

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 56 of 2021**

**IN THE MATTER OF:**

**The Assistant Commissioner of Central Tax,**

GST Division, 3<sup>rd</sup> Floor, Thakai Towers,

RF Road, Anantapur

**...Appellant**

**Versus**

**1. Mr. V. Shanker,**

**RP for M/s. Sri Ramanjaneya Ispat Pvt. Ltd.,**

Flat No. 04, Trendset Villas, Road No. 3,

Banjara Hills, Hyderabad,

Telangana – 500034.

**...Respondent No. 1**

**2. Resolution Applicant of**

**Sri Ramanjaneya Ispat Private Ltd.**

Terapanth Foods Ltd.

MaitriBhavan, Plot No. 18, Sector No. 8

Gandhidham (Kutchh) Gujarat-370201

**...Respondent No. 2**

**3. Resolution Applicant of**

**Sri Ramanjaneya Ispat Pvt. Ltd.**

**Rav's Steels Pvt. Ltd.**

Seven Hills, Plot # 9 Gopalswamy Road

Gandhinagar Market Bellary Bellary

Karnataka – 583101

**...Respondent No. 3**

**For Appellant: Ms. Samiksha Godiyal, Advocate.**

**For Respondent: Mr. Mithun Shashank, Advocate for R-1.**

**Mr. PCS Devangi Kariya and**

**Mr. Y Suryanarayan, Advocate for R-2&R-3.**

**ORDER**

**(Virtual Mode)**

**11.06.2021**      Heard.

2. This Appeal has been filed by the Appellant-The Assistant Commissioner of Central Tax, G.S.T. Division against Impugned Order dated 28<sup>th</sup> January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in I.A. No. 779 of 2019 in CP (IB) No. 344/9/HDB/2018 in the matter of Corporate Debtor – Sri Ramanjaneya Ispat Pvt. Ltd. By the said Impugned Order, the

Adjudicating Authority allowed Resolution Plan which was filed by Terapanth Foods Ltd. and Rav's Steels Pvt. Ltd. which was passed under Section 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 (IBC in short).

3. According to the Appellant, the Appellant had filed claim with the Interim Resolution Professional on 07<sup>th</sup> August, 2019. On 16<sup>th</sup> August, 2019, the Appellant filed Application to consider Proof of claim along with condonation of delay before the Adjudicating Authority. It is argued for Appellant the letter was acknowledged as received by the Registry of Adjudicating Authority on 23<sup>rd</sup> August, 2019. According to the Appellant, even the Resolution Professional had inspected and looked into valuation of the attached goods by the department on 06<sup>th</sup> November, 2019. The grievance of the Appellant is that when the Adjudicating Authority passed the Impugned Order it did not take into consideration and include the claim made by the department for Operational dues of Rs. 3,88,38,963/-.

4. We have heard the Learned Counsel for the Appellant and the Respondent No. 1-Resolution Professional.

5. Before discussing the matter we need to keep in view Judgment of Hon'ble Supreme Court of India in the matter of "*Ghanashyam Mishra Vs. Edelweiss Asset Reconstruction Company*" (Civil Appeal No. 8129/2019 & Others decided on 13.04.2021) MANU/SC/0273/2021 where amendment made in Section 31 as per Insolvency and Bankruptcy Code (Amendment) Act, 2019 (26 of 2019) was considered. Material, relevant Section 31(1) of IBC after the amendment reads as under:

***"31. Approval of resolution plan***

*(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4)*

*of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”*

6. It appears from the Judgment in the matter of “*Ghanashyam Mishra Vs. Edelweiss Asset Reconstruction Company*” that statutory dues, if not part of the Resolution Plan shall stand extinguished, if they are not part of the Resolution Plan (See Paragraphs 67, 77 & 87 read with Paragraph 95 of the Judgment). Thus, it is material that if Appellant wanted to claim statutory dues, it had to file claim as per procedures as laid down in IBC read with Rules and Regulations.

7. The Learned Counsel for the Appellant submits that the Appellant was in correspondence with the Resolution Professional since February, 2019 and had approached the Resolution Professional with their claim. However, the Resolution Professional informed the department that there was delay in making claim with the Resolution Professional and so the department should get the delay condoned from the Adjudicating Authority so that the claim can be considered.

8. The Learned Counsel referred to the Appeal to state that the Appellant had made a claim before Interim Resolution Professional on 07<sup>th</sup> August, 2019. The Learned Counsel however is unable to show any specific document which was filed with the RP/IRP or filing Form B as required to be

filed considering Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations in short). Learned Counsel referred to Annexure 2 filed with the Appeal (Page 54) which is actually a letter dated 16<sup>th</sup> August, 2019 addressed to the Member Judicial, National Company Law Tribunal, Hyderabad Bench, Hyderabad. With the letter there is one Form F (Page 56) which was addressed to the Member Judicial. According to the Learned Counsel for the Appellant, the department had received a stamp of receipt of such letter from the Registry of NCLT, Hyderabad Bench, Hyderabad on 23<sup>rd</sup> August, 2019. Learned Counsel is unable to show any Application as such filed or any I.A. or M.A. with number of filing Application for condonation of delay. In fact, the Form F filed is also relating to Proof of claim of Creditors (Other than Financial Creditors and Operational Creditors).

9. The Learned Counsel for the Respondent No. 1 submitted that dues claimed are Operational Debt. Learned Counsel referred to the Reply-Affidavit filed by the Resolution Professional and it is stated that Public Notice after Admission of the Application under Section 9 of IBC was published on 23<sup>rd</sup> December, 2018 in Newspaper as mentioned in Reply-Affidavit Para 3 and Copy of which has been annexed. Learned Counsel for Respondent No. 1 has submitted that as per the Public Notice the claims should have been filed by 3<sup>rd</sup> January, 2019. In any case, if Regulation 12 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was kept in view the claims should at the most have been filed in 90 days from Insolvency commencement date, but the same was not filed.

10. According to the Resolution Professional, the CIRP had commenced on 12.12.2018 and the department officials approached the Resolution

Professional in February, 2019 and he had told the officials to file the claim in Form B. According to the Resolution Professional after February, 2019, the Appellant contacted with the Resolution Professional only in August, 2019 for filing the claim but the same could not be accepted as the same was not in prescribed Form B and it was being filed after 90 days which was maximum permissible limit under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional states that Resolution Professional on 29.08.2019 asked the Appellant to move the Adjudicating Authority for condonation of delay if Appellant wants the claim to be admitted. Reference has been made to the correspondence as per Annexure R-5 filed by the Respondent No. 1. The Resolution Professional claims that thereafter he did not get any information or notice from the Adjudicating Authority and the Resolution Professional adhered to the guidelines as laid down in IBC and Application under Section 30(6) and 31 of IBC for approval of the Resolution Plan was filed with the Adjudicating Authority. Thus, according to the Learned Counsel for the Respondent, the Appellant did not follow necessary procedure, and in time, to file the claim as such and claim was not filed.

11. The Learned Counsel for the Appellant is submitting that the Resolution Professional had all the books of the accounts of the Corporate Debtor with the Resolution Professional and he should have taken on record the dues outstanding of the Appellant department and other departments. She submits that the Resolution Professional knew about the dues of the department but still did not take the same on record by the Resolution Applicant to consider.

12. (A) Regulation 7 of CIRP Regulations reads as under:

***“7. Claims by operational creditors***

*(1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule:*

*Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.*

*(2) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of –*

- (a) the records available with an information utility, if any; or*
- (b) other relevant documents, including-*
  - (i) a contract for the supply of goods and services with corporate debtor;*
  - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;*
  - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or*
  - (iv) financial accounts.”*

(B) Regulation 12 of CIRP Regulations reads as under:

***“12. Submission of proof of claims***

*(1) Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*

*(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) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:*

*Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”*

13. It is apparent from the above that the Appellant was required to file claim in terms of IBC provisions but did not follow the procedure as laid down in the IBC read with the Regulations and did not duly file claim in proper format within time. Even when the time was over and the Appellant

department was advised by the Resolution Professional to get delay condoned by moving Adjudicating Authority, the department instead of resorting to Section 60 of IBC and other enabling provisions only sent a letter, further with a wrong Format, that too addressed to Adjudicating Authority. The Learned Counsel for the Appellant has not been able to show anything that the Application as such was filed or was registered or taken up with the Adjudicating Authority for consideration on the judicial side. Sending off a letter cannot be said to be in compliance with Part III of NCLT Rules, 2016, or Section 60 of IBC or the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 or the Regulations.

14. In the facts of the matter, we cannot find fault with Respondent No. 1 for not including such operational debt so as to be part of the Resolution Plan as necessary procedure was not followed. In IBC delay affects maximization of Value, and time bound steps for CIRP are prescribed. Reversal of stages, affects progress. Timely and duly taking steps by all stakeholders is material.

15. We do not find that there is any error in the Impugned Order which has been passed accepting the Resolution Plan. There is no substance in the Appeal. The Appeal is dismissed. No orders as to costs.

**[Justice A.I.S. Cheema]**  
**The Officiating Chairperson**

**[Mr. V.P. Singh]**  
**Member (Technical)**

Basant B./gc.