



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – II, CHENNAI**

IA (IBC) / 1603 (CHE) 2024

IN

CP/IB/106/2021

(filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of NCLT Rules, 2016)

In the matter of M/s. Bhadreshwar Vidyut Private Limited

Hitesh Goel,

Resolution Professional of M/s. Bhadreshwar Vidyut Private Limited,

C4/1002, The Legend Apartments,

Sector 57, Gurgaon, Haryana, India – 122 011.

... Applicant

Versus

M/s. Supreme Industries Limited,

Through Mr. Yogesh Gupta,

C 30 & 31, Phase II, Noida,

Gautam Buddha Nagar, Uttar Pradesh – 201 305.

... Respondent

&

IA (IBC) / 1604 (CHE) 2024

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(filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of NCLT Rules, 2016)

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... Applicant

Versus

M/s. Responsive Industries Limited,

Through Mr. Yogesh Gupta,

C 30 & 31, Phase II, Noida,

Gautam Buddha Nagar, Uttar Pradesh – 201 305.

... Respondent

Order Pronounced on 25th September 2024



CORAM

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

In both IA(IBC)/ 1603(CHE)/ 2024 & IA(IBC)/ 1604(CHE)/ 2024:

For Applicant : Mr. Dwarakesh Prabhakaran, Mr. Sandeep Bagmar R and Mr. Varun Kumar Tikmani, Advocates

ORDER

(Heard through video conferencing)

1. This Interlocutory applications have been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC" / "Code") read with Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred as "Regulations") and Rule 11 of NCLT Rules, 2016 (hereinafter referred as "Rules") by the Applicant / Resolution Professional of M/s. Bhadreshwar Vidyut Private Limited (hereinafter referred as 'Corporate Debtor/ CD'), seeking similar reliefs in respect of the two different Respondents/ Claimants as below:

"In IA(IBC)/ 1603(CHE)/ 2024:

To condone the delay caused by the Claimant i.e., Supreme Industries Limited in submitting its claim in the ongoing CIRP of the Corporate Debtor"

and

"In IA(IBC)/ 1604(CHE)/ 2024:

To condone the delay caused by the Claimant i.e., Responsive Industries Limited in submitting its claim in the ongoing CIRP of the Corporate Debtor"

2. The Corporate Debtor is a private limited company incorporated on 26.04.2007 (bearing Corporate Identity Number: U40101TN2007GAT063283) having its registered office at New No. 16, Old No. 41, Ground Floor, Thomas Nagar, Little



Mount, Saidapet, Chennai, Tamil Nadu, India – 600 015. The Corporate Debtor was earlier known as OPG Power Gujarat Private Limited.

3. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this tribunal vide order dated 18.10.2022 and applicant herein is appointed as Interim Resolution Professional, later confirmed as Resolution Professional (for brevity 'RP') by the Committee of Creditors ('CoC') in their meeting dated 16.12.2022.
4. We have heard the Counsels appeared for the Parties and perused the documents placed on record.

Applicant Submissions

5. It is stated that the RP has issued a public announcement dated 26.10.2022 wherein it was highlighted that the last date of submission of claims in the ongoing CIRP is 01.11.2022.
6. It is stated that this Tribunal vide order dated 04.08.2023 in IA(IBC)/1333(CHE)/2023 granted time extension until 30.09.2023 to complete the CIRP of the CD. Subsequently, an Interim Stay Order was passed vide order dated 12.02.2024 in IA(IBC)/419(CHE)/2024.
7. Further it is stated that, this Tribunal vide order dated 20.06.2024 in IA(IBC)/1297(CHE)/2024 excluded a period of 90 days from the CIRP Period in view of the Stay order dated 12.02.2024 and allowed additional exclusion of period till final adjudication of IA(IBC)/419(CHE)/2024.



8. It is stated that, the Respondents Claimants in both applications namely, M/s. Supreme Industries Limited (for brevity 'SIL') and M/s. Responsive Industries Limited (for brevity 'RIL') have filed their claims in Form B on 02.11.2023 and 31.01.2024 respectively.
9. It is stated that, the Respondents in both the applications have filed their claims with a delay of 290 and 380 days beyond the 90 day limitation period from the Insolvency Commencement Date ('ICD') and with a delay of 82 days and 172 days respectively from the date of issuance of RFRP which is 12.08.2023.
10. It is stated that the Respondent Claimants have provided their reason for delay in filing the claim before the Applicant vide e-mail communications dated 29.05.2024. The information regarding the Claim submission, time delay and reason given by the Respondents were appraised.
11. It is stated that, the CoC in its 32nd Meeting dated 18.06.2024, wherein unanimously agreed to give the claim submitted by the Respondent Claimants in similar treatment to other admitted claims submitted by claimants of similar nature. ('Operational Creditors').
12. Learned Counsel for Applicant relied upon below judgements to support his plea and same is as follows,

- i. Ahluwalia Contracts (India) Ltd. V. Logix Infratech Pvt. Ltd. (I.A. No. 1410 of 2024 in C.P. (I.B.) No. 882 of 2020) – NCLT, New Delhi.*



- ii. *United News of India Workers Union V. United News of India & others [I.A. No. 505 of 2024 in C.P. (I.B.) No. 764 of 2022] – NCLT, New Delhi.*

13. It is pertinent to refer the relevant Regulations of CIRP process for better understanding and same is extracted below,

“12. Submission of proof of claims:

- (1) *A creditor shall submit claim with proof on or before the last date mentioned in the public announcement:*

Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.

- (2) ****

- (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. Verification of claims:

- (1) *The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along*



with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(1A) Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.

(IB) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.

(IC) The interim resolution professional or resolution professional, as the case may be, shall:

(a) intimate the creditor within seven days of categorisation thereof under sub-regulation (IB) and provide reasons where such claim has been categorised as non-acceptable for collation; and

(b) put up the claims categorised as acceptable under sub-regulation (IB) and collated by him to:-

(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and

(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable."

14. The modification to Subsection (1), omission of Subsection (2) of Regulation 12 and addition of Subsection (1A), (1B) and (1C) to Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was effected on 18.09.2023 by Insolvency and Bankruptcy Board of India with the idea of facilitating the Adjudicating Authority (AA) which is burdened with



applications for acceptance of delayed claims. The IBBI Press release No. IBBI/PR/2023/10 dated 19.09.2023 expresses the view of above provisions in light of IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 as follows,

“3. To facilitate the Adjudicating Authority (AA) burdened with applications for acceptance of delayed claims, the Amendment Regulations increase the timelines to file claims up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later. It further empowers the RP to give his view on the acceptance of claim for its collation even for claims submitted beyond this time and committee of creditors (CoC) to recommend their acceptance for inclusion in the list of claims and its treatment in the resolution plan before the same is adjudicated or condoned by the AA.”

15. It is observed that, Regulation 12 (1), provides for time limit for submission of claims with proof in a CIRP. A Creditor who fails to submit his claims within the last mentioned in the Public announcement, may submit his claims with proof to the IRP or RP up to the Date of Issuance of RFRP under Regulation 36B or up to 90 days from the Date of Insolvency Commencement with the saving whichever time limit is later. Further such creditor should provide reasons for such delay when submitting claim beyond 90 days from ICD.
16. It is observed that, Regulation 13 (1B) provides for receiving claims after the period specified in Regulation 12 (1) and only up to 7 days before the Date of meeting of Creditors for voting on the Resolution Plan or the initiation of Liquidation and directs the IRP or RP depending upon the case, to verify and



categorise such claims. Further Regulation 13 (1C) mandates the IRP or RP with two directions.

17. First to intimate the Creditor within 7 days along with reasons from categorisation of claim as non-acceptable for collation.
18. Second to put the claims which is categorised as acceptable and collated before the CoC for recommendation for inclusion in the list of Creditors and its treatment in the resolution plan. Additionally, the second condition directs the IRP or RP to submit the delayed claims as specified in Regulation 13 (1B) which are categorised as acceptable, collated and recommended by the CoC before the Adjudicating Authority for Condonation of delay and adjudication.
19. From the cursory reading of the above provisions, the intention of the amendment is clearly understood. To include and benefit the Creditors who filed their claims with proof belatedly beyond the time limit specified and within a contingency as stipulated under Regulation 13 (1B) with a genuine reason for such delay.
20. In the Present case, the CIRP has been interrupted for an adjudication. The stage of discussion/ voting on Resolution Plan or Liquidation before the CoC has not yet arrived. The Respondents / Claimants had filed their claims with delay of 82 and 172 days respectively. The reasons for such delay is also submitted, discussed in the CoC, which is reasonable and acceptable. The relevant extracts in respect of SIL and RIL are as follows,

Reason by SIL:



"[...] While submission of our claim vide letter dated 31st Oct-23, we informed you that captive generator was failed to obtain the Group Captive Status to their power plant and the matter was sub judice. Matter was lastly listed on 25th Sep-23 before the APTEL whereby Captive Generator legal representative apprised the APTEL about company ongoing Insolvency Proceedings and appointment of RP.

Now, the question of delay in submission of claim doesn't arise as matter of fact that the claim of any creditor like us can be accepted till the resolution plan is not approved, and in the present case there is no resolution plan which is approved, therefore.

So accordingly, we had filed the contingent claim under Form- B which was acknowledged by you on dated 01st Dec-23.

Thanks."

Reason by RIL:

"[...]As we already informed you that, being group captive status was not achieved by the corporate debtor, MSEDCL demanded the cross-subsidy surcharge and additional surcharge from M/s Responsive industries Limited, and OPGS Power Gujarat Private Limited has file the petition/appeal before the judicial authority to ascertain the group captive to their plant, as currently the matter is sub judice before judicial authority, and during the hearing on dated 25th September, 2023 before the Honorable APPELLATE TRIBUNAL FOR ELECTRICITY, New Delhi, first time its come to our knowledge that OPGS is admitted under the Insolvency and Bankruptcy Code, 2016 and lieu of the same, we hereby submitted our Claim before Resolution Applicants. Abstract of the Daily order dated 25th September, 2023 referred below and copy enclosed:

"Mr. Hemant Singh, Learned Counsel for the Appellant, states that the Appellant is under Insolvency Proceedings, and that a Resolution Professional has been appointed. He requests for three weeks' time to obtain necessary instructions as to whether he could continue to appear in the matter"

Further, as our facilities are located in the state of Maharashtra, and registered office of OPGS is in Chennai and Power Plant in Gujarat, due to that we have not received any public advertisement in Form-A. Furthermore, our Claim is legitimate, legal and correct based on the privity of contract no part of claim is false or incorrect, and it was well within the knowledge of corporate debtor and

their suspended management that, ascertain of captive status is sub-judice before the appropriate forum and in case of adverse outcome of the matter they are liable to pay the Cross-subsidy surcharge and additional surcharge. [...]"

21. Further, CoC in its 32nd Meeting dated 18.06.2024 has recommended for admission of those claims and thus the RP has move the present petitions seeking to condone the delay in submitting the claims by the claimants as there would be



no harm, loss or prejudice will be caused to the stakeholders. The relevant extracts of CoC discussion on the belated claims are as follows,

*“The RP informed that the Insolvency and Bankruptcy Board of India (IBBI) has, vide notification dated 18th September 2023, amended and incorporated new provisions in the CIRP Regulations. In accordance with the revised regulations, a creditor shall provide reasons for the delay in submitting the claim up to the date of issue of request for resolution plans (RFRP) under regulation 36B or ninety days from the insolvency commencement date (“ICD”), whichever is later. The relevant extract from the new regulations is as follows:
[...]*

The RP had also informed that two claims as operational creditors had been received from M/s Supreme Industries and M/s Responsive Industries Limited, each beyond 90 days of the ICD and after issuance of RFRP, i.e., 12 August 2023 and hence emails requesting reasons for the delay in submitting the claim as per the above-mentioned amendment to the Regulation were sent to both. The RP further informed that follow-up emails were sent and on 29th May 2024, both of the claimants provided their response. The RP presented the replies which were received: [...]

The RP further informed the CoC that according to the new regulations, the claims that are accepted for collation will require the recommendations from the CoC for the inclusion of such claims in the list of claims collated and their treatment in the Resolution Plan. Subsequently, based on the recommendations, the RP added that such claims are required to be submitted before the Adjudicating Authority for condonation of delay and adjudication wherever applicable. The RP thus went ahead to ask the CoC members for their recommendations.

*The relevant extract from the new regulations is as follows:
[...]*

The representative of REC Ltd. mentioned that both the claims have not been admitted and have only been taken as contingent, they support inclusion of the above-mentioned claims in the list of claims.

The rest of the CoC members also supported the inclusion. The RP noted the same. The RP also informed the CoC that their recommendations for the inclusion of the claims and the treatment in the resolution plans will also be shared with the PRAs. The CoC members noted the same.

The representative of REC Ltd. asked about the other contingent claims to which RP replied that there have been multiple contingent claims which have pending litigations, hence the same has been admitted with a notional amount of INR 1, but

only the above-mentioned two claims have been received after the due date of the new regulations. The representative of REC then suggested the RP to admit these two claims as contingent. The RP then asked again regarding the recommendation for their treatment in the Resolution Plan.

The CoC Legal advisor suggested the CoC members to give these claims the treatment similar to the other similarly placed claims. The CoC Legal Advisor further added that their view is proposed to ensure equitable treatment of all the creditors. The RP asked the CoC members if they wish to go ahead with the suggestion of the CoC Legal Advisor as the recommendations for the treatment of these claims under discussions in the Resolution Plan.

The representative of State Bank of India mentioned that these claims are already in litigation where ultimately court will take decisions on the claim. The representative further added that the Resolution Plans provide some treatment for operational creditors and the contingent claims, which might be capped or even NIL, similar to the plans received in the first and second challenge processes and hence, the recommendation of CoC to the court might not make any difference. The RP clarified that the recommendations will be made to the Hon'ble NCLT for condonation of delay while the decision regarding the claims will be taken in the courts where the cases were ongoing even before the CIRP.

The representative of State Bank of India agreed to going ahead with the suggestions of the CoC Legal Advisor and the representative of REC Ltd. also agreed. The RP asked the rest of the CoC members and the CoC unanimously agreed with the suggestion of the CoC Legal Advisor. The RP noted the same.”



22. In *Ahluwalia Contracts (India) Ltd. V. Logix Infratech Pvt. Ltd.*, (I.A. No. 1410 of 2024 in C.P. (I.B.) No. 882 of 2020) and In *United News of India Workers Union V. United News of India & others* (I.A. No. 505 of 2024 in C.P. (I.B.) No. 764 of 2022), the Division Bench and Special Bench of NCLT, New Delhi respectively have condoned and allowed the delay in submitting the claims by the Claimants/ Creditors in a CIRP proceedings where the reasons for delay is acceptable.
23. Based on given facts and circumstances, after having a detailed look into the relevant provisions, this Tribunal considers that the Claims of the Respondents/ Claimants have to be considered and included by condoning the actual period of delay in submitting the Claims with Proof with the Applicant/ RP.
24. Therefore *IA(IBC)/1603(CHE)/2024* and *IA(IBC)/1604(CHE)/2024* in *CP/IB/106/2021* are *Allowed* accordingly and are *disposed of*.

-Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd/-
JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Note:

Order Pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Judicial Member, Shri Jyoti Kumar Tripathi on behalf of the Special Bench Comprising of Shri Jyoti Kumar Tripathi, Member (Judicial) and Shri Venkataraman Subramaniam, Member (Technical).

-Sd/-
Court Officer

Prabhu