

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

**IA No. 3915/MB/C-I/2022**

**In**

**C.P (IB) No.3025/MB/C-I/2019**

An application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016  
Filed by

**Department of State Tax**

Through the Deputy Commissioner of State Tax (RAI-  
VAT-E-005)

**...Applicant**

Versus

**Anish Nanavaty**

Resolution Professional of

Reliance Communication Infrastructure Limited.

**...Respondent**

In the matter of

**State Bank of India**

**...Financial Creditor**

Versus

**Reliance Communication Infrastructure Limited**

**... Corporate Debtor**

**Order Pronounced on: 08.09.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)  
Hon'ble Member (Technical) : Mr. Prabhat Kumar

***Appearances:***

For the Applicant : Mr. Amar Mishra, Advocate  
For the Respondent : Mr. Rishab Jasani, Advocate.

**ORDER**

*Per: Justice V.G. Bisht, Member (Judicial)*

1. The present Application is filed by Department of Sales Tax Through the Deputy Commissioner of Sales Tax, Ms. Madhavi Sahebrao Suryavanshi. The following reliefs are sought by the Applicant:
  - i. That this Tribunal be pleased to condone the delay of 765 days in registering claim with the Resolution Professional.
  - ii. That this Tribunal be pleased to allow the present Applicant and direct the Resolution Professional to register the claim of the Applicant.

**Backdrop of facts**

2. The Corporate Debtor (Reliance Communication Infrastructure Limited) was admitted in CIRP vide Order dated 25.09.2019 and Mr. Anish Nanavaty i.e. the Respondent herein was appointed as the Resolution Professional. Subsequently, the Resolution Professional made a public announcement on 28.09.2019 in newspapers in terms of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016. In the said public announcement, the last date for submission of claims by creditors was 12.10.2019.

3. The Applicant submits that as per the MVAT and CST Act the assessment order dated 30.08.2021 was passed by the Applicant for the period of 2016-2017 directing the Corporate Debtor to pay Rs.28,06,557/- (Rupees Twenty-Eight Lakh Six Thousand Five Hundred and Fifty-Seven Only). The Applicant further states that they were informed about the commencement of CIRP of the Corporate Debtor in the month of November, 2021.
4. Thereafter, the Applicant sent a letter/email dated 15.11.2021 to the Resolution Professional to register its claim along with Form B for dues amounting to Rs.28,06,577/- for the period of 2016-2017. The proof of claim in Form B is placed as "Exhibit-C" to the Application.
5. The Applicant contends that the Resolution Professional has rejected the claim of the Applicant vide email dated 01.12.2021. The Respondent/Resolution Professional has recorded reasons for rejection of the claim in the aforesaid letter dated 01.12.2021. It is stated that claims in respect of dues of the creditors are required to be submitted prior to the cut-off date. The claims after verification would be settled vide a Resolution Plan in terms of section 31 or under section 53 of the Code in event of Liquidation.
6. The Respondent further states that the Committee of Creditors ("**CoC**" **for short**) have approved the Resolution Plan for the Corporate Debtor on 30.08.2021 and claims submitted after the Resolution plan is

approved by the CoC cannot be considered. In furtherance of his contention he has placed reliance on the Judgement of the Hon'ble NCLAT in *Mukul Kumar vs RPS Infrastructure Limited* (dated 30.07.2021) and *Harish polymer Products vs Mr. George Samuel and Ors.* (dated 18.06.2021) wherein it was held that the claims submitted beyond the timelines stipulated under Regulation 12(2) of CIRP Regulations cannot be admitted.

7. The Respondent/Resolution Professional has not filed affidavit-in-reply to the present Application. Accordingly, we are deciding the matter on the basis of the records available with us and the arguments advanced by the Ld. Counsel for both sides.

**Findings and Directions:**

8. Upon perusal of records, it is observed that the claim is filed on 15.11.2021 by the Applicant. As per Regulation 12(2) of CIRP Regulations, 2016 the maximum time available for submission of claim is till ninetieth day from insolvency commencement day. It is undisputed that the plan was approved by the CoC on 30.08.2021 and the Application for approval of resolution plan was filed before this Tribunal on 31.08.2021.
9. It is pertinent to note that the assessment order passed by the Income Tax Authorities is dated 30.08.2021 for the assessment years 2016-2017. Moreover, the demand notices and scrutiny report are both dated

30.06.2022 which is clearly after the date of approval of Resolution Plan by the CoC. Further, notice in Form No- ASMT-10 bearing reference no ZD271121003078Y is dated 03.11.2021 which is also after the plan was approved by the CoC.

10. In this backdrop, it is important to refer to the Judgment delivered by the Hon'ble NCLAT in the matter of *Office of the Assistant State Tax Commission State Tax Department, Government of Maharashtra Vs. Shri Parthiv Parikh &Ors. CA (AT) (Ins) No. 583 of 2020* wherein a similar question of facts and law was considered. The relevant paragraphs are reproduced below:

*“13. Further, in the same Regulations, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by financial and corporate debtor, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation.....*

*The purpose of issuing public notice is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor and the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors is to provide the Resolution Applicant all relevant information so that the applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC. Such*

*Resolution Plan has to be submitted to the Resolution Professional under Section 30 of IBC, which is considered by the Committee of Creditors for approval and the final approval of the Resolution Plan is provided by the Adjudicating Authority under Section 31 of the IBC. It is quite logical to say that these actions have to be taken with alacrity so that the successful Resolution Applicant, if any, can take the reins of the management of the Corporate Debtor in good time for its proper management and consequent revival.*

*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 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. A real hazard in such an event could be liquidation, and corporate death, of an otherwise functional and corporate debtor, with which Resolution Plan approved is set to come out of the Red ....”*

11. We hold that the argument of the Applicant that the Resolution Professional having the custody of the books of accounts of the Corporate Debtor, ought to have included the dues owed to tax

department in the information memorandum and ensured that their dues get due treatment under the Resolution Plan cannot be sustained as the assessment order by the tax authorities for the dues claimed was passed on 30.08.2021 that is on the same day when the Resolution Plan was approved by the CoC.

12. At this juncture, if the delay is condoned and the Resolution Professional is directed to examine the claim, grave prejudice will be caused to CIRP Process and the Resolution Applicant. Since, the plan is pending approval before us, we cannot set the clock back in time and hinder the timebound process under the Code.
13. With the aforesaid observation, **IA No. 3915 of 2022 in CP(IB) No. 3025/MB/C-I/2019** stands disposed of as **rejected**.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

08.09.2023

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**