

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

**IA (IB) No. 74/60(5)/GB/2022
In CP (IB) No. 4/GB/2018**

Coram:

**Hon'ble Shri Deep Chandra Joshi, Member (J):
Hon'ble Shri Subrata Kumar Dash, Member (T):**

**Hearing through
Video Conference**

Section: U/s 60(5) of IBC, 2016

In the matter of:

Maxim Infrastructure & Real Estate Pvt. Ltd. Applicant

V/s

The Secretary, Meghalaya Urban Development Authority & Ors.

.... Respondents

Memo of the Parties:

Maxim Infrastructure & Real Estate Pvt. Ltd.

A company incorporated under the Companies Act, 2013 and having its registered office at Plot No. 34, Old Municipal Office, Jail Road, Shillong-793001.

... Applicant

Versus

- 1. The Secretary, Meghalaya Urban Development Authority, Shillong 793001 (Meghalaya)**
- 2. Town Planning Officer, Meghalaya Urban Development Authority, Shillong-793001, Meghalaya**
- 3. The Secretary, Meghalaya Building & Other Construction Workers Welfare Board, Lower Lachaumiere, Shillong 793001 (Meghalaya)**

... Respondents

Order Pronounced On: 21.07.2023

ORDER

[Per: Shri Deep Chandra Joshi, Member (J)]

1. The present Interlocutory Application has been filed under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking the following reliefs that:

- a. Necessary orders be passed directing the Respondent No. 1 to accept an amount of Rs. 7,49,979/- towards full and final settlement of its dues in terms of the Resolution Plan.
 - b. Necessary orders be passed directing the Respondent No. 1 to waive and/or extinguish the demands to the extent of Rs. 71,69,513/- and Rs. 9,92,671/- raised in the notice dated 21st April, 2022 issued by the Respondent No. 1.
 - c. Necessary orders be passed directing the Respondent No. 1 to issue a no due certificate.
 - d. To pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper.
2. The Applicant submits that:
- 2.1. An application being CP (IB) No. 4/GB/2019 was filed by Bank of India being the Financial Creditor under Section 7 of IBC, 2016 against Maxim Infrastructure & Real Estate Private Limited being the corporate debtor wherein this Tribunal by an order dated 31st August, 2018 admitted the said application and initiated Corporate Insolvency Resolution Process (CIRP) against corporate debtor.
 - 2.2. The IRP was replaced by the Resolution Professional (RP) who floated the Expression of Interest for inviting the potential Resolution Applicants to submit their Resolution Plans.
 - 2.3. The Resolution Plan submitted by the successful Resolution Applicant i.e. M/s Rare Asset Reconstruction Limited was duly confirmed by the Committee of Creditors in the 14th Meeting held on 26th September, 2019 and subsequently the same was approved by this tribunal vide order dated 25th October, 2019.
 - 2.4. During the CIRP of the CD, Respondent No. 1 did not submit its claim to the IRP or the RP but there was an amount of Rs. 7,49,797 due and payable to the Respondent No. 1 reflecting in the books of accounts of the CD. The information memorandum was prepared by the RP.

- 2.5. In terms of the said information memorandum the successful resolution applicant submitted its resolution plan and agreed to infuse an amount of Rs. 260.14 Crores and make payments to all the stakeholders including the Respondent No. 1 to an extent of Rs. 7,49,797/- and this was duly recorded in the Resolution Plan on clause No. 2.3.4.2.
- 2.6. Pursuant to the approval of the Resolution Plan, the Successful Resolution Applicant had taken over control of the Corporate Debtor and the Applicant required an Occupancy Certificate/validation of NOC for smooth running of the business, therefore, the Applicant sent a letter dated 21st October, 2021 to the Respondent No. 1 for issuance of Occupancy Certificate for the Hotel cum Office Complex project coming up at Old SMB Complex, Jail Road, Shillong. In reply thereto, the Respondent No. 1 vide its letter dated 26th November, 2021 directed the Applicant to deposit an amount of Rs. 71,69,513/- towards the building permission sanction fees and also required certain documents to be submitted. The Applicant vide its letter dated 7th December, 2021 brought to the knowledge of the Respondent No. 1 that only an amount of Rs. 7,49,979/- was due and payable to the Respondent No.1 in terms of the resolution plan and upon such payment, no further amount is due and payable. The Applicant made over all the compliances required by the Respondent No. 1 through its covering letter dated 10th December, 2021.
- 2.7. On 3rd March, 2022 the Respondent No.1 sent a notice demanding the Labour Cess for the building from the Applicant, in reply thereto the Applicant vide its letter dated 8th March, 2022 informed the Respondent No. 1 that a lease deed was executed on 19th October, 2021 with Urban Affairs Department, Govt. of Meghalaya therefore, the Respondent No. 1 was requested to inform the amount to be paid from the date of execution of the lease deed. Further, vide letter dated 10th March, 2022 the Respondent No. 3 informed the Applicant that as per the Government of Meghalaya, Labour Department vide order No. LBG-125/96/Pt I 172 dated 30th March, 2011 the Cess of 1% is payable by the Applicant. In reply

thereto the Applicant vide its letter dated 15th March, 2022 brought to the notice of the Respondent No. 1 and 2 that the civil construction of the hotel was completed before 2015 prior to the period when the Corporate Debtor entered into CIRP and there is no due as on date and all the old dues and outstanding amounts are waived off in terms of the Resolution Plan submitted by the successful Resolution Applicant approved by this Tribunal.

- 2.8. On 8th April, 2022 the Respondent No. 1 sent a letter to the Applicant demanding an amount of Rs. 71,69,513/- towards the building permission fees. The Applicant replied vide its letter dated 12th April, 2022 to the Respondent No.1 informing that the Tribunal has approved the Resolution Plan of the CD vide its order dated 25th October, 2019 wherein it was clearly stated that the old statutory dues against the property is to be paid for an amount of Rs. 7,49,979/- and the same reflects in the para No. 2.3.4.2 of the approved Resolution Plan.
- 2.9. In spite of informing the Respondent No. 1 about approval of the Resolution Plan, a demand notice was issued by Respondent No. 1 dated 21st April, 2022 demanding an amount of Rs. 9,92,671.70 towards the Labour Cess along with an amount of Rs. 71,69,513/- towards the building permission fees.
- 2.10. Thereafter, vide letter dated 23rd June, 2022 the Applicant requested the Respondent No. 1 to share a detailed break up for the amount claimed by the Respondent No. 1. Pursuant to the same, the Respondent No. 1 vide its letter dated 11th July, 2022 disclosed the detailed break up for the building permission fees.
- 2.11. The Applicant vide letter dated 15th July, 2022 clarified that the Applicant is agreeable to pay the dues for the current renewal fees i.e. Rs. 10,24,216/- starting from 2nd February, 2021 and the old dues amounting to Rs. 7,49,979 towards the Labour Cess.
- 2.12. Respondent No. 1, in spite of the order dated 25th October, 2019 passed by this Tribunal is not accepting the payment of issuing the Occupancy

Certificate of the said building which is causing hindrance in the business of the Applicant.

- 2.13. The Respondents have acted in gross violation of the order dated 25th October, 2019 passed by this Tribunal and is not accepting the amount of Rs. 7,49,979/- provisioned to be paid as per the Resolution Plan approved by this Tribunal.
 - 2.14. Appropriate direction be issued directing the Respondent No.1 to accept the amount to the tune of Rs. 7,49,979/- towards the Labour Cess as mentioned in the Resolution Plan in Clause 2.3.4.2 with further directions for waiver and/or extinguishment of the demands raised in its notice dated 21st April, 2022 to the extent of Rs. 71,69,513/- and Rs. 9,92,671/- raised towards building permission fees and the Labour Cess.
3. The Respondents No. 1 and 2 vide affidavit in opposition dated 16.02.2023 submit that:
- 3.1. The instant application is not maintainable in as much as the Applicant is seeking for waiver of the statutory dues, which is beyond the scope and powers of this Tribunal. The Meghalaya Urban Development Authority is a statutory authority constituted under the Meghalaya Town and Country Planning Act, 1973. Section 9 of the Meghalaya Town and Country Planning Act, 1973 provides for preparation of Master Plan and Section 10 provides for publication of Master Plan. In 2011, the Meghalaya Urban Development Authority formulated the Meghalaya Building Byelaws, 2011. The development of the property in issue has been granted under this building byelaw and all statutory levy have been demanded under this byelaws, as such, the demand of Respondent is beyond the scope and jurisdiction of interference of this Tribunal.
 - 3.2. Section 61 of the Meghalaya Town and Country Planning Act, 1973 categorically bars institution of any proceedings against actions of Authority and/or officers, taken under the Act.

- 3.3. The Respondents in this instant application are not parties to the main proceedings i.e. CP (IB) No. 4/GB/2018 before this tribunal. There arises no occasion of claiming any relief against the answering respondents, by way of the interlocutory application, when the answering respondents are not parties in the main proceedings. The application deserves to be dismissed, being defective under procedural law.
- 3.4. The answering respondents not being parties to the main proceedings, were not in the knowledge of the proceedings before this Tribunal and its contents, as such, there arises no occasion of the answering respondents submitting any claims of statutory dues before this Tribunal.
- 3.5. The claim of the Petitioner that the payment of dues and outstanding amount of statutory dues has been waived off and approved by this Tribunal is strongly denied and objected to for blatantly misinterpreting and misrepresenting the order dated 25.10.2019 passed by this Tribunal.
- 3.6. The building permission of the building in question was granted vide Building Permission No. MUDA.BP/655/2008-09 dated 03.02.2012. The initial permission for the building was granted at the maximum limit as was normally permissible for grant to a normal building under the building byelaws. Since, the permission sought was for a special building, the approval of the State Government is required under the Building Byelaws. The maximum permissible limit for construction under building byelaws is Basement+Ground+3 Floors. Further, an additional floor may be permitted, if any of the G+3 floors is fully used for parking purposes. Clause 2 of the permission clearly indicates that the permission shall remain in force for 3 years.
- 3.7. Upon approval of the State Government being sought for 2 additional floors, the State Government in the Urban Affairs Department, had vide Approval Letter No. DUA/D/80/2006/99 dated 23.04.2013, granted its approval for 2 additional floors for Special Building, to the Applicant Building.

- 3.8. Total cost of Building Permission Fees for the proposed 5 Star Hotel (Non Residential use) is Rs. 20 per square feet which amounts to Rs. 54,22,900 i.e. (271145 sq.ft x Rs. 20) for which the petitioner owed the Respondent. The due amount payable was owed from the day of issuance of the Building Permission Sanction, hence, the meter ran from the day the sanction was accorded and as such the meter would not cease operation simply by the initiation of Insolvency and Bankruptcy proceedings or by the change of parties by way of CIRP proceedings.
- 3.9. The statements made in para 4 (d) of the application is vehemently objected to as the Respondent were not informed of CIRP. It is a statutory requirement that the Petitioner is to mandatorily pay Building Permission Fees which existed since the initiation of the subject matter and subsequently the Petitioner was required to pay the Updated Building Permission Fees which are levied in accordance to the provisions provided in the Meghalaya Building Bye Laws, 2011. Therefore the averment of the Petitioner that the Respondent did not submit any claim holds no ground as the Petitioner did not provide any intimation of the CIRP proceedings, thus, preventing the Respondent from submitting any claim to the Resolution Professional.
- 3.10. Subsequent to CIRP, the Petitioners approached the Respondent to issue Occupancy Certificate whereby the Respondent issued a letter dated 26.11.2021 clarifying that the issuance of Occupancy Certificate shall be considered after the necessary compliances are met in accordance with Section A-Clause 10 of the Bye Laws, which also included the payment of Building Permission Fees as was directed of the Petitioners to submit the due amount i.e. Rs. 71,69,513. The Petitioner in reply to the letter dated 26.11.2021 brought to the notice of the Respondent that only an amount of Rs. 7,49,979 is due and payable in terms of Resolution Plan, which is grossly erroneous, groundless and is vehemently objected to.
- 3.11. With regards to the statement of the Petitioner claiming that no dues existed and all dues as well as outstanding amounts are waived off and

the same is approved by the Tribunal is not only utterly incorrect and misinterpreted but also a misrepresentation of the Tribunal's order dated 25.10.2019 with the intent to deceive, for which the Petitioner is liable for strict action by this Tribunal. Therefore, in view of the Para 12 of the order dated 25.10.2019 passed by this Tribunal, the claim of the petitioner that the payment of dues and outstanding amount of Statutory dues has been waived off and approved by this Tribunal is denied and objected for blatantly misinterpreting and misrepresenting the order dated 25.10.2019.

3.12. The statement made in para 4(i), 4(j), 4(k), 4(l), 4(m), 4(n) and the averments made therein are misleading and incorrect insofar as the amount due and payable to the Respondent is concerned.

3.13. The previous Corporate Debtor vide Demand Draft dated 03.08.2012 paid a total of Rs. 13,26,035.00. Therefore, the remaining outstanding balance for the original Sanction due as on 2016 amounted to Rs. 40,96,865.00.

3.14. The original Building permission Sanction is valid up to 3 years as per Section A-Clause 5 of the Bye Laws and as per condition 2 of the Building Permission Sanction which was issued on 03.02.2012 to the Petitioner. Thereafter, the Building Permission Sanction was required to be renewed and the Building Permission Fees for renewal is $\frac{1}{4}$ th of the fees which shall be paid on remaining portion only and the validity shall be for 18 months as per Section-A Clause 16.4 (vi) of the Bye Laws, hence, $\frac{1}{4}$ th of Rs. 40,96,865.00 is amounting to Rs. 10,24,216.00 for 18 months. Therefore, approximately three times of Rs. 10,24,216 amounts to Rs. 30,72,648 bringing the total Updated Building permission Fees due and payable to Rs. 71,69,513 which is owed to the respondent.

4. Further the Applicant vide its written submissions dated 07.04.2023 submits that:

4.1. As and when the public announcement was made by the IRP/RP to invite claims from all the stakeholders of the Corporate Debtor, the IRP nor the

RP received any claims from the Respondents but considering the fact that there was an amount of Rs. 7,49,797.00 due and payable to the Respondent No.1 as per the books of accounts of the CD, the RP prepared the information memorandum disclosing the said amount therein. As per the information memorandum received from the RP the successful resolution applicant submitted its resolution plan and agreed to infuse an amount of Rs. 260 Crores and make payments to all the stakeholders including the Respondent No. 1 to an extent of Rs. 7,49,797 and this was duly recorded in clause No. 2.3.4.2 of the approved Resolution Plan. Therefore, the respondents cannot at this belated stage raise a demand of Rs. 71,69,513.00 towards the building permission fees and Rs. 9,92,671.00 towards the Labour Cess which were dues of the prior period of the CIRP of the CD.

- 4.2. In para No. 2.3.5 of the approved resolution plan specifically states that other than the creditors mentioned in the resolution plan and those reported in the IM, operational creditors of the Company (within India or elsewhere) including the creditors who have not submitted their claims in the CIRP process to the RP or whose claim has not been admitted by RP, shall be deemed to have been settled or waived off as per the above terms of the Resolution Plan.
- 4.3. Para No. 2.3.10 of the approved resolution plan states that all other dues/claims/demands, if any, to be waived off fully. Further, in respect to the Shillong property, pt. no. 2 of the approved resolution plan states that any liabilities that may accrue to Meghalaya Urban Development Authority (MUDA), the approval of the resolution plan by NCLT shall be treated as a waiver order to MUDA for waiving off building permission fee/renewal fee/ or any past dues in whatever form, whether claimed or unclaimed by MUDA from the date of NCLT Order and in pt No. 26 of the approved resolution plan it states that the approval of the resolution plan will be treated as the approval by the NCLT that claims of government authorities, in relation of all taxes etc. for period pertaining prior to the insolvency

commencement date and till date and till the date of NCLT orders, shall stand extinguished and ineffective.

- 4.4. Section 238 of Insolvency and Bankruptcy Code, 2016 clearly indicates that the “provisions of this Code to override other laws”, this provision has a non-obstante clause and states that notwithstanding anything inconsistent therewith in any other law for the time being in force or any instrument having effect by virtue of any other law, the provisions of the Code shall have full effect. Thus, the Meghalaya Building Bye Laws, 2011 or the Building and Other Constructions Workers Welfare Cess Rules of 1998 cannot override the provisions of Section 238 of Insolvency and Bankruptcy Code, 2016.
5. The Respondent No. 1 and 2 vide its written arguments dated 16.06.2023 submit that:
 - 5.1. The Meghalaya Urban Development Authority is a statutory authority constituted under the Meghalaya Town and Country Planning Act, 1973. Section 9 of the Meghalaya Town and Country Planning Act, 1973 provides for preparation of Master Plan and Section 10 provides for publication of Master Plan. In 2011, the Meghalaya Urban Development Authority formulated the Meghalaya Building Byelaws, 2011. The development of the property in issue has been granted under this building byelaw and all statutory levy have been demanded under this byelaws, as such, the demand of respondent is beyond the scope and jurisdiction of interference of this Tribunal.
 - 5.2. The present application is not maintainable in as much as the provisions of the IBC, 2016 do not provide any jurisdiction on the National Company Law Tribunal to entertain such an application. After approval of the resolution plan the Tribunal becomes ‘functus officio’ and therefore, the present application would not lie before the NCLT. The law is well settled that an interlocutory application does not lie as against a disposed of

matter and therefore, on this ground as well the present application is not maintainable.

- 5.3. Even in a Corporate Insolvency Resolution Proceedings under the Insolvency and Bankruptcy Code, 2016 the NCLT lacks jurisdiction to grant waiver of statutory dues. The Applicant is seeking for waiver of statutory dues which it cannot get even under a proceeding under the Code.
- 5.4. Section 61 of the Meghalaya Town and Country Planning Act, 1973 categorically bars institution of any proceedings against actions of the Authority and/or officers, taken under the Act. The Applicant could have approached the appropriate forum to overcome Section 61 of the Meghalaya Town and Country Planning Act, 1973.
- 5.5. The respondents in this instant application are not parties to the main proceedings i.e. in the original application filed by the petitioner in application under CP(IB) No. 4/GB/2018 before the NCLT, Guwahati Bench. As such, there arises no occasions of claiming any relief against the answering respondents, by way of the interlocutory application, when the answering respondents are not parties in the main proceedings and especially when, such an application is not permissible under law. On this ground alone the application deserves to be dismissed.
- 5.6. The claim of the Applicant that the payments of dues and outstanding amount of statutory dues has been waived off and approved by this Hon'ble Tribunal is incorrect. The order dated 25.10.2019 passed by this Tribunal is very clear on this aspect.
- 5.7. This Tribunal has no power of review. The power of review is a creature of statute and there being no such power conferred under the IBC, 2016, the present application is also not maintainable on this ground. Since this Tribunal has not granted any waiver of statutory dues. The Applicant in the garb of this Application is practically seeking for a review of the order dated 25.10.2019, which is impermissible in law. Besides, this order dated

25.10.2019, on account of non-grant of waiver of statutory dues etc. has not been challenged in appeal.

- 5.8. The RP ought to have been taken due care in following Regulation 4 of the Resolution Process Regulation of 2016. The Respondents were never called upon to produce materials as regards to the amount allegedly indicated in the books of accounts. Since, the Resolution Plan was improper and did not meet the requirements of Section 30(2) of the IBC, it is invalid and for this reason as well, it cannot be made binding on the Respondents. Since no waiver as sought for in the Resolution Plan was granted of the order dated 25.10.2019, there would arise no occasion/requirement for the respondents to challenge the same.
- 5.9. The Applicant had approached the Respondents only on 21.10.2021 seeking for the Occupancy Certificate. Thereafter, the dues were determined for issuance of the Occupancy Certificate and intimated to the Applicant on 26.11.2021. Ultimately the conditional occupancy certificate was issued on 12.01.2023. As such, there arises no occasion for making any claim for dues which are yet to be determined during the resolution plan. As such, the dues in the instant case cannot form part of Resolution Plan.

ORDER

6. We heard the both the sides and perused the materials available on record. It is found that in spite of the order dated 25th October, 2019 wherein this Tribunal has approved the Resolution Plan of the Corporate Debtor, the Respondent No. 1 issued a demand notice dated 21st April, 2022 demanding an amount of Rs. 9,92,671.70 towards the Labour Cess along with an amount of Rs. 71,69,513.00 towards the building permission fees.

7. Reliance is placed on the judicial precedent of Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Private Limited V/s Edelweiss Asset Reconstruction Company Limited*** wherein it is settled that once a Resolution Plan is duly approved by the Adjudicating Authority under 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 a part of the Resolution Plan.

8. It is observed that the Applicant herein has agreed to pay the dues for the current renewal fees i.e. Rs. 10,24,216.00 starting from 2nd February, 2021 in view of the letter dated 11th July, 2022 shared by Respondent No. 1 disclosing the detailed break up for the building permission fees. However, the Respondent No. 1 is not accepting the amount of Rs. 7,49,979.00 towards full and final settlement of its dues in terms of the Resolution Plan.

9. This Bench, therefore, hereby orders as follows:

9.1. The Respondent No.1 is hereby directed to accept the payment of Rs. 10,24,216.00 against the current renewal fees starting from 2nd February, 2021 and the old dues amounting to Rs. 7,49,979 towards the Labour Cess as agreed by the Applicant.

9.2. Respondent No. 1 is directed to waive and/or extinguish the demands to the extent of Rs. 71,69,513.00 and Rs. 9,92,671.70 raised in the notice dated 21st April, 2022 issued by them as it is evident that the Applicant had taken over the project only after 25th October, 2019, hence, they are not eligible to pay for the renewal fees upto the 3rd August, 2019.

9.3. Respondent No. 1 is also directed to issue a no dues certificate as soon as the stipulated amount is being deposited and also to issue the Certificate of Occupancy for Hotel cum Complex coming up at Old SMB Complex, Jail Road, Shillong.

9.4. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

9.5. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

10. Thus, the present application i.e. IA (IBC) No. 74/GB/2022 filed under Section 60(5) of the IBC, 2016 stands disposed of with the above Observations and Directions.

-Sd-
(Subrata Kumar Dash)
Member (Technical)
& Adjudicating Authority

-Sd-
(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority