

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

**IA No. 699 of 2022
IN
CP (IB) No. 4676/MB/C-II/2018**

In the matter of

**Department of Sales Tax
Through the,
Deputy Commissioner of Sales Tax
... Applicant**

Versus

CiCil Biochem Private Limited

In the matter between

**Kalyan Janata Sahakari Bank Limited
... Financial Creditor**

Versus

Cicil Biochem Limited

Order delivered on 19.10.2023

Coram:

**Hon'ble Member (Technical)
Mr. Anil Raj Chellan**

**Hon'ble Member (Judicial)
Mr. Kuldip Kumar Kareer**

Appearances:

For the Resolution Professional

**: Adv. Amir Arsiwala
a/w Adv. Arjun Sathees**

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ORDER

Per: Anil Raj Chellan, Member Technical

1. The present application is filed by Department of State Tax, through Deputy Commissioner of State Tax, Government of Maharashtra under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') for directing the Respondent, the Resolution Professional for CCIL Biochem Private Limited ('the Corporate Debtor') to register the claim of the Applicant in accordance with the provisions of the Code and to stay the hearing and final disposal of the Application for approval of the Resolution Plan during the pendency of this application.

2. Brief facts of the case leading to the filing of the present application are as under:

2.1 The Corporate Debtor was admitted to Corporate Insolvency Resolution Process ('CIRP') pursuant to an order passed by this Tribunal on 01.10.2019 and Mr. Arun Kapoor was appointed as Interim Resolution Professional (IRP). The IRP,

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as required under Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 ('CIRP Regulations') made public announcement/advertisement in newspapers on 07.10.2019 and invited claims with 19.10.2019 as the last date for submission of claims. In response to the above, the Applicant filed a claim on 08.11.2019 for an amount of Rs.17,06,62,590/- which was admitted by the Respondent. The Applicant subsequently submitted another claim of Rs.4,77,23,885 (comprising Net Tax of Rs.1,62,18,822/-, interest of Rs.1,52,86,241/- and penalty of Rs.16118822/-) for the assessment period 2015-16 in Form B vide letter and email dated 28.07.2020 ("Fist Additional Claim"). The claim together with the interest upto the Insolvency Commencement Date was considered by the Resolution Professional (RP), thereby partially rejecting the interest portion of the claim to the extent of Rs.19,46,259/- for the period 01.10.2019 to 31.03.2020.

- 2.2 The Applicant filed another claim of Rs.47,84,74,238 (comprising net tax of Rs.16,26,19,571, interest of

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Rs.15,32,50,096 and penalty of Rs.16,26,04,571) in Form B with the RP on 28.06.2021 for the assessment period 2016-17 ('Second Additional Claim'). The RP rejected the Second Additional Claim of the Applicant vide email dated 16.07.2021 stating that RP does not have the authority to consider any claim after approval of the Resolution Plan by the Committee of Creditors (CoC).

- 2.3 The present application is filed for directing RP to accept both the above claims.

Contentions of the Applicant

3. The Applicant raised the following contentions:

- 3.1 The resolution plan is yet to be approved by the Tribunal;
- 3.2 Regulation 14 of the IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), clearly states that IRP/RP shall make best estimate of the amount of claim based on information available with him. To buttress

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the above contention, the Applicant relied on the decision of Hon'ble NCLT in *State Bank of India v. ARGL Ltd** where it was observed as under:

".....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 collected in terms of Section 21. First of all, 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 cases 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."

* (IB)-531(PB)/2019 decided on 12.03.2019 (2019) ibclaw.in 72 NCLT

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- 3.3 The Applicant further submitted that the claim of Applicant is statutory dues which is duly reflected in the financial statements of the Corporate Debtor and the same cannot be rejected like any other ordinary claim. The claim of the Applicant would have been evident from the financial statements of the Corporate Debtor, which were taken over by the IRP/RP. Once the debt is duly reflected in the balance/financial statements of the Corporate Debtor, then the RP is duty bound to get the said books of account audited and checked to ascertain the assets and liabilities of the Corporate Debtor, so that the proper resolution plan could be evolved for all the stake holders.
- 3.4 The Applicant contended that the timeline stipulated under Regulation 12 (2) had been held to be directory.

Contentions of the Respondent

4. The Respondent submitted that the initial claim of Applicant filed on 08.11.2019 for Rs.17,06,62,590/- was admitted by the Respondent. The First Additional Claim of Rs.4,77,23,885,- though submitted after the last date for submission of claims, was

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also considered by the Respondent though the interest on the tax amount was considered only upto the Insolvency Commencement Date as per Regulation 13(1) of the CIRP Regulation.

5. The Respondent further submitted that the provisions of the Code shall override other laws, and the Applicant cannot seek inclusion in its claim the interest post insolvency commencement date. The Respondent submitted that the Applicant sought inclusion of interest calculated in accordance with Section 30 (3) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) as the dues relates to the financial period of 2015-16.
6. The Respondent further submitted that the decisions cited by the Applicant are not applicable to the facts of the case.
7. With respect to the Second Additional Claim, the Respondent submitted that the said claim had been filed at a belated stage on 28.06.2021 where the CoC had already approved the Resolution Plan on 07.03.2021. Admission of claims at such a belated stage, particularly after approval of the Resolution Plan by the CoC, is against the objectives of the Code and creates an adverse impact on the resolution of corporate insolvency within the timeframe.

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8. The application for approval of the Resolution Plan has also heard by the Tribunal and reserved for orders. Hence, the present application cannot be considered at this stage.

Analysis and Findings

9. We have heard the Advocates appearing for the parties and perused the documents on record.
10. It is observed that the prayer in respect of the first claim is to admit in the claim the interest to the extent of Rs.19,46,259/- calculated for the period after the insolvency commencement date, as other dues stated in the claim had been admitted by the Respondent. In support of the above, the counsel for the Applicant relied on several case laws, namely (i) Wanbury Ltd v. Panacea Biotech Ltd¹, (ii)DF Deutsche Forait AG and Anr. V. Uttam Galva Steels Ltd², (iii) M/s. Steel India v. Theme Developers (p) Ltd³. On perusal of the above decisions, it is observed that all the above decisions pertain to the question whether interest can be claimed on/as operational debt

¹ NCLT, Chandigarh Bench – CP No. 8/2016 decided on 18.04.2017

² NCLT, Mumbai Bench – CP No. 45/IBC/NCLT/MAH/2017 decided on 10.04.2017

³ NCLAT – Company Appal (AT) (Insolvency) No. 1014 of 2019 decided on 11.02.2020

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and not relating to the acceptance of interest for the period after the insolvency commencement date and hence, the decisions are not applicable in the present case.

11. It is observed that Regulation 13(1) of the CIRP Regulation unambiguously states that IRP/RP shall verify the claims **as on the insolvency commencement date**, for every creditor. Further Section 238 of the Code states that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force and therefore, even if the interest is charged as per MVAT Act, those provisions will not have an overriding effect. In view of the above, the contention of the Applicant that the dues is in the nature of statutory dues or is for the assessment period prior the insolvency commencement date or the charging of interest is in accordance with MVAT Act is untenable. Further, since the dues are being calculated on a specific date i.e., insolvency commencement date for every creditor, the IRP/RP rightly rejected the interest portion accrued after the insolvency commencement date.

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12. With respect to the second claim of Rs.47,84,74,238/-, it is observed that the said claim was rejected by the RP mainly on the grounds that the claim is filed at a belated stage i.e., after approval of the resolution plan by the CoC. The Applicant submitted that the claim of the Applicant being statutory dues are duly reflected in the financial statements of the Corporate Debtor and the IRP/RP is duty bound to get the said books of account audited and checked to ascertain the assets and liabilities of the Corporate Debtor. In support of the above, the Applicant also relied on the decision of the Hon'ble Principal Bench, NCLT in *State Bank of India vs. AGRI Ltd(Supra)*. In the present application, it is observed that the second additional claim of the Applicant is relating to the assessment year 2016-17 arising under notice of demand dated 25.02.2021 i.e., after the initiation of CIRP. It is neither available in the books of the accounts of the Corporate Debtor nor can the IRP/RP be expected to prepare the books of accounts of the Corporate Debtor for the audit period subsequent to the Insolvency Commencement Date, which in the present case was 01.10.2019. In the circumstances, the decision referred to by the Applicant is not applicable in the facts

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and circumstances of the present case and the argument of the Applicant does not merit consideration.

13. As regards the contention of the Applicant that the timeline stipulated under Regulation 12 (2) of the CIRP Regulations, had been held to be directory, the Hon'ble Supreme Court in the case of *M/s. RPS Infrastructure Limited v. Mukul Kumar & Another (Civil Appeal No. 5590 of 2021 decided on 11.09.2023)* considered the above and observed that “....The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters”. Thus, the time period stipulated in CIRP Regulations, even when considered as directory in nature, the facts of the case should justify its extension.

It is pertinent to mention here that Respondent invited claims with last date for submission of claims as 19.10.2019. Thereafter, based on the claims received, Information Memorandum issued; Resolution plan approved by CoC; the application for approval of Resolution plan was also heard and reserved by the Adjudicating Authority. Thus, there is no doubt that the claim of the Application

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was submitted at a belated stage i.e. much after the 90th day from the insolvency commencement date as specified in Regulation 12 of the CIRP Regulations. Admission of claims at such belated stage, more particularly after approval of the Resolution Plan by the CoC, was considered by Hon'ble Supreme Court in the case of *M/s. RPS Infrastructure Ltd (Supra)*, and the Hon'ble NCLAT in the case of *Office of the Asst. State Tax Commissioner, State Tax Department, Government of Maharashtra Vs. Shri. Prithiv Parikh*⁴; and in many other cases, and rejected the claims taking into consideration the objectives of the Code and the adverse impact on the resolution of corporate insolvency within the timeframe.

Based on the facts and circumstances of the case, we do not see any merit in granting the relief for admitting the second additional claim.

14. In view of the above, the **Application bearing No. 699 of 2022 is dismissed.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

⁴ *Company Appeal (AT) (Ins) No.583 of 2020,*