



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

IA/(IBC)/1638/CHE/2023 in CP/1006/IB/2018

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

In the matter of *GK Steels & Allied Industries Limited*

The Assistant Commissioner of Central GST and Central Excise
Dindugal – I, Division,
Post Box No.47, D. No. 68, Nehruji Nagar,
R.M. Colony Road,
Dindigul – 624 001

Applicant

-Versus-

J. Karthiga

Resolution Professional of
GK Steel and Allied Industries Limited
Sri Nivas, No. 1, Old No. 1052,
41st Street, Korattur, Chennai – 600 080

Respondent

Present:

For Applicant : Sai Srujan Tayi, Senior Standing Counsel
Customs and GST
Pooja Jain, Advocate

For Respondent : V.V. Sivakumar, Advocate
For RP

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 29th November 2023

ORDER

(Heard through Video Conferencing)

IA(IBC)/1638(CHE)/2023 is an application filed under Section
60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as
follows:



Hence it is prayed that this Hon'ble Tribunal may be pleased to declare rejection of the Claim of the Applicant by the Respondent vide letter dated 28.07.2023 as illegal and invalid and direct the Respondent to admit said claim and thus render justice.

2. It is stated that Corporate Debtor viz. GK Steels and Allied Industries Ltd. was engaged in the business of manufacture and supply of iron and steel. Upon information that the Corporate Debtor had involved itself in large scale evasion of central excise duty, an investigation commenced which led to issuance of Show Cause Notice No. 11/97 dated 05.03.97 by the office of the Commissioner of Central Excise, Madurai *inter alia* calling upon the Corporate Debtor to show cause why an amount of Rs.4,30,17,428/- with penalty and interest ought not be levied on the Corporate Debtor for clandestinely removal of goods and consequent evasion of excise duty.

3. It is stated that the Corporate Debtor filed a Writ Petition viz. W.P 12747/06 wherein by an interim order dated 21.04.2006, the Hon'ble Madras High Court granted an interim stay of the said notice. In view of the said interim order, the revenue department could not proceed with the notice further and the adjudication proceedings remained pending. Meanwhile when the writ petition came up for final hearing on 17.11.2022, a representation was made on behalf of the Corporate



Debtor to the effect that a Resolution Professional has been appointed by this Tribunal under IBC proceedings initiated against the Corporate Debtor.

4. It is stated that in the meanwhile, the Applicant had to change its counsel and the present standing counsel took over the case. Subsequently, under legal advice, the revenue took the decision to submit a formal claim application before the RP realizing that the RP has not considered the pending demand for payment of excise duty with penalty and interest as an operational debt of the Corporate Debtor.

5. It is stated that the revenue department did not have notice of the IBC Proceedings until the writ petition was listed for final hearing on the dates mentioned above. As such, a formal claim petition could not be filed in time with the respondent.

6. It is stated that the demand made by the department being government taxes, (the said liability) ought to have been showed by the Corporate Debtor in its book of accounts; in any event the previous management of the Corporate Debtor ought to have atleast notified the Respondent about the pending liability, though in dispute; further, the



Respondent ought to have *suo motto* included the pending demand as part of the operational debt due from the Corporate Debtor.

7. It is stated that the Applicant filed its claim under Form B with the Respondent / RP on 28.07.2023 for a sum of Rs.30,94,89,770/- along with all the supporting documents. However, by letter dated 28.07.2023 the Respondent / RP rejected the said claim without considering the same on merits.

8. The Respondent has filed the reply.

9. It is stated that the Applicant has not cited any valid reason as to why it could not file its claim before the Resolution Professional earlier. It is stated that it is settled law that a person making a claim before the RP cannot claim ignorance of the commencement of the CIRP process as a reason especially in view of Section 15 of the IBC, 2016 and regulation 6 of the IBBI regulations. Once the CIRP process starts, the public at large is deemed to have knowledge of the commencement of the CIRP.

10. It is stated that it is a settled law that no claim can be made once the Resolution Plan has been finalized and approved by the Committee



of Creditors and on this ground also this application ought to be rejected.

11. Heard the submissions made by the Learned Counsel for both the parties and perused the record.

12. In the present case, the CoC approved the Resolution Plan as early as on 21.12.2020. Thereafter, the RP filed MA(IBC)/37(CHE)/2021 before this Tribunal seeking approval of the same by this Adjudicating Authority. The Applicant filed the claim before the RP only on 28.07.2023. At this juncture we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of **M/s. RPS Infrastructure Limited –Vs- Mukul Kumar & Anr.** in *Civil Appeal No. 5590 of 2021*, wherein it is held as under;

19. *The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. 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. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.*



20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

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, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

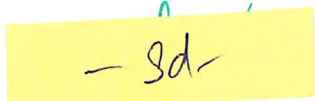
22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.

23. The result of the aforesaid is that the appeal is dismissed leaving the parties to bear their own costs.

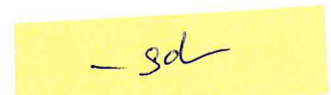
(emphasis supplied)

13. Thus, in light of the Judgment of the Hon'ble Supreme Court in M/s. **RPS Infrastructure Limited** (*supra*) we are of the view that the claim of the Applicant cannot be admitted at this belated stage.

14. Accordingly, IA(IBC)/1638(CHE)/2023 stands **dismissed**. No cost.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond