

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CA No.163/ALD/2019
in
CP (IB) No.223/ALD/2018**

In the matter of

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

In the matter of

Supriyo Kumar Chaudhuri

Resolution Professional

(Now Liquidator of JVL Agro Industries Ltd)

...Applicant

Versus

1. Probal Dhara

Senior Intelligence Officer

Directorate General of GST Intelligence.

Kolkata Zonal Unit, Kolkata-700017(WB)

2. Sh. Ritesh Kumar Tripathi

Deputy Director

Directorate General of GST Intelligence

Kolkata Zonal Unit, Kolkata-700017(WB)

3. Sh. Dibyendu Chatterjee

Deputy Commissioner (CGST & CX),

Kolkata North Commissionerate

GST Bhawan, Kolkata-700017(WB)

...Respondents

In the matter of:

Standard Chartered Bank

...

Financial Creditor

Versus

JVL Agro Industries Ltd

...

Corporate Debtor

Order reserved on: 08.02.2022

Order pronounced on: 22.02.2022

Coram:

Shri Rajasekhar V. K.

: Member (Judicial)

Shri Virendra Kumar Gupta

: Member (Technical)

Appearances (via videoconferencing):

For Applicant

: Mr. Yash Tandon, Adv

For Respondents

: Mr. Abhradip Maity, Adv
Mr. Amitabrata Roy, Adv

—Sd—

ORDER

Rajasekhar V.K., Member (Judicial)

1. This is an application filed by the Resolution Professional (RP) (*now the liquidator*) under section 60(5) of IBC against the summons issued to the RP and his team for non-payment of pre-Corporate Insolvency Resolution Process (CIRP) dues and further for directions regarding acceptance of claims of GST dues of pre-CIRP period which have been submitted by various GST authorities after the due date.
2. It is submitted that the applicant has received claims from the GST Authorities in Kolkata, which could not be collated by RP on the ground of delay. Thereafter the applicant continued to receive notices and letters from the tax authorities, demanding payment of outstanding taxes for the pre-CIRP period prior to the commencement of CIRP of the corporate debtor. The authorities also issued summons to the RP.
3. Learned Counsel appeared on behalf of erstwhile RP (now the liquidator) and submitted that in the present matter, liquidation order has already been passed. In consonance with the circular dated 23.03.2020, a new GST registration was also taken by the RP for the Corporate Debtor. This registration is active and regular payments have also been made. Further, the GST authorities have also not expressed any objection for the same.
4. On the query of the Bench as whether the RP is taking part in those proceedings it is stated that when this application was filed way back in 2019 and summons were issued, there was some uncertainty between the GST Regime and the CIRP Regulations. Therefore, the GST authorities were forcing the erstwhile RP to pay the pre CIRP dues. The law has since been settled, that the pre-CIRP dues of taxing authorities are also operational debts. There is also no priority accorded under the IBC regime to crown debts. Therefore, no coercive measures were taken against the RP.
5. In any case, as recorded in the order dated 13.12.2019, learned counsel for respondents had submitted that no coercive steps shall be taken with regard to

—Sd—

the dues of pre CIRP period. The claim of the GST authorities has already been filed before the RP.

6. There has been no appearance on behalf of the respondents when the matter was called on various dates *i.e.*, 05.10.2021, 29.11.2021, 11.01.2022 and 08.02.2022, when the matter was heard and reserved for orders.
7. Heard the Learned counsel appearing for the applicant and perused the records.
8. The undisputed facts are that the CIRP was initiated on 25.07.2018 by the order of this Adjudicating Authority. The GST Authority, Kolkata has filed its claim in the prescribed form with the applicant on 06.04.2019. This was rejected by the applicant on ground of delay. The present application was filed on 01.05.2019; and the liquidation order was passed on 19.08.2020.
9. Meanwhile, *vide* circular No.134/04/2020-GST dated 23.03.2020, The Central Board of Indirect Taxes & Customs (CBIC) clarified how the dues under GST for pre-CIRP period should be dealt with. It was in accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues for the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim. Section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited. Further the Hon'ble Supreme Court in the case of "*Innovative Industries Limited v ICICI Bank Limited*" noted that the intention of the legislature behind providing the moratorium is "*to provide the debtors a breathing spell in which he is to seek to reorganise his business.*"¹

—Sd—

¹ (2018) 1 SCC 407

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10. Therefore, we hold that payment of pre-CIRP dues of the GST authorities cannot be made by the Resolution Professional as it falls within the definition of “operational debt” and the Code provides for a moratorium on all the past dues of the Corporate Debtor. Any pre-CIRP claim should be before the RP. No coercive action can be taken in this regard by the GST authorities.
 11. Now that the liquidation order has intervened and the liquidator has been appointed with effect from 19.08.2020, the GST Authorities are hereby directed to file their claims with the liquidator. Delay in filing the claims with the liquidator is hereby condoned in the facts and circumstances of this case. The liquidator shall, however, adjudicate the claims on merit, uninfluenced by the fact that the delay has been condoned.
 12. With the above directions, CA No.163/ALD/2019 stands disposed of.
 13. List the main CP for reporting progress on 30.03.2022.
 14. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.

—Sd—

Virendra Kumar Gupta
Member (Technical)

Swati Gupta (LRA)

—Sd—

Rajasekhar V.K.
Member (Judicial)