in which the previous RP proceeded to reject and suppress the claims is perverse, wrongful and unjustified. The Applicant by its letter dated 20th October, 2022 provided an elaborate account of the events leading to wrongful partial rejection of the Claims by the previous RP and requested the Respondent to fully admit the claims. The Applicant has not received any response or affirmative action from the Respondent.

6. Hence, being left with no alternative, and aggrieved by the previous RP and the Respondent's conduct, the Applicant is filing the present Application under section 60 read with other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and rule 11 of the National Law Tribunal Rules, 2016.

Submissions of Respondent in brief

7. Ms. Pinkush Jaiswal ("ExRP") after receiving the claim from the Applicant, raised certain queries and sought certain documents to substantiate the claim. After much correspondence was exchanged, the ex-RP sent a letter to the Applicant on the 2nd of May, 2022, partially admitting the claim of the Applicant. The details of admission of the claim of the Applicant are as below:

A. With respect to Claim-I set out above, an amount of Rs. 1,57,53,273/-was admitted out of the claim of Rs. 1,65,93,495/-. An amount of Rs. 8,40,222/- was rejected after restricting the interest claim to only the insolvency commencement date. This has not been challenged.

B. With respect to Claim II set out above, an amount of Rs. 38,25,65,275/-was admitted out of the claim of Rs. 58,56,65,350/-. Out of the claim, an amount of Rs. 20,31,00.075/- was rejected for the reasons set out in the letter dated the 2nd of May, 2022, sent by

ex-RP.

8. In this regard, reference may be drawn to the letter dated the 2nd of May, 2022, sent by ex-RP; and more specifically to the following averment contained therein: "The amount claimed for Well 2 and Well 3 is not as per Appendix H of Production Sharing Contract. As per File No. O-19025/4/2007-ONG DV dated of 17.12.2007 issued by MoPNG to DG, DGH read with clause 6(vii) of 'Policy III/Determination of cost of Unfinished minimum work programme/2007 '- "Cost of each activity of un-finished work programme will be computed as per format given in Appendix-H of model PSC". This is further repeated in Section 1.16 of 'Good International Petroleum Industry Practices 2016' published by DGH. The difference in the amount claimed and as computed per Appendix H is rejected."

9. The case of the Applicant appears to be that the Ex-RP erred in calculating the compensation payable to it under article 5.6 of the PSC Contract-3, which according to the Applicant should have been done in accordance with a policy document published by the Applicant. On the other hand, the Ex-RP maintained that the calculation must be done in accordance with the PSC Contract itself. Without going into the merits or demerits of the specifically factual case of the Applicant, it is humbly submitted that a Resolution Professional cannot enter into "adjudications" for compensation but is restricted to collating only those claims which are clearly and unequivocally substantiated by documents available on record. A Resolution Professional cannot accept a claim for "damages" or any such claim which requires an adjudication from a civil court or tribunal. Thus, the Ex-RP was justified in partially rejecting the claim of the Applicant by restricting herself to the calculation methodology set out in the PSC Contract itself.

10. After receiving the e-mail dated 13th September, 2022 from the Applicant, the present RP sought the requisite information from ex-RP under the cover of an e-mail dated 03rd October, 2022. Notably, on review of various transaction documents, the Respondent could not find any grounds for re-visiting the assessment of the claim of the Applicant as verified by the ex-RP. Accordingly, an e-mail dated 06th October, 2022 was sent to the Applicant by the Respondent. Again, after receipt of the Applicant's letter dated 20 October 2022 and other communications in this regard by the Applicant to the Respondent, once again on 05th December, 2022 the Respondent conveyed to the Applicant that such issues were dealt with by the Ex-RP in detail. Importantly, thereafter, no further objection/ communication was sent by the Applicant to the Respondent in this regard and, thus, now the Applicant is estopped from raising this issue at this belated stage specially after approval of the resolution plan for the Corporate Debtor by the committee of creditors on 13 February 2022.

11. The Applicant through the present application has not been able to demonstrate why its claim ought to be revisited at this belated stage when the resolution plan is already approved by the committee of creditors on 13 February 2022. No further material has been provided to answer the issues flagged by the Ex-RP. The submissions of the Applicant in the present application relate primarily to the interpretation of the PSC Contract and substantiation of the claim for damages. In light of the aforesaid reasons, the Respondent-Resolution Professional humbly submits that this Hon'ble Tribunal may pass appropriate order in this matter in the interest of justice and equity.

ANALYSIS AND FINDINGS

12. Heard the learned Counsels for the Applicant and the Respondent. We have also gone through the records.

13. The present application has been filed by the Applicant on 14th February, 2023, whereas the Resolution Plan for the Corporate Debtor was approved by the Committee of Creditors on 13th February, 2022. The said resolution plan is now pending for approval of the Adjudicating Authority u/s 31 of the Code in IA No. 1124 of 2023. The Applicant is an operational creditor and therefore, does not form part of CoC and has no voting rights. Even if the Applicant's claim is approved, the same is of no consequence now, as the Applicant will only receive to what he is entitled to receive under the resolution plan which has already been approved by the CoC. Even otherwise, it is now well settled that after the approval of the Resolution Plan by the CoC, no new claim can be received or revised as it will jeopardise and derail the entire insolvency process. Besides, the RP while collating the claims has to go strictly by the documents. The RP cannot be expected to adjudicate as he has no such powers to entertain any claim on account of damages/compensation.

14. Hence, in our considered view the I.A. deserves to be dismissed and it is ordered accordingly.

ORDER

a. The Interlocutory Application No.597 of 2023 in Company Petition (IB) No. 3434 of 2019 is hereby dismissed with no order as to costs.