NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. IA/5957/2024C.P. (IB)/610(MB)2021

IN THE MATTER OF

IDBI Bank Limited

Vs

M/S. Zicom Electronic Security Systems Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 06.10.2025

CORAM:

SH. MOHAN PRASAD TIWARI MEMBER (J)	SH. CHARANJEET SINGH GULATI MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Applicant: M. S. Bhardwaj (VC)
For the Respondent:

ORDER

IA/5957/2024: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/- CHARANJEET SINGH GULATI Member (Technical)	Sd/- MOHAN PRASAD TIWARI Member (Judicial)

//*Zakir*//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

IA(I.B.C)/5957/MB/C-V/2024

IN

C.P.(IB)/610/MB/2021

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

Assistant Commissioner of CGST & Cen. Ex, Division-VII, Mumbai East Commissionerate, Central Board of Indirect Tax and Customs, Department of Revenue, Ministry of Finance
having its office address at 10% Floor, Lotus Info Centre, Parel East, Mumbai-400012.

....Applicant

Versus

M/S Zicom Electronics Security Systems
through its Directors,
501, Silver Metropolis, Wester Express Highway, Goregaon East, Mumbai-400063.

....Respondent no.1/
Corporate Debtor

Shri Huzefa Fakhri Sitabkhan
Resolution Professional (for Corporate Debtor), Reg No. IBBI/IPA-001/IP-P0031/2017-18/10115)
1012, Dalmal Tower, Free Press Journal Road.
211, Nariman Point, Mumbai- 400021.

IDBI BANK LIMITED

having registered office at:
IDBI Towe, WTC Complex, Cuff Parade, Mumbai-400005
....Respondent no.3

IN THE MATTER OF

IDBI Bank Limited

Versus

M/s Zicom Electronic Security Systems Ltd

Order Pronounced on: 06.11.2025

Coram:

Hon'ble Sh. Mohan Prasad Tiwari, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For Applicant: Adv. M.S. Bhardwaj

For Respondent: Adv. Shreyas Lele, Adv. Riya Kamdar i/b Khaitan Legal Associates

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ORDER

IA(I.B.C)/5957/MB/2024

1. The present application has been filed by the Applicant under 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC/the Code'), seeking following relief :-

" a. To direct Respondent No.2, Resolution Professional outstanding dues recoverable interest and penalty as per

Applicants FORM B dated 05.03.2024 consideration and approval belated claim of a creditor even at the stage when the resolution plan had already been approved by the CoC and was pending for facts and reasoning it is humbly submitted that the Respondent directed to admit the Applicant's claim and for approval before the CoC.

b. *Pending the hearing in the captioned application Hon'ble Tribunal be pleased to not pass any orders in Interim Application 3956 of 2023 filed by Respondent No.2.*

c. *To direct the Resolution professional to consider the government dues at par with the Secured Creditors.*

d. *To pass any such Order or Orders as this Hon'ble Tribunal may deem fit and expedient."*

Brief Facts as per the Application:

2. The above Interlocutory application (IA) is filed by **Assistant Commissioner of CGST & Cen. Ex** ("**Applicant**") in Company Petition No. 610(IB)/MB/2021. The company petition was filed by **IDBI Bank Limited**, ("**Respondent no.3**") under Section 7 of IBC for Initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Zicom Electronic Security Systems Ltd** ("**Corporate Debtor/ Respondent No.1**").

3. CIRP against the Corporate Debtor was initiated by the order of this Tribunal dated 29-07-2022 for default on an unresolved financial debt of ₹80,62,61,990.21 and Mr. Huzefa Fakhri Sitabkhan ("**Respondent no.2**") was appointed as the IRP and subsequently was confirmed as Resolution Professional for the Respondent no.1 Company.

4. The Applicant submits that the due date for availing ITC for the FY 2018-19 was 20th October 2019. However, it appeared from the data that the

Respondent No.1 had availed the below mentioned ITC after the specified date for the FY 2018- 19 under section 16(4) of the CGST Act, 2017:

FY	**Availed ITC after Due Date**			
	IGST	CGST	SGST	Total
2018-19	2840720.56	6335166.09	6335166.09	15511052.74

5. As per Section 16(4) of the CGST Act, 2017, ITC pertaining to FY 2018-19 could be availed only up to the due date of filing GSTR-3B for September 2019, i.e., 20.10.2019, or filing of the annual return, whichever was earlier. However, Respondent No.1 filed its GSTR-3B returns after 20.10.2019 and availed ITC of Rs. 1,55,11,052/-, which was therefore ineligible. Consequently, the said ITC was held inadmissible under Section 16(4) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and is liable for recovery.

6. The Respondent No.1 had availed excess/ineligible ITC during FY 2018-19. The discrepancy was intimated on 02.01.2024, requesting clarification and payment/reversal of the ineligible ITC along with interest under Section 73(5) of the CGST Act, 2017. However, the taxpayer neither submitted any valid explanation nor discharged the applicable dues.

7. Consequently, a Show Cause Notice (SCN) dated 24.01.2024 was issued by the Applicant vide Form GST DRC-01, requiring the Respondent No.1 to show cause within 30 days as to why excess/ineligible ITC amounting to Rs. 1,55,11,052.74 (CGST: Rs. 63,35,166.09; SGST: Rs. 63,35,166.09; IGST: Rs. 28,40,720.56) should not be recovered along with interest and penalty under Section 73(1) of the CGST Act, 2017 read with the corresponding provisions of the MGST and IGST Acts. Despite being granted multiple opportunities for personal hearing on 13.02.2024, 20.02.2024, and 27.02.2024, the Respondent failed to appear.
8. Further, another Show Cause Notice dated 29.01.2024 was issued, wherein reconciliation of GSTR-3B and GSTR-2A for FY 2018-19 revealed excess ITC availment as detailed below:

Particulars	Amount (Rs.)
ITC availed in GSTR-3B	1,55,11,053
ITC available in GSTR-2A	1,51,13,564
Difference (Excess ITC)	**3,97,488**

Earlier to the above notice, vide Form GST DRC-01A dated 10.01.2024, the taxpayer was directed to show cause as to why ineligible ITC of Rs. 3,97,488/- should not be demanded and recovered under Section 73(1) of the CGST Act, 2017 read with the corresponding provisions of the MGST and IGST Acts.

9. Respondent No.1, vide letter dated 31-01-2024, denied all allegations made in the Show Cause Notices issued by the Applicant and stated that the Corporate Insolvency Resolution Process ("CIRP") had been initiated against it by order dated 29-07-2022. It was further stated that the Committee of Creditors had approved the Resolution Plan of the Successful Resolution Applicant with requisite majority, which was pending approval before this Tribunal, and hence the Applicant should coordinate with Respondent No.2.

10. The said SCN dated 24-01-2024 was adjudicated by the Office of the Principal Commissioner of Central Tax (GST), wherein Shri S.G. Ghosh, Assistant Commissioner, Division VII, CGST & CX, vide Order No. 61/ME/AC/Div-VII/SGG/23-24 dated 04-03-2024, observed that despite issuance of notice, Respondent No.1 failed to submit any documentary evidence or attend the personal hearings granted on three occasions under Sections 75(4) and 75(5) of the CGST Act, 2017. Accordingly, the case was decided ex parte on the basis of available records.

11. Upon examination, the authority held that as per Section 16(4) of the CGST Act, 2017, ITC relating to FY 2018-19 could not be availed after the due date of filing GSTR-3B for September 2019, i.e., 20-10-2019. Since Respondent No.1 had filed its GSTR-3B after the said due date, the ITC of Rs.

1,55,11,052/- was held ineligible and recoverable. The authority accordingly confirmed the demand under Section 73(1) of the CGST Act, 2017, along with interest under Section 50 and imposed a penalty of Rs. 15,51,105/- under Section 122(2)(a) of the said Act.

12. Thereafter, the Applicant submitted its proof of claim for recovery of Rs. 1,55,11,052/- plus interest and penalty through Form B dated 05-03-2024 to Respondent No.2, declaring that Respondent No.1 was indebted to the Government of India as on the insolvency commencement date, i.e., 29-07-2022. Upon receipt of the claim, Respondent No.2, vide email dated 12-03-2024, stated that CIRP had been initiated against the Corporate Debtor by order dated 29-07-2022, and that a public announcement dated 03-08-2022 had been issued inviting claims till 17-08-2022. However, no claim was received from the Applicant within the said period. Respondent No.2 further informed that the Resolution Plan had been approved by the Committee of Creditors (CoC) in its 19th meeting, and an application for its approval was pending before this Hon'ble Tribunal. Accordingly, Respondent No.2 declined to accept or verify the Applicant's claim made through Form B dated 05-03-2024, stating that it did not form part of the ongoing CIRP proceedings.

13. Further the show cause notice dated 29-01-2024 were taken for adjudication by the Superintendent (Range-V), Division- VII, CGST & CX, Mumbai East Commissionerate whereby the authority vide its order dated 18-03-2024 confirmed the demand of ITC amounting to Rs.3,97,488/- along with penalty of Rs.39,748/- under the relevant provisions of CGST Act, 2017.

14. The Hon'ble Tribunal vide its order dated 16-05-2024 reserved its order in IA no.3956/2023 filed by the Respondent no.02 for approval of the Resolution Plan. Consequently, aggrieved by the decision of the Respondent No.2 vide his email dated 12 march 2024, the Applicant files the present petition.

15. This Hon'ble Tribunal vide Order dated 03.06.2025 rejected the IA no.3956 of 2023 filed by the Respondent no. 2 for approval of Resolution Plan and sent back the Resolution Plan to COC for reconsideration observing **"*the Resolution Plan submitted by the SRA is in noncompliance of section 30(2) of the Code, 2016 read with Regulation 38(3)(b) of the CIRP Regulation*"**. In the meantime the RP also has been changed/replaced vide Order dated 04.09.2025.

Submissions of the Applicant :

16. The claim is clear and confirmed vide Order of 04.03.2024 and 18.03.2024 and pertain to the period prior to initiation of CIRP, hence there is no delay.

17. The Resolution Professional erred in rejecting the Applicant's claim on the ground of delay. The Hon'ble Supreme Court in ***State Tax Officer v. Rainbow Papers Ltd.*** has categorically held that delay in filing a claim cannot be the sole ground for its rejection and that the Respondent No.2 has failed to appreciate that any Resolution Plan excluding statutory dues is contrary to law. As held in Rainbow Papers (supra), a Resolution Plan not satisfying Section 30(2) of the IBC is invalid and not binding on the Government or any statutory authority where dues remain outstanding.

18. The Respondent No.2 further failed to consider that till the approval of the Resolution Plan by the Adjudicating Authority, even belated claims may be entertained, as held in ***India Opportunities III Pte Ltd. & Anr. v. V. Venkatachalam (2019 SCC OnLine NCLT 18406),*** where the NCLT directed the RP to consider a belated claim even after CoC approval.

19. It is submitted that under Regulation 6(2)(b)(i) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional is required to publish a public announcement in one English and one regional language newspaper having wide circulation at the place of the corporate debtor's registered and principal office. However, in the present case, Respondent No.2 published the announcement in newspapers

with limited circulation, in contravention of the said Regulation. Consequently, as the Applicant (CGST Department), who does not subscribe to those newspapers remained unaware of the said announcement. It is also submitted that Respondent No.2, having access to the books of accounts and records of Respondent No.1, could not have summarily rejected the Applicant's claim, as the liability would have been reflected therein.

20. It is submitted that despite initiation of CIRP, the suspended directors—who stood divested of management powers, continued to act on behalf of Respondent No.1 in collusion with Respondent No.2 and that such conduct raises serious concern and warrants investigation by this Hon'ble Tribunal for possible violations of the provisions of the Code by Respondent No.2.

21. The Applicant also submitted that in ***Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors ({2020) 8 SCC 531)*** Hon'ble Supreme Court held that though the NCLT cannot interfere with the commercial decision taken by the CoC on merits, it has the power of limited judicial review to send back the resolution plan for reconsideration of the CoC if the same was not in terms of the parameters laid down under Section 30(2) of the Code. The same was reiterated and reaffirmed in ***Jaypee Kesington Boulevard Apartments Welfare Assoctation & Ors v. NBCC (India) Limiud & Ors.(2021 sec OnLine SC* 253)**. Further in **Bank of Maharashtra v. Videocon Industries Ltd, (CA (AT) (Ins) No. 503 of 2021)** it was affirmed that if CoC has the power to approve a resolution plan, it also has the power to reconsider and review its own decisions on resolution plans as the commercial wisdom of the CoC is non-justifiable.

22. The Respondent No.02 has not considered the fact that till the time the Resolution Plan is not approved by the Adjudicating Authority the claims even if belated can be taken into consideration and placed before CoC. It is submitted that in ***India Opportunities III Pte Limited and Anr. v V. Venkatachalam (2019 sec Online NCLT 18406)***, the NCLT Hyderabad directed the RP to consider the belated claim of a creditor even at the stage

when the resolution plan had already been approved by the CoC and was pending for approval before NCLT.

Submission of the Respondent No.1 and 2 :

23. The Respondent No.2 submits that pursuant to the initiation of CIRP on 05-08-2022 and in compliance with Section 15 of the Code read with Regulation 6 of the CIRP Regulations, he made a public announcement in The Financial Express and Loksatta. Pursuant thereto, claims were received and verified, and the CoC was constituted on 20-08-2022, holding its first meeting on 26-08-2022. In the second CoC meeting on 21-07-2022, Respondent No.2 was confirmed as the Resolution Professional. In the second round of resolution plan process, after deliberations, voting was concluded within the extended timeline, and in the 19th CoC meeting held on 06-06-2023, it was resolved to vote on three compliant plans. As per the results dated 19-08-2023, the Resolution Plan submitted by Advaita Trading Private Limited was approved with 75.03% voting share.

24. Following CoC approval of the Resolution Plan, Respondent No.2 filed IA No. 3956 of 2023 before this Tribunal under Sections 30(6) and 31 of the Code for approval of Resolution Plan, which was heard and reserved for orders on 16-05-2024. Upon seeking clarifications, the same were duly provided as recorded in the Tribunal’s Order dated 21-10-2024.

25. Nearly seven months after the approval of CoC and filing of the Resolution Plan IA, the Applicant lodged its first claim on 05-03-2024, alleging belated availment of ITC of ₹1,55,11,052.74 in violation of Section 16(4) of the CGST Act, 2017. The Applicant issued Show Cause Notices in January 2024 to the Corporate Debtor’s old Goregaon address, over which Respondent No.2 had no control, as the registered office had shifted to Bandra prior to CIRP. Earlier on 04-03-2024, the Applicant passed an Order confirming the said demand and penalty of ₹15,51,105/-. Vide email dated 12-03-2024, Respondent No.2 expressed inability to accept the claim, as the Resolution

Plan had already been approved by the CoC and was pending before this Hon'ble Tribunal.

26. On 18-03-2024, the Applicant, through Shri Akshay Negi, Superintendent, passed an Order confirming a demand against Respondent No.1 for belatedly availing ITC of ₹3,97,488/- and imposed a penalty of ₹39,748/-. Pursuant thereto, the Applicant filed its second claim dated August 01, 2024 (received on 06-08-2024) for the said amount with interest and penalty. Respondent No.2, vide email dated 09-08-2024, again expressed his inability to entertain any fresh claims as the Resolution Plan had already been approved by the CoC.

27. It is pertinent that the Applicant's first claim was lodged only on 05-03-2024 i.e nearly seven months after the CoC approved the Resolution Plan on 19-08-2023. It is settled law that once a Resolution Plan is approved by the CoC, no new claims can be admitted thereafter. Hence, the belated claim is liable to be dismissed at the threshold. Further, despite being informed on 12-03-2024, that the claim could not be verified, the Applicant filed the present Application after nearly five months, in September 2024. The same suffers from gross delay and laches and runs contrary to the time-bound scheme of the Code.

28. Moreover, the Applicant's claim form fails to disclose any definite date of default. From its own case, the alleged default pertains to ITC availed after the deadline of 20-10-2019. Alternatively, if the claim arises from the assessment order dated 04-03-2024, it is evidently post-CoC approval and thus inadmissible. In any event, the demand, show cause notice, and assessment order dated 01-01-2024, 25-01-2024, and 04-03-2024, respectively were all issued after the insolvency commencement date and during the moratorium under Section 14 of the Code. As both assessment and recovery proceedings are barred during moratorium, the Applicant's claim is untenable. Allowing such belated claims would defeat the object of the Code and set an undesirable precedent.

29. Lastly, the case laws cited by the Applicant are distinguishable on facts and do not apply to the present matter.

Findings & Analysis :

30. We have heard the Ld. Counsels of the parties and perused the documents available on record.

31. The Applicant on 25.07.2025 submitted that since there is no prayer sought against the Respondent no.3, hence, Respondent no.3 is not necessary party and therefore this Tribunal vide order dated 05.08.2025 noted that the notice to Respondent No.3 and its reply to the present IA, is not necessary.

32. The Applicant has submitted that Respondent no.1 has availed ITC in contravention of section 16(4) of CGST Act, 2017. The due date for availing the ITC for the FY 2018-19 was 20-10-2019 and it appeared from the data available with the Office of the Applicant that the Respondent No.1 had availed the ITC after the specified date for the FY-2018-19 under section 16(4) of CGST Act, 2017. Further, the said demand was duly communicated to the Corporate Debtor through issuance of multiple Show Cause Notices, culminating in an Order dated 03.04.2024 passed by the Applicant, confirming the demand of ₹1,55,11,052/- along with applicable interest and penalty. Additionally, a separate demand of ₹3,97,488/-, together with a penalty of ₹39,748/-, was confirmed vide Order dated 18.03.2024.

33. It was asserted by the Applicant that following the due process of law, they issued the order dated 03.04.2024, confirming the demand of ₹1,55,11,052/-. The Applicant immediately after confirming of dues which pertain to the period prior to initiation of CIRP filed the claim under Form B with the Respondent no.2 on 05-03-2024, nonetheless the Respondent No.2 declined to accept the above claim of the Applicant on the grounds that there is a delay and the Resolution Plan has been approved by CoC and pending before this Tribunal for approval.

34. However, it is pertinent to note that this Tribunal vide Order dated 03.06.2025 disposed off the IA no.3956 of 2023, filed by the Respondent No. 2 for approval of Resolution Plan and thereby has remanded the Resolution Plan to CoC for reconsideration. The Relevant paragraph of the said order is reproduced here in under:

> "*33. Therefore, in view of the statutory non-compliance of the Resolution Plan and the aforementioned judgement of the Hon'ble NCLAT, we are of the opinion that the instant* ***resolution plan submitted by M/s Advaita Trading Private Limited is in non-compliance of Section 30(2) of the Code, 2016 read with Regulation 38(3)(b) of the CIRP Regulations in terms of feasibility and viability and the factors mentioned above which seem to have been overlooked by COC and therefore the Resolution Plan is being sent back to the CoC for reconsideration on the stated issues and for satisfying the parameters set out by the code as exposited above."***

35. Also, it is necessary to refer to the Regulation 13(1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which stipulates as under:-

> *"(1B)* ***In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation****, as the case may be, the interim resolution professional or* ***resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation****."*

36. From plain reading of the aforesaid Regulation, it is clear that even where a claim is filed beyond the period stipulated under Regulation 12(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the same may still be examined and adjudicated, provided it is submitted

up to seven days prior to the meeting of the Committee of Creditors ("CoC") convened for voting on the resolution plan or prior to the initiation of liquidation, as the case may be. Although Regulation 12(1) prescribes a specific timeline for submission of claims, Regulation 13(1B) operates as an enabling provision, affording a final opportunity for genuine claims to be duly considered within the prescribed parameters.

37. In the present case, since the Applicant had lodged its claim in Form B with Respondent No.2 on 05.03.2024, and as while disposing off IA No. 3956 of 2023, the Resolution Plan stands remitted for reconsideration of CoC, the applicant's claim, in the changed circumstances, would fall within the stipulations of Regulation 13(1B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and should be considered by the Respondent No.2 and dealt with accordingly.

38. In the above facts and circumstances of the case, we deem it appropriate to direct the Respondent no.2 to verify the claim filed by the Applicant and take further necessary action, in accordance with law. Accordingly, prayer clause (a) is allowed in above terms. Prayer clause (b) becomes inconsequential and no specific direction is considered necessary in respect of prayers clause (c). Accordingly, **IA(I.B.C)/5957/MB/2024** is **partly allowed** & is **disposed off.**

Sd/-	**Sd/-**
Charanjeet Singh Gulati	**Mohan Prasad Tiwari**
Member (Technical)	**Member (Judicial)**

(Rashmi, LRA)