

**.IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

IA/283/2022 & IA/426/2022

In

C.P.(IB)/2092(MB)2018

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

Department of State Tax

*(E-002) 424, 4th Floor, Alibag, Raigad Division,
Kokan Bhawan, CBD Belapur, Navi Mumbai-
400614.*

.....Applicant

Vs.

**Resolution Professional of M/s. Calchem
Industries (India) Limited.**

*Shop No. 9 & 10, D Wing, Elco Arcade, 1st
Floor, Hill Rd, Bandra West, Mumbai, 400050.*

.....Respondent

In the matter of

M/s. Gokul Fuelchem Private Limited

.....Operational Creditor

Vs.

M/s. Calchem Industries (India) Limited

.....Corporate Debtor

Order Reserved on: 04.09.2023

Order delivered on: 06.10.2023

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Applicant : Adv. Amar Mishra

For the Respondent: Adv. Aniruth Purusothaman

COMMON ORDER

Per- Ms. Lakshmi Gurung, Member Judicial

1. These two applications are filed by the Department of State Tax (**Applicant**) under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") against the Resolution Professional of M/s. Calchem Industries (India) Limited (**Corporate Debtor**), seeking direction to the resolution professional (who had rejected their claims) to register the claims of the Applicant and deal the same with the provisions of the Code. The Applicant also prayed to hold the approval of the Resolution Plan till the above applications be dealt as per the law. As both the IA's involve the same issue, and have similar prayer, hence both the IA's are heard together and disposed of by common order.

Relevant Brief Facts as narrated in the Application:

2. On an application filed by the Operational Creditor, this Tribunal vide order dated 25.09.2019, admitted the Corporate Debtor to Corporate Insolvency Resolution Process ("**CIRP**") under IBC and appointed Mr. Ritesh Prakash Adatiya, as Interim Resolution Professional.

3. Pursuant to the admission of the petition, the public announcement/advertisement in newspaper was made by the IRP on 01.10.2019 for the purpose of inviting claims from the creditors of the Corporate Debtor.

Claims submitted as per I.A. 283/2022:

4. The Applicant filed the claims with Resolution Professional vide letter/email dated 08.10.2021 amounting to Rs. 4,18,52,112/- arising out of the assessment orders passed under Maharashtra Value Added Tax Act, 2002, for the years 2012-2013 to 2017-2018 as per details given below:

Sr. No.	Date of Recovery Demand Raised	ACT	Recovery Period	Pending Recovery
1.	30.03.2017	MVAT	01.04.2012 to 31.03.2013	289,980
2.	30.03.2017	CST	01.04.2012 to 31.03.2013	712,870
3.	06.01.2021	MVAT	01.04.2014 to 31.03.2015	752,854
4.	06.01.2021	CST	01.04.2014 to 31.03.2015	1,34,40,035
5.	08.01.2021	MVAT	01.04.2015 to 31.03.2016	159,688
6.	08.01.2021	CST	01.04.2015 to 31.03.2016	93,77,343
7.	08.01.2021	MVAT	01.04.2016 to 31.03.2017	23,86,751
8.	08.01.2021	CST	01.04.2016 to 31.03.2017	1,18,74,730
9.	22.09.2021	MVAT	01.04.2017 to 30.06.2017	580,926
10.	22.09.2021	CST	01.04.2017 to 30.06.2017	22,76,935
			Total Recovery:	4,18,52,112

5. The RP vide email dated 13.10.2021 rejected the claim of Applicant stating that the Committee of Creditors has already approved the Resolution Plan on 13.10.2020 and the same is pending before the Adjudicating Authority for the approval.

Claims submitted as per I.A. 426/2022:

6. The claim amount in Interlocutory Application No. 426 is Rs. 1,61,73,457/- arising of assessment orders passed under Maharashtra Goods and Service Tax Act, 2017, for the months of September 2017 to June 2018 against the Corporate Debtor was filed in Form B with IRP vide letter/email dated 12.10.2021.

7. The RP vide email dated 13.10.2021 rejected the claim of Applicant stating that the Committee of Creditors has already approved the Resolution Plan on 13.10.2020 and the same is pending before the Adjudicating Authority for the approval.

8. The Applicant also issued so cause notice dated 16.11.2021 for non payment of interest liability as per Section 50 of the GST Act for the period of 2017-2018, amounting to Rs. 2,27,484/-. The Applicant submitted the additional claim of Rs. 2,27,484/- vide email dated 18.11.2021, which was rejected by the RP vide email dated 20.11.2021. has submitted an additional claim amounting to Rs. 2,27,484/- vide letter/email dated 18.11.2021.

9. The reasons for inordinate delay in filing the claims has been explained by the Applicant by stating that Applicant is a statutory authority and Govt. Department which is responsible for collection of revenue and taxes applicable under VAT & GST Act and the Corporate Debtor was an assessee of the Applicant/Department under the GST Act and was liable to deposit the tax as per law for the transactions done during the particular financial year. The Applicant came to know about the CIRP process of the Corporate Debtor in March 2021.

Applicant's submission:

10. The Applicant has submitted that the said rejection of the claim of the Applicant is illegal and unsustainable. All the claims filed are self-assessed by the taxpayer who has accepted the said liability from time to time. The claims were duly filed along with all supporting documents and sent to the RP for consideration. The Applicant has relied on Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 which states that the Resolution Professional shall make best estimate of the amount of claim based on information available with him. It is contended that since the claim of the applicant is statutory dues, the resolution professional was duty bound as per regulation 14 to make best estimate of the amount of claim based on the information available with him. Therefore, the rejection of claim by the RP is bad in the eyes of law.

11. The Applicant relied on ***State Bank of India v. ARGL Ltd.*** wherein the Principal Bench of the NCLT, while considering an application filed by Central Board of Goods and Service Tax Department indicated that since the government dues would always be reflected in the books of accounts of the corporate debtor, therefore, the RP/IRP would be required to take cognizance of the dues as per the books of accounts and accordingly had allowed the application filed by Central Board of Goods and Service Tax Department.
12. The Applicant also relied on ***Twenty-First Century Wire Roads Ltd.***, case where an application was filed by AMA Agencies Pvt. Ltd. before the Principal Bench of the NCLT for condonation of delay in filing their claim. The NCLT was pleased to condone the delay and directed the RP to consider the claim.
13. The Applicant further relied on the judgment of the Principal Bench of the NCLT, in the matter of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.*** where it was held that the rejection of claim on the ground of delay is not sustainable because the provisions of IBC has been held to be directory.
14. In addition to this, the Applicant has filled an additional affidavit stating that the department was following the due procedure of law and therefore the delay has been caused.

Reply by Respondent/RP:

15. The RP has filed a detailed reply and submitted that the RP had informed the Applicant about the date for submission of claims as per the Public Announcement made by him and as per Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Despite having knowledge of the public announcement, Applicant did not file the claims.
16. The last date for submission of claims was 14.10.2019 as per the Public Announcement dated 01.10.2019. The Applicant submitted their claim of Rs. 4,18,52,112/- with the RP on 08.10.2021 i.e.,
- a. after a delay of 726 days i.e., more than one year and eleven months, from the last date of submission of claims;
 - b. after a delay of 650 days from the extension provided under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016;
 - c. 474 days after the publication of FORM G on 22.06.2020;
 - d. 361 days after the CoC approved the Resolution Plan for the Corporate Debtor;
 - e. And more importantly, 325 days after the Interlocutory Application No.2117/2020 for the approval of the Resolution Plan was registered with the Adjudicating Authority on 18.11.2020.

- f. The other claim as mentioned in IA/426/2022 (Rs. 1,61,73,457/- and Rs. 2,27,484/-) were also filed at very belated stage.
17. The Resolution Plan for the Corporate Debtor had already been approved by the CoC on 13.10.2020 and the resolution plan is pending with the NCLT, Mumbai Bench for approval. Hence, the claims of Applicant cannot be accepted.
18. The RP relied on the decision of Hon'ble National Company Law Appellate Tribunal, in the matter of ***Office of the Asst. State Tax Commissioner, State Tax Department, Government of Maharashtra vs Shri Parthiv Parikh, Resolution Professional, M/s. Jaihind Projects Ltd &Ors.*** (Company Appeal (AT) (Ins) No.583 of 2020) passed on 26.03.2021.
19. In light of the above-mentioned judgement, the respondent submitted that the relief claimed by the Applicant be denied and the Application be dismissed.

Findings and Order:

20. Heard the Parties for both the sides and perused the record. We observe that public announcement inviting the claims was made on 01.10.2019 and after the extension provided for CIRP under Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, any claim against the Corporate Debtor had to be filed on or

before 29.12.2019. Undisputedly, the Applicant filed their claims on 08.10.2021, after a delay of 650 days by which time, the CoC had already approved the Resolution Plan on 13.10.2020 and the RP has filed IA for approval of the resolution plan by the Adjudicating Authority and the same is pending before this Tribunal since 18.11.2020.

21. It would be profitable to refer to the judgment of Hon'ble Supreme Court in ***RPS Infrastructure Ltd. vs. Mukul Kumar & Anr. (2023) ibclaws.in 102 SC*** decided on 11.09.2023 wherein it was reiterated that the hydra-headed monster of undecided claims cannot be allowed to unleash on the resolution applicant while the resolution plan was pending before the Adjudicating Authority and the plan cannot go back and forth making CIRP process endless. The relevant extract are reproduced below:-

“21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

*22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. **We find it difficult to unleash the hydra-headed***

monster of undecided claims on the resolution applicant”

(emphasis provided)

22. In the present case, the Applicant has filed the claim on 08.10.2021 while the CoC had already approved the Resolution Plan on 13.10.2020 which is pending for approval before this Tribunal since 18.11.2020. Therefore, any interruption in the CIR process at this belated stage by allowing the application might open the floodgate for the similar claims, causing unnecessary delays in the CIRP process.
23. Before disposing of this application, we would like to deal with the judgments/orders relied upon by the parties. The Applicant has relied on the order of the Principal Bench of the NCLT, New Delhi and contended that in an application filed in the case of ***State Bank of India v. ARGL Ltd. (supra)***, the Principal Bench of the NCLT, New Delhi had indicated that since the government dues would always be reflected in the books of accounts of the corporate debtor therefore the RP/IRP would be required to take cognizance of the dues as per the books of accounts. However, in the present case, out of total demand of Rs. 4,18,52,112/-, pre-existing demand as on date of initiation of CIRP was Rs.2,89,980/- under MVAT and Rs. 712,870/- under CST for the relevant year 2012-13 aggregating to Rs.10,02,850/-. Rest of the demand arose consequent upon assessment

orders passed during the period from 06.01.2021 to 22.09.2021 (as can be seen from the table given in para 4), much after initiation of CIRP on 25.09.2019 and much after the resolution plan was already approved by the CoC on 13.10.2020. Obviously, such claims would not be reflected in the books of account of Corporate Debtor when the RP had prepared the Information Memorandum. Therefore, the judgment relied upon by the Applicant is of no avail to the Applicant, except to the extent that if VAT/CST liability was reflected in the books of Corporate Debtor on the date of initiation of CIRP, then the RP should have considered the same in the Information Memorandum.

24. The Applicant relied on the decision of Principal Bench of the NCLT, New Delhi in the matter of ***Twenty-First Century Wire Roads Ltd. (supra)***, wherein the Adjudicating Authority had condoned the delay and directed the RP to consider the claim. However, the distinguishing fact was that when the application for condonation of delay was being heard by the Adjudicating Authority, the CoC was still in the process of considering the resolution plans and as such the resolution plan had not been approved by CoC. However, in the present case, the CoC has already approved the resolution plan and the same is pending before this tribunal for approval. Therefore, this decision also does not support the Applicant.

25. The Applicant also relied on the matter of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.***

wherein, the Principal Bench NCLT, New Delhi has held that the rejection of claim merely on the ground of delay is not sustainable because the provisions of IBC have been held to be directory. Firstly, the issue before the Principal Bench, NCLT, New Delhi was whether provisions are directory or mandatory. Secondly, in the present case, the claim was rejected not only on the ground of delay but on the account of the fact that the resolution plan has already been approved by the CoC and the Resolution Applicant cannot be burdened with claims which were not decided on the date of approval of resolution plan.

26. The Respondent relied on the judgment in the matter of ***Office of the Asst. State Tax Commissioner State Tax Department, Government of Maharashtra vs Shri Parthiv Parikh, Resolution Professional, M/s. Jaihind Projects Ltd &Ors.*** (Company Appeal (AT) (Ins) No.583 of 2020) decided on 26.03.2021. We have gone through the above judgment and observe that the facts of present case are squarely covered by this judgment of NCLAT. Some of the relevant paragraphs which give facts and the decision of NCLAT are reproduced below for completeness:-

“3. The Appellant has claimed that he was unaware of these proceedings and the insolvency proceedings against Respondent No.3 came to his knowledge only when the Joint Commissioner of Sales Tax forwarded the order of the Adjudicating Authority dated 30.09.2019 to him. In order to secure the interest of the State Tax Department, the Appellant filed a claim in Form B for

Rs.5,62,29,528/- on 20.12.2019. This claim was rejected by the Resolution Professional vide email dated 31.12.2019 on the ground of delay in filing the claim and as the Resolution Plan had been submitted for approval to the Adjudicating Authority after approval by the Committee of Creditors.

14. In the present case the Operational Creditor – State Tax Department, Government of Maharashtra submitted its claim on 20.12.2019, more than about one year and one month after the invitation of claims through public notice on 2.11.2018. The extended time period for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 31.01.2019. It is undisputed that the RP had filed the Resolution Plan as approved by the Committee of Creditors to the Adjudicating Authority, much before the said claim was preferred before the RP, and the Adjudicating Authority was actively considering the Resolution Plan for necessary approval. After rejection of claim of Appellant by RP, its appeal was filed before the Adjudicating Authority on 21.02.2020 under Section 60(5) of the IBC.

15. Thus, it is clear that much water had flown under the bridge from the date of issue of public notice (on 02.11.2018) and the extended time period of ninety days as provided under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Resolution Plan as approved by the COC was submitted to the Adjudicating Authority for

necessary approval under Section 30. Any interruption in the CIR Process at this stage by including a delayed claim/s would have meant setting the clock back and sending matter back to COC & RP. It cannot be ruled out that if the claim of the Operational Creditor State Tax Department, Government of Maharashtra was accepted at such a late stage, there could have been other such applicants too, who would have demanded accommodation on the same ground allowing late submission of their claims once this window would have opened. It would be trite to emphasise the fact that this would have meant complete disruption of the CIRP and the timelines stipulated therein. Delay would defeat Resolution as this would have resulted in the CIRP and approval of successful Resolution Plan to continue for an indefinite period of time, which is certainly not the intention of IBC.”

27. We cannot lose the sight of the object of the Code which *interalia* aims for insolvency resolution of the corporate debtor in a time bound manner. The Code has also altered the order of priority of payment of Government dues when compared to the earlier Companies Act. The emphasis under the Code is for time bound process rather than payment of belated Government dues. For all these reasons we do not find any merit in the present applications, **except to the extent that if VAT/CST liability as contended by the Applicant for Rs.2,89,980/- under MVAT and Rs. 712,870/- under CST for the relevant year 2012-13 aggregating to Rs.10,02,850/- was reflected in the books of Corporate**

Debtor on the date of preparation of Memorandum Information, then the RP should have considered the same in the Information Memorandum and **RP is directed to consider such Government dues if appearing in the books of account of the Corporate Debtor.**

28. Accordingly, the present Interlocutory Applications IA/283/2022 and IA/426/2022 are ***disposed of in above terms.*** No order as to cost.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA