IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI, HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA, HON'BLE TECHNICAL MEMBER

IA(IBC) No. 409/JPR/2023
In CP No. (IB)- 87/9/JPR/2020

IN THE MATTER OF:

APOLLO PIPES PRIVATE LIMITED

...Financial Creditor

VERSUS

TONK WATER SUPPLY LIMITED

...Corporate Debtor

IN THE MATTER OF
IA(IBC) No. 409/JPR/2023

Deputy Commissioner, State Tax Department,
Business Audit Zone-II, Zonal Kar Bhawan, Jhalana,
Jaipur; Office Address At: Room No. 334,
Zonal Kar Bhawan, Jhalana Institutional Area,
Jhalana Dungri, Jaipur-Rajasthan.

. .... Applicant

VERSUS

M/s Tonk Water Supply Limited
Through Interim Resolution Professional, Amit Gupta
Registered Add.: C-17, Vinay Nagar, Krishna Nagar,
Lucknow Uttar Pradesh-226023
E-mail: amitguptacs@gmail.com

.... Respondent

FOR THE APPLICANT: Nikhil Yadav, Adv.
Shantanu Jugtawat, Standing Counsel
Nagendra Singh Adha, Adv.

FOR THE RP: Rishabh Singh, Adv.

Sd/-

Sd/-

Order Pronounced On: 22.12.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Adjudicating Authority had admitted an Insolvency Application filed by *Apollo Pipes Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') and directed the commencement of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor namely *M/s Tonk Water Supply Limited*; thereby appointing *Mr. Amit Gupta* as the Interim Resolution Professional ('IRP') vide order dated 16.09.2022.
2. It is seen that the present application has been filed by the Resolution Professional subsequent to the filing of the application bearing *IA No. 408/JPR/2023* seeking liquidation of the Corporate Debtor under Section 33(1) of the IBC, 2016 read Rule 11 of NCLT Rules seeking liquidation of the Corporate Debtor.
3. The present application has been filed on the following grounds:
   3.1. The present Application has been filed by State Tax Department, Business audit-1, Zone-II, Jaipur ('Applicant'), through the Joint Commissioner Tanuja Goswami State Tax Department, Business audit-1, Zone-II, Jaipur.
   3.2. In the present matter the CIRP of the Corporate Debtor has commenced on 16.09.2022. Thereafter the IRP has issued public announcement in

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Form-A on 21.09.2022 to submit the claims of the creditors. The Applicant herein submits that there is an outstanding liability on the Corporate Debtor to pay interest as per Section 50 of the Central Goods and Service Tax/State Goods and Service Act, 2017 ('CGST/SGST') which is to be paid @18% i.e., Rs. 4,98,971/- (Rupees Four Lakh Ninety-Eight Thousand Nine Hundred Seventy-One) along with the penalty under Section 73 of the CGST/SGST Act, 2017.

3.3. It was found in the observation that in cash/credit ledger of the Corporate Debtor there was no amount till the date of filing of GSTR 3B of March, 2018 however Section 13 of the CGST/SGST Act, 2017 categorically states about the time of supply and tax liability there upon. Therefore, in contravention of Section 13 of the CGST/SGST Act, 2017 the Corporate Debtor was liable to pay interest amounting to Rs. 9,79,922/- (Rupees Nine Lakh Seventy-Nine Thousand Nine Hundred Twenty-Two Only) under Section 50 of the CGST/SGST Act, 2017, as the Corporate Debtor has issued tax invoices from July 2017 to March, 2018 after providing the services.

3.4. Thereafter an order has been passed by the Applicant on 24.01.2023 that the Corporate Debtor is liable to pay an interest of Rs. 14,78,893/- (Rupees Fourteen Lakh Seventy-Eight Thousand Eight Hundred Ninety-Three Only) along with penalty of Rs. 60,546/- (Rupees Sixty Thousand Five Hundred Forty-Six Only) in terms of Section 13(2),

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35(6), 50 and 73 of the SGST/CGST Act, 2017. The Copy of the order dated 24.10.2023 is annexed as Annexure-3 of the Application.

3.5. In relation to the same the Applicant has filed its claim under Form-A & B along with the declaration before the RP on 26.04.2023 via E-mail and Registered Post. Copy of the mail and receipts of the Indian Post are annexed as Annexure-4 of the Application.

3.6. On the very same day the RP has rejected the claim of the Applicant stating that the claim has been filed on the belated stage since the last for the submission of the claim was 03.10.2022 as per the Regulation 12(2) of the CIRP Regulation. In light of the aforementioned regulation the claim has be to filed before the 90^{th} day of the commencement of the CIRP i.e., 15.12.2022. In the view of the same the RP has rejected the claim of the Applicant.

3.7. The Applicant is a State Department, in order to plead any case in the court the department needs to undergo an extensive procedure that includes seeking permission and directions from the headquarter/higher authorities. Further there was strike going on in the department in the month pf May and June.

3.8. The Applicant states that there is delay of almost 133 days in filing the claim before the RP, therefore the delay may be condoned since the it was not intentional.

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4. The RP filed its reply vide Dairy No. 1931/2023 dated 09.08.2023 whereby the following was submitted:

4.1. The Rp has received the claim of the Applicant on 26.04.2023 for an amount of Rs. 15,39,439/- (Rupees Fifteen Lakh Thirty-Nine Thousand Four Hundred Thirty-Nine Only). The claim was received after the last date of the submission of the claim as per the Section 12(1) and (2). The claim was filed almost after 205 days from the last date mentioned in Form-A i.e., 03.10.2022.

4.2. It is pertinent to note instant application filed by Applicant is violative of Section 14 of the Code, 2016 which deals with the provisions of moratorium. It is decisively established under the law that during the period of moratorium the commencement of any suit or continuation of pending suits against the Corporate Debtor is strictly prohibited during that period.

4.3. Further it is stated the claim of the Applicant is time barred and are in violation of Section 14 of the Code, 2016. The RP has relied on the Judgement of the Hon'ble High Court of the Karnataka in the matter of *Associate Décor Limited Vs Deputy Commissioner of Commercial Taxes* in Writ Petition No. 17303/2021 and Judgement of the Hon'ble NCLAT in the matter of *The Assistant Commissioner, Central Tax, CGST & CX Vs Avishek Gupta (RP) CA (AT) (INS) No. 869 of 2021*

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5. We have heard the Ld. Counsel & the RP and perused the averments made in the Application and Reply along with the documents enclosed with the Application.

6. Learned Counsel for the Applicant has submitted that the total outstanding amount towards Corporate Debtor is Rs. 15,39,440/- (Rupees Fifteen Lakh Thirty-Nine Thousand Four Hundred Forty Only) in Form-B dated 26.04.2023. Accordingly, a claim statement has been filed before the RP however, it was rejected by the RP on the ground of the late submission of the claim. The Applicant has submitted that it was unable to submit its claim within the stipulated time period for reasons mentioned therein.

7. It is seen that the claim filed by the Applicant is beyond the timeline as provided under regulation 12(2) of the CIRP Regulations, 2016 and the same has been resolved and thereby received at a stage where the Committee of Creditors had already approved to Liquidate the Corporate Debtor. An application to this effect was also moved by the RP before the Adjudicating Authority bearing *IA No. 408/JPR/2023* which has been further allowed vide Order dated 22.12.2023.

8. The Hon'ble Supreme Court has in the matter of *M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. Civil Appeal No. 5590 of 2021* dealt with the issue of inviting claims. In Para 20 of the Judgment, it is stated that Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP in the newspapers. This would constitute

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Sddeemed knowledge on part of the Applicant. Therefore, there appears to be no valid reason for the submission of the claim by the Applicant after the final date as mentioned in the public announcement.

9. The application numbered as *IA No. 408/JPR/2023* filed under Section 33(2) of the IBC seeking Liquidation of the Corporate Debtor has been allowed by this Adjudicating Authority vide Order dated 22.12.2023 and Liquidator has duly been appointed. In view of the Order passed in *IA (IBC) No. 408/JPR/*2023, at this stage, the Corporate Debtor is now undergoing Liquidation. Therefore, it is not proper to allow the plea of the Applicant at this stage.

10. In view of the foregoing, the Applicant may present its claims during liquidation process before the Liquidator under Regulation 16(1) of the IBBI (Liquidation Process) Regulations, 2017.

11. Accordingly, this application is rejected & thereby disposed of.

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER