



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,(COURT II)
KOLKATA**

IA (IB) No. 421/KB/2023
in
CP (IB) No. 2078/KB/2018

***Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal, 2016.***

In the matter of:

Trimurti Associates Private Limited

... Financial Creditor

Versus

BKM Industries Limited

... Corporate Debtor

-And-

In the matter of:

Assistant Commissioner, CGST & Central Excise, Division X

... Applicant

Versus

Pritam Bayal,

Resolution Professional of BKM Industries Limited

... Respondent

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through hybrid mode):

For the Applicant

Mr. S.K. Tiwari, Advocate

Order pronounced on: 19 September 2023

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court convened *via* hybrid mode.

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2. The present I.A. has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) by the Assistant Commissioner, Central GST seeking the following reliefs:
- a. *That order be passed condoning the delay in lodging the claim by the applicant with the RP of the Corporate Debtor; or*
 - b. *That order directing the RP to consider the claim submitted by the Applicant vide its claim submitted in Form”B” dated 24.11.2022, in accordance with law upon condonation of the delay by this Hon’ble Tribunal be passed; or*
 - c. *Ad-interim orders in terms of prayers above; or*
 - d. *Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem, fit and proper.*
3. ***Submissions of the learned Counsel appearing on behalf of the Applicant***
- 3.1. The learned Counsel appearing on behalf of the Applicant submitted the Corporate Insolvency Resolution Process (“CIRP”) was initiated against the said Corporate Debtor i.e. BKM Industries Limited on 30 December 2020. In the said proceeding, Mr. Kanchan Dutta was appointed as the Interim Resolution Professional. Mr. Pritam Bayal was appointed as the Resolution Professional on 17 February 2022.
- 3.2. It is further submitted that the Interim Resolution Professional duly made a public announcement on 02 January 2021. As per Regulation 12(1) and 12(2) of the Insolvency and Bankruptcy of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) the 90th day of submission of claim expired on 30 March 2021.
- 3.3. The Applicant has a claim amounting to Rs. 2,74,56,984/- (Rupees Two Crore Seventy-Four Lakh Fifty-Six Thousand Nine Hundred Eighty-Four Only) against the two SCNs bearing No. DGGI/VRU/36-02/2022-

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23, dated 20.04.2022 and No. DGGI/ SZU/36-01/2022-23, dated 20.04.2022.

3.4. On 16 November 2022¹, the Applicant was informed regarding the said CIRP proceedings with a request to take necessary action into the matter. Accordingly, on 24 November 2022, the Applicant filed the claim of Rs. 2,74,56,984/- to the Resolution Professional. The Resolution Professional vide email dated 29 November 2022 stated that as per regulation 12 of the CIRP Regulations that a creditor is to submit the claim on or before the last date as mentioned in the public announcement and if the creditor fails to do so then the same may be filed on or before ninety days of CIRP date. The Resolution Professional stated that he may not be able to accept the claim as there was a delay in filing the claim.

3.5. The Applicant on 16 December 2022, requested the Resolution Professional to accept the claim, however, the Resolution Professional vide email dated 20 December 2022 stated that he is not competent to accept a claim at such a belated stage and has further not obtained an order for condonation of delay.

3.6. It is submitted that the Applicant was not aware about the provision of the Code as well as the initiation of CIRP of the Corporate Debtor and as soon as the Applicant became aware of the initiation of CIRP of the Corporate Debtor, it filed its claim before the Resolution Professional.

3.7. The Applicant states that the deadline set out for submission of proof of claim is not a sacrosanct and/or mandatory provision of law but is procedural in nature to aid the Insolvency Resolution Process.

3.8. It is further submitted that denying the claim of the Applicant would result in unfair and arbitrary treatment to the Applicant.

Analysis and Findings

¹ Annexure A at page 23 of the I.A.

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4. Heard the learned Counsel appearing on behalf of the Applicant and perused the records.
5. Let us understand the timeline from the date of initiation of CIRP till the date the claim was rejected.

List of dates	Event	No. of days from CIRP
30.12.2020	Initiation of CIRP	0
02.01.2021	Form A publication	3
24.11.2022	Claim filed before the Resolution Professional	694
29.11.2022	Claim rejected	699
16.12.2022	Request for re-consideration of claim	716
20.12.2022	Claim rejected	720

6. From the table above, it is clear that it had been more than 600 days from the date of initiation of CIRP, when the Applicant filed its claim Further, no reasonable explanation has been given except that the Applicant was not aware of the CIRP of the Corporate Debtor. If we accept this explanation and condone the delay, and send the claim for verification, and if the claim is approved , it would lead to changes in the list of creditors, which would then the change in the payment schedule in the Resolution Plan creating a domino effect. This process would make the entire CIRP period futile.
7. The claim of the Applicant may be genuine as stated by the Applicant but the law can only come to the rescue of a person who is vigilant and not dormant, in this case the reason and the delay are both unreasonable.
8. Further, at this stage, the Resolution Plan for the Corporate Debtor has been approved by the CoC and filed before us for approval of the Resolution Plan.

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9. Be that as it may, the Successful Resolution Applicant in its Resolution Plan in Clause 2.9 of Part B at Page 62 has dealt with “Failure to submit claims and rejected claims” and has stated that if any claims have not been submitted, have been rejected by the Resolution Professional and not verified then such claims shall be extinguished and waived as on the Effective Date.
10. Thus, considering the timeline and the statement of the Successful Resolution Applicant, we are of the opinion that condoning such claim would impact the CIRP in a negative manner as it would mean restarting the process.
11. With the above observations *I.A. (IB) No. 421/KB/2023 in C.P. (IB) No. 2078/KB/2018 is hereby dismissed.*
12. The Registry is directed to send email of the order forthwith to all the parties and their Id. Counsel for information and for taking necessary steps.
13. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on the 19th day of September 2023.

GGRB (LRA)