THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 3524 OF 2023

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Mr. Rakesh Kumar Agarwal

…Applicant

Vs.

Devender P. Jain,
Director of Corporate Debtor

…Respondent

In the matter of

C.P.(IB) No. 839/MB/2017

Shirdi Industries Limited

…Corporate Applicant

Order delivered on: 16.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant	:	Mr. Shyam Kapadia a/w Ms. Sanaya patel i/b Induslaw
For the Respondent	:	Mr. Tejas D. Shah, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA 3524/2023 filed by Rakesh Kumar Agarwal, Resolution Applicant of M/s Shirdi Industries Limited ("Corporate Debtor") and Rakesh Kumar Agarwal as Director of Corporate Debtor ("the Applicants") in the Corporate Insolvency Resolution Process (CIRP) against Sh. Devender P. Jain, Former Resolution Professional of Corporate Debtor seeking following reliefs :
   a. direction or order deemed fit that under Clause No. 57 applicable to payment to operational creditors in default/claim/dispute as on cutoff date providing for payment Statutory, Tax and Government Authorities as disclosed at Exhibit-7 of the Application;
   b. direction or order deemed fit that under Clause No. 58 applicable to resolution of contingent liability in relation to Statutory, Tax and Government Authorities on account of operation till cutoff date as disclosed at Exhibit-8 of the Application.

2. The Applicants submitted that the name of Applicant No. 2 was changed to M/s Shirdi Panel Industries Limited from M/s Shirdi Industries Limited w.e.f 16.11.2022

   2.1. The Applicant had filed an application under Section 10 of the IBC 2016 on 24.04.2017 before this Tribunal for initiation of Insolvency Resolution Process, which was allowed by this Tribunal vide Order dated 18.05.2017 in C.P. (IB) 839/2017 and a Moratorium commenced in terms of Section 14 of Insolvency & Bankruptcy Code, 2016 ("Code"). Respondent No 1, CA Devendra P Jain, was appointed as the Resolution Professional. Resolution Plan of the Applicant No 2 was approved vide order of this Tribunal dated 12.12.2017.

2.2. The Resolution Plan, as approved by this Tribunal vide Order dated 12.12.2017, provided for the manner and amount payable to secured and unsecured financial creditors. The manner of payment in relation to operational creditors was provided in Clause No. 57 i.e. "Payment to operational creditors in default/claim dispute as on cutoff date", and Clause No. 58 i.e. "Resolution of contingent liability on account of operation till cutoff date".

2.3. Although the manner of payment had been specified at Clause No.57 and Clause No.58, the amount payable to operational creditors particularly statutory authorities has not been specified in the Order dated 12.12.2017 or approved resolution plan both, however, admitted Claim amounts and payable amounts to operation creditors including Statutory authorities and Tax authorities has been specified in Affidavits filed by the Applicant and gist of payments filed by the Resolution Professional before this Hon'ble Authority in course of proceedings culminating into passing of Order dated 12.12.2017.

2.4. Prior to approval of the Plan, this Tribunal directed the Respondent to file gist of payment offered in the Plan which was also submitted by the Respondent by way of an affidavit dated 8.11.2017 and the details therein matched with the amount disclosed by the Applicant in Schedule 10 & 11, page 62 & 63 of the Affidavit filed on 16.5.2017 in so far as the outstanding and contingent dues are concerned.

2.5. It is the case of the Applicant that the authorities have been insisting for certification of the amount payable to them by this Tribunal. It is submitted that the payment to such operational creditors has already commenced from June 2022 in accordance with Resolution plan and same is being made as per Plan.

2.6. The Applicant submitted that the Applicant had been receiving Notices/Orders and is being confronted by multiple adjudication proceedings, from them for assessment periods that include the period prior to the said order dated 12.12.2017.

3. The Respondent has filed a combined reply in this IA as well as IA 3421/2022, which pertains to compliance of the terms and conditions of resolution plan approved by this Tribunal vide Order dated 12.12.2017 wherein statutory authorities, amongst others, are also party respondents. The management of the Corporate Debtor prior to CIRP and post CIRP remained the same and the amounts offered to secured and unsecured financial creditors were in line with the restructuring agreement made in July 2015 pursuant to scheme of arrangement placed before Board of Industrial Financial Reconstruction under the provisions of The Sick Industrial Companies (Special) Provisions Act, 1985 and substantially higher than the liquidation value of the fixed assets of Company. This plan provided for payment to Operational Creditors against confirmed dues and contingent liabilities both as provided at Clause No. 57 and 58 of approved Resolution Plan.

3.1. The Respondent has also stated that this Tribunal in MA 34/2018 in open court clarified on 4.5.2018 that "*R-1 has not understood the order in correct perspective because it has been made clear in the Order dated 12.12.2017 that this Corporate Applicant is not entitled to any exemption after approval of the resolution plan. Since this order has clarified that the corporate applicant is not entitled to have any exemption in respect of payment of any kind of taxes that arise from the date of the approval of resolution plan the Bench disposes off this application clarifying that R-1 is not entitled to realise its dues which were claimed before the Resolution Professional during CIRP henceforth this Bench hereby held that this Respondent as well as other Authorities are at liberty to release all kind of* *taxes that arise subsequent to approval of resolution plan. Hence this application is hereby disposed of.*"

3.2. It is further stated that the Resolution Plan provided for the manner in which it would deal with all creditor's dues, including statutory liabilities and contingent liabilities. The Respondent has also reiterated that the amounts of claim of statutory authorities submitted vide affidavit dated 8.11.2017 matched with the amount disclosed by the Applicant in Schedule 10 & 11, page 62 & 63 of the Affidavit filed on 16.5.2017 in so far as the outstanding and contingent dues are concerned.

4. Heard the learned Counsel and perused the material available on record.

4.1. It is trite law that the resolution applicant can not be fastened with the liabilities in relation to the period upto the date a Resolution Plan in case of the Corporate Debtor is approved by this Tribunal under Section 31 of the Code. There is no dispute that the Plan approval Order dated 12.12.2017 has attained finality, accordingly the claim of the Creditors, whether statutory authorities or otherwise, have to be dealt with in accordance with the approved plan and shall stand settled completely accordingly.

4.2. The dispute seems to have arisen from this Tribunal declining to entertain any relief or concession in relation to statutory dues for further period. The Respondent has clarified that this Tribunal vide order dated 4.5.2018 in MA 34/2018 had clarified in clear terms that *that R-1 is not entitled to realise its dues which were claimed before the Resolution Professional during CIRP henceforth this Bench hereby held that this Respondent as well as other Authorities are at liberty to release all kind of taxes that arise subsequent to approval of resolution plan.*

4.3. This Bench is of considered view that the words *"this Respondent as well as other Authorities are at liberty to release all kind of taxes that arise subsequent to approval of resolution plan"* has to be understood to mean that such authorities shall be at liberty to realise all kind of taxes that may arise subsequent to approval of resolution plan in relation to the period from plan approval order i.e. 12.12.2017 and not prior to that. This has to be read so in terms of plethora of decisions of the Hon'ble Supreme Court laying down the law that once the Resolution Plan in case of Corporate Debtor is approved, the Resolution Applicant can not be fastened with the liability in relation to period upto the plan approval date as all the claims of the creditors, whether admitted or not, whether contingent or crystallised, ceases to exists.

4.4. In case of Committee of Creditors of ***Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. (2020) 8 SCC 534***, the Hon'ble Supreme Court opined that a successful resolution applicant cannot be faced with undecided claims after the resolution plan has been accepted. The Hon'ble Court observed:

> "…*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 would 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, NCLAT judgment must also be set aside on this count*."

4.5. The principle of 'Clean Slate' has consistently been followed. Accordingly, we clarify that the Corporate Debtor can not be fastened with any liability for a period upto the Plan Approval date i.e. 12.12.2017, even if such liability is crystallises after this date or the notice/order in relation to such liability was issued prior to 12.12.2017. All the liabilities payable to any creditor shall stand satisfied and discharged upon approval of the Resolution Plan provided that sums set aside against each of such liability is paid.

5. In view of foregoing, IA 3524/2023 is allowed with aforesaid clarification.

Sd/-	Sd/-
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)