



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-416/2023 in CP(IB)-197/MB/2018

Under Section 60(5) of the IBC, 2016

In the matter of

**Office of the Assistant Commissioner
Central GST & Central Excise
Division XI (Vapi III) ...Applicant**

v/s.

Amit Gupta ...Respondent/
Res. Professional

In the matter of

ICICI Bank ...Financial Creditor

v/s.

Unimark Remedies Ltd.
...Corporate Debtor

Order Pronounced on: **17.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant: Mr. Ashish Mehta i/b Ethos Legal Alliance, Advocate.

For the Respondent: Ms. Pooja Mahajan a/w Ms. Mahima Singh, Ms. Arveena Sharma & Mr. Jineshkumar Gandhi i/b Arihant Associates, Advocates. Mr. Amit Gupta, RP present in person.



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application filed by Asst. Commissioner Central GST and Central Excise, Vapi, praying for admission of claim for a sum of ₹3,23,82,203/- which was rejected by the Resolution Professional (RP) on the ground that *"claim cannot be admitted though acknowledged as the statutory period of 270 days is over and resolution plan duly approved by CoC is filed with NCLT, the matter is sub-judice"*.
2. The applicant has submitted that the delay in filing the present Interlocutory Application be condoned, as the same is not deliberate, wilful and intentional. The delay has occasioned as the instructions on which the present Interlocutory Application was going to be filed was being deliberated upon, COVID 19 Lockdown and Restrictions from March 2020 has been imposed. Since March 2020, there were disruptions with the functioning and the operations of the Advocates of the Applicant, Government offices were shut considerably for a long period of time, the sanctioned strength of the officers allowed to attend the offices were bare minimal. The Advocate's offices of the Applicant were being shifted from one location of the city to another, time and again Advocates for the Applicant and six of his family members were COVID positive, some of them had to be hospitalized and on account of various other professional as well as personal hindrances, obstacles and medical emergencies. It is submitted that the reasons for delay which are stated in this para are absolutely true, genuine and in order to not burden this Hon'ble Tribunal



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with record the documentary evidence in that regard has not been annexed to this presenting Interlocutory Application.

3. In view of above submission, explaining the delay in filing of an Appeal before us and fact that approval of the plan is still pending, we condone the delay and proceed to decide on the claim on its merits.

4. We notice that the RP had intimated the commencement of CIRP of M/s. Unimark Remedies Ltd. to The Superintendent of CGST & Excise, Division XI (Vapi III), Vapi, vide letter dated 12.04.2018 acknowledged on 20.04.2018. However, the GST department filed a claim vide letter dated 05.03.2019 which was received on 06.03.2019 by the RP, who rejected the claim stating that resolution plan is already pending with NCLT for its approval. We notice that CIRP period in this case came to end on 03.01.2019 and Resolution Professional becomes functus officio. Accordingly, we do not find any infirmity in the decision of RP in this regard. However, we find that the coordinate bench of Mumbai NCLT has allowed claim of Ahmedabad GST office which was also filed after the end of CIRP period and rejected by the RP on similar ground. It was held therein that *“since these are government dues which would always be reflected in the books of Accounts of the Corporate Debtor and the RP/IRP would be required, rather is duty bound to take cognizance of the dues as per the Books of Accounts”*. We agree with this decision. Accordingly, the Resolution Professional is directed to admit the claim of the applicant and determine the amount payable to the claimants under that class accordingly.



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5. With these directions IA-416/2023 is **allowed** and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)