



**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 4988/2021**

**IN**

**Company Petition No. (IB) – 937/(PB)/2018**

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

**IN THE MATTER OF:**

CORPORATION BANK

.... PETITIONER

**VERSUS**

M/S. UNITECH MACHINES LTD.

.... RESPONDENT

**AND IN THE MATTER OF-**

THE ASSISTANT COMMISSIONER  
CENTRAL GOODS & SERVICES TAX  
DIVISION SAHARANPUR

.... APPLICANT

**VERSUS**

VIVEK RAHEJA RESOLUTION PROFESSIONAL FOR  
M/S. UNITECH MACHINES LTD.

...RESPONDENT/ NON-APPLICANT



**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

For the Applicant: Ms. Samiksha Godiyal and Mr. Nakul Rajan,  
Advs. for Assistant Commissioner, CGST

For the RP: Mr. Abhishek Anand, Mr. Mohak Sharma and  
Mr. Sajal Jain,

**ORDER**

**PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**Order Pronounced on: 18.05.2023**

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against refusal to consider and accept the Applicant's statutory claim against M/s. Unitech Machines Ltd. by the Resolution Professional



The applicant in the present application has prayed for the following reliefs: -

- a) *Set aside the Respondent's communication dated 24.08.2021 refusing to consider and accept the Applicant's claim against the Corporate Debtor for an amount of Rs. 22,36,04,728 and place the same for consideration before the CoC and*
- b) *Pass such further and/or other orders which this Hon'ble Tribunal may deem fit and proper in favour of the applicant.*

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That, the Corporate Debtor is registered with the Applicant under Registration No GSTIN 09AAACUO313P1Z9 for the business of manufacturing of engineering equipment.
- ii. That, in June 2018, the Applicant commenced investigations into allegations that while the Corporate Debtor was charging and collecting GST from its clients, it was neither filing returns nor depositing the GST collected to the credit of the Government exchequer. This led to a



Show Cause Notice F. No. DGGSTI/GZU/INVIGR-C/67/2018-19/ 1316 dated 30.05.2019 issued under Section 74 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") read with the relevant state statutes and consequential proceedings.

- iii. The Show Cause Notice culminated in a final order dated 25.06.2021 confirming a total GST demand of Rs. 14,42,25,917 along with applicable interest. A penalty of Rs. 14,42,25,917 was also imposed on the Corporate Debtor. This demand relates to a period prior to the commencement of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") for the Corporate Debtor. As recorded in the order dated 25.06.2021, out of the total GST, demand of Rs.14,42,25,917, Rs.9,82,34,106 was recovered from amounts paid by the Corporate Debtor between July 2017 and February 2018.
- iv. Pursuant to the order dated 25.06.2021, the Applicant submitted its claim to the Respondent/Resolution Professional in Form B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016



(hereinafter referred to as "CIRP Regulations") on 16.08.2021. The Applicant's claim against the Corporate Debtor is for an amount of Rs. 22,36,04,728 for the period July 2017 to March, 2019 (Rs.4,59,91,811 towards GST, Rs. 3,33,87,000 towards interest up to 13.08.2021 and Rs. 14,42,25,917 towards penalty). This amount reflects (i) GST collected by the Corporate Debtor from its customers but not paid to the GST department; and (ii) GST under reverse charge mechanism.

- v. That, vide email dated 24.08.2021, the Resolution Professional refused to consider and accept the Applicant's claim on the ground that it was purportedly delayed. The Respondent's email dated 24.08.2021, *inter alia*, states as under: -

*“As per order of Hon'ble Adjudicating Authority, Corporate Insolvency Resolution Process ("CIRP") has been initiated in respect of the Company under the provisions of the IBC, with effect from 1st March, 2019.*

*It is further to state that the interim resolution professional issued public announcement in prescribed format of Form A inviting the claims in terms of Section 15 of the Code on 07.03.2019. The last date for filing the claim as per Form A*



*was 18.03.2019. It is further to state that as per Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, claim may be submitted on or before ninetieth day of the insolvency commencement date.*

*Please note that presently the Resolution Plan is under consideration by the Committee of Creditors and the CD is in the final stage of CIRP. Thus, at this stage of CIRP, we are unable to consider and accept any new claim. You may however reserve your right to approach Hon'ble NCLT for issuing suitable directions, if deemed fit."*

- vi. The Applicant verily believes that the CIRP for the Corporate Debtor has not yet concluded and that no resolution plan has been approved for the Corporate Debtor by the Committee of Creditors and this Tribunal yet. In these circumstances, the Applicant is seeking that its claim for Rs.22,36,04,728 towards statutory tax dues be included in the Corporate Debtor's list of claims/ creditors by the Respondent and be considered by the CoC
- vii. It is further submitted that the timeline under Regulation 12(2) of the CIRP Regulations, which the Respondent has relied upon in the present case to reject the Applicant's



claim, is directory and not mandatory. The applicant has placed reliance on the matter of *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.* also on *M/s. Ranajit Das & Others, CA No. 709/2018 in (IB)-334(ND)/2018*

- viii. It is submitted that Applicant's claim could not have been rejected by the Respondent on the ground of delay. According to the Respondent's email, when the Applicant claim was received, the CoC was still considering resolution plans. The Respondent was duty bound to inform the CoC of the Applicant's claim towards statutory tax dues and the Government exchequer cannot be made to suffer on account of the Respondent's failure in this regard.
- ix. That, the Applicant's claim relates to outstanding GST dues of the Corporate Debtor for the period for the period July 2017 to March 2019 (i.e., prior to the commencement of the CIRP). Given the nature of statutory dues, these would have been reflected in the books of accounts of the Corporate Debtor and the Respondent would have been aware of these dues since his appointment on 01.03.2019.



- x. That the Respondent was aware of the Applicant's claim since his appointment and had even participated in the investigations and show cause proceedings before the Applicant department as reflected in the Applicant's order dated 25.06.2021. In these circumstances, the purported delay in filing the Applicant's claim cannot explain the Respondent's failure to (i) verify the Applicant's statutory claim; and (ii) include the Applicant in the list of creditors to be considered by the CoC before approval of a resolution plan.
- xi. That the applicant has a right to payment under the IBC. If its claim is not included in the list of claims/creditors of the Corporate Debtor by the Respondent and not placed for consideration before the CoC, it will not be provided for in the final resolution plan. The Applicant will be left without a remedy in the CIRP, and the Government exchequer will suffer a significant loss on account of an illegal action of the Respondent.

3. The resolution professional of the Corporate Debtor had filed his reply to the averments of the applicants. The defence



taken by the resolution professional, respondent herein, are stated in brief as below: -

- i. That, CIRP of the CD had commenced vide order dated 01.03.2019 and public announcement was made by the respondent herein on 07.03.2019, and thereafter, the Committee of Creditors (for brevity, the “CoC”) was constituted on 28.03.2019 in compliance of Section 21(1) of the Code read with Regulation 17(1) of the CIRP Regulations.
- ii. That in the 10<sup>th</sup> CoC meeting held on 28.11.2019, the CoC had resolved to liquidate the corporate debtor by taking a decision of not putting the resolution plan, submitted by the prospective resolution applicant, for voting, for it being unviable. Accordingly, the respondent herein, on instructions of the CoC members, had moved an application for liquidation under Section 33(1) of the Code.
- iii. That the Hon’ble NCLAT, New Delhi vide order dated 12.02.2020 in Company Appeal (AT) (INS.) No. 265 of



2020 was pleased to stay the liquidation proceedings of the corporate debtor, sub judice before the Hon'ble AA.

- iv. That on 03.06 2021, the appeal was called for hearing by the Hon'ble Appellate Authority wherein a direction was issued to the respondent herein to place the revised resolution plan of the prospective resolution applicant before the CoC for consideration.
- v. That in the 11<sup>th</sup> CoC meeting held on 23.07.2021 the Resolution Plan was considered by the CoC members and was negotiated over.
- vi. That in the 13<sup>th</sup> CoC meeting held on 25.08.2021, it was unanimously decided by the CoC to put the resolution plan for e-voting. Thereafter, the resolution plan was approved by the CoC members with 89.97% voting shares.
- vii. That on 07<sup>th</sup> October 2021, the respondent herein had filed an application under Section 30(6) read with Section 31 of the Code and Regulation 39(4) of the CIRP Regulations for approval of the resolution plan.



- That the applicant herein is attempting to seek a direction from this Tribunal to admit the claim filed by the applicant after an expiry of 894 days, as calculated from the date of public announcement (07.03.2019) till date of Form B (16.08.2021). It is further stated that 90 days from 01<sup>st</sup> March 2019 [vide Regulation 12(2) of the CIRP Regulations] had ended on 30<sup>th</sup> May 2019. Therefore, even if the time were to start running from 01<sup>st</sup> June 2019, the claim of the applicant would have warranted a dismissal for the it being hopelessly belated
- viii. That the applicant's claim is hopelessly barred by limitation on the following grounds:
  - a. The applicant has filed its claim in utter disregard of the preamble of the Code which inter alia aims to achieve the maximization of value of assets of the corporate debtor in a time-bound manner.
  - b. The applicant's claim is in stark violation of the timelines prescribed under Regulations 6 and 12 of the CIRP Regulations. Regulation 12(2) of the CIRP Regulations stipulates that if a creditor has failed to



submit the claim by the last date mentioned in the public announcement, it can be submitted on or before the ninetieth day of the insolvency commencement date.

c. That inasmuch as the resolution plan has been approved by the CoC and is sub judice before the Hon'ble AA for approval, the applicant may not be permitted to submit the claim at such a belated stage.

d. That allowing the instant application would tantamount to winding the clock back; which would be in grave departure from the object of the Code, i.e., value maximization of the corporate debtor in a time-bound manner

ix. In addition to the foregoing, it is respectfully submitted that as per Section 30(4) of the Code, the CoC may approve the resolution plan (with votes in favor not less than 66%) after considering its feasibility and viability. Thereafter, as per Section 31(1) of the Code, the resolution plan is to be approved by the Adjudicating Authority; upon approval of the resolution plan, it becomes binding upon the creditors of the corporate



debtor. Thus, it is trite that resolution plan attains finality upon its approval by the CoC. The Adjudicating Authority can only interfere with the resolution plan if it is in contravention of the provisions of Section 30(2) of the Code. In a catena of judgments of the Hon'ble Supreme of India, the commercial wisdom of the CoC has been held to be supreme. Therefore, the resolution plan once filed with the Adjudicating Authority cannot be modified to include the time-barred claims.

- x. That it is pertinent to mention herein that the claim of the Applicant is also not reflected in the Financials of the Corporate Debtor therefore, even at this stage the claim of the Applicant cannot be considered by the Respondent. The Judicial Precedents relied upon by the Applicant quite clearly show that the claims which are reflected in the financials of the Corporate Debtor have to be taken into consideration however, in the instant case, the claim of the Applicant is not reflected in the financial of the Corporate Debtor not even as a contingent liability.



- xi. It is submitted that the undecided claims of the creditors which do not form part of the Resolution Plan cannot suddenly be thrown at the Resolution Applicant. The Resolution Applicant must be aware as to what exactly has to be paid by the Resolution Applicant once plan is approved by the Adjudicating Authority.
- xii. Furthermore, it is Applicant's own case that as of insolvency commencement date, the claim of Applicant was not crystallized. It is only during the CIRP, dues have been crystallized vide Order in Original No. 09-CGST/ADC/MRT/2021 dated 25.06.2021.
- xiii. That in view of the submissions made hereinabove the Respondent prayed to dismiss the present application.

4. We have gone through the application and documents on record filed by both the parties and arguments advanced by counsels of both the parties.

5. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information



memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

6. We find that the in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, 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 relevant regulation is reproduced hereunder:

***“12. Submission of proof of claims. –***

*(1) xxxxxx*

*(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case*



*may be, on or before the ninetieth day of the insolvency commencement date.*

(3) *Xxxxx* ”

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7. Adverting to the facts of the present case, the public announcement was made on i.e., 07.03.2019 according to which last date for submission of the claim was 18.03.2019. The Committee of creditors had approved the resolution plan in its 13<sup>th</sup> COC meeting held on 25.08.2021. The applicants had submitted their respective claim on 16.08.2021 after more than 2 years (899 days) from Insolvency Commencement date.

8. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 30.05.2019. The application for approval of the Resolution Plan as approved by the Committee of Creditors was filed to the Adjudicating Authority on 07.10.2021.

9. It is pertinent to refer to the judgment of Hon’ble Supreme Court in the matter of *Essar Steel India Limited vs. Satish*



*Kumar Gupta & Ors (2020) 8 SCC 531 dated 15.11.2019 wherein it was held that "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."*

10. Further in the matter of Tata Capital Financial Services Limited and Ors. vs. Santanu T. Ray and Ors. (02.09.2021 - NCLT - Mumbai) : MANU/NC/3503/2021 in para 86 it was held as under : -

*86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to*



*RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. **The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.***



In the matter of *Assistant Commissioner of Customs Vs. Mr. Mathur Sabhapathy Viswanathan IRP of M/s. Leo Primecomp Pvt. Ltd. IA 814/IB/2020*, while considering an application of similar nature the Hon'ble NCLT in para 15 stated as under: -

*“15. ... The Applicant had been informed of commencement of CIRP by the Respondent. **The Applicant has failed to establish the reason for the delay in submission of the claim. This led us to the questions that why not the Respondent / RP take cognizance of outstanding statutory dues as per book of accounts of the Corporate Debtor. The Respondent has clearly stated that the alleged dues are not yet quantified and litigations under various authorities are pending. The Respondent has also stated that the Resolution Plan is pending for approval before CoC. Hence, we are of the view that there is no merit in this application. The Applicant has failed to reason out the delay in submission of claim, the quantified amount is also under dispute. Hence, at this fag end of CIRP, we cannot entertain this application.***

*16. In view of the foregoing discussions, the IA/814/1B/2020 stands dismissed. No cost.”*



11. It is admitted fact that claim of Applicant was not crystallized and it is only during the CIRP, dues have been crystallized vide Order in Original No. 09-CGST/ADC/MRT/2021 dated 25.06.2021 therefore, the claim of the Applicant was also not reflected in the Financials of the Corporate Debtor. Hence, the RP does not have the records of the dues of GST Department. The GST Department had sufficient opportunities to file the claim within time. Public Announcement was made on 07.02.2019 wherein last date for submission of claim was 19.02.2019. The applicant even failed to file the claim within the extended time period as provided in Regulation 12(2) of IBBI (CIRP) Regulations, 2016. The extended period expired on 30.05.2019 and the applicant filed its claim on 16.08.2021. If the claim of the applicant is admitted at this stage, then the very purpose of IBC would be defeated as discussed in the abovesaid judgements. Keeping in mind the very objective of the Insolvency and Bankruptcy Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of assets.



12. In view of the above, this Adjudicating Authority dismisses the application filed the applicant.

Sd/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**