

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2281 OF 2021

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

Ruchi Soya Industries Limited

...Applicant

V/s

State Load Despatch Centre, Madhya
Pradesh Power Transmission Company
Limited & Another

...Respondents

I.A. 1862 OF 2022

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

Patanjali Foods Limited

Formerly Known as Ruchi Soya Industries
Limited

...Applicant

V/s

Commissioner, Central Goods and Service
Tax & Central Excise, Haldia
Commissionerate & Another

...Respondents

I.A. 1496 OF 2022

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

Ruchi Soya Industries Limited

...Applicant

V/s

The Deputy Commissioner of State Tax
(A-5) Uttarakhand & Others

...Respondents

I.A. 2011 OF 2022

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

Ruchi Soya Industries Limited

...Applicant

V/s

The Deputy Commissioner of State Tax
(A-5) Uttarakhand & Others

...Respondents

I.A. 165 OF 2023

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

Patanjali Foods Limited
Formerly Known as Ruchi Soya Industries
Limited

...Applicant

V/s

State Tax Officer (6) Gujarat State Goods
and Service Tax Unit-103 Gandhidham
Kutch (Gujarat) & Another

...Respondents

In the matter of

I.A. 1721 OF 2019

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

Shailendra Ajmera
The Resolution Professional of Ruchi Soya
Industries Limited

...Applicant

In the matter of

C.P.(IB) No. 1371/MB/2017

&

C.P.(IB) No. 1372/MB/2017

Standard Chartered Bank &
DBS Bank Limited

.... **Financial Creditors**

Vs.

Ruchi Soya Industries Limited

...**Corporate Debtor**

Order delivered on: 08.11.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant

: Mr. J.P. Sen, Sr. Advocate
a/w Mr. Kunal Vaishnav &
Ms. Surbhi Soni i/b MGV &
Associates (Patanjali Foods
Limited)

For the Respondent

: None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. These five Applications IA 2281/2021, IA 1496/2022, IA 2011/2022, IA 1862/2022 & IA 165/2023 were filed on different date(s) by M/s Ruchi Soya Industries Limited, (“Corporate Debtor”) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") in CP 1371(IB)/MB/2017, for direction to various Government Authorities and Public Sector Undertakings to quash and set aside amounts of debt due and payable by the Corporate Debtor till the date of approval of the Resolution Plan in the case of Corporate Debtors. Since the issue(s) involved in these applications i.e. liabilities pertaining to period upto approval of the Resolution Plan are common, the same are being disposed of in terms of present common Order.
2. The Corporate Insolvency Resolution Process was initiated in respect of Applicant by an order of the National Company Law Tribunal, Mumbai dated 8th December 2017 read with order dated 15 December 2017, and the Resolution Plan submitted by the Patanjali Ayurved Limited Consortium was approved by the National Company Law Tribunal vide its Order dated 24 July 2019 read with Order dated 4 September 2019 and uploaded only on 6 September 2019. In terms of the approval of the Resolution Plan the Patanjali Consortium has paid the entire sum as contemplated therein and taken over the Applicant as on 15 December 2019.

3. In accordance with terms of Resolution Plan, all the liabilities pertaining to the period till the approval of Plan by this Tribunal were extinguished and not payable by the Corporate Debtor or its successors. It is trite law that the Resolution Applicant gets the Corporate Debtor on clean slat principal and is liable to discharge the liabilities of the Corporate Debtor in terms of approved Resolution Plan only.
4. The Brief details of each applications and prayers therein are as follows –

4.1. **IA 2281/2021** : The Applicant seeks quashing and set aside of 102 Demand notices issued in respect of DSM Charges by M/s Reconnect Energy Solutions Private Limited (“Respondent No. 2”) for and on behalf of State Load Despatch Center, Madhya Pradesh Power Transmission Company Limited (“Respondent No. 1”). The Brief facts pertaining to this application is as follows -

4.1.1. Commencing from 24 July 2021, Respondent No2 has addressed numerous emails to the Applicant whereby Respondent No 2 (for and on behalf of Respondent No 1) and on the basis of the DSM Statement (Deviation Settlement Mechanism Statement) notified by Respondent No 1. raised de-pooled DSM Demand Notes imposing alleged DSM Charges for the period commencing from the period of August 2018

4.1.2. According for the period of August 2018 to December 2019, the Applicant has received 12 depooled DSM Demand Notes relating to the Police stations to a sum of Rs 14997390. (rounded off) i.e. Impugned DSM Demand Notes. From a perusal of the Impugned DSM Demand Notes, it is apparent that these are towards the alleged DSM Charges as per a notice issued by Respondent No.1 and is being charged by Respondent No.2 as the QCA on behalf of Respondent No.1.

4.1.3. After approval of the Resolution Plan, Respondent No.2, for and on behalf of itself and Respondent No.1 has inter alia addressed emails commencing from 2nd July 2021 whereby (i) Respondent No.1 has sought to issue DSM Statements each pooling sub-station wise for each month (ii) Respondent No.2 has on the basis of such DSM Statement, has raised the Impugned DSM Demand Notes imposing alleged DSM Charges for the period commencing from the period of August 2018 to December 2019 (i.e. the period prior to approval of the Resolution Plan); and (iii) threatened disconnection in the event of non-payment of alleged DSM Charges.

4.2. **IA 1496/2022** : The Applicant seeks quashing and/or set aside of (i) the Assessment Order dated 29.09.2021 (received on

25.04.2022) under Section 25 (7) of the UKVAT Act imposing a liability on the Applicant for the sum of Rs.35,241/- in relation to VAT for AY 2015-2016 (Exhibit A to Application); and (ii) Assessment Order dated 29.09.2021 (received on 25.04.2022) under Section 9(2) of the CST Act imposing a liability on the Applicant for the sum of Rs.15,32,262/- in relation to sales tax for AY 2015-2016 and further direct the Deputy Commissioner of State Tax (A-5), Uttarakhand Goods & Service Tax Department (Commercial Tax Department), Sales Tax, Dehradun {"Respondent No. 1"} and Commissioner of Commercial Tax, State Goods and Service Tax Department ("Respondent No. 2"); The Executive Magistrate (Tehsildar), Dehradun ("Respondent No. 3") and / or any other officer / department / authority / person acting through or under them, to not initiate any proceedings / take any steps / raise any demand/ claims for any amount (including interest) in relation to / furtherance of the aforementioned Impugned Orders or any other notice relating thereto; to restrain the Respondents and/ or any other officer / department / authority person acting through or under them, from issuing any notice(s)/ demands / orders which relate to a period prior to the date of approval of the Resolution Plan i.e. 9th December 2019; pending the hearing and final disposal of the present Application, to stay the effect, operation and implementation of the Assessment Order dated 29.09.2021 (received on 25.04.2022) under Section 25 (7) of the UKVAT

Act imposing a liability on the Applicant for the sum of Rs.35,241/-in relation to VAT for AY 2015- 2016 (Exhibit A to Application); Assessment Order dated 29.09.2021 (received on 25.04.2022) under Section 9(2) of the CST Act imposing a liability on the Applicant for the sum of Rs.15,32,262/-in relation to sales tax for AY 2015-2016 (Exhibit B to Application); and pending the hearing and final disposal of the present Application, to direct the Respondents and/ or any other officer / department / authority/person acting through or under them, to not take any steps, coercive or otherwise, including but not limited to demanding on assessment / reassessment, demanding filing of any returns, attaching any accounts/assets of the Applicant and/or to recover any liability / dues or stay any recovery proceedings, in furtherance of the Assessment Order passed or which may be passed in relation to period upto the Resolution Plan Approval date.

4.2.1. In respect of the CIRP, the following communications were also issued on behalf of the Applicant (1) Letter dated 06.11.2019 to the Deputy Commissioner of State Tax-7, Commercial Tax Department, Department of State Tax, Mohabbewala, Dehradun, informing him of the completion of CIRP, approval of the Resolution Plan and specifically stating that all prior liabilities stand extinguished; (ii) The aforesaid details alongwith the letter and orders as enclosures were also intimated to the

Respondents vide the email dated 12.11.2019 addressed to the email id 'devikasnagar@gmail.com.

4.2.2. On 25.04.2022 (ie. After nearly 2½ years from the date of the approval Order), the Applicant received two Orders passed by Respondent No.1 relating to AY 2015 – 2016 – (1) Assessment Order dated 29.09.2021 under Section 25 (7) of the UKVAT Act imposing a liability on the Applicant for the sum of Rs.35,241/- in relation to VAT for AY 2015 2016; and (ii) Assessment Order dated 29.09.2021 under Section 9(2) of the CST Act imposing a liability on the Applicant for the sum of Rs.15,32,262/-in relation to sales tax for AY 2015-2016 9. Respondent No.1 had served a copy of the Impugned Orders upon the Applicant nearly 7 months after the same appears to have been passed. Further, by the Impugned Orders, Respondent No.1 has sought to demand tax under the UKVAT Act and CST Act from the Applicant which relates to a period prior to the CIRP. It is not out of place to mention that no claim had been filed in respect of AY 2015-2016 by the Respondents with the RP during the CIRP.

4.3. **IA 2011/2022** : The Applicant seeks quashing and/or set aside of (a) Assessment Order dated 05.01.2021 (received on 17.09.2021) under Section 25 (7) of the UKVAT Act imposing a liability on the Applicant for the sum of Rs.1,076/- in relation to VAT for AY 2016- 2017 (Exhibit A to Application): (b) Assessment Order dated 05.01.2021 (received on 17.09.2021)

under Section 9(2) of the CST Act imposing a liability on the Applicant for the sum of Rs.5,04,754/- in relation to sales tax for AY 2016- 2017 (Exhibit B to Application) issued by Deputy Commissioner of State Tax (A-5), Uttarakhand Goods & Service Tax Department (Commercial Tax Department), Sales Tax, Dehradun {"Respondent No. 1"} under the jurisdiction of Commissioner of Commercial Tax, State Goods and Service Tax Department ("Respondent No. 2") and (iii) Notice dated 01.11.2021 issued by The Executive Magistrate (Tehsildar), Dehradun ("Respondent No. 3") to the Applicant under Section 280 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 inter alia seeking recovery of the sum of Rs.5,05,830/- along with interest in the sum of Rs.3,98,341/- (Exhibit J to Application) and further direct the Respondents and/or any other officer/ department / authority/person acting through or under them, to not initiate any proceedings / take any steps / raise any demand / claims for any amount (including interest) in relation to / furtherance of the aforementioned Impugned Orders or any other notice relating thereto; to restrain the Respondents and/ or any other officer / department / authority/person acting through or under them, from issuing any notice(s)/ demands / orders which relate to a period prior to the date of approval of the Resolution Plan i.e. 9th December 2019; to stay the effect, operation and implementation of the assessment orders stated in the Application and to restrain the Respondents from taking any

steps, coercive or otherwise, including but not limited to demanding on assessment / reassessment, demanding filing of any returns, attaching any accounts/ assets of the Applicant and / or to recover any liability / dues or stay any recovery proceedings, in furtherance of the Assessment Order passed or which may be passed in relation to period upto the Resolution Plan Approval date.

- 4.4. IA 1862/2022 :** The Applicant seeks quashing and/or aside of (a) the Order bearing n13/IC/CGST/Haldia/Adjn/2018 dated 31.05.2018 passed by Respondent No 1 for the period 21.07.2005 to 31.03.2006 (Exhibit A to Application); and (ii) the Notice dated 02.05.2022 (Exhibit B to Application) issued by Commissioner, Central Goods and Services Tax & Central Excise, Haldia Commissionerate, Kolkata {"Respondent No 1"} and / or the Notice dated 24.06.2022 (Exhibit C hereto) issued by Asstt. Commissioner, Haldia-1 Division, Haldia CGST & CX. Commissionerate, Haldia {"Respondent No.2"} and / or any further notices Issued by the Respondents in furtherance of or seeking to recover the sums as per the Impugned Order dated 31.05.2018 and further direct the Respondents and / or any other officer/ department / authority/person acting through or under them, to not initiate any proceedings/take any steps / raise any demand/ claims for any amount (including interest) in relation to furtherance of the aforementioned Impugned Orders or any other notice relating thereto; to restrain the

Respondents and/or any other officer / department/ authority/person acting through or under them, from issuing any notice(s) / demands / orders which relate to a period prior to the date of approval of the Resolution Plan i.e. 9th December 2019; and to stay the effect, operation and implementation of the Order(s) and Notices passed under the relevant statute; to restrain from taking any steps, coercive or otherwise, including but not limited to demanding on assessment / reassessment, demanding filing of any returns, attaching any accounts / assets of the Applicant and / or to recover any liability/ dues or stay any recovery proceedings, any further notices issued by the Respondents in furtherance of the or seeking to recover the sums as per the Impugned Order dated 31.05.2018/.

4.4.1. On 18.07.2006, Respondent No.1 issued a Show Cause cum Demand Notice to Madhya Pradesh Glychem Industries Ltd. L.e. MP Glychem calling upon MP Glychem to show cause why central excise duty in the sum of Rs.84,94,259/-and education cess in the sum of Rs.1,69,855/- for the period of 21.07.2005 to 31.03.2006 should not be demanded and recovered from MP Glychem, which was responded to by MP Glychem vide its letter dated 10.08.2006 explaining the manner in which the demand was untenable and ought not to be demanded and / or recovered from MP Glychem.

4.4.2. Composite Scheme of Arrangement and Amalgamation was submitted to the Hon'ble Bombay High Court

(Scheme'). As recorded in Part C of the Scheme, the SVF Business of MP Glychem was purchased by the Applicant on a slump sale basis and as a going concern for a consideration of Rs.80.57 crores. The Hon'ble Bombay High Court vide its Order dated 30.06.2006 was pleased to allow the Company Petitions by which the companies had sought approval of the Scheme.

4.4.3. At the meeting of the Board of Directors of the Applicant on 29.09.2006, the implementation of the Scheme was discussed and resolved that the certified copies be filed with the Registrar of Companies to give effect to the Scheme and to give effect to the Scheme from 04.09.2006. Thus, the SVF Business of MP Glychem to which the Impugned Order and Impugned Notices relate, was transferred to the Applicant. Thereafter, no further steps were taken by the Respondents in furtherance of the Show Cause Notice.

4.4.4. Despite the approval of the Resolution Plan in case of Corporate in terms of provisions of Insolvency & Bankruptcy Code, on 02.05.2022 (i.e. after nearly 2½ years from the date of the approval Order), the Applicant received a Notice from Respondent No.1 inter alia informing Respondent No.1 that an Order dated 31.05.2018 had been passed against the Applicant, however, no details of an appeal had been furnished to Respondent No.1.

4.4.5. The Applicant learnt that on 31.05.2018, Respondent No.1 has passed the Impugned Order being an Order bearing no.13/JC/CGST/Haldia/Adjn/2018, relating to alleged evasion of payment of Central Excise duty for the period 21.07.2005 to 31.03.2006 and thereby imposing (1) Central Excise duty amounting to Rs.84,94,259/- and Education Cess of Rs.1,69,885/- under Section 11A(2) of the Central Excise Act, 1944; (ii) interest at the appropriate rate in terms of Section 11AB of the Central Excise Act; and (iii) penalty of Rs.86,64,144/- under Section 11AC.

4.4.6. Thereafter, on 24.06.2022, Respondent No.2 has issued the Recovery Notice being a Notice for Recovery of the sum of (1) Central Excise duty amounting to Rs.84,94,259/- and Education Cess of Rs.1,69,885/-; (ii) interest as is applicable; and (iii) penalty of Rs.86,64,144/- .This Notice although addressed to MP Glychem, relates to the unit of MP Glychem which has been purchased by the Applicant and thus this Recovery Notice has -effectively been issued to the Applicant whereby the Applicant has been called upon to pay the amounts failing which action shall be taken against the Applicant. On the basis of these Order and the notices, the Respondents seek to raise a demand and recover monies from the Applicant that relate to the period 21.07.2005 to 31.03.2006 i.e. for a period prior to the date of the CIRP.

4.4.7. None of the Respondents or any other officer from their departments filed any claim relating the purported Central Excise Duty and / or penalty in that regard for the period 21.07.2005 to 31.03.2006. Thus, having failed to do so, any alleged claim / demand for the period stands extinguished and the question therefore of recovering any sums from the Applicant after completion of the CIRP does not arise.

- 5. IA-165/2023 :** The Applicant seeks quashing and set aside- i) Impugned Show Cause Notices dated 09.06.2022, 03.09.2022 and 06.09.2022 [Exhibits "T" to "V" to the Application], (a) the Impugned Order dated 02.01.2023 passed by State Tax Officer (6), Gujarat State Goods and Service Tax, Unit 1-3, Gandhigram ("Respondent No.1") relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "A" to the Application]; and (iii) Order dated 01.01.2023 passed by Respondent No.1 calling upon the Applicant to make the payment of the sum of Rs.80,83,33,700/- relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "B"] and direct the Respondents and / or any other officer / department / authority / person acting through or under them, to not initiate any proceedings, for recovery or otherwise / raise any demand / claims for any amount (including interest) in relation to / furtherance of the aforementioned Impugned Orders and / or Notices; pending the hearing and final disposal of the present Application, in the alternative to stay the effect, operation and implementation of (a) Impugned Show Cause Notices dated 09.06.2022, 03.09.2022 and 06.09.2022 [Exhibits "T" to "V" to the Application], (b) the

Impugned Order dated 02.01.2023 passed by Respondent No.1 relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "A" to the Application]; and (c) Order dated 01.01.2023 passed by Respondent No.1 calling upon the Applicant to make the payment of the sum of Rs.80,83,33,700/- relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "B" to the Application); and pending the hearing and final disposal of the present Application, to direct the Respondents and / or any other officer / department / authority/ person acting through or under them, to not take any steps, coercive or otherwise, including but not limited to commencing with, continuing or finalising any assessment / reassessment proceeding(s), penalty, demanding on assessment / reassessment, demanding filing of any returns, attaching any accounts / assets of the Applicant and / or to recover any liability / dues / penalty, in furtherance of the (a) Show Cause Notices dated 09.06.2022, 03.09.2022 and 06.09.2022 [Exhibits "T" to "V" to the Application], (b) the Impugned Order dated 02.01.2023 passed by Respondent No.1 relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "A" to the Application]; and (c) Order dated 01.01.2023 passed by Respondent No.1 calling upon the Applicant to make the payment of the sum of Rs.80,83,33,700/- relating to the tax period 01.07.2017 to 31.03.2018 [Exhibit "B" to the Application]. The Application has also impleaded Assistant Commissioner of State Tax Unit-103, Gandhigram as ("Respondent No. 2").

6. We have heard the Counsel and perused the material available on record.

6.1. We find that Para 21 of the Order dated 24.07.2019 contains the financial proposals of the Resolution Applicant in relation to the Applicant in this Application, and under sl. No. 6 of the Table in that Para, it is clearly stated that “*All claims or liabilities etc. owed to any Operational Creditor by the Corporate Debtor, in relation to any period prior to the Effective Date or on acquisition of control of the Corporate Debtor by the Resolution Applicant through the SPV proposed to stand extinguished upon the receipt of the said amount by the operational creditors pursuant to the approval of the resolution plan by the Hon’ble NCLT*”.

6.2. Further, the Hon’ble Supreme Court in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., 2023 SCC OnLine SC 842*, decided on 17-07-2023 held that “*Similarly, in Duncans Industries Ltd. v. AJ Agrochem³⁹, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in Sundaresh Bhatt and Duncan Industries (supra) [refer also:*

Innoventive Industries (supra), CIT v. Monnet Ispat & Energy Ltd. , Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. , and Jagmohan Bajaj v. Shivam Fragrances Private Limited.”

6.3. The Hon’ble Supreme Court has clarified the same in *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [2019] ibclaw.in 07 SC*, wherein it was held that 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 successfully take over the business of the corporate debtor. Further, the Hon’ble Supreme Court reiterated the similar position in case of *RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. (2023) ibclaw.in 102 SC* in these words “*We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.*”

6.4. Admittedly, the DSM Demand Notes/ Assessment Orders/ Show Cause Notices/ Notices, subject matter of present applications, relate to the period prior to the Approval of the Resolution Plan i.e. 6 September 2019, which is a period prior to the date of approval of the resolution plan. It is trite law that on approval of the Resolution Plan all claims prior to

the date of approval stand extinguished i.e. all claims that had been filed shall stand extinguished in the manner in which they had been dealt with in the Resolution Plan and the claims which had not been filed cannot be agitated after the approval of the Resolution Plan.

6.5. In view of aforesaid discussion, we direct the Respondents in aforesaid application to withdraw Demand Notes/ Assessment Orders/ Show Cause Notices/ Notices, subject matter of present applications forthwith and not to enforce any recovery or claim in relation to such invoices, as no claim lies against the Corporate Debtor Applicant pursuant to the approval of Resolution Plan. It may be noted by the Respondents that their continued disobedience to the Law of land in this relation may invite contempt proceedings in terms of Section 425 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016.

7. In view of foregoing, IA 2281/2021, IA 1496/2022, IA 2011/2022, IA 1862/2022 & IA 165/2023 is disposed of as allowed in terms of prayers therein.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)