THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 790 OF 2022

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

Department of State Tax
Through he Deputy Commissioner of State Tax ...**Applicant**

V/s

Leo Duct Engineering & Consultants Limited

...Respondent

In the matter of

C.P.(IB) No. 1103/MB/2017

Leo Duct Engineerings and Consultant Limited

...Corporate Applicant

Order delivered on: 11/10/2023

Coram:

Shri Prabhat Kumar Hon'ble Member (Technical)	**Justice Shri V.G. Bisht** Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Ms. Sonal Darbar, Advocate
For the Liquidator	:	Ms. Dhwani Bagdai, Advocate
For the Respondent	:	None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 790/2022 is filed by Department of State Tax through Deputy Commissioner of State Tax, Mr. Nitin G. Awale ("Applicant") in the matter of M/s Leo Duct Engineers and Consultants Ltd, the Corporate Debtor, seeking admission of the Claim of Statutory Dues in the Form of Tax Demands.

    1.1. The Corporate Debtor i.e. Leo Duct Engineers & Consultants Ltd had filed company petition bearing no. 1103 of 2017 under section 10 of Insolvency and Bankruptcy Code 2016 read with rule 7 of Insolvency and Bankruptcy (Application to Adjudication authority) rules 2016 for initiation of Corporate Insolvency Resolution Process and was admitted into Corporate Insolvency Resolution Process vide order dated 21st March 2018 ("Admission Order"). This Tribunal inter alia appointed Mr. Martin Sunder Kumar Golla as the interim resolution professional of the Corporate Debtor. Thereafter, a MA No. 2318/2019 in CP No. 1103 /2017 under Section 33 of the Insolvency and Bankruptcy Code, 2016 (I&B Code), was filed seeking, liquidation of the Corporate Debtor namely Leo Duct Engineers & Consultants Ltd, which was allowed vide order dated 9th July 2019, and Mr Pramod Dattaram Rasam was appointed as the Liquidator of the Corporate Debtor.

    1.2. The public announcement was made by the liquidator on 14th August 2019 inviting the claims under the liquidation and the last date of receipt of proof of claim was 12th September 2019. It is admitted by the Applicant that pursuant to this publication, the Applicant came to know about the liquidation proceeding of the Corporate Debtor.

1.3. However, the Applicant sent a letter/email dated 7th April 2021 to the Liquidator in order to register their claim amounting to Rs. 2,25,14,999/- for the period of 2000-01, 2005-06, 2006-07, 2008-09, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 along with Form C. The Liquidator vide letter/email dated 7th April 2021 rejected the claim informing the Applicant that "*I have received your claim in Form C on 07/04/2021, which you submitted via email. The Hon'ble NCLT, Mumbai, by order dated 09/07/2019 has passed liquidation order. The same order was received on 13/08/2019 by me. The public notice of the same is published in news paper on 15/08/2019 so that claim can be filed by Operational Creditors by 12/09/2019 in Form "C" in Liquidation. You have failed to file the claim in time i.e. by 12/09/2019. Hence I hereby reject your claim and advise you that you may seek direction from the Adjudicating Authority*."

1.4. The Applicant has relied upon the decision in the case of ***State Bank of India v. ARGL Ltd***. delivered by 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 corporate debtor and the RP/IPR would be required to take cognizance of the dues as per the books of accounts. The Applicant has also relied upon decision in the case of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd*** of Principal Bench of the NCLT, New Delhi,

2. We have heard Learned Counsel and perused the materials available on records.

2.1. We find that the Principal Bench of this Tribunal held in the case of ***State Bank of India v. ARGL Ltd***. that

"It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claims were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."

2.2. We find that the said decision was rendered in the context of Corporate Insolvency Resolution Process ("CIRP"), where the claims are invariably allowed to be admitted till the approval of plan by the Committee of Creditors. Further, the decision in the case of Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd, was also in relation to admission of claim during the CIRP.

2.3. Accordingly, these decisions are distinguishable on the facts. It is admitted position of the Applicant that no claim was filed in CIRP, and the claim for the first time was filed in the liquidation process that to after the expiry of about 18 months. We find that the orders in relation to assessment year 2015-16, 2016-17 and 2017-18 were passed on 30.08.2021 raising tax demands under the VAT Act for these years, order for assessment year 2013-14 was passed on 23.01.2020, and for assessment year 2014-15 was passed on 31.03.2019. Accordingly, these demands could not have been found reflecting in the books of accounts at the time of commencement of liquidation/CIRP, which also makes the decision in the case of ***ARGL Ltd***.(supra) inapplicable to the present case.

2.4. Section 38 of the Code mandates collection of claims within a period of 30 days. Regulation 16 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, refers to `Submission of Claim', and reads as hereunder:

"(1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate

insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.
(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.''

2.5. The Regulation clearly stipulates that the Claim has to be submitted on or before the last date mentioned in the Public Announcement. We also take note of the submissions of the Liquidator in I.A. 2594/2021 that most of the assets of the Corporate Debtor were realised and distributed during the period from February 2020 to September 2020, and only NRRA (Not Readily Realisable Assets) are available for distribution. The present claim was filed even after last distribution of assets, which was completed in September, 2020.

2.6. In the case of ***V.K. Abdul Rahim Vs. Jasin Jose, RP/ Liquidator (2023) ibclaw.in 632 NCLAT***, the Hon'ble NCLAT Chennai held that *IBC is a time bound process and the Liquidator cannot accept a belated Claim, which would go against with the provisions of the IBC, 2016 as well as the scope and objective of the `Code'*. Following this decision, we dismiss the present application, considering the fact that claim has been filed much beyond the prescribed date and after distribution of major part of realisable assets.

3. In view of the forgoing, the I.A. 790/2022 is dismissed.

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