

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. (IB) No.08/GB/2021

In the matter of:

Goodwood Products
V/s
Kitply Industries Ltd.

... Operational Creditor / Applicant

... Corporate Debtor / Respondents

Order delivered on 22nd June, 2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J):

Hearing through

And

Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

Appearance:

ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The Applicant has filed this Petition under Section 9 of the IBC, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority), 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor (CD) M/s. Kitply Industries Ltd.

2. It is stated by the Applicant that the appended application in Form No.5 with necessary attachments is preferred by the OC under Section 9 of the Insolvency and Bankruptcy Code, 2016. The OC is the supplier of plywood materials to the CD, Kitply Industries Ltd. on whose account huge amounts are entitled for realization as confirmed as per credit information letter issued by the CD. When it was not discharged, this OC as early in the year 2014 filed civil suit for recovery of money. The suit was contested and ultimately decreed in favour of the OC. The CD has not so far preferred any appeal against the decree and thus it became an executable decree in till effect. Despite admission of liability, the CD did not reveal the erstwhile

proceedings initiated under SICA, 1985 to the knowledge and notice of the OC. Be that as it may, the proceedings started in the year 2012, under SICA became abated when IBC Act, 2016 came into force. Taking cue the Eighth Schedule of the IB Code, the process of insolvency stood referred to this Tribunal under IB Code on motion of Financial Creditor/ IDBI. The said proceeding was registered as C. P. (IB) No.2/GB/2018. Sri Bijay Murmura was initially appointed as IRP. This CD was unaware of such appointment of IRP at the relevant time since public announcement circulated in local dailies at Guwahati whereas the OC conducts business in southern part of India in Kerala. On coming to know about the IRP at a later stage, the OC preferred a claim before IRP on 26.11.2018. However, the same was rejected by the IRP on the ground that it was submitted beyond 90 days after resolution process date and hence not entertainable Under 12(2) of IB Regulations, 2016. Challenging the same, this OC filed IA No.21/2019 in C.P. (IB) No.2/GB/2018 before this Tribunal. After perusing the records and hearing the matter, this Tribunal was pleased to dismiss the same, however making it clear that nothing prevents the OC to pursue enforcement of debt legally due from the CD and mandated in terms of decree of support, if proper application u/s 9 of IB Code is submitted. Thereafter, as a prelude to initiating proceedings u/s 9 of IB Code, this OC has duly sent Form No.3 on 06.11.2020. Despite, Form No.3 sent by RPAD was duly received by the CD on 20.11.2020, neither any reply nor any payment hitherto has been made, despite an elapse of three months. Hence, this application under Section 9 of IB Code, 2016.

3. It is further submitted in the Application that the OC, Goodwood Products is having Identification REG. No.1203/2014 dated 16.04.2014 of Registrar of Firms, Thiruvananthapuram and the OC is situated at I.D. Plot, Andoor, Parassinikadavu, Kannur District, Kerala State, PIN 670623, E-mail:rajcarolin@gmailcom.

4. The CD, Kitply Industries Ltd. is having identification No. U20211AS1982PLC001969 and was incorporated on 26.08.1982. The authorised capital of the CD is Rs.500,000,000.00 and paid up capital of the CD is Rs.10,000,00.00. The Registered Office of the CD is at Makum Pathar, A. T. Road, Margherita – 786181 in the State of Assam. Sri K. S. Haris, S/o. P. P. Ibrahim Hazi, Andoor, Parassinikadavu, Kannur District, Kerala State, PIN 670623, Managing

Partner of Goodwood Products is authorised to submit the present application on behalf of the OC and the said authorisation is attached with the Application. Mr. Raj Karolin V, Advocate, M. K. Associates, Power House Extension Road, Ernakulam North, Cochin, Kerala, India- 682018, E-mail:rajcarolin@gmail.com has been authorised by the OC to accept the service of process on its behalf and the authorisation is attached with the Application. However, the OC has not proposed any name of the Interim Resolution Professional.

5. Rs.35,89,008.00 (Rupees Thirty Five lacs Eight Nine thousand and Eight only) is the total amount of debt being the outstanding amount due from M/s. Kitply Industries Ltd., towards supply of plywood Board by M/s. Goodwood Products as per Books of Accounts and the Credit Balance Confirmation Letter No.KIL/TN/GWP/13-14/094 dated 02.12.2013 with the Accrued Interest @6% Till Form 3 Demand Notice, Cost. Etc. granted thereon by decree in the Original Suit No.47/2014 of Sub Court, Kannur and the same is due from 01.04.2013. The said amount is claimed to be in default and the date of default is 01.04.2013. The working for computation of the amount and date of default in tabular form is attached with the Application. The same is also given hereunder:

Sr. No.	Particulars	Amount
1.	Credit balance confirmation letter No.KIL/TN/GWP/13-14/094 dated 02.12.2013 as per the books of accounts of Kitply as on 31.03.2013.	21,92,013.00
2.	Interest on Rs.21.92.103.00 from 01.04.2013 to 05.11.2020 @6% P.A. for 2776 days	9,99,740.00
3.	Cost allowed as per decree in O.S.47/2013 of Sub Court, Kannur	3,96,855.00
	Grant Total	35,88,608.00

6. In support of the claim / operational debt the Applicant has referred to and or attached the following provisions of law / documents with the Application:

- i) Decree in the Original Suit No.47/2014 of Sub Court, Kannur
- ii) Indian Contract Act, 1872
- iii) Invoices and credit confirmation letter KAIL/TN/GWP/13-14/094 dated 02.12.2013 by Kitply.

- iv) Statement of Bank Account where deposits are made or credits received normally by the Operational Creditor in respect of the debt of the Corporate Debtor –
 - (a) Axis Bank Account of the Operational Creditor with Bank Account Number: 159010200009591 of Axis Bank, Kannur Branch(UTIB0000159)
 - (b) Federal Bank Account of the Operational Creditor with Bank Account Number: 11380200025628 of Federal Bank, Kannur Branch (FDRL000138)
- v) Firm Registration acknowledgement issued by Department of Registration of Firms, Thiruvananthapuram, dated 16.04.2014.
- vi) Credit confirmation letter KAIL/TN/GWP/13-14/094 dated 02.12.2014 issued by Corporate Debtor.
- vii) Statement of Account prepared by Chartered Accountant showing schedule -5 Sundry Debtors as on 31.03.2014.
- viii) Copy of decree dated 16.09.2017 in O.S. No.47/2017 on the file of Sub Ordinate Court, Kannur.
- ix) Copy of the order dated 10.05.2019 in I. A. No.21 of 2019 in C.P.(IB) No.02/GB/2018 of NCLT, Guwahati Bench, Guwahati.
- x) Lawyer Notice dated 17.11.2020 issued by Adv. Raj Carolin. V to Corporate Debtor and others.
- xi) Copy of Form-3 under Rule-V of IB Rules to the Corporate Debtor.
- xii) Consignment tracking details of Form-3 issued to Corporate Debtor with the copy of postal receipt.
- xiii) Authorisation letter by Operational Creditor to K. S. Harris.

7. The matter was heard on 23.03.2021 and 19.04.2021.

8. The Applicant has filed written submissions on 01.04.2021 and it has reiterated the same what has been mentioned in its Application enclosing copy of the certain judgments in support of its claim and limitation period within which the Application has been filed.

9. On the other hand the Respondent /CD has filed its written submission on 28.04.2021 countering the contentions of the Applicant. The Respondent / CD has submitted in its written submission that –

I. **THE LAW IS SETTLED THAT RESOLUTION PLAN ONCE APPROVED BY THE HON'BLE ADJUDICATING AUTHORITY BECOMES BINDING ON ALL STAKEHOLDERS AND ALL CLAIMS NOT DEALT WITH STAND EXTINGUISHED.**

- (i) It is pertinent to mention that recently the Hon'ble Supreme Court in the case titled as "***Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors' Civil Appeal No.8129 of 2019 (delivered on 13.04.2021)***" reaffirmed the settled position of law that once the Resolution Plan is approved by the Hon'ble Adjudicating Authority under Section 31 of the Insolvency & Bankruptcy Code (hereinafter '***I & B Code***') in respect of the corporate debtor, it becomes binding on all the stakeholders (in this case the Operational Creditor/Petitioner, hereinafter '***OC***'). The Hon'ble Supreme Court in Para 95 of the said judgment held as under:

"..... That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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....."

Prior to Ghanashyam (supra), the Hon'ble Supreme Court in case titled as '**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others**' (2020) 8 SCC 531 (famously known as Essar Judgment) settled the position of law and held in para 105 & 107 as under:

"105. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were"

"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority / Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60 (6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count...."

- (ii) It is a matter of record that the OC though belatedly but did file its claim before the RP of the Corporate Debtor during the Corporate Insolvency Resolution Process (hereinafter '**CIRP**') on 20.11.2019 which was rejected by the RP. Pursuant thereto the OC filed the application challenging the rejection by RP before this Hon'ble Adjudicating Authority which was also rejected by this Hon'ble Adjudicating Authority vide order dated 10.05.2019. However, prior to that this Hon'ble Adjudicating Authority vide order dated 07.12.2018

approved the resolution plan in respect of the Corporate Debtor. Thus on approval of the resolution plan, the claim of the OC stood extinguished and therefore the present Section 9 is wholly non maintainable and an abuse of the process and thus deserves rejection with costs.

- (iii) In any event the OC neither challenged the order dated 10.05.2019 passed by this Hon'ble Adjudicating Authority rejecting its application being I. A. No.21 of 2019 filed by the OC in C.P. (IB) No.02/GB/2018 nor it challenged the approved Resolution Plan dated 07.12.2018. In fact it is the own admission of the OC in the said application being I. A. No. 21 of 2019 that it failed to file its proof of claim before the IRP within the stipulated time.

It is humbly submitted that OC itself has not been vigilant for its rights and a legal maxim Vigilantibus Non Dormientibus Jura Subveniunt i.e. the law assists only those who are vigilant, and not those who sleep over their rights, is perfectly applicable on the facts of the present matter. Therefore, in view of extinguishment of claim the Applicant can neither pursue this Application under Section 9 of the I & B Code nor can pursue execution of such alleged decree now.

IV. THE CLAIM FILED BY THE OC AFTER THE STIPULATED PERIOD OF 90 DAYS WAS RIGHTLY REJECTED BY THE RESOLUTION PROFESSIONAL OF THE CORPORATE DEBTOR AND UPHELD BY THIS HON'BLE ADJUDICATING AUTHORITY.

- (i) This Hon'ble Adjudicating Authority vide its order dated while dismissing an application being I. A. No.21 of 2019 filed by the OC in C.P.(IB) No.02/GB/2018 rightly held in para 12 as under:

"12.So, as per the amended Regulation 12 (2), which has come into force on 04.07.2018, the RP could not receive any claim submitted beyond 90 days after the CIRP begins. The CIRP begins in this case on 01.05.2018. Therefore, the submission of claim by the applicant on 20.11.2018 is no doubt beyond 90 days from 01.05.2018 when the CIRP has been initiated and therefore, the rejection of the claim, by

applying Regulation 12(2) of the Regulations of 2016 is found perfectly legal and proper and the RP has not committed any error or illegality in rejecting the claim. Moreover, the Resolution Plan has been approved by the Adjudicating Authority on 07.12.2018. Therefore the application of this nature cannot be entertained as this Adjudicating Authority has no power to reopen the resolution process which has already been closed. Therefor the remedy available to the applicant is lying elsewhere.

In view of the above settled position of facts and law the present application preferred by OC under Section 9 of I & B Code is hopelessly bared by time and after the Resolution Plan was approved way back on 07.12.2018 and the Resolution Applicant has already stepped into the shoes of the Corporate Debtor and also the corpus of Resolution Plan has also been disbursed amongst the stakeholders. In any event the claim of the Applicant OC stands extinguished on approval on approval of the resolution plan and thus neither it is entitled to pursue and maintain this present application nor this Hon'ble Adjudicating Authority with all due respect and humbleness has any power and jurisdiction to consider the present application. The Corporate Debtor therefore prays that this Hon'ble Adjudicating Authority may be pleased to dismiss the present application and impose exemplary cost on OC for wasting the previous judicial time of this Hon'ble Adjudicating Authority."

10. It is observed that:

- (1) The Application filed under Section 7 of IBC CPIB (IB) No.2/2016 by the FC IDBI Bank was admitted by this Bench and CIRP started on 01.05.2018.
- (2) The IRP was subsequently approved as RP continued the CIRP and issued Public Announcement in English Newspaper :Financial Express" and also in vernacular Newspaper "Amar Asom" mentioning the last date of submission of claims by the Creditors as on 16.05.2018.
- (3) The Applicant OC here filed the claim on 20.11.2018 through e-mail.
- (4) The IRP / RP rejected the claim, as it has been submitted more than ninety days after the commencement of Insolvency Resolution Process date and communicated the decision to the Applicant here on 26.11.2018.
- (5) The Resolution Plan has been approved by this Bench on 07.12.2018.

- (6) The Applicant had filed an IA No.21 of 2019 with a prayer that the order of rejection of its claim by the RP to set aside as it was not aware about the CIRP of the CD and it came to know about the CIRP of the CD from the internet only after second week of November, 2018 and thereafter only it had filed its claim. The prayer made in the said IA was rejected by this Bench.
- (7) The Applicant has filed this petition under Section 9 of I & B Code after 2 years of the Resolution Plan approved and Plan is under implementation.
- (8) Recently the Hon'ble Supreme Court in the case titled as **"Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors' Civil Appeal No.8129 of 2019 (delivered on 13.04.2021)** reaffirmed the settled position of law that once the Resolution Plan is approved by this Hon'ble Adjudicating Authority under Section 31 of the Insolvency & Bankruptcy Code (hereinafter '**I & B Code**') in respect of the corporate debtor, it becomes binding on all the stakeholders (in this case the Operational Creditor/Petitioner, hereinafter '**OC**'). The Hon'ble Supreme Court in Para 95 of the said judgment held as under:

"..... That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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....."

Prior to Ghanashyam (supra), the Hon'ble Supreme Court in case titled as '**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others**' (2020) 8 SCC 531 (famously

known as Essar Judgment) settled the position of law and held in para 105 & 107 as under:

"105. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were"

ORDER

11. Considering (a) the arguments advanced by the Counsels of both the parties, (b) papers/documents made available before this Bench, (c) the points mentioned in Para 9 (1) to (8) above and (d) the Judgment of the Hon'ble Supreme Court in the cases of "the Committee of Creditors of Essar Steels India Ltd. Vs. Satish Kumar Gupta and others and "Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors." Civil Appeal No.8129 of 2019 delivered on 13.04.2021, the present petition CP(IB) No.8/GB/2021 needs to be rejected as the Law is settled that once the Resolution Plan is approved by the Adjudicating Authority becomes binding on all stakeholders and all claims not dealt stand extinguished.

We do not find any merit in the contention of the Petitioner that it could not know about the initiation of CIRP within 90 days from the date of initiation when the notice inviting claims was published by the IRP in the Newspapers and the Petitioner has been perusing the Civil Suit filed by it against the Respondent in the year 2014.

12. Hence this CP (IB) No.8/GB/2021 is hereby rejected with the above observations so as to no cost.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
/Deka- 22.06.2021/

Sd/-

(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority