



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 3964/2023

IN

Company Petition No. (IB) – 806/(PB)/2019

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

RAVINDER AGGARWAL & ORS

.... PETITIONER

VERSUS

M/S. MSA DEVELOPERS PRIVATE LIMITED

.... RESPONDENT

AND IN THE MATTER OF-

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE-13, NEW DELHI

.... APPLICANT

CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**



For the Applicant: Mr. Sanjay Kumar, Ms. Esha, Ms. Hemlata Rawat Advs.

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 13.09.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 to accept and entertain the claim filed by the applicant which was rejected by the IRP vide letter dated 18.02.2023.

The applicant in the present application has prayed for the following reliefs: -

- a) *Set aside and quash the letter dated 18.02.2023 issued by the Ld. Resolution Professional to the Applicant;*
- b) *Direct the Resolution Professional to consider and include the claim dated 01.12.2022 filed by the Applicant pursuant to Corporate Insolvency Resolution Process of the Corporate Debtor; and/or*



c) Pass any such order(s) or judgments that this Hon'ble Tribunal may deem fit and proper in the present set of facts and circumstances.

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That a survey operation under section 133(A) of the Income Tax Act, 1961 was conducted on 03.08.2016 by the investigation wing and on subsequent dates in different business premises of “MSA Developers & Others” Group of Companies based at Delhi. This group was found to be involved in bogus/ inflated purchases/ services from dubious parties, release their payment through cheque and in return the cash is received back from the vendors/ parties. Thereafter, the case of the Corporate Debtor was selected under “CASS” for scrutiny assessment and accordingly, notices under section 143(2) of the Income Tax Act, 1961 were issued on 31.03.2017 for A.Y. 2016-17 and on 09.08.2018 for A.Y. 2017-18. The same were duly served upon the Corporate Debtor.



- ii. The assessment proceedings for Assessment Year (A.Y.) 2016-17 was completed on 13.08.2019 and a demand notice for Rs.45,52,43,910/- was served upon Corporate Debtor. While the Scrutiny assessment was going on, the CIRP of the Corporate Debtor, M/s MSA Developers Pvt. Ltd. was initiated vide an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). The same was admitted by this Hon'ble Tribunal vide order dated 11.10.2019 and Sh. Rabindra Kumar Mintri was appointed as the Interim Resolution Professional (IRP).
- iii. Pursuant to the Order dated 11.10.2019; the Ld. RP issued a public announcement inviting claims from the creditors. The Applicant filed its claim on 04.02.2020 pertaining only to Assessment Year 2016-17 for Rs.45,52,43,913/- in Form B along with all the supporting documents and the claim of the Applicant was admitted by the Resolution Professional. However, no claim in respect of demands for A.Y. 2014-15 to 2017-18 were filed by Revenue as no assessment order and pursuant demands for A.Y. 2014-15 to 2017-18 were crystallized.



- iv. The assessment proceedings of the Corporate Debtor for A.Y. 2014-15, 2015-16 and 2016-17 were re-opened vide issuance of notice dated 28.03.2021 under section 148 of the Income Tax Act, 1961 and the assessment for A.Y. 2017-18 was completed vide order dated 19.07.2021 and a demand notice was issued for Rs.1,43,32,090/- to the Corporate Debtor much before the Resolution Plan was approved by the Committee of Creditors (CoC). Subsequently, the Resolution Plan was submitted before this Tribunal for approval. The IRP in response to the notices, filed its submission and furnished Transaction Audit Report vide an email dated 18.02.2022 and further the District Valuation Officer submitted its report on 24.08.2022.
- v. On the basis of the Transaction Audit Report submitted by the Ld. Resolution Professional and the report of District Valuation Officer, the Applicant completed the assessment proceedings for A.Y. 2014-15, 2015-16 and 2016-17 vide its orders dated 19.10.2022 and issued demand notices.



- vi. It is submitted that the RP was already aware of the ongoing assessment proceedings against the Corporate Debtor before the plan was approved by the CoC and despite of having full knowledge, the RP failed to consider the tax dues. The Corporate Debtor owes a sum of Rs.119,17,91,261/- (Rupees One Hundred Nineteen Crores Seventeen Lakhs Ninety One Thousand Two hundred and Sixty One Only) in the form of statutory dues for A.Y. 2014-15 to 2017-18 payable to the Applicant.
- vii. The Applicant filed its final claim of Rs. 119,17,91,261/- (Rupees One Hundred Nineteen Crores Seventeen Lakhs Ninety One Thousand Two hundred and Sixty One Only) on 01.12.2022 in Form B along with all the supporting documents. However, the said claim was rejected by the Ld. RP vide communication dated 18.02.2023 on the ground that the claim was time barred and could not be proceeded with.
- viii. Hence, the only recourse left with the Applicant is to approach this Tribunal for appropriate directions by



directing the RP to allow claims of the Applicant by way of this present Application.

3. The Resolution Professional of the Corporate Debtor had filed his reply to the averments of the applicants. The defence taken by the Resolution Professional, respondent herein, are stated in brief as below: -

- i. The applicant is the Deputy Commissioner of Income Tax, Central Central-13, New Delhi. The applicant had submitted its claim vide Form B dated 01.12.2022 for an amount of Rs. 1,19,17,91,261.00/- (Rupees One Hundred Nineteen Crores Seventeen Lakhs Ninety-One Thousand Two Hundred Sixty-One) which was rejected by the IRP vide email dated 18.02.2023 on the ground that as per Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the claim filed by Applicant was time-barred.
- ii. The Applicant had earlier submitted his claim *vide* Form-B dated 04.02.2020 (of which a claim of Rs. 45 crores was admitted by the IRP). Further, through



captioned IA, Applicant is contending that his earlier Form-B dated 04.02.2020 was only for Assessment Year (AY) 2016 to 2017, which clearly shows that Applicant was well aware of the CIRP against the Corporate Debtor still slept over his alleged claims and filed Form B dated 01.12.2022 after a delay of 1058 from the 90th day of the insolvency commencement date.

- iii. That Form A was published on 17.10.2019 wherein the last date for submission of claim was 28.10.2019
- iv. That in view of Form A published by the IRP, the Applicant had filed its claim, as per Regulation 8A of CIRP Regulations, 2016 which was admitted by the IRP.
- v. That Income Tax Authority was a part of the CoC meetings, hence, was well aware of insolvency proceedings.
- vi. That in the 12th CoC meeting, the Resolution Plan submitted by the Successful Resolution Applicant (hereinafter to be referred to as 'SRA') was approved by the COC by 80.12% voting share. Subsequently, the IRP as per Section 30 (6) of the Code, 2016, filed IA No. 1078



of 2022 before the Tribunal, to adjudicate upon the plan approved by the CoC members with 80.12 % of the voting share.

- vii. That on 01.12.2022, Applicant herein has filed another Form-B for an amount of Rs. 1,19,17,91,261.00/- which was rejected by the IRP vide email dated 18.02.2023 as per Regulation 12A of the CIRP Regulations.
- viii. That the present application has been filed just to drag the ongoing CIRP against the Corporate Debtor.
- ix. That in the matter of "*Regional Provident Fund, Commissioner Warangal Employees Provident Fund Organization Vs. Vandana Garg & Ors.*", CA (AT)(Ins) No. 50 of 2021, Hon'ble NCLAT observed that –

95. In the result, we answer the questions framed by us as under:

(z) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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;

x. It is submitted that the Resolution Plan approved by the CoC with 80.12% voting share is now reserved for orders by this Adjudicatory Authority vide order dated 16.06.2023 in IA No. 1078 of 2022 (which deems to be approved by the Adjudicatory Authority). Further, in terms of the Provision of the Code and catena of Judgements passed by the Hon'ble NCLAT and Hon'ble Supreme Court, once a Resolution Plan is approved by the Adjudicatory Authority the claim provided in the Resolution Plan stands frozen and will be binding on Corporate Debtor and everyone else related, therefore captioned IA is not maintainable and shall be dismissed.

4. We have gone through the application and documents on record filed by both the parties and arguments advanced by counsels of both the parties.



5. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

6. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, prescribes the timeline under Regulation 12(2) for submission of claim with proof by the creditor within the time stipulated in the public announcement, to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation.

The relevant regulation is reproduced hereunder:

“12. Submission of proof of claims. –

(1) xxxxxx



(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Xxxxxx ”

7. Adverting to the facts of the present case, the public announcement was made on i.e., 17.10.2019 according to which last date for submission of the claim was 28.10.2019. The Committee of creditors had approved the resolution plan in its 12th COC meeting held on 31.08.2021. The applicants had submitted their respective claim on 01.12.2022 after almost 3 years (1058 days) from Insolvency Commencement date.

8. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 09.01.2020.



9. It is pertinent to refer to the judgment of Hon'ble Supreme Court in the matter of *Essar Steel India Limited vs. Satish Kumar Gupta & Ors* (2020) 8 SCC 531 dated 15.11.2019 wherein it has been held that *"A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."*

10. Further in the matter of *Tata Capital Financial Services Limited and Ors. vs. Santanu T. Ray and Ors.* (02.09.2021 - NCLT - Mumbai) : MANU/NC/3503/2021 in para 86 it was held as under : -

86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern.



*I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. **The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.***



In the matter of *Assistant Commissioner of Customs Vs. Mr. Mathur Sabhapathy Viswanathan IRP of M/s. Leo Primecomp Pvt. Ltd. IA 814/IB/2020*, while considering an application of similar nature the Hon'ble NCLT in para 15 stated as under: -

*“15. ... The Applicant had been informed of commencement of CIRP by the Respondent. **The Applicant has failed to establish the reason for the delay in submission of the claim. This led us to the questions that why not the Respondent / RP take cognizance of outstanding statutory dues as per book of accounts of the Corporate Debtor. The Respondent has clearly stated that the alleged dues are not yet quantified and litigations under various authorities are pending. The Respondent has also stated that the Resolution Plan is pending for approval before CoC. Hence, we are of the view that there is no merit in this application. The Applicant has failed to reason out the delay in submission of claim, the quantified amount is also under dispute. Hence, at this fag end of CIRP, we cannot entertain this application.***

16. In view of the foregoing discussions, the IA/814/1B/2020 stands dismissed. No cost.”



11. The Hon'ble Supreme Court very recently in the matter of *RPS Infrastructure Ltd. vs. Mukul Kumar and Ors.* (11.09.2023 - SC) : MANU/SC/1001/2023 held as under: -

19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. **We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry.**

20. **Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the Appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.**

21. **The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth,**



thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the Appellant. **We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.**

23. **The result of the aforesaid is that the appeal is dismissed** leaving the parties to bear their own costs.

12. It is admitted fact that claim of Applicant was not crystallized and it is only during the CIRP, dues have been crystallized. Hence, the IRP does not have the records of the dues of IT Department. If the claim of the applicant is admitted at this stage, then the very purpose of IBC would be defeated as discussed in the abovesaid judgements. Keeping in mind the very objective of the Insolvency and Bankruptcy



Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of assets.

13. The application filed by the applicant is dismissed.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)