



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303

IA/359(AHM)2023 in CP(IB) 81 of 2019

Order under Section 60(5)(C) IBC,2016 r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

Mangalam Global Enterprise Ltd
V/s
Kapadwanj Nagar Seva Sadan & Anr

.....Applicant

.....Respondents

Order delivered on: 19/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



I.A. NO. 359 OF 2023
In
C.P. (IB) No. 81 OF 2019

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDBAD BENCH
(COURT-I)**

**I.A. No. 359 of 2023
IN
CP (IB) No. 81 of 2019**

I.A. No. 359 of 2023

(Application under Section 60(5) (c) of the Insolvency and Bankruptcy Code, 2016 r/w rule 11 of NCLT Rules, 2016)

Mangalam Global Enterprise Limited

101, Mangalam Corporate House,
42, Shrimali Society, Netaji Marg,
Mithakali, Navrangpura,
Ahmedabad-380009

....Applicant

Versus

1. Kapadwanj Nagar Seva Sadan

Near Bank of Baroda,
Natraj Road, Kapadwanj,
Kheda-387620

2. Shri Vijay Lulla

(Erstwhile Resolution Professional of
H.M. Industrial Private Limited)
201, Satchitanand Building,
2nd Floor, 12th Road, Khar,
Mumbai-400052

....Respondents



In the matter of :

C.P. (IB) No. 81 of 2019

(Application under section 9 of Insolvency and Bankruptcy Code, 2016)

Shah Kiritkumar Babulal

Ni Company

....Operational Creditor

Versus

H.M. Industrial Private Limited

....Corporate Debtor

Order pronounced on: 19.10.2023

CORAM: SHAMMI KHAN (Member Judicial)

SAMEER KAKAR (Member Technical)

APPEARANCE:

For the Applicant: Mr. Monaal Davawala, Adv.

For the Respondent: Ms. Pooja Raval, Adv.

ORDER

1. Present application is filed by Mangalam Global Enterprises Ltd. who is the successful resolution applicant (SRA) of Corporate Debtor - H. M. Industrial Pvt. Ltd. seeking the following prayers:-

a) Allow the present application.

b) Declare that all claims of the Respondent No.1 before 20.09.2022 stand extinguished pursuant to the approval of Resolution Plan by this Hon'ble Tribunal,



and/or

c) Pending the admission and final hearing of this application, direct the respondent No.1 not to initiate any proceedings or take coercive action against the applicant pursuant to its letter dated 31.01.2023 and 15.02.2023;

and/or

d) Grant any other relief of reliefs as may deem fit in the interest of justice.

2. It is stated that the Resolution Plan of the SRA was approved by this Tribunal vide order in IA 616 of 2022 dated 20.09.2022.

3. It is stated that in terms of the said order more specifically the Paragraph 18 and 19, this Tribunal has held as under :-

18. As far as reliefs and concessions claimed by the Resolution Applicant, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.** reported in MANU/SC/0273/2021 in the following words:

I. "The legislative intent behind this is, to freeze all the claims so that the resolution applicant start 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 plan would go haywire and the plan would be unworkable.

II. We have no hesitation to that the word "other stakeholders" would squarely cover the Central Government any State Government or any local authorities. The legislature, noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..."

19. In view of the above we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP..."

4. It is stated that the Resolution Plan has been fully implemented and the applicant has taken complete charge of the Corporate Debtor. The applicant approached the Respondent No. 1 requesting for change of name in the bills issued by it from the erstwhile Corporate Debtor to that of the applicant. The applicant also brought to the notice of the Respondent No. 1 the order dated 20.09.2022 passed by this Tribunal approving the applicant's Resolution Plan and pointed out that consequently it would not be liable to pay any dues accrued on or before 20.9.2022. Copy of the letter of the applicant dated 26.12.2022 written to the Respondent No. 1 is annexed hereto and marked as "ANNEXURE – B".



5. It is stated that much to the shock and surprise of the applicant, instead of adhering to the directions of this Tribunal as well as the position of law as laid down by the Hon'ble Supreme Court, the Respondent No. 1 responded vide letter dated 31.1.2023 stating that all past and pending were payable since there was no specific observation with regards e Respondent No. 1 by this Hon'ble Tribunal in its order dated 20.9.2022. Copy of the letter of the Respondent No. 1 dated 31.1.2023 written to the applicant is annexed hereto and marked as "ANNEXURE - C" to this application.

6. It is stated that the applicant responded to the Respondent No. 1 and again pointed out the law as well as the fact that no specific observation is required with regards to extinguishment of past dues of the Corporate Debtor. However, the Respondent No. 1 was adamant that the Tribunal has no jurisdiction over the same and it is governed by The Gujarat Municipalities Act, 1963. It was also pointed out to the applicant that the dues may be cleared at the earliest failing which the Respondent No. 1 would take serious note of the situation and proceed with the sealing of the premises if necessary. Copy of the correspondence exchanged between the applicant and the Respondent No. 1.

7. It is stated that the Respondent No. 1 had not lodged its claim in accordance with law with the Respondent No. 2 at any point of time



during the CIRP of the Corporate Debtor. Even thereafter, the respondent No. 1 has not approached the Respondent No. 2 or even Tribunal seeking to get its claim lodged/admitted in accordance with law. Copy of the list of claims received by the Respondent No.2 during the course of CIRP i.e. from 7.6.2019 to 20.9.2022 and handed over to the applicant is annexed as Annexure E.

8. The applicant submits that the law with respect to extinguishment of claims after approval of the Resolution Plan is well settled by the Hon'ble Supreme Court from time to time. In Committee of Creditors of Essar Steel Limited vs. Satish Kumar Gupta & Others, the Hon'ble Supreme Court has held so.

9. The applicant submits that in consonance of the clean slate doctrine as propounded by the Hon'ble Supreme Court, any action sought to be taken against the applicant as the Resolution Applicant of the Corporate Debtor would amount to undue harassment and would be in the nature of arm-twisting tactics. The applicant submits if the prayers as prayed for hereunder are not granted, the applicant will suffer irreparable loss and injury which cannot be compensated in terms of money. In view thereof the applicant is constrained to prefer the present application before this Tribunal.



10. Respondent No. 1 has filed reply through affidavit dated 11.09.2023.

In reply the main contentions of the Respondent No. 1 are summarized below :-

- I. Respondent No. 1 is local authority established under Gujarat Municipalities Act.
 - II. Dues are in nature of Tax which is to be collected as per provisions of Gujarat Municipalities Act.
 - III. Resolution Professional has not list of claims as per knowledge of answering respondent.
 - IV. There is no specific order of this Tribunal exempting the SRA from the past tax so as to Respondent No. 1 is concerned.
11. We have heard the counsels and perused the records. It is an admitted position from both the sides that the resolution plan w.r.t. Corporate Debtor was approved by this Tribunal vide order dated 20.09.2022 and that the Respondent No. 1 has not filed the claim before the RP during the CIRP of the Corporate Debtor.
12. It is well settled law that CIRP is a claim driven time bound process and that through catena of judgment the above position has been upheld by Hon'ble Supreme Court of India and recently again in the matter of Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. Vs. Jagannath Sponge Pvt. Ltd. reiterated that the clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor.



13. Relying on the judgment of Hon'ble Supreme Court of India in the matter of **Ghanshyam Mishra (supra)** as well as **Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. Vs. Jagannath Sponge Pvt. Ltd.** we hold that Respondent No. 1 has no right at this belated stage to raise a claim against the Corporate Debtor/SRA for the dues pertaining to the period prior to the approval of the resolution plan i.e. 20.09.2022 w.r.t. the Corporate Debtor.

Accordingly, we allow prayer (a) in the application declaring that all claims of the Respondent No.1 before 20.09.2022 stand extinguished pursuant to the approval of Resolution Plan by this Hon'ble Tribunal.

With the above directions this application is allowed and is disposed off.

No order to costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)