

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**IA No.- 4999/2023  
In  
CP (IB) – 1096 (PB)/2018**

**IN THE MATTER OF:**

**State Bank of India**

**..... Financial Creditor**

**Versus**

**Action Ispat and Power Pvt. Ltd**

**..... Corporate Debtor**

**AND IN THE MATTER OF**

**Government of Odisha**

**Through the Office of**

**The Chief Engineer-Cum-**

**Chief Electrical Inspector (Western Zone)**

**... Applicant**

**ORDER PRONOUNCED ON: 08.02.2024**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant (Government of Odisha): Shashank Bajpai and Kaveesh  
Nair

For the RP:

Mr. Sandeep Bajaj, Mr. Vipul Jai,  
Ms. Vasudha Chadha, Advs.

## ORDER

1. **IA-4999/2023** has been filed for seeking the following relief:
  - a. *Allow the present application;*
  - b. *Direct the Respondent to admit the claim of the Applicant amounting to Rs. 43,99,71,698.00 (Fourty Three Crores Ninety-Nine Lakhs-Seventy-One-Thousand Six Hundred and Ninety Eight Only) and/or*
  - c. *Pass any other order that this Hon'ble Tribunal may deem fit.*
2. It is submitted that CP(IB)-1096(PB)/2018 was admitted vide order dated 23.03.2022 by this tribunal and vide public announcement dated 05.04.2022, the IRP/RP invited claims in Form-B along with proof of claims and the last date for claim submission was 18.04.2022.
3. It is submitted that the Government of Odisha through its Office of the Chief Engineer-Cum-Chief Electrical Inspector (Western Zone) has submitted Form B proof of claim by operational creditors except workmen and employees under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 against the Corporate Debtor to the IRP/RP, Smt. Maya Gupta on 03.08.2023. The Copy of Form B along with proof of claims is marked and attached as **Annexure-B** of the application.
4. It is submitted that vide E-mail dated 17.08.2023 RP/Respondent informed applicant that she is unable to collate the claim of any creditor at this stage, as the claim was submitted on 03.08.2023 i.e. after the last date of submission of claim which was 18.04.022. The Copy of E-mail

dated 17.08.2023 is marked and attached as **Annexure-C** of the application.

5. It is submitted that the delay in the present case in submission of claim has been occasioned due to departmental procedures for ascertaining the amount of pending dues, as the total claim spans across a considerable period, and is of a substantial amount and once the same was finalized, the applicant immediately filed the claim with the respondent.
6. It is submitted that it is an established principle of law and the Hon'ble Supreme Court in the case of **State Tax Officer vs. Rainbow Papers Ltd., 2022 SCC OnLine SC 1162** has unequivocally stated that the timelines stipulated in the IBC even for completion of proceedings are directory and not mandatory. For the convenience of the tribunal the relevant paragraph are reproduced below:

*“22. Prior to amendment by Notification No. IBBI/2018-2019/GN/REG013 dated 3 July 2018, with effect from 4th July, 2018, Sub-Regulation (1) of Regulation 12 read with Sub-Regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub-Regulation (2) was amended with effect from 4 July 2018 and now reads “a creditor shall submit claim with proof on or before the last date mentioned in the public announcement”.*

*23. The Regulations have to be read as a whole and not in a truncated manner and interpreted in the light of the statutory provisions of the IBC, as interpreted by this Court. This Court has time and again held that the*

*timelines stipulated in the IBC even for completion of proceedings are directory and not mandatory.”*

7. It is submitted furthermore in the case of **Vishal Saxena v. Swami Deen Gupta, 2020 SCC Online NCLT 2734**, the Allahabad Bench of NCLT took the view that the time stipulation in Regulation 12(2), of the CIRP Regulations, 2016 for submission of claim is directory and not mandatory. Relevant paragraph of judgement is reproduced below:

*“7. In view of the facts of the case on hand and of the judgments referred, this adjudicating Authority is of the view that it is a settled law that the claim cannot be rejected by RP solely on the ground of delay by the applicants in filing their claim. Moreover, sufficient reason has been shown for delay occurred in filing claim by the applicants before RP and the RP can be directed to accept the claim of the applicants to be considered by it on its merits and subject to proper verification, which will only be in consonance with the purpose sought to be achieved by the IBC.”*

8. It is submitted that the view that time stipulations are not mandatory in nature was also taken by NCLT, Chennai in its judgement in the case of **Assistant Commissioner of Customs v. Mathur Sabhapathy Vishwanatham (IB)-578 OF 2019**.
9. It is submitted that the dues accrued under the Odisha Electricity (Duty) Act, 1961 are statutory first charge created in favour of the State and has primacy over rights of others to recover their dues. As per Section 5(2) of the Odisha Electricity (Duty) Act, 1961 the claim of the Department of the State, squarely falls within the definition of “Security Interest” under Section 3(31) of the IBC and State becomes a secured creditor under Section 3(30) of IBC. The said provision is reproduced herein below:

## **5. Collection of electricity Duty-**

*(2) The duty and the interest, if any, so payable shall be a first charge on the amount recoverable by the licensee or appointed authority for the energy supplied by him and shall be a debt due by him to the State Govt.*

10. It is submitted that the provision of Section 5(2) of the Orrisa Electricity (Duty) Act, 1961 is *pari materia* to the Section 48 of the Gujarat VAT Act. Further while interpreting the provisions of Section 48 of the GVAT, the Hon'ble Supreme Court in the case of **State Tax Officer (1) v. Rainbow Papers Ltd., 2022 SCC OnLine SC 1162** held that:

*"57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC 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 Government or Governmental Authority."*

## **Analysis and Findings**

11. We have heard the Ld. Counsel for the Applicant and Ld. Counsel for the RP and perused the documents submitted. We take note that in the instant case Resolution Plan has already been approved by this Adjudicating Authority on 26.09.2023. Further, as per the public announcement dated 05.04.2022 the last date for submission of claim in Form-B was 18.04.2022 whereas the applicant filed its claim only on 03.08.2023 i.e. after a delay of almost 16 months.

12. The claim submitted by applicant was rejected by RP vide email dated 17.08.2023. Now, through this application the applicant is praying for issuance of direction to RP for admitting the claim amounting to Rs. 43,99,71,698 (Fourty Three Crores Ninety-Nine Lakhs Seventy-One Thousand Hundred and Ninety-Eight Only).
13. We observe that the Hon'ble Supreme Court in a catena of landmark judgements including M/s Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407 and Arcelor Mittal India Private Limited v. Satish Kumar Gupta (2019) 2 SCC 1 has emphasized on the legislative fiat of timeliness in the conduct of CIRP and that the model timelines provided in Regulation 40A of the CIRP Regulations need to be adhered to by all the parties as closely as possible.
14. We are also guided by the law laid down by the Hon'ble Supreme Court in the case of M/s. RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr in Civil Appeal No. 5590 of 2021 and in this regard it would be relevant to refer to the findings recorded in paragraph no. 19 and 21 which read as follows:

*19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out*

*whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.*

***21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.***

15. In the present case, the applicant is filing the application for admission of its claim even after the approval of resolution plan by this Adjudicating Authority. Allowing of applicant's claim at this stage would lead to interfering with plan which is already at the implementation stage and will make the CIRP an endless process.
16. We now refer to the Judgment of the Hon'ble Supreme Court dated 13.04.2021 in the matter of Ghanashyam Mishra and Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 OF 2019, the concluding para of which reads as overleaf  
:

## **“CONCLUSION**

95. In the result, we answer the questions framed by us as under:

- (i) That 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;**
- (ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;
- (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.”**

*(Emphasis supplied)*

In view of the above and for the reasons recorded herein, the IA-4999/2023 is liable to be dismissed.

## **17. ORDER**

- i. IA-4999/2023 filed by Govt. of Odisha for direction to RP to admit the claim of the applicant is dismissed.

- ii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**

**RAMALINGAM SUDHAKAR  
(PRESIDENT)**

**Sd/-**

**AVINASH K. SRIVASTAVA  
MEMBER (TECHNICAL)**