



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – I, CHENNAI**

**IA/(IBC)/734/CHE/2022 in CP/1006/IB/2018**

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of GK Steels & Allied Industries Limited*

**State of Tamilnadu**

Commercial Taxes & Registration Department

Represented by Thiru N. Mahalingam,

Assistant Commissioner (ST)(FAC)

P.N. Palayam Circle,

Coimbatore – 641 018

.. .. .. *Applicant*  
Versus-

**J. Karthiga**

Resolution Professional of

GK Steel and Allied Industries Limited

Sri Nivas, No. 1, Old No. 1052,

41<sup>st</sup> Street, Korattur, Chennai – 600 080

.. .. .. *Respondent*

*Along with*

**IA/(IBC)/287/CHE/2023 in CP/1006/IB/2018**

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of GK Steels & Allied Industries Limited*

**Rocksand Minerals Private Limited**

Flat No.203, Vijay Enclave,

Srinagar Colony, Hyderabad – 500 073

Rep. by its Director, Mr. Purna Chand.

.. .. .. *Applicant / Successful Resolution Applicant*

-Versus-



1. **State of Tamilnadu**  
Commercial Taxes & Registration Department  
Represented by Thiru N. Mahalingam,  
Assistant Commissioner (ST)(FAC)  
P.N. Palayam Circle,  
Coimbatore – 641 018
2. **J. Karthiga**  
Resolution Professional of  
GK Steel and Allied Industries Limited  
Sri Nivas, No. 1, Old No. 1052,  
41<sup>st</sup> Street, Korattur, Chennai – 600 080
3. **M/s. GK Steel & Allied Industries Limited**  
No. 1077, Avinashi Road,  
Coimbatore

.. .. Respondent

Present:

*For Applicant* : *Dinesh Kumar, Advocate*  
*In IA/734/2022*

*M.S. Krishnan, Senior Advocate*  
*In IA/287/2023*

*For Respondent* : *V.V. Sivakumar, Advocate*  
*For RP*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)**  
**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*Order Pronounced on 29<sup>th</sup> November 2023*

COMMON ORDER

*(Heard through Video Conferencing)*

IA(IBC)/734(CHE)/2022 is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as

follows:



*In these circumstances, it is therefore prayed that this Hon'ble Tribunal may be pleased to set aside the Resolution Plan tabled by the Respondent and direct the Respondent to receive and collect all the documents relating to the claim filed by the Petitioner and include the same in the Resolution Plan by suitably provisioning the amount for the revenue before submitting it to Hon'ble NCLT, Chennai.*

2. IA(IBC)/287(CHE)/2023 is an application filed by the Successful Resolution Applicant of the Corporate Debtor under Section 60(5) of IBC, 2016 seeking reliefs as follows;

- a. *Implead the Applicant herein, the Successful Resolution Applicant as the Respondent No.3 in IA No. 734 of 2022 in C.P. No. 1006 of 2018 pending on the file of this Hon'ble Tribunal;*
- b. *Pass any such further orders as this Hon'ble Tribunal may deem fit in the circumstances of this case.*

3. In relation to IA(IBC)/287(CHE)/2023 it is stated that the CoC of the Corporate Debtor has approved the Resolution Plan given by the Applicant and the Resolution Plan is pending approval before this Tribunal in MA(IBC)/37(CHE)/2021.

4. The Successful Resolution Applicant seeks impleadment in the Application filed by the Commercial Taxes & Registration Department against the rejection of the claim.



5. We are of the view that proper and necessary person in the said application is the Resolution Professional. Till the time the Resolution Plan is approved by this Adjudicating Authority, the Successful Resolution Applicant does not have any locus to intervene in the affairs of the Corporate Debtor. Thus the Applicant / SRA is neither a proper party nor a necessary party in the present Application.

5. Accordingly IA(IBC)/287(CHE)/2023 stands **dismissed**.

6. In relation to IA(IBC)/734(CHE)/2023, it is seen that based upon the letter of the RP, the Applicant submitted the claim to the Respondent / RP on 30.01.2020 in the prescribed format to the tune of Rs.32,83,34,741/-. The RP vide letter dated 22.01.2021 rejected the claim of the Applicant citing the pending dispute at the CST Appellate Authority, Delhi.

7. It is stated that, the IRP had published a provisional list and a final list in the Form G before approving the Resolution Plan by CoC. However, the details of such list were not intimated to the Applicant. The Applicant was not informed of its inclusion/exclusion in the provisional list and final list, though the claim was submitted well before i.e., on 30.01.2020.



8. It is stated that the Applicant had sought the present stage of the case by the letters dated 31.07.2020 and 21.09.2020, which the RP did not respond but rejected the claim on 22.01.2021.
9. It is stated that the rejection of claim ought have been by a speaking order setting forth the grounds on which the Applicant claim has been rejected considering the fact that there is undisputed TNGST demand of Rs.8,39,24,071 /-.
10. The Respondent / RP has filed reply. It is stated that there is no statutory obligation on the part of the RP to submit the Form – G to the Applicant. The RP by a letter dated 22.01.2021 had clearly informed the Applicant about the rejection of its claim.
11. It is stated that the claim form submitted by the Applicant is an unsigned document. All the supporting documents pertains to one M/s. GK Alloys Private Limited and not the Corporate Debtor. It is stated that the said fact was informed by the RP to the Applicant vide emails dated 21.09.2020, 09.11.2020 and 23.01.2020.
12. It is stated that in the meantime, the Resolution Plans were invited and the Resolution Plan submitted by the Successful Resolution



Applicant was approved by the CoC and the same is pending approval before this Tribunal.

13. Heard the submissions made by the Learned Counsel for both the parties and perused the record.

14. The Applicant had submitted a claim to the tune of Rs.32,83,34,741/- on 30.01.2020. The same came to be rejected by the RP on 22.01.2021. Further, it is seen that the RP by email dated 21.09.2020, 09.11.2020 and 23.01.2020 informed the Applicants regarding the lacunae in the Claim form and also informed the Applicant that the supporting documents filed along with the Claim Forms pertain to one M/s. GK Alloys Private Limited and not the Corporate Debtor.

15. Be that as it may, in the present case the Resolution Plan in respect of the Corporate Debtor was approved by the CoC as early as on 21.12.2020. The RP has filed MA(IBC)/37(CHE)/2021 before this Tribunal seeking approval of the Resolution Plan.

16. The Hon'ble Supreme Court in the matter of **Paschimanchal Vidyut Vitran Nigam Limited –Vs- Raman Ispat Private Limited & Ors.** in *Civil Appeal Nos. 7976 of 2019* has held as follows;



49. *Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.*

50. *The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a 'secured creditor'. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.*

17. Thus, in the present case as per the decision of the Hon'ble Supreme Court in the matter of **Paschimanchal** (*supra*) the Applicant cannot be treated as a 'Secured Creditor'.

18. As per the approved Resolution Plan, the Operational Creditors are not paid any amount. The entire claim of the Operational Creditor



shall stand extinguished after the approval of the Resolution Plan. Thus, even if the claim of the Applicant is admitted in full, the Applicant will not be paid any amount under the Resolution plan which is approved by the CoC. Under such circumstances, we do not find any merit in the present Application.

19. Accordingly, IA(IBC)/734(CHE)/2022 stands **dismissed**. No costs.

— Sd—

VENKATARAMAN SUBRAMANIAM  
MEMBER (TECHNICAL)

— Sd—

SANJIV JAIN  
MEMBER (JUDICIAL)

*Raymond*