NATIONAL COMPANY LAW APPELLATE TRIBUNALPRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 223 of 2021

IN THE MATTER OF:

KALYAN DOMBIVALI MUNICIPAL CORPORATION
Kalyan Mahanagarpalika Shivaji Chowk,
Thane 421 301, Maharashtra **...Appellant**

Versus

NRC LIMITED
67, Ground Floor, 75, Surajmal Building,
Nakoda Street, Off Abdul Rehman Street,
Pydhone, Mandavi, Mumbai 400 003
Maharashtra

MR. VIKAS PRAKASH GUPTA
Resolution Professional of the Corporate Debtor/
Respondent, 3rd Floor, Plot No. 16B, Padmanabh
Apartment, Tilak Nagar, Nagpur- 440010
Maharashtra **...Respondents**

Present:

For Appellant	:	Mr. Rahul Chitnis, Mr. Samrat K. Shinde, Advocates
For Respondent	:	Mr. Vikram Hedge, Ms. Alvia Ahmed, Ms. Raksha Agarwal, for RP Mr. Vikram Nankani, Sr. Adv. with Mr. Mahesh Agarwal, Mr. Shivam Shukla, Ms. Geetika Sharma and Mr. Himanshu Satija, Advocates for RA

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

The Appellant has challenged the order dated 13.03.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) by which an application bearing M.A. No. 2531 of 2019 filed by the Resolution Professional (RP) under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') in CP(IB)1886/MB/2018 for approval of the resolution plan of the Corporate Debtor has been allowed.

2. In brief, the Adjudicating Authority vide order dated 27.11.2018, initiated Corporate Insolvency Resolution Process (CIRP) against the NRC Limited (Corporate Debtor/Respondent No. 1) and appointed Vikas Prakash Gupta (Respondent No. 2) as the Interim Resolution Professional (IRP) who was further confirmed as the RP of the Corporate Debtor pursuant to the resolution of the Committee of Creditors (CoC) in its second meeting held on 21.01.2019. The resolution plan submitted by the Resolution Applicant (RA) i.e. Adani Properties Private Limited, on 10.05.2019, was approved by the CoC with 99.88% vote share whereas 0.00% voters abstained from voting and 0.12% voters of the CoC rejected the plan. The Respondent No. 2, by way of an application bearing M.A. No. 2531 of 2019, submitted the resolution plan for consideration/approval of the Adjudicating Authority, which was approved by the members of CoC. The application i.e. 2531 of 2019 has been allowed by the impugned order dated 13.03.2020 against which the present appeal has been preferred by the Appellant (Kalyan Dombivali Municipal Corporation).

3. The brief facts, extracted from the memorandum of appeal are that the town planning department of the Appellant gave permission to Respondent No. 1 to construct a total area of18,07,826 sq. meters. The Appellant served demand notice dated 17.01.1996 to Respondent No. 1 regarding property tax calculated at Rs. 2,17,43,656/- per year. The Respondent No. 1 challenged the demand by filing objection dated 22.01.1996, which was rejected. The Appellant sent a demand notice to the Respondent No. 1 after the objection was rejected. The Respondent No. 1 challenged the said notice by way of Municipal Suit No. 51 of 1996 and 52 of 1996 before the JMFC,

Kalyan. Both suits were disposed of on 30.04.2001. The Appellant challenged the decree dated 30.04.2001 by way of Civil Appeal No. 111 of 2001 before the District Court, Kalyan. Vide Judgment dated 15.07.2003 the District Court fixed the property tax amount at Rs. 1,55,94,912/- per year and the earlier tax paid of an amount of Rs. 1,50,44,430/- by the Respondent No. 1 was settled. The Appellant sent a fresh demand notice as per the revised tax amount decided by the District Court which was challenged by the Respondent No. 1 in Writ Petition No. 3379 of 2005 in which ad-interim injunction was granted on 12.05.2005 by the High Court with two conditions, namely, the Respondent No. 1 to deposit Rs. 77,58,04/- within a period of two weeks and shall also deposit Rs. 2 Crores on or before 17.06.2005. The Respondent No. 1 vide receipt no. 6052 dated 25.05.2005 deposited Rs. 77,58,084/- but it is alleged that Rs. 2 Crores was not deposited. According to the Appellant, Municipal Suit No. 51 of 1996 was dismissed on 20.10.2005 and the amount of tax fixed by the Appellant was confirmed. The demand notice no. 33601 dated 02.09.1996 was quashed. The Appellant then issued a fresh demand notice. The Respondent No. 1 challenged the order dated 20.10.2005 in Writ Petition No. 8674 of 2005 praying that the appeals should proceed without Respondent No. 1 paying the property tax but the said petition was dismissed by the High Court on 18.07.2006. The Respondent No. 1 challenged the order dated 18.07.2006 by way of SLP(C) No. 14419 of 2006 in which the Hon'ble Supreme Court on 13.11.2006, directed Respondent No. 1 to deposit a total sum of Rs. 4.5 Crore including the earlier paid amounts and directed that further no tax will be recovered till all the Municipal Appeals are decided finally. The

Respondent No. 1 deposited Rs. 3,72,42,000/- as the balance amount with the Appellant vide receipt no. 74307 on 08.01.2007. It is the case of the Appellant that since Municipal Appeal is still pending, therefore, the Appellant has not taken any steps for recovery of the taxes in view of the judgment dated 13.11.2006. It is averred that a meeting was called by the Deputy Chief Minister of Maharashtra in respect of issues raised by the workers of Respondent No. 1 in which it was decided on 12.02.2009 that the Appellant and Respondent No. 1 shall enter into a registered agreement to create first charge of the Appellant on the properties of the Respondent No. 1 which shall be sufficient to recover the property tax. It is also averred that in the meeting held on 17.04.2009 with Labour Minister of Maharashtra, it was decided that the Appellant and Respondent No. 1 shall open an escrow account in a Nationalised Bank and the amount of Rs. 6,68,76,000/- receivable against the property tax by the Appellant shall be deposited by the Respondent No. 1. Further, the agreement was entered into between the Appellant and the Respondent No. 1 on 22.04.2009 as decided in the meeting dated 12.02.2009 and an escrow account was opened in the Nationalised Bank. It is also averred that the Respondent No. 1 gave no objection to the Appellant to withdraw the amount lying in the escrow account subject to the orders of the Court in the Municipal Appeal but it is alleged that Respondent No. 1 never deposited the agreed amount of Rs. 6,68,76,000/- in the escrow account. It is alleged that CP(IB)1886/MB/2018 filed by the Punjab National Bank against Respondent No. 1 was admitted on 27.11.2018 and then M.A. No. 2531 of 2019 was filed by the RP for approval of the resolution plan but the

Appellant was not made a party either to the said application of Respondent No. 2 nor was informed about the same.

4. In reply filed by Respondent No. 1, it is alleged that in the year 2005-06, the Corporate Debtor/answering Respondent began incurring huge losses and was declared a sick company by BIFR on 31.10.2008. The Corporate Debtor declared a lock-out of its factory at Mohone, which is continuing till the date of commencement of the CIRP. It is further averred that CIRP of the Corporate Debtor was initiated by the Adjudicating Authority on 27.11.2018 on the application filed by the Financial Creditor (PNB). A CoC comprising of six financial creditors was constituted. The RP made a public announcement on 07.12.2018 inviting claims from all the creditors of the Corporate Debtor, including Financial and Operational Creditors, in terms of Section 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations'). The RP made the public announcement in Marathi (i.e.Navshakti) as well as in English (i.e The Free Press Journal) having wide circulation and also published notice on the website of the Corporate Debtor. The RP sent a letter dated 11.12.2018 to the Appellant to intimate about the appointment of the IRP by the Adjudicating Authority. The Appellant was thus timely informed about the proceedings. A copy of letter dated 11.12.2018 has been attached as Annexure B with the Reply. Consequent on the public announcement, the RP received claims from various financial and operational creditors including four local/central government bodies and after verification of all submitted claims, duly collated the claims and

prepared the information memorandum (IM) on 25.03.2019 as per Section 29 r/w Regulation 36 of the Code. As per IM, the amount admitted claims of various government agencies was approximately Rs. 2.26 Crores and at no point of time the Appellant submitted their claim to the RP despite the public announcement made in accordance with law and also the letter Annexure B. It is alleged that the Appellant had the knowledge of the CIRP proceedings and ought to have submitted their claims within the prescribed period and cannot now after such a belated stage claim ignorance and attempt to stall the proceedings of the resolution process.

5. In the rejoinder to the reply filed by the Respondent No. 1, the Appellant has reiterated the averments made in the memorandum of appeal.

6. Counsel for the Appellant has submitted that though neither the Appellant filed any claim about the pending dues of the property tax to the RP nor any application in this regard to the Adjudicating Authority yet it is vehemently argued that the RP was aware of the litigation between the Appellant and CD about the property tax which was not being paid despite notices. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of State Tax Officer v. Rainbow Papers Ltd, 2022 SCC Online SC 1162to contend that it is the duty of the RP to examine the books of accounts to form the statutory liability of the CD and on account of its failure the resolution plan should not have been approved. It is also submitted that information memorandum is bad in law because it does not provide the information about the pending dues of the Financial Creditor and in this regard, he has referred to an order dated 13.11.2006 of the Hon'ble Supreme Court in Civil Appeal No. 14419 of 2006.

7. On the other hand, Counsel appearing on behalf of the SRA has submitted that the decision in the case of Rainbow Papers Ltd. (Supra) is not applicable because the issue involved therein was about the claims not made within the period of limitation and also submitted that information memorandum is for the prospective resolution applicant and cannot be applied where the resolution plan has been approved. He has further referred to Regulation 12(2) of the Regulations to contend that there is an amendment in the Regulation w.e.f. 04.07.2018 by which claim with proof has been substituted whereas the application was admitted by the Adjudicating Authority on 27.11.2018. He has argued that public announcement was made on 07.12.2018 and the letter was sent on 11.12.2018 (Annexure -B) informing the Appellant about the appointment of the IRP and the fact that he is in control of entire state of affairs of the Company as on the date 05.12.2018 including the management/properties/books of accounts/staff-employees and entire state of affairs. He also referred to the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director &Ors. 2021 SCC Online SC 313 to contend that after the expiry of the period of limitation the statutory claims cannot be recovered.

8. Counsel appearing on behalf of the RP has argued that in terms of Regulation 6 of Regulations, the publication was made in which it was categorically mentioned that the statutory authority may file their claim with

proof and has also referred to a letter dated 11.12.2018 (Annexure-B) which has been appended with the reply of SRA.

9. In rebuttal, Counsel for the Appellant has also referred to Section 141 of the Maharashtra Municipal Corporation Act to contend that it has a first charge whereas the RP has submitted that since no claim was made in this regard, therefore, it was not part of the information memorandum.

10. We have heard Counsel for the parties and perused the record with their able assistance.

11. From the resume of the aforesaid facts, it is clear that CIRP of the Corporate Debtor was initiated on 27.11.2018 and the RP made the public announcement, inviting the claims of all the creditors of the Corporate Debtor by publication in Marathi (i.e.Navshakti) as well as in English (i.e The Free Press Journal) and also published notice on the website of the Corporate Debtor. It has also come on record that the RP sent a letter dated 11.12.2018 to the Appellant intimating about its appointment as IRP of the Corporate Debtor and that he has taken over the charge of the entire asset of the Corporate Debtor w.e.f.15.12.2018 but despite that the Appellant did not choose to put up any claim before the RP whereas according to the RP the claim received from Financial Creditors and Operational Creditors including the Govt. bodies and authorities were duly collated and IM was prepared on 25.03.2019 and as per IM, the claim of the various Govt. agencies was approximately Rs. 2.26 Crores. The Appellant has not denied the fact that he did not file any claim but its whole case is that the books of accounts of the Corporate Debtor would have reflected the liability of the Appellant but the RP did not examine the books of accounts and included

the same in the IM and hence, the resolution plan is not inconformity with the statutory requirement of the Code. The Appellant has relied upon decision of the Hon'ble Supreme Court in the case of Rainbow Papers Limited (Supra), which in our considered opinion it is not applicable to the facts and circumstances of the present case.

12. In the case of Rainbow Paper Limited (Supra), the application filed by the State Tax Officer (1) was dismissed holding that the Government cannot claim first charge over the property of the Corporate Debtor, as Section 48 of the Gujarat Value Added Tax, 2003 (GVAT Act) which provides for first charge on the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty etc. cannot prevail over Section 53 of the Code and thus the question which was raised in the said appeal was as to whether the provision of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act? In the cited case, the State Tax Officer filed a claim before the RP in the requisite Form B which was held to be beyond time. The RP informed the Appellant therein that the entire claim of the Appellant has been waived off. The resolution plan was challenged by the Appellant therein before the Adjudicating Authority on the ground that Govt. dues can not be waived off. The said plea was rejected by the Adjudicating Authority as well as by the Appellate Tribunal and hence, the matter reached the Hon'ble Supreme Court. It is pertinent to mention that the last date for submission of claim was 05.10.2017 and it was noticed in the said decision that till 03.07.2018 Regulation 12 of the Regulations provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement whereas w.e.f 04.07.2018 the said

regulation was amended and the proof of claim was changed to claim with proof required to be submitted on or before the last date mentioned in the public announcement. It was observed that under the unamended provisions of Regulation 12(1), the Appellant therein was not required to file any claim. Read with Regulation 10, the Appellant would only be required to substantiate the claim by production of such material as might be called for. It was also held therein that the Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secure creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date and that the State is a secured creditor under the GVAT Act. Section 3(30) of the Code defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Govt. or Authority. It was further ordered that "as observed above, delay in filing a clam cannot be the sole ground for rejecting the claim"

13. The aforesaid decision, solely relied upon by the Appellant is not at all applicable to the facts arising out of the case in hand because, firstly, the Appellant did not file any claim, whereas in the case of Rainbow Papers Limited (Supra) the claim was filed though belatedly. Secondly, the last date for submission of claim in the case of Rainbow was 05.10.2017 and till then unamended provisions of Regulation 12 were in operation as per which the creditor was to submit proof of claim whereas in the present case public

announcement for inviting claim was made on 07.12.2018 much after the amendment in Regulation 12 of the Regulations which now provides that a creditor shall submit a claim with proof. Meaning thereby, after the amendment in Regulation 12 filing of the claim has become a sine quo non. It is pertinent to mention that being a statutory authority, it cannot feign ignorance about the necessity to file claim after having been informed by the RP of the CIRP proceedings vide letter dated 11.12.2018. As a matter of fact, the Appellant is to be blamed for not initiating the steps to set up its claim before the RP. Moreover, it has now been settled that if the claims are not submitted to the RP and are not part of the resolution plan then the same shall be deemed to have been extinguished. In this regard, decision of three judge bench judgment of the Hon'ble Supreme Court in the case of Ghanashya Mishra and Sons (Supra) may be referred to which read is as under:

> 95.(i) .....once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;
> ....
> (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

14. Thus, in view of the aforesaid discussion, we do not find any merit in this appeal for the purpose of interference and hence, the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi

20th December, 2022

Sheetal