

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**MA(IBC)/05/KOB/2023**

**IN**

**CP(IBC)/54/KOB/2022**

*(Under Section 60(5) Of the Insolvency and  
Bankruptcy Code, 2016)*

*In the matter of:*

**ASTEN REALTORS PRIVATE LIMITED**

**MEMO OF PARTIES:**

**ASSISTANT COMMISSIONER**

Tax Prayer Service, State Goods and  
Service Tax Department, Kadavanthra,  
Tripunithura, Kochi

**... Applicant**

**-Vs-**

**CA RAJENDRAN P R,**

Insolvency Professional,  
Agasti & Associates, 1<sup>st</sup> Floor, CNRWA-6,  
Cherupushpam Lane, Kadavanthra,  
Kochi - 682 020

**.... Respondent**

**Order delivered on: 19.01.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. Justice T Krishna Valli**

***Appearances:***

For the Petitioner : Mr. Arun Chandy, Government Pleader  
For the Respondent : Mr. Vinod P.V, Advocate

**ORDER**

**Per Coram**

1. This application MA(IBC)/05/KOB/2023 is filed under section 60(5) of the I&B Code of 2016 by the applicant/Assistant Commissioner, State Goods and Service Tax Department, in the matter of M/s. Asten Realtors Private Ltd., to issue direction to the respondent/resolution professional (RP) to accept Annexure A2 claim submitted by the applicant.

The brief facts of the case are as follows:

2. This Hon'ble Tribunal has ordered Corporate Insolvency Resolution process (CIRP) proceedings against M/s. Asten Realtors Private Ltd., (Corporate Debtor) Vide order No. CP/IBC/54/KOB/2022 dated 25/01/2023 under Insolvency and Bankruptcy Code, 2016 (IBC) and the undersigned has been appointed as Interim Resolution Professional/Resolution professional (IRP/RP).
3. M/s. Asten Realtors Pvt. Ltd (Taxpayer for short) is a Private Limited Company under the rolls of the petitioner's office having GSTN:

32AAJCA6403BIZD. During the scrutiny of GSTR1 with GSTR3B under Section 61 of CGST and SGST Act, 2017 for the FY 2017-18, the following discrepancies has been found out:

| ACT      | PERIOD                     | TAX         | INTEREST    | PENALTY   | TOTAL        |
|----------|----------------------------|-------------|-------------|-----------|--------------|
| CGST Act | 2017-18<br>(July to March) | 3,72,32,604 | 3,83,33,574 | 37,23,260 | 7,92,89,438  |
| SGST Act | 2017-18<br>(July to March) | 3,72,32,604 | 3,88,91,323 | 37,23,260 | 7,98,47,187  |
| IGST Act | 2017-18<br>(July to March) | 3,57,309    | 3,69,544    | 35,731    | 7,62,584     |
| Total    |                            | 7,48,22,517 | 7,75,94,441 | 74,82,251 | 15,98,99,209 |

4. This was intimated to the Taxpayer vide Asmt. 10 No. 32AAJCA6403/20-21/S/40 dated 11/08/2020 and uploaded to the same to the common portal. But the taxpayer did not reply to the same. Hence, an intimation under Section 73(1) has been issued vide DRCO1 No. ZD3210220270557 dt. 29/10/2022 and communicated the same through GST Portal of the Taxpayer. Despite of above

notice, the taxpayer requested a short adjournment, and this was allowed the same by the petitioner. But thereafter the Taxpayer has neither replied nor paid any amount. On further enquiry it is found that M/s. Asten Realtors Pvt. Ltd. is under CIRP.

5. As per the circular of Government of India dt. 23/04/2020 regarding the clarification of issues under the GST Law for companies under the I&B Code 2016, the respondent who is undergoing CIRP is to be treated as a distinct person of a CD and shall be liable to pay due registration in its State and Union Territory where the CD was registered earlier, within 30 days of the appointment of the IRP/RP. In cases where the IRP/RP has been appointed prior to the issuance of intimation No. 11/2020 - Central Tax dated 21/03/2020, he shall take registration within 30 days of issuance of the said notification, with effect from the date of his appointment. As per the Circular, IRP/RP will be liable to furnish details, make payment of tax and comply with all the provisions of GST law during CIRP period.
6. The petitioner immediately filed the claim in Form B before the respondent dated 21/07/2023 which was subsequently rejected by the respondent without any valid reason. The respondent in reply, stated that he already intimated the above CIRP Process to the petitioner vide E-mail dated 06/02/2023. The said E-mail communication has not received as so far due to the restructuring in the entire GST Department of Kerala and the relocation of the concerned officers pursuant to that. This led to the change in the corresponding E-mail IDs as well. Apart from that, the officers in this

jurisdiction earlier are came under the Works Contract. After the restructuring it is relocated to Taxpayer Services Circle Kadavanthra at Tripunithura. The new restructuring is only based on Post Identification Number (PIN).

7. Hence, the adjudication process was initiated under Section 73(1) of the CGST and SGST Act, 2017. In the above proceedings a hearing notice also served to the respondent dt. 01/07/2023 and 21/07/2023, to which the respondent filed reply on 31/07/2023. One more notice was served on 07/08/2023. Accordingly, the respondent had appeared before the Adjudication Officer through authorized representative and filed the reply dt. 14/08/2023. Finally, the determination order was passed vide Order No.32AAJCA6403B1ZD/l7-18 dated 08/09/2023 and was also served to the respondent through the common portal.
8. The respondent/RP filed his reply on 04/12/23 stating the grounds in detail to dismiss this application by the applicant. Respondent submitted that the Application is not maintainable in law as applicant is trying to seek an admission of claim which is filed beyond the timeline prescribed under IBC, and claim does not exist as on the insolvency commencement date and Applicant is trying to enforce an order passed violating the moratorium declared by this Hon'ble Tribunal.
9. This Hon'ble Tribunal vide Order dated 25/01/2023 in CP(IBC)/54/KOB/2022, admitted the Corporate Debtor for CIRP

and the CoC in the 1st meeting held on 25/02/2023 appointed the Respondent No.1 as RP, which was confirmed by this Hon'ble Tribunal vide Order dated 25/03/2023. The IRP made public announcement inviting claim on 28/01/2023 and the same was published in Malayalam Daily - Kerala Kaumudhi on 29/01/2023 and in the English daily "Business Line" on 30/01/2023 and also published in the official website of IBBI.

10. The Respondent Resolution Professional in compliance of Regulation 6A to IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 issued an intimation via letter and by email to all Statutory Government Bodies including the Applicant about the admission of CD into CIRP, prohibition for initiation or continuation of any proceedings or execution against CD during the moratorium period, requirement of filing claim within 90 days from the commencement of insolvency Proceedings and also intimated that the last date of submission of claim is 08/02/2023. The last date of filing of claim was on 25/04/2023. CGST filed the claim of Rs.89,49,233/- and was admitted by the RP. However, the Applicant, SGST department has not filed any claim.
11. Meanwhile, RP has invited EOI to submit the Resolution Plan on 28.03.2023. In response, RP received two Project wise Resolution Plans Resolution Plan on 11/07/2023. The RP has placed the plan before consideration of the CoC on 18.07.2023. Amidst this, CIRP period was extended for further 90 days from 25/07/2023 to 22/10/2023 vide order dated 27/07/2023. The CoC has approved

two project wise Resolution Plan on 16/10/2023 in the 8<sup>th</sup> CoC meeting.

12. RP received a notice dated 21/07/2023 from the Applicant, directing him to appear for hearing on 01/08/2023, at the office at State GST Complex, before finalizing the adjudication proceedings under Sec. 73 of the Kerala State Goods and Service Tax Act, 2017 (“KGST Act”) against the CD. Along with the notice the applicant also filed a claim based on a show cause notice issued to the CD on 29/10/2022 under Sec. 73(1) KGST Act.
13. It is submitted that the Applicant has forwarded the claim to the RP with a delay of 87 days. This claim was filed after finalisation of Information Memorandum, subsequent to issue of EOI and after receipt of the Resolution Plan by the Prospective Resolution Applicants.
14. Till that date the Applicant has not made any determination of claim, which is evident from the claim form itself that the Claim is based on a show cause notice and no order or final determination is made prior to the commencement of the CIRP by the Applicant.
15. The RP vide letter dt. 26/07/2023 sent a reply to the Applicant that the claim is filed beyond the statutory period of 90 days and cannot be accepted and it was also informed that claim is submitted merely based on a show cause notice, which means that the Applicant has not finally determined the claim and is only at the investigation stage. Therefore, before determination of the tax liability on the

assessee, there cannot be any claim even otherwise legally admissible in CIRP proceedings. It was also informed that the initiation or continuation of any proceeding against the CD is a violation of moratorium.

16. Despite this the applicant also issued a notice on 07/08/2023 for personal appearance of the RP on 14/08/2023. Further to that the RP Appeared before the Applicant, through its authorised representative and reiterated his contention in his reply about the moratorium declared by this Hon'ble Tribunal, requesting the Authorities to drop the proceedings against CD as per law.
17. However, in gross contempt of the order of this Hon'ble Tribunal, the Applicant proceeded with passing of an order on 08.08.2023 determining liability of CD, under Section 73(1) and 73(9) of the CGST/KSGST Act, 2017 r/w Rule 142 of CGST/KSGST Rules, 2017 for the period of 2017-2018 and also issued the order demanding CD to pay the tax dues amounting to Rs.7,48,22,517/- along with interest and penalty for the period of 2017-2018.
18. Heard the Learned Counsels for both parties and perused all materials available on record including the batch of judgments submitted by the parties before the Tribunal.
19. This application MA(IBC)/05/KOB/2023 is filed under Section 60(5) Of the Insolvency and Bankruptcy Code of 2016. There arises two points for consideration before this Hon'ble Tribunal:

**Point 1:** Whether the belated claim submitted by the applicant can be admitted by the Resolution Professional?

20. As per Regulation 12(1) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the creditor can file claim up to 90 days. In the present case, the RP has invited EOI on 28/03/2023 and 90 days deadline was falling on 25/04/2023. The applicant herein has forwarded its claim form on 21/07/2023 with a delay of 87 days.

***Regulation 12(1) IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 reads as follows:***

*“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.”*

21. In Para 58 of ***State Tax Officer vs. Rainbow Papers Limited 2022 SCC Online SC 1162***, it was observed that the delay in filing a claim cannot be the sole ground for rejecting the claim. The Principal Bench of the NCLT, New Delhi, decided in ***Edelweiss Asset***

***Reconstruction Co. Pvt. Ltd. vs. Adel Landmarks Ltd.*** that the rejection of claim on the ground of delay is not sustainable because the provision has been held to be directory. By this order it was made clear to all the Resolution Professionals that claim of an applicant could not be rejected on the ground of delay as the provision has been held to be directory. In ***Puneet Kaur vs. KV Developers Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.390 of 2022***, appellants and some other homebuyers could not file the claims and hence it was not reflected in the information memorandum. Therefore, the RP was asked to prepare an addendum to the resolution plan to be placed before the CoC for consideration. In ***State Bank of India vs. ARGL Ltd.***, the Principal Bench of the Hon'ble NCLT New Delhi while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the CD and the RP/IRP would be required to take cognizance of the dues as per the books of accounts. Hence, it can be seen that even when the law does not permit filing of claim by any creditor after the 90th day, the Court can take a lenient view considering the facts and circumstances of each case.

22. In this present case also, the respondent has not denied the proceedings of tax assessments, forming basis of present claim, against the CD. It is also imperative to note that all these facts

relating to the claim would have been available in the audited financial statement of the CD already, which the then IRP/RP ought to have taken cognizance of and included the said liability in the formation memorandum.

23. Moreover, if the delay is not condoned and the claim is not accepted, it will also lead to great loss to the State's Exchequer. All the above said claims are legally sustainable and the applicant has produced sufficient materials to prove his claim before the respondent. The delay in submitting the claims occurred due to the restricting of the GST Department in general and is inadvertent from the side of the applicant. This bench is of the view that there is no wilful delay or laches on the part of the applicant in filing the claim before the RP and therefore the claim should be accepted by the RP.

**Point 2:** Whether the proceeding initiated, and the determination order passed by the Applicant under Section 73 of the KGST Act, 2016 is illegal and in violation of the moratorium declared by this Hon'ble Tribunal?

24. The relevant provision of the I&B Code, 2016 on the moratorium period is as follows:

***"Section 14. Moratorium. -***

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;...”*

25. The object of moratorium under section 14 of the I&B Code, 2016 is that there is no depletion of the CD's assets during the CIRP so that it can continue as a going concern while maximising its value. However, the assessment proceedings are considered to be outside the purview of moratorium, proceedings for recovery of tax would fall within the ambit of moratorium. While the tax authorities may continue the assessment proceedings to determine the quantum of their claim, they cannot however, proceed with execution, distress or recovery.
26. Section 82 of the KGST Act clearly states that the Government shall have first charge on the assets subject to the provisions of the I&B Code, 2016. Section 82 of Kerala State Goods and Service Tax Act, 2017 reads as follows:

***“Section 82. Tax to be first charge on property. - Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (Central Act 31 of 2016), any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”***

27. The Supreme Court in the case of ***Sundaresh Bhatt, Liquidator of ABC Shipyard Vs. Central Board of Indirect Taxes and Customs (2023) 1 SCC 472***, in *para 44* held as follows:

*“Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.”*

28. As per the decision in the above case, the Supreme court observed that *“the custom authorities under the Customs Act during the period of moratorium can only take steps to **determine the tax, interest, fine or any penalty which is due**. However, the authority cannot transgress such boundary and proceed to initiate recovery in violation of section 14 or 33(5) of IBC, 2016.”* This decision of the Supreme Court was reiterated by this Hon’ble Tribunal while deciding IA(IBC)/141/KOB/2023 in CP(IBC)/06/ KOB/2022 as well.

29. The last page of the **Annexure A10** determination order passed by the Kerala State GST Department reads as follows:

*“In the circumstances the liability of the taxable person M/s. Asten Realtors, for the year 2017-18 is **determined** u/s 73(1) 8; 73(9) of the CGST/ SGST Act 2017 read with Rule 142 of the CGST/ KSGST Rules 2017 and section 20 of the IGST Act 2017. Tax and the other dues are **determined** and hence, the same are hereby demanded from the*

*taxpayer. The Act-wise **dues with respect to tax, interest and penalty for the year 2017-18 (July-2017 to March 2018) are specified in the table...***

30. It is a settled legal position that tax determination and assessments are not covered under moratorium and only recovery of tax under CGST/SGST Act is prohibited by virtue of moratorium under I&B Code, 2016.
31. Considering the above, any further proceedings by the Applicant to recover the tax dues determined as per the determination order will be barred under Section 14 of the I&B Code and will lead to contempt of order of this Hon'ble Tribunal. In any such case, this Tribunal holds the power to take Suo moto contempt against the applicant. Therefore, the proceedings by the Applicant in this present case is not violative of the moratorium period.
32. This Tribunal has in detail considered the points in question in this present case and has decided as follows: This Bench takes a lenient view on the issue of inadvertent and belated submission of the Claim by the Applicant. The delay is hereby condoned. Also, the proceeding initiated, and the determination order passed by the Applicant in this case under Section 73 of the KGST Act, 2017 is neither illegal nor in contravention of the moratorium declared by this Hon'ble Tribunal.
33. **This Application MA(IBC)/05/KOB/2023 is hereby allowed and disposed of accordingly.**

34. The respondent must take necessary steps to accept the Annexure A2 claim in Form B submitted by the applicant.
35. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
36. Let the certified copy of the order be issued upon compliance with requisite formalities.
37. File be consigned to records.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM  
Date: 2024.01.19 15:39:22 +05'30'

**SHYAM BABU GAUTAM**

**(MEMBER TECHNICAL)**

T.KRISHNAVALLI Digitally signed by T.KRISHNAVALLI  
Date: 2024.01.19 15:39:04 +05'30'

**T KRISHNA VALLI**

**(MEMBER JUDICIAL)**

Signed on this the 19<sup>th</sup> day of January 2024.

Leona/LRA