



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

IA/4304//2023 IN C.P. (I.B) No. 3126/MB/2019

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016]

Securities and Exchange Board of India

Plot No. C4-A, “G” Block, Bandra-Kurla Complex, Bandra (East), Mumbai- 400051 (Maharashtra)

...Applicant

Vs

Mr. Manish Lalji Dawda

Resolution Professional of Sheltrex Karjat Private Limited

205 A, 2nd Floor, Hiren Light Industrial Estate,
Behind Johnson and Johnson, Mogul Lane,
Bhagoji Kheer Marg, Mahim (West), Mumbai -
400016, (Maharashtra)

... Respondent

In the matter of

Positive Rays Events Private Limited

Old Rizvi Nagar, Yellow Building, R.No. 1,
Ground Floor, S.v. Road, Santacruz (West),
Mumbai- 400054, (Maharashtra)

...Financial Creditor



Vs

Sheltrex Karjat Private Limited

Tanaji Malushree City site, Shirse- Akurle, Karjat
(West), Raigarh- 410201

... Corporate Debtor

Order Dated: 25.10.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Omprakash Jha (PH)

For the Respondent: Adv. Maulik Chokshi (PH)

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ORDER

Per: Reeta Kohli, Member (Judicial)

- I. The above application I.A. No. 4304 OF 2023 is filed by **Securities and Exchange Board of India** (hereinafter referred as the “**Applicant**”) seeking directions against **Mr. Manish Lalji Dawda**, Resolution Professional of Sheltrex Karjat Private Limited (hereinafter referred as the “**Respondent**”) under **Section 60(5)** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”), praying for following reliefs :



A. This Hon'ble Tribunal be pleased to set aside the decision of the Resolution Professional vide Email dated 12.08.2023, rejecting the Form-B Proof of Claim;

B. This Hon'ble Tribunal be pleased to direct the Resolution Professional to admit the claim of the Applicant of Rs. 1,07,000/- (Rupees One Lakh Seven Thousand only) along with interest @ 12% p.a. which is due and payable by the Corporate Debtor in terms of the LODR Regulations, Rules, By-Laws and Regulations of the Applicant, Circulars issued by the Applicant/ from time to time;

C. This Hon'ble Tribunal be pleased to pass such other or further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity.

II. Facts of the Application-

1. The present Application has been preferred by Securities and Exchange Board of India (SEBI) under the provisions of Securities and Exchange Board of India Act, 1992 seeking a direction to the Resolution Professional to admit the claim of the Applicant of Rs. 1,07,000/- along with interest @ 12% per annum which is due and payable by the Corporate Debtor in terms of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”). The prayer of the Applicant is also to set aside the decision of the Resolution Professional dated 12.08.2023 vide which the claim of the Applicant has been rejected. The contention of the Applicant is that the Applicant is a statutory body established to protect the interests of investors in securities market and to promote the development and to regulate the securities market and for matter connected therewith. The Applicant contended that vide Circular



dated 23.06.2020 (“SEBI Circular”) which came into effect on 01.07.2020 wherein para 3.2 of the said SEBI Circular stated that at the time of executing Debenture Trust Deed, issuers are mandated to provide firstly the Bank details from which it proposes to pay the redemption amount and secondly to pre-authorize Debenture Trustee to seek debt redemption payment related information from Issuer’s bank. The Circular categorically stated that for existing debt securities, the Issuer is required to provide pre-authorization to Debenture Trustee within 60 days from date of the Circular.

2. The case of the Applicant is that the Corporate Debtor, i.e., Sheltrex Karjat Private Limited, failed to comply with the provisions of SEBI Circular because of which adjudication proceedings were initiated against the Corporate Debtor under Section 15-I of SEBI Act read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalty) Rules, 1995 for the violation of the aforesaid SEBI Circular and Regulation 8 of LODR Regulations. A show-cause Notice dated 22.12.2022 was issued on the Corporate Debtor as to show why the penalty should not be imposed upon the Corporate Debtor for violation of the provision of law. However, the Corporate Debtor failed to submit its reply. The reminders dated 28.12.2022 and 10.01.2023 were also issued to the Corporate Debtor with respect to the same. Even the opportunity of personal hearing was provided to the Corporate Debtor on 20.01.2023 and 27.02.2023, however, the Corporate Debtor failed to avail the said opportunity of hearing and also failed to respond to the said show-cause Notice. Hence, the Adjudicating Authority proceeded ex-parte against the Corporate Debtor. Taking the facts and circumstances into consideration, the Adjudicating Officer exercising its powers under Section 15J and Section 15HB of SEBI Act imposed penalty of Rs. 1,00,000/- on the Corporate Debtor vide order dated



28.02.2023 for violating the provisions of LODR Regulations and SEBI Circulars. The Corporate Debtor was provided 45 days to remit the amount penalty imposed and the said order attained finality as the Corporate Debtor never challenged the same. In the interregnum, the Corporate Debtor vide order dated 01.02.2023 was admitted to CIRP and the Respondent was appointed as the Resolution Professional and thereafter, the Resolution Professional published a Public Announcement dated 08.02.2023 in Form-A calling all the stakeholders to file their claims before him, the last date for the said submission of claims was 20.02.2023. On 09.08.2023, the Applicant filed its Form-B Proof of Claim for amount of Rs. 1,07,000/- towards the penalty imposed on account of non-compliance of the provisions of the LODR Regulations and SEBI Circular.

3. Further, the case of the Applicant is that the Respondent/Resolution Professional vide email dated 12.08.2023 expressed his inability to accept the Form-B Proof of Claim on the ground that the Adjudication Order dated 28.02.2023 was passed after the admission of the Corporate Debtor into CIRP, when the moratorium under Section 14 came in effect. The Counsel for the Applicant contended that in view of the fact that the said order of SEBI imposing the penalty has attained finality as neither the Corporate Debtor nor the Resolution Professional challenged the said order, and hence, the Applicant was entitled to submit its claim in terms of IBC provisions. The Counsel relied upon the judgment of Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shyppar Vs. Central Board of Indirect Taxes and Customs (2022 SCC Online SC 1101)***.
4. The counsel for the Applicant also contended that the communication dated 12.08.2023 issued by the Resolution Professional is misconceived and arbitrary as the Resolution Professional has failed to appreciate that the



claim has arisen out of a penalty imposed pursuant to the violation of the provisions of the LODR Regulations and SEBI Circular, thus, is a statutory due imposed for non-compliance of the statutory provisions. Further, as alleged, the Applicant is a statutory authority and has only taken steps to determine the penalty which is due and has not enforced a claim for recovery of penalty due during the period of moratorium under Section 14 of the Code. Therefore, the Respondent has an obligation to ensure that the said penalty is included in the claim against the Corporate Debtor. The counsel for the Applicant, by placing reliance on the IBBI Circular dated 03.01.2018, contended that the Resolution Professional is duty bound to comply with the SEBI Act and Regulations framed thereunder. It was also submitted that in light of Section 15JA of the SEBI ACT, 1992, the penalty amount imposed by the Adjudicating Officer vide order dated 28.02.2023 including the interest amount would be deposited in the Consolidation Fund of India and not in the account of SEBI, further, the same will be gravely prejudicial to public interest.

5. The Counsel further contended that non-inclusion of the Applicant's claim in any proposed Resolution Plan will cause grave prejudice to the interest of the Applicant who is a statutory authority and will be arbitrary and unreasonable as the same is against the principles laid down by the Hon'ble Supreme Court in ***Sales Tax Officer (1) vs. Rainbow papers Limited [2022 SCC Online 1162]***. The Counsel further submitted that the Resolution Professional was duty bound to admit the claim of the Applicant as the Resolution Professional is not vested with any adjudicatory power to accept or reject the claims submitted. He is duty bound to receive, verify and collate the claims as held by the Hon'ble Supreme Court in ***Swiss Ribbons Private Limited Vs. Union of India, (2019) 4 SSC 17***. Therefore,



the Counsel contended that in view of the submissions made, the claim of the applicant, i.e., SEBI, deserves to be admitted.

6. It was also submitted that the rejection of the Applicant's claim by the Resolution Professional would be against the ratio laid down by the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Ors. [(2021) 9 SCC 657]***. As further submitted by the counsel for the Applicant, the SEBI Act and IBC can be read in a harmonious manner and such harmonious interpretation would be in line with the judgment of the Hon'ble Supreme Court in ***Gujarat Urja Nigam Limited vs. Amit Gupta [(2021) 7 SCC 209]***, wherein a balance was struck between the jurisdiction of NCLT under the IBC and the potential encroachment on the legitimate jurisdiction of other authorities. In view of the aforementioned submissions, the Applicant prayed before this Hon'ble Tribunal to set aside the decision of the Resolution Professional rejecting the Form B- Proof of Claim of the Applicant and also to direct the Respondent to admit the claim of the Applicant.
7. On the other hand, the Counsel for the Respondent stated that vide order dated 01.02.2023, Corporate Debtor was admitted to CIRP whereby moratorium was initiated and thus continuing or initiating any proceedings against the Corporate Debtor was prohibited. The Counsel further contended that on plain reading of Section 14 of the Code along with Section 238 of the Code, it is clear that when moratorium is levied, the provisions of the Code will override the SEBI Circular. It was contended that the imposition of penalty upon the Corporate Debtor after the initiation of moratorium under Section 14 was a gross violation of powers by the Applicant as under SEBI Act. The Resolution Professional further



submitted that despite the fact that the Corporate Debtor was admitted to CIRP on 01.02.2023 and the public announcement for the same was made by the erstwhile Resolution Professional on 08.02.2023, the Applicant still chose to pass the impugned order dated 28.02.2023 levying a penalty of Rs. 1,00,000/- for violating provision of LODR Regulation and SEBI Circular.

8. The Ld. Counsel relied upon the judgment of Hon'ble Bombay High Court in the case of ***Securities Exchange Board of India Vs. SKDC Consultants Limited (2004) 53 SCL 407 (Bom HC DB)*** so as to emphasize the point that the imposition of penalty for the default of failure on the part of the Corporate Debtor is a statutory civil obligation. There is no element of criminal offence or punishment as contemplated under the Criminal Proceedings and hence, the Counsel for the Respondent contended that in view of the same, the claim filed by the Applicant after the initiation of moratorium has been rightly rejected. By placing further reliance on the aforesaid case, the Ld. Counsel for the Respondent also contended that the Applicant cannot continue any civil proceedings when moratorium is levied.
9. It was further stated by the Respondent that the last date of submission of claims was 20.02.2023 and Regulation 12(2) of the IBBI Regulations clearly stipulates that a claimant shall submit its claim before 90 days from the date of the order. However, 90 days from the said date got over on 07.05.2023 and keeping the same in mind, the Applicant had crossed the timeline as per the aforesaid IBBI Regulations and thus, the Respondent could not admit the claim of the Applicant. The Respondent placed reliance on the judgment of the Hon'ble NCLT in the matter of ***Tirupati Finance Vs SEBI (2000) 27 SCL 179 (SAT)***. In light of the aforementioned



submissions, the Respondent prayed before this Hon'ble Tribunal to reject the claim of the Applicant.

III. Findings-

10. After having heard the Ld. Counsel for the parties and after appreciating the documents placed on record, the only issue involved for adjudication in the present case is ***“Whether the assessment of imposition of penalty by SEBI after the initiation of moratorium period, is legally permissible or not?”***
11. To determine this issue, it must be appreciated that after the admission of the Corporate Debtor into CIRP, the moratorium under Section 14 of the Code is declared and the Corporate Debtor becomes immune from the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the enforcement of any judgment, decree or decision issued by any Court, Tribunal, Arbitration Panel or other Authority. The Insolvency and Bankruptcy Code forbids any such act which, after the admission of Corporate Debtor into CIRP, depletes the value of the Corporate Debtor or which puts any additional encumbrance upon the Corporate Debtor. In view of the fact that IBC, 2016 is a subsequent legislation in comparison to SEBI Act, 1992 and it is bound to prevail upon the SEBI Act, otherwise also at the time of enactment of IBC, the Legislature was well aware of the provisions of all previous acts. It deserves to be appreciated that IBC is not merely a Statute but a complete Code in itself and thus on all matters pertaining to Insolvency, in view of Section 238, IBC is bound to have an overriding effect. We would also like to mention that **2018 Report of NCLT Law Committee** wherein it distinguishes between a proceeding pertaining to *“determination or assessment of the liability”* and *“recovery of the determined or assessed*



liability”, wherein it has been proposed that Section 14 only prohibits the proceeding to recover the liability and not the proceeding to determine the liability. A relevant excerpt from the **2018 Report of the NCLT Law Committee**, dated 26.03.2018, is reproduced as under-

“5.3 Having said that, it is well understood that a proceeding to assess or determine liability, and a proceeding to recover the assessed or determined liability stand at a different footing. The realisation of the dues is a consequence to the determination of liability.”

12. Keeping in view of the abovesaid observations of the report, in the present case, the Applicant has not gone ahead to recover the penalty imposed against the Corporate Debtor but has filed its claim of the assessed liability before the Resolution Professional for a default having been committed by the Corporate Debtor prior to initiation of CIRP which in our opinion is very well taken care of in the observations of the **2018 Report of NCLT Law Committee**. Thus, it is incumbent upon the Resolution Professional to admit the claim submitted by the Applicant, i.e., SEBI. Therefore, it is not appropriate and legally sustainable on the part of the Resolution Professional to have rejected the claim of the Applicant SEBI merely on the ground that the penalty imposed is after the commencement of moratorium as given under Section 14 of the Code.

13. Therefore, in view of the above finding, the issue of assessment of imposition of penalty by SEBI after the initiation of moratorium under Section 14 is held to be legally permissible in the eyes of law as the same in no manner depletes the assets of the Corporate Debtor. Thus, the decision of the Resolution Professional vide Email dated 12.08.2023, rejecting the claim of the Applicant is set aside. Further, the Resolution



Professional is directed to admit the claim of the Applicant. With these observations, **the IA stands allowed.**

Sd/-

MADHU SINHA
Member (Technical)
/Jhanvi/

Sd/-

REETA KOHLI
Member (Judicial)