

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.205/2021
in
CP (IB) No.19/Chd/Chd/2018**

Under Section 31 of the IBC, 2016

In the matter of:

Small Industries Development
Bank of IndiaApplicant

Vs.

Mansa Print & Publishers Limited ...Respondent

And in the matter of IA No.205/2021:-

CA Jalesh Kumar Grover
Resolution Professional of
Mansa Print & Publishers Limited
having its registered address at
SCO 818, 1st Floor, NAC Manimajra,
Chandigarh- 160101
.....Applicant

Vs.

The Assistant Commissioner,
State Taxes and Excise
...Respondent

Order delivered on: 18.07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Resolution Professional : Mr. Bharat Chadha, Advocate

For the Respondent-Excise
Taxation Department : Mr. J.P. Bhatt, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application has been filed by Mr. Jalesh Kumar Grover Resolution Professional of Mansa Print & Publishers Limited (hereinafter referred to as 'Applicant') against The Assistant Commissioner, State Taxes and Excise (Hereinafter referred to as 'Respondent') under Section 31 of Insolvency and Bankruptcy Code, 2016

2. The applicant has prayed to direct the respondent to issue necessary directions to the respondent to remove the lien marked over the revenue records properties of the corporate debtor for the dues prior to CIRP period and further to cooperate with the applicant for the successful implementation of the resolution plan as approved by this Adjudicating Authority by order dated 18.03.2020.

3. The brief facts of the case as stated in the application are that :-

i) The Corporate Insolvency Resolution Process was initiated in case of Corporate Debtor on 28.02.2019 and the applicant was appointed as IRP. Thereafter, in the 1st CoC Meeting held on 29.03.2019, the applicant has been appointed as Resolution Professional.

ii) The committee of creditors has approved the resolution plan of ANG Life Sciences (India) Ltd on 12.12.2019 with 100% voting share. Thereafter, This Adjudicating Authority by order dated 18.03.2020 in CA No. 55 of 2022 has also approved the resolution plan and the copy of the order is attached with the main application as Annexure A-3.

iii) In terms of the resolution plan approved by the adjudicating authority, no payments have been proposed for the operational creditors, including the

statutory authorities as the liquidation value due towards the Operational Creditors was NIL. The Resolution plan provides for the payment of Rs. 12 lakhs for the claims of workmen and 15 lakhs for the claims of the employees within the 30 days from Effective date.

iv) During the implementation of the resolution plan, it is noticed that the Central Excise and Taxation Department has created a lien which is duly marked in the revenue records of the Corporate Debtor by Rapat No. 703, dated 15.09.2020 for Rs.10,47,85,949 and the copy of the revenue records are attached with application as Annexure A-4

v) The applicant has intimated the respondent by letter dated 08.10.2022 to remove the lien created over the assets of the corporate debtor as the resolution plan has been approved by order dated 18.03.2020. It is mentioned by the applicant that the respondent Department had submitted an incomplete claim to the IRP and the applicant by email dated 10.12.2019 requested the respondent to submit the additional documents. However, the respondent has not filed any revised claim before the applicant.

vi) As per section 53 of the code, the payment of statutory dues ranks below after the payment of secured financial creditors. The Resolution Plan approved by the Adjudicating Authority is binding in nature on all the stakeholders of the Corporate Debtor, including the Central Government, State Government and local Authorities. Hence, the approved resolution plan is binding on all the stakeholders, including the respondent. Reliance is placed on the judgement of Hon'ble NCLAT in case of ***State of Haryana (Excise and Taxation) versus Uttam strips Ltd, Company Appeal (AT) (INS) No. 319 of 2020 dated 23.06.2020 and GGS Infrastructure Private***

Limited versus Commissioner of CGST and Central excise,
W.P.LD–VC–NO. 268 of 2020 dated 22.12.2020

4. The Excise and Taxation Department has filed its reply wherein it has been stated that the state has first charge over the assets of the Corporate Debtor as per Section 26 of HPVAT Act, 2005 and the action of the Department is as per the law. The department was within its right to create a lien by marking a read entry in respect of the land of the Corporate Debtor. The respondent has already lodged its claim in the prescribed Form C of Regulations by email dated 10.12.2019. It is contended that the respondents have also sent a reply to the liquidator when the department received an email asking for attested copies of the Assessment Orders. The Resolution Professional has not accepted the claim of the respondent. The respondents have relied upon the judgment of ***State Tax Officer vs. Rainbow Papers Ltd., CA No.2568/2020 decided on 06.09.2022*** wherein it has been held that GVAT department is a Secured Creditor in whose favour Security Interest is created by operation of law. The HPVAT Act and GVAT Act are analogous and deal with the same subject matter.

5. The applicant has filed rejoinder wherein it has been stated that the state government is bound by the resolution plan, once it is approved by the Adjudicating Authority. Reliance is placed on the judgement of Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (2021) ibclaw.in 54 SC*** wherein it has been held that

“95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the

Corporate Debtor and its employees, members, creditors, including Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;”

The relevant applicable Section 31 of the code is reproduced here below:-

Section 31: Approval of resolution plan.

*31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

6. It is also submitted that the claim of the respondent was completely time-barred and was filed after the last date of submission of the claim. It is further contended that commercial wisdom of the committee of creditors is paramount. Reliance is placed on the judgement of ***IDBI Bank Vs. Ms. Mamta Binani RP, Deccan Chronicle Holdings Ltd Company Appeal (AT) (Insolvency) No. 553 of 2019 dated 02.09.2022*** holding that

“31. In view of the principle laid down in the above two judgments, when the Appellant is dissenting Creditor, Appellant is not competent to challenge the approved Resolution Plan and file an Appeal under Section 61 of IBC before this Tribunal. Applying the principle laid down in the above judgments, we hold that the Appellant being a dissenting secured Financial

Creditor is not entitled to challenge Resolution Plan on the ground of discrimination by filing separate Interlocutory Application without challenging the approved Resolution Plan. Accordingly, the point is held against the Appellant and in favour of the Respondent.”

7. We have heard the counsel for the applicant and the respondent and have pursued the records carefully.

8. We have observed that the resolution plan was approved by this Adjudicating Authority on 18.03.2020 and the lien was created by the department on 15.09.2020 over the assets of the corporate debtor for the dues pertaining to pre-CIRP period.

9. The relevant Part of resolution plan as approved by this Adjudicating Authority is reproduced below :-

“Operational Creditors- Suppliers of goods/ services

As per information memorandum, Claims have been received under The category of creditors having dues for supply of Goods and Services. The available liquidation value to this class of creditors is Nil, hence, the Resolution Applicant has not proposed any amount under this category.

The detail of the claim & proposal under the Resolution Plan is as follows;

(Amount in Rs. Crores)

Category of Operational Creditor	Total Amount Claimed	Claim Admitted	Amount proposed	% of claim admitted
Supplier of Goods & services	10.72	5.43	0.00	Nil

10. It is seen from the records that the department has filed the claim by Email dated 10.12.2019 and the applicant has requested to send the attested copies of the Assessment orders and details of occurrence of debt. The

respondents have stated that they had relevant documents on the same date, but no response was received from the Resolution Professional in respect of the claims filed by the Department.

11. It is also observed that the respondent has neither filed any application before this tribunal over non- admission of claims by the Resolution Professional nor filed any appeal to approval of Resolution Plan before Appellate Authority.

12. Reliance is placed on the Judgement of Hon'ble NCLAT in the case of ***Kalyan Dombivali Municipal Corporation Versus NRC Limited Company Appeal (AT) (Insolvency) No. 223 of 2021 dated 20.12.2022*** wherein it has been observed that:-

“13. xxxxxx

Moreover, it has now been settled that if the claims are not submitted to the RP and are not part of the resolution plan then the same shall be deemed to have been extinguished. In this regard, decision of three judge bench judgment of the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons (Supra) is referred which read as under:

“95.(i)once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

.....

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

13. With regard to the respondents claim that despite compliance with the provisions of IBC, their claim was not acknowledged by the RP/Liquidator, we observe that the respondent had the option of going in appeal against such rejection. However, the same has not been done.

14. The lien in the present case has been carried out by the department under Section 26 of HP VAT Act, 2005 after the initiation of CIRP and during the moratorium period. The respondent has also filed its claim before the Resolution Professional. However, in the approved Resolution Plan, no amount was proposed to be paid to the respondent under Section 53 of the Code. As laid down in Section 238 of the Code, the provisions of the IBC override the other laws. Thus, the lien recorded by the respondent is neither justified nor tenable under the provisions of the Code.

15. In view of the aforementioned judgement and discussions, the present application is allowed with the direction to Excise and Taxation Department to remove the lien over the properties of the corporate debtor within 15 days of this order and in these Circumstances, IA No. 205/2021 is allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 18, 2023

SA/PRF