

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 2

ITEM No.302
IA/1199(AHM)2023
in IA/733(AHM)2022
in
CP(IB)/70(AHM)2021

Order under Section 60(5) r.w Rule 11 of NCLT Rules, 2016

In the matter of:

DEPARTMENT OF GUJARAT STATE TAX
VS

.....**Applicant**

THE R.P CA DHAVALJITENDRA KUMAR MISTRY
R.P OF GAJANAND CORPORATION LTD

.....**Respondent**

Order delivered on 27/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH, COURT-II**

**IA/1199(AHM)2023
In IA/733(AHM)2022
in CP(IB) 70 of 2021**

[An application under 60(5) Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules, 2016]

In the matter of:

Department of Gujarat State Tax,

Address: Unit-11,

Office of Assistant Commissioner of State Tax,

2nd Floor, Bahumali Bhavan-2,

Opp. Himallaya Mall, Vastrapur, Ahmedabad-380052

(Through its Authorized officer, Mr. Kunal Kishore Maheshwari,
State Tax Officer (2) Unit-11, Ahmedabad.

Email I.D.: sto2unt11-gstd- ahd1@gujarat.gov. in

.....Applicant

VERSUS

The Resolution Professional,

CA Dhaval Jitendrakumar Mistry,

Resolution Professional of Gajanand Corporation Pvt. Ltd.,

9-B, Vardan Complex, Near Vimal House, Lakhudi Circle,

Navrangpura, Ahmedabad, Gujarat-380014.

.....Respondent

Order pronounced on: 27/10/2023

Coram: SHAMMI KHAN, MEMBER (JUDICIAL)

Dr. V.G. VENKATA CHALAPATHY (TECHNICAL)

Appearance:

For the Applicant: Ms. Maithili D Mehta, Advocate

For the Respondent: Mr. Atul Sharma, Advocate for RP

ORDER

1. This is an application filed by Applicant/ Department of Gujarat State Tax under Section 60(5) of The Insolvency and Bankruptcy Code, 2016, read-with Rule 11 of the NCLT Rules, 2016 against non-consideration of a claim submitted in the shape of Form DRC-01A by the RP which was communicated to RP through e-mail on 08.09.2023, with inter-alia following prayers:-

(a). *To allow the present application.*

(b). *To direct the Resolution Professional and the Corporate Debtor to Co-operate with the adjudication proceedings.*

(c). *To allow the applicant authorities to conclude the assessment proceedings based on the decision of Sunderash Bhatt.*

(d). *To Consider the adjudicated amount as "Secured Claim" and the applicant authorities as "Secured Creditor".*

(e). To grant any other and further relief as may be deemed fit and proper in the facts of the present case.

2. It is stated that the captioned main matter being Company Petition (IB) No. 70 of 2021 was filed by the Operational Creditor M/s. Eco Green Products Pvt. Ltd. before this Hon'ble Tribunal under Section 9 of the Insolvency and Bankruptcy Code, 2016, with a prayer to initiate a Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor M/s. Gajanand Corporation Pvt. Ltd.
3. This Tribunal vide order dated 22.02.2022 was pleased to direct commencement of CIRP proceedings appointing Mr. Dhaval JitendraKumar Mistry as the Interim Resolution Professional (IRP") further declaring a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.
4. Pursuant to the said Order dated 22.02.2022, a public announcement was issued on 28.02.2022 by the Interim Resolution Professional inviting claims from the respective creditors of the Corporate Debtor M/s. Gajanand

Corporation Pvt Ltd. Thereafter, the captioned Interlocutory Application being IA No. 733 of 2022 was filed by the Resolution Professional ("RP") for approval of the Resolution Plan which does not take into consideration the claim of the applicant authorities.

5. The Corporate Debtor is engaged in civil engineering activities and has been registered under the Goods and Service Tax Act, 2017, The issue in question pertains to Financial Years 2017-118 to 2019-20. The Corporate Debtor has filed its returns under the Goods and Service Tax Act, 2017, and the said returns were carried under scrutiny under Section 61 of the Goods and Service Tax Act, 2017.
6. The applicant authorities had issued a show cause notice under Section 61 of the Goods and Service Tax Act, 2017 for the Financial Years ("F.Y.") 2018-19 and 2019-20 on 06.12.2021. It is necessary to mention that for the F.Y. 2017-18, the applicant authorities have issued a notice dated 28.09.2023 under Section 73 of the Goods and Service Tax Act, 2017.

7. As the Corporate Debtor never replied to the said show cause notices, three Reminders were sent to the Corporate Debtor on 19.02.2022, 10.03.2022 and 14.03.2022 with respect to the show cause notices issued under Section 61 of the Goods and Service Tax Act, 2017.
8. That the summons on 14.07.2023 under section 70 of the Goods and Service Tax Act, 2017 was issued upon the Corporate Debtor for a particular transaction. The said summons is an auto-generated summons and the particular transaction which is mentioned therein with Nagesh Enterprise would fall within the purview of F.Y. 2019-20.
9. That based on the returns filed by the Corporate Debtor for F.Ys. 2018-19 to 2019-20, the approximate claim amount comes to the tune of Rs 10.27 Crores. It is not in dispute that the adjudication is still pending and under the guise of initiation of CIRP proceedings, the Corporate Debtor is not responding to any of the notices as well as summons issued by the applicant authorities. To be precise, the corporate

debtor is not co-operating to the assessment/adjudication proceedings.

10. That on 08.09.2023, the Applicant authorities issued Form DRC-01A to the Resolution Professional as well as the Corporate Debtor. However, the Resolution Professional has chosen to remain silent to the email dated 08.09.2023, which clearly indicates that the show cause notices or F.Ys. 2018-19 and 2019-20 have been served upon the Corporate Debtor along with three reminders. The said email also specifies that Form DRC-01A has been issued for carrying out adjudication proceedings for both the Financial Years. That the said email also contains the fact that the summons under section 70 of the Goods and Service Tax Act, 2017 was also Served upon the Corporate Debtor.
11. Learned Counsel for the applicant has relied upon the judgement of NCLT Mumbai Bench dated 04.09.2023 rendered in the matter of **Paramount Consultants and Corporate Advisors Pvt. Ltd., Vs. Prabhat Technologies (India) Ltd.**

12. Ld. Counsel for the Respondent/RP filed their written submission wherein it is submitted that no claim was submitted by the applicant/State Tax Department within the prescribed period (at the relevant point of time) in the prescribed form as per Regulation 12 of IBBI Regulations, 2016 for which present IA has been filed by the applicant. The applicant filed a claim on 08.09.2023 at belated stage which is also not in prescribed form as per Regulation 12 of IBBI Regulations, 2016 before the Resolution Professional of the Corporate Debtor after the approval of Resolution Plan w.r.t. Corporate Debtor by the COC long ago on 18.08.2022 and the same is pending for approval by this Tribunal which is now reserved in IA 733 of 2023 vide order dated 17.10.2023.
13. That the Respondent/RP further submits that in view of the judgment in the matter of **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, [Civil Appeal No. 7667 of 2021]** passed by the Hon'ble Supreme Court of India, it may be noted that the

statutory authority like the Applicant only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. However, the Applicant authority has failed to adhere to the scheme of the Code by not considering that after such assessment, the Applicant is duty bound to submit its claim in terms of the procedure laid down under the Code, in strict compliance of the time period prescribed under the Code before the Hon'ble Adjudicating Authority. Therefore, such belated assessment proceeding may not be permissible under the Code. The relevant excerpt of the said judgment is reproduced hereunder for the sake of brevity:

“55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent? The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of

dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

Answered in negative.

56. On the basis of the above discussions, following are our conclusions: (i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

(iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

14. It is further submitted by the Respondent/RP that the Applicant (Authority) has under some misconceived understanding of law has erroneously contended that irrespective of its submission of claim, the Resolution Professional was duty bound to admit the claim of the Applicant Authority as the same was reflected in the books of accounts of the Corporate Debtor and had further relied the on the judgment in the matter of *Paramount Consultants and Corporate Advisors Pvt. Ltd Vs Prabhat Technologies (India) Ltd.*
15. In this regard, the Respondent/RP most humbly submits that the aforestated contention of the Applicant Authority is devoid of present standing of well settled position of law and the Respondent further submits that Hon'ble Appellate Tribunal vide its judgement dated 19.09.2022 in the matter of **CoC of Associated Décor Ltd. through Union Bank of India Vs. State of Karnataka** has rightly observed as follow:

“39. The next point for consideration is whether the RP has power to admit the claims suo-motu?”

40. The code prescribes the duties to be performed by the 'Interim Resolution Professional' and the 'Resolution Professional', as per Section 18 and Section 25 of the I & B Code, 2016. The IBBI (Insolvency Resolution Process for Corporate persons) Regulations 2016, prescribes the procedure to be adopted/ followed. As per Chapter IV Regulation 7 of the Regulations, the 'Claims' by the 'Operational Creditor' to be submitted with proof to the 'Interim Resolution Professional' in Form-B and as per Regulation 8 of the Regulations, the 'Financial Creditors' shall submit the 'Claims' to the 'Interim Resolution Professional' in Form-C. After receipt of the 'Claims', the 'Interim Resolution Professional', shall verify the 'Claims' in accordance with Regulation 13 and the 'Interim Resolution Professional', maintained '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'. There is no such provision that the 'Interim Resolution Professional', shall admit the 'Claim' without filing a 'Claim Form' either in 'Form-B' or in 'Form-C'. Therefore, this 'Tribunal', is of the considered view, that the 'Interim Resolution Professional', 'suo-motu' cannot admit the 'Claims' without their being a 'Claim' by the 'Claimants' viz. 'Operational Creditors', 'Financial Creditors' and 'Claims' by other 'Creditors'. Every 'Claim'

shall be submitted by the 'Claimant' with proof and the issue is answered accordingly."

16. We have heard the Counsel for the Applicant and perused the record. It is not in dispute that the Resolution Plan w.r.t. Corporate Debtor was approved by the COC on 18.08.2022 long back and is to be considered by the Adjudicating Authority. It is also not disputed that the Resolution Plan was heard by the Tribunal and was reserved for orders on 17.10.2023. No claim was submitted by the applicant/State Tax Department within in prescribed period in the prescribed form as per Regulation 12 of IBBI Regulations, 2016 for which the present IA has been filed by the applicant. Further, the claim was submitted only on 08.09.2023 whereas the last date for submission of the claim was already over long ago as per IBC which cannot be more than 90 days in terms of Regulation 12(2) of the IBC 2016.
17. On perusal of record, we find that there is neither any prayer seeking condonation of delay in filing claim before the RP nor any substantial explanation has been given by

the Applicant which can be construed as a sufficient cause. This claim is also stated to be a provisional claim and as per the respondent it has not been submitted in proper form.

18. We also see that the Resolution plan has already been reserved on 17.10.2023 for orders. IBC is a time-bound process which has been repeatedly held by the Hon'ble NCLAT as well as the Hon'ble Supreme Court in a catena of Judgements and Resolution Professional cannot wait indefinitely for the claims of the various claimants. Restricting the time period for submission of claims enables completion of CIRP in a time-bound manner and a resolution plan has already been approved by the COC.
19. In Civil Appeal No. 5590 of 2021 titled **RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr.** on 11.09.2023 the Hon'ble Supreme Court again categorically held that :-

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements

is not one which should be available to a commercial party.

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,⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

20. The above decision of Hon'ble Supreme Court squarely applies to the facts of the present case. It is observed from the application and the oral arguments before the Tribunal that the State Tax Department is yet to adjudicate and complete the process of arriving at the tax due payable and has without proper proof and documents submitted an

interim claim amount for admission before RP much after the Resolution Plan was approved by the COC.

21. In the matter before the Hon'ble NCLAT in **Bijoy Prabhakaran Pulipra V State Tax Officer, SGST Department, Kerala in** Company Appeal (AT)(CH)No.42 of 2021 has held as under:

"It is pertinent to mention that all assessment orders were passed before the declaration of Moratorium. Therefore, it has attained finality in the absence of any challenge against the assessment orders before the Appellate Authority as provided under the statutes. In the instant case, the Adjudicating Authority has rightly considered the statutory provision and suggested filing an appeal before the appropriate forum than reducing the claim.

22. In view of the same, and the provisions of IBC, the claim which was submitted by the applicant at a belated stage without proper proof and before finalisation of the dispute wherein the adjudication is yet to be completed and after the approval of the Resolution Plan was rightly not considered by the RP. The judgement relied by the Applicant

of NCLT Mumbai Bench dated 04.09.2023 rendered in the matter of **Paramount Consultants and Corporate Advisors Pvt. Ltd., Vs. Prabhat Technologies (India) Ltd.** is not binding on the RP as the same is on a different prayer for the classification of financial and operational creditors as per IBC.

23. In view of the above discussions, we do not find any merit in the application to interfere at this belated stage for consideration of the claim of the Applicant/ Department of Gujarat State Tax.
24. Accordingly, the present **IA/1199(AHM)2023** is hereby dismissed with no order as to cost.

S/d-

Dr. V.G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

S/d-

SHAMMI KHAN
MEMBER (JUDICIAL)