

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

I.A. No. 562/KB/2021
in
C.P. (I.B) 387/KB/2017

*An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

State Bank of India.

..... Financial Creditor

-versus-

**Amalgram Steel & Power Limited
[previously known as Adhunik Alloys Private Limited]**

..... Corporate Debtor

And

- 1. Bhagwati Power & Steels Limited.**
- 2. Amalgram Power & Steel Limited
(previously known as Adhunik Alloys & Power Ltd.)**

*..... Applicants/ Successful
Resolution Applicant*

-versus-

- 1. Principal Secretary, Department of Energy**
- 2. Director, Jharkhand Renewable Energy Development Agency**

..... Respondent

Date of Pronouncement of the order: 09.02. 2024

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

I.A.(IBC) 562/KB/2021 in CP (IB) 387/KB/2017

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

Mr. Shahrukh Raja, Adv.] *For Respondent No. 1 in IA 58/2022*

Mr. Debashish Ghosh, Adv.] *For Respondent in IA 636/2021*

Mr. Debraj Saha, Adv.]

Mr. Akash sharma, Adv.] *For JBVNL in IA 563/2021*

Mr. Akhilesh Srivastava, Adv.] *For State of Jharkhand in IA 521/2021*

Mr. Aishwarya Rajyashree, Adv.] *& IA 933/2023*

Mr. Chandra Gupta Kamal, Adv.]

Mr. S.K. Tiwari, Adv.] *For South Eastern Railway in I.A. 881/2021*

Mr. Anuj Singh, Adv.] *For Successful Resolution Applicant*

Mr Aman Agarwal, Adv.]

Mr. Victor Dutta, Adv.] *For the Respondents in I.A. 703/2021*

Mr. Mukesh Kumar, Adv.] *For R/2 JREDA in I.A.(IB) 562/2021*

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.

2. This is an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Bhagwati Power & Steels Limited** i.e the successful resolution applicant and **Amalgram Power & Steels Limited** i.e the Corporate Debtor, seeking the following reliefs:

- a. *An order quashing the demand dated 18.8.2018 for a sum of Rs. 17.89 Crores raised by the Respondent by its letter dated 18.8.2018 being Annexure "N" hereto;*
- b. *An order quashing the demand of Rs.5.51 Crores raised pursuant to the letter dated 4.1.2020 being Annexure "P" annexed hereto;*
- c. *Interim stay of demand contained in the letter dated 18.8.2018 for a sum of Rs. 17.89 Crores and contained in the letter dated 4.1.2020 for a sum of Rs. 5.51 Crores;*
- d. *Direction restraining the Respondent from not taking any coercive steps for recovery of the sum claimed under the letter dated 18.8.2018 and 4.1.2020 against Applicant no. 2;*
- e. *Declaration that the demand raised in the letter dated 18.8.2018 and 4.1.2020 is illegal and not payable by the Applicant under the provisions of the Insolvency and Bankruptcy Code, 2016;*
- f. *Ad-interim orders in terms of prayer above;*
- g. *Take action against the Respondents in terms of section 74(3) of IBC, 2016;*
- h. *Such further order or orders as to which this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

3. Submissions on behalf of the Applicant:

The submissions of the Applicants are summarized hereinafter:

3.1 The Adjudicating Authority admitted the Corporate Debtor/Applicant No.2 into Corporate Insolvency Resolution Process (CIRP) vide order dated 23.08.2017 in C.P. 387/KB/2017. Thereafter, vide order dated 07.12.2018, this Adjudicating

- Authority approved the resolution plan submitted by the Successful Resolution Applicant/ Applicant No.1 herein.
- 3.2 The Applicant No. 2 has set up a power plant for the purpose of generating electricity primarily for its own use. The said plant is thus a Captive Power plant.
- 3.3 The case of the Applicants is that by a letter¹ dated 17.02.2011, the JREDA being the respondent authorities informed the Corporate Debtor that in pursuance of JSERC Notification No. JSERC/112/29 dated 21.08.2010, the Corporate Debtor was obliged to implement 'Renewable purchase Obligation' ("RPO") and purchase from Renewable Energy Sources. In response thereof, by a reply² dated 31.03.2011, the Corporate Debtor represented that it did not qualify under the said RPO, and hence, implementation thereof was not required. The respondent authorities chose not to reply to the said letter dated 31.03.2011.
- 3.4 Subsequently, the respondent authorities vide letters dated 13.07.2016 and 18.04.2017 called on the Corporate Debtor to provide particulars with regard to RPO and further 'Compliance Report' with respect thereof. In reply thereof, vide letter dated 12.05.2017, the Corporate Debtor reiterated that it did not qualify for the said RPO.
- 3.5 In the meantime, an application being CP (IB) No. 387/KB/ 2017 was filed against the Corporate Debtor under Section 7 of IBC and by order dated 23.08.2017, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("CIRP"). Accordingly, public announcement³ dated 25.08.2017, inviting claims from creditors of CD, was issued by the Interim Resolution Professional (IRP). It is pertinent to note herein that the respondent authorities never submitted their proof of claim as per Form B under IBC.

¹Annexure D to the Application

²Annexure E to the Application

³Annexure R

- 3.6 At a later stage, the Respondent Authorities, vide letter⁴ dated 20.04.2018, informed the Corporate Debtor that since it had not been able to fulfill its RPO compliance as per JSERCRPO resolution from F.Y. 2011-12 to F.Y. 2016-17, it was called upon to show cause as to why it should not be notified as a defaulter for non-fulfillment of its RPO. In response thereof, the Corporate Debtor, vide reply⁵ dated 03.05.2018 informed the Respondent that the Corporate Debtor was under CIRP.
- 3.7 Notwithstanding the said reply, by a letter⁶ dated 09.07.2018, the respondent authorities once again called on the Corporate Debtor to demonstrate its RPO compliance and further by a notice⁷ dated August 18, 2018, claimed a sum of Rs. 17.89 Crores against the Corporate Debtor due to non-compliance of the purported RPO by it during the financial years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.
- 3.8 Afterwards, the Adjudicating Authority approved the Resolution Plan⁸ submitted by the consortium inter alia Applicant No. 1 vide order dated 07.12.2018. Since the respondent authorities failed and/or neglected to submit their claims to the concerned IRP upon the publication of Form A, the said claims raised by the respondent authorities for the 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 had extinguished for all purposes upon the approval of the Resolution Plan.
- 3.9 After the final order dated December 07, 2018 was passed, by a further demand notice⁹ dated 04.01.2020, the respondent authorities raised a further claim of Rs. 5.51 Crores against the erstwhile Corporate Debtor for non-satisfaction of the of its RPO compliance for the financial years 2017-18 and 2018-19 i.e. the period

⁴Annexure K

⁵Annexure "L"

⁶Annexure "M"

⁷Annexure "N"

⁸Annexure "C"

⁹Annexure "P"

during which its CIRP was still continuing. The said claim was appropriately refuted by the applicants herein.

- 3.10 In view of the fact, that the respondent authorities continued to press illegal claims on the applicants, the present application was filed before the Adjudicating Authority seeking that such claims against the applicants be quashed.
- 3.11 Any claim during subsistence of the CIRP should have been raised by the respondent authorities against the concerned resolution professional managing the operation of the Corporate Debtor, at the appropriate time i.e. while the Corporate Debtor was undergoing CIRP. However, evidently, the respondent authorities failed and/or neglected to raise the same at the relevant period.
- 3.12 As per the observation and holding of the Hon'ble Supreme Court in *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset*¹⁰, the legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority, is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. That is to say that the dominant purpose is that the successful resolution applicant should start with fresh slate on the basis of the resolution plan approved.
- 3.13 In order to alleviate the aforesaid circumstances condemned by the Hon'ble Supreme Court, it is necessary that no claim be imposed upon the applicant no. 1 in addition to that already paid by it under the approved Resolution Plan. Hence, the reliefs sought by the applicants herein for quashing of claims raised vide notices dated August 18, 2019 and January 04, 2020 deserve to be allowed.

4. Submissions on behalf of the Respondent:

The submissions on behalf of the Respondent in the Reply- Affidavit are summarized hereinafter:

¹⁰(2021) 9 SCC 657

- 4.1 The JREDA has acted as per the provisions of The Electricity Act, 2003 along with the Jharkhand State Electricity Regulatory Commission (Renewable Energy Purchase Obligation and its compliance) Regulations, 2016.
- 4.2 Based on the communication between JREDA and Corporate Debtor, *vide* aforementioned letters dated 30.04.2016 and 13.07.2016, the Corporate Debtor, had provided Captive generation details of their plant *vide* letter no AAPL/JREDA/2017-18/01 dated 12/05/2017 & letter no AAPL/JREDA/2017-18/02 dated 30/01/2017. Based on such Captive generation details, JREDA has calculated Minimum Quantum of Purchase in (%) from renewable energy sources (in terms of energy in kWh).
- 4.3 According to the Captive generation details provided by the Applicant, power was generated from coal based boilers as well as from waste heat recovery boilers. However, as per the National Tariff Policy -2016 clause 6.4.1 "provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPO". As such, the Corporate Debtor had not complied with the Jharkhand State Electricity Regulatory Commission (Renewable Energy Purchase Obligation and its compliance) Regulations, 2016.
- 4.4 Accordingly, JREDA has issued Notice *vide* letter dated 24.04.2018 to the Corporate Debtor asking for explanation as to why it should not be notified as defaulter for non- fulfillment of its RPO compliance as per JSERC regulation issued from time to time.
- 4.5 Since JREDA has not received any communication from the Corporate Debtor regarding the matter cited above, JREDA again issued to the Corporate Debtor a notice for default towards RPO compliances from 2011-12 till 2016-17 *vide* letter dated 18.08.2018 and directed them to submit the RPO charge amount of Rs. 17.89 Crores to Jharkhand RPO Charge Regulatory Fund.
- 4.6 Due to fact that JREDA did not receive any communication from the Corporate Debtor for submission of RPO Compliance report for FY 2018-19 & FY 2019-

- 20, a fresh notice was issued, directing the Corporate Debtor to submit Rs. 5.51 to "Jharkhand RPO Charge Regulatory Fund" for non-fulfillment of its RPO compliances for FY2017-18 & FY 2018-19.
- 4.7 Thereafter, JREDA again received letter dated 08.07.2020 from the Corporate Debtor, wherein they have asked for waiver of statutory dues / penalty, if any, and intimating thereof that a case has been filed by them under of Insolvency and Bankruptcy Code, 2016. And further that they have challenged the notice issued for compliance of RPO for the FY 2011-12 to FY 2018-19 at NCLT, Kolkata.
- 4.8 JREDA has not received any information regarding the same under Insolvency and Bankruptcy Code 2016 and also JREDA has never come across any paper publication by the IRP regarding the proceedings under Insolvency and Bankruptcy Code 2016 in the instant matter. The Applicant never communicated any aforesaid IA Petition challenging the demand notice for RPO compliance earlier. JREDA has come to know of the pendency of the present case from Principal Secretary, Department of Energy respondent 1 in the case.

5. Rejoinder on behalf of the Applicant:

The submissions made in the rejoinder are summarized hereinafter:

- 5.1 All contentions of the Respondent in the Reply- Affidavit, save and except what is matter of record, have been denied.
- 5.2 Upon the initiation of CIRP, public announcement¹¹ in terms of section 15 of the IBC was published by the Interim Resolution Professional (IRP) in two widely circulated newspapers on 25.08.2017. Despite the aforesaid public notice, the Respondent Authorities failed to file the claim with the concerned Resolution Professional. As such, the Applicants are not liable to accommodate the claims of the Respondent Authorities in respect of a period prior to the commencement

¹¹Annexure R

- of the CIRP on 23.08.2017. Further, a copy of the instant application was forwarded to the Respondent Authorities on 16.06.2021.
- 5.3 Even assuming the assertion of the Respondent Authorities that their actions were in pursuance of the provisions of The Electricity Act, 2003, the same cannot have a bearing on the cause of action of the Applicant in the instant matter. IBC, being a complete Code will override anything inconsistent therewith. In this matter, IBC will prevail over The Electricity Act, 2003 and Jharkhand State Electricity Regulatory Commission (Renewable Energy Purchase Obligation and its compliance) Regulations, 2016.
- 5.4 By virtue of the order dated 07.12.2018 passed by the Adjudicating Authority approving the resolution plan, all claims of the respondent Authorities in respect of the period prior to the commencement of CIRP stood extinguished.

6. Analysis and Findings:

- 6.1 Heard the Ld. Counsels on behalf of the parties and perused the records.
- 6.2 Upon perusal of the records, it is seen that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor commenced on and from 23.08.2017. The first notice directing the submission of RPO charge amount for F.Y. 2011-12 till 2016-17 was issued by the Respondent on 18.08.2018 *i.e* during the continuance of moratorium under section 14 of IBC. The second notice directing the submission of RPO charge amount for F.Y. 2017-18 & F.Y. 2018-19 was issued by the Respondent Authorities on 04.01.2020 *i.e* after the approval of the resolution plan by the Adjudicating Authority on 07.12.2018.
- 6.3 However, once a company is admitted into CIRP and Public Announcement regarding the same, all claims by creditors thereafter are required to be made in the Form specified in the CIRP Regulations. Since the Respondent in the instant matter are governmental authorities, they would fall in the category of

Operational Creditor and hence are required to submit their claims to the RP in Form B.

6.4 In this regard we would like to rely upon the decision of Hon'ble Supreme Court of India in the matter of *Essar Steel India vs. Satish Kumar Gupta & Ors* wherein it has been held as follows:

*“67. 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. 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, the NCLAT judgment must also be set aside on this count.”*

6.5 It is seen that the first claim was sent to the Corporate Debtor on 18.08.2018 i.e long after the last date of submission being 08.09.2017. It is also seen that the same was not addressed to the Resolution Professional (RP) in Form B as specified in CIRP Regulations. Further, upon the failure of the RP to consider the same, the Respondents took no steps to follow up on the said matter. It is clear that the Respondents had been sleeping over their rights for a significant amount of time. CIRP is a time-bound process and the RP, during his engagement, has to stick to the timeline stipulated in the Code and its allied Regulations. Since the Respondents failed to submit their claims to the RP in Form B within the last

date of submission mentioned in the Form A, the Resolution Professional cannot be held liable for not including their name in the list of creditors for the purpose of distribution under the resolution plan.

6.6 It is noted in this regard that the claims of the Respondents relate to the alleged RPO obligations of the Corporate Debtor. The Respondents, vide several letters including letters dated 17.02.2011, 13.07.2016 and 06.10.2017 had called upon the Corporate Debtor herein to implement the said RPO and file compliance reports for the same. In reply to the said letters, the Corporate Debtor has issued replies dated 31.03.2011 and 18.04.2017, explaining to the Respondents that the Corporate Debtor it did not qualify for the RPO. The last such reply was issued on 30.10.2017 and is signed by the authorised signatory of the Corporate Debtor. Since the said letter was issued during the moratorium period, the said reply is deemed to have been sent on behalf of the Resolution Professional.

6.7 Considering that the claim was made at a belated stage and not in a proper format as established by law, the Resolution Professional was not obligated to consider the same and the said letter dated 30.10.2017 ought to be construed as a rejection of any claim arising out of such RPO.

6.8 The Respondents have also submitted that they did not have any notice of the CIRP proceedings. On the other hand, Applicants have also claimed to have intimated the Respondent Authorities regarding the CIRP of the Corporate Debtor vide letter dated 03.05.2018¹². Upon perusal of the same, it can be seen that there is no mention of CIRP in the said letter. There is only a mention that the plant is “under NCLT (National Company Law Tribunal) from August 2017 and it will continue up to May 2018.” The same will not amount to proper intimation of CIRP.

¹²Annexure L

- 6.9 Be that as it may, it is seen that newspaper publications of Form A were made in newspapers editions in both West Bengal and Jharkhand. Upon commencement of CIRP, public announcement dated 25.08.2017, inviting claims from creditors of the Corporate Debtor, was published by the Interim Resolution Professional (IRP) in various newspapers including *Aajkal* (bengali), *Business Standard*(english) and *The Telegraph Metro* (Ranchi, Jamshedpur Edition) (English).
- 6.10 In the instant matter, the publication of Form A in the aforementioned newspaper will amount to constructive notice to the Respondent Authorities. As such, this defence taken by the Respondents that they were not aware of the admission of Corporate Debtor into CIRP is not maintainable.
- 6.11 In any event, the Adjudicating Authority has already approved the resolution plan submitted by Applicant No. 2 on 07.12.2018. Upon such approval, all claims belonging to a period prior to the commencement of CIRP stand extinguished. Further, any dues pertaining to the moratorium period ought to be included in the CIRP costs and claims regarding the same also need to be made during the moratorium period so that the same can be included by the Resolution Professional in the list of creditors. It is seen that the claims in respect of the F.Y. 2017-18 and F.Y. 2018-19 was made on 04.01.2020 i.e after the resolution plan was approved by the Adjudicating Authority and therefore, cannot be considered at this point.
- a) In this regard we would like to rely on the decision of the Hon'ble Supreme Court in the matter *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*¹³ wherein the Apex Courthas laid down the law in regard to the extinguishment of past liabilities of the Corporate Debtor once the resolution plan is approved. According to the Hon'ble Supreme Court, once a resolution plan has been duly approved by the Adjudicating Authority pursuant

¹³2021 SCC OnLine SC 313 decided on 13.04.2021.

to section 31(1), the claims specified in the resolution plan shall stand frozen and be binding upon the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government, or any local authority, guarantors, and other stakeholders. All such claims that are not included in the resolution plan must be extinguished as of the day the Adjudicating Authority approves the resolution plan, and no individual shall have the right to begin or continue any proceedings with respect to a claim that is not included in the resolution plan. The Hon'ble Supreme Court has further ruled that, if not covered by the resolution plan, all debts to the Central Government, any State Government, or any local authority shall stand extinguished and that no further legal action may be taken to collect those debts for the time period prior to the date the Adjudicating Authority grants its approval under Section 31.

6.12 The relevant part of the **Ghanshyam Mishra judgment(supra)** in this regard is given below:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of *Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra)*.

“107. For the same reason, the impugned NCLAT judgment [*Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLineNCLAT 388*] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. 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.” “

6.13 We also place reliance on the recent judgement of Hon’ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan*¹⁴ wherein it has been *inter-alia* held that :

¹⁴ D.B. Civil Writ Petition No. 6048/2020, decided on

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

I.A.(IBC) 562/KB/2021 in CP (IB) 387/KB/2017

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

6.14 In light of the aforementioned case-laws, we hold that all the claims of the Respondent Authorities pertaining to the period before the date of approval of resolution plan i.e. 07.12.2018 shall stand extinguished.

6.15 With the aforesaid observations, the instant application is allowed. **IA (IBC) No.562/KB/2021** shall stand *disposed of* accordingly.

6.16 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

6.17 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 9th day of February, 2024

SM_(LRA)