

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

IA No. 2598/MB/C-I/2021

**In
C.P (IB) No. 920/MB/C-I/2020**

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

Filed by
**Deputy Commissioner of Customs, Group-1A,
Import-II Comissionerate,Mumbai, Zone-I**

...Applicant

Versus

**Mr. Milind Khasodekar
Resolution Professional of Uttam Galva Steels
Limited**

...Respondent

In the matter of

State Bank of India

...Financial Creditor

Versus

Uttam Galva Steels Limited ... Corporate Debtor

Order Pronounced on: 14.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

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Appearances:

For the Applicant : Mr. Amar Mishra, Advocate
For the Respondent : Mr. Chetan Kapadia, Advocate

ORDER

Per Coram:

1. The present Application is filed seeking the following reliefs:
 - i. Condone the delay of 7 days in filing the present application
 - ii. Condonation of delay of 302 days in submitting proof of claim to the Respondent
 - iii. Admission of the claim of the Applicant
 - iv. Issuance of direction to the Resolution Professional to admit the claim of the Applicant
2. The Applicant submits that the claim against the Corporate Debtor is arising out of misclassification of goods under CTH 27011920 in the bill of entry No.6396802 dated 29.03.2012 with BCD 'NIL' and CVD 1% with the benefit of Sr. No. 123 of Notification No. 12/2012- Cus whereas the goods are rightly classifiable under CTH 27011200 with BCD @ 5% and CVD 6% with benefit Sr. No. 124 of Notification No. 12/2012 dated 17.03.2012.
3. The aforesaid misclassification resulted in short paid customs duty

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amounting to Rs.2,23,43,829/- (Two Crore Twenty Three Lakh Forty Three Thousand Eight Hundred and Twenty Nine Only). The said demand was confirmed by the Commissioner of Customs (import), Zone-I, Mumbai along with interest and penalty vide Original-in-Order No. CAO No. 55/2014/CAC/CC(I)AB dated 30.04.2014. The Corporate Debtor has preferred an appeal against the aforesaid order before the Hon'ble Customs Excise and Service Tax Appellate Tribunal ("CESTAT") and the same is still pending adjudication.

4. The Applicant submits that the Resolution Professional made a public announcement on 06.10.2020 and declared that that the last date for receipt of claims is 20.10.2020. The Applicant states that it has belatedly lodged its claim amounting to Rs.5,53,91,897/- on 18.08.2021, which was rejected by the Resolution Professional on the ground of delay.
5. The Respondent vide email dated 19.08.2021 informed the Applicant that the Resolution Plan has been approved by the CoC and hence, the claim cannot be considered.
6. The Applicant vide Additional Affidavit dated 13.04.2022 submits that the delay is caused as the nation was under lockdown in wake of the Covid-19 pandemic and has further relied on order passed by the Supreme Court in MA 21 of 2022 in MA 665/2021 in Suo Moto Writ Petition No. 3/2020 for extension of limitation period from 15.02.2020

till 28.02.2022.

Submissions made by the Respondent:

7. The Respondent submits the claim of the Applicant was submitted 302 days after the last day of submission of claims and therefore could not be entertained.
8. Further, the Applicant claim is not crystallized as on the date of commencement of CIRP against the Corporate Debtor in view of an appeal filed by the Corporate Debtor in respect of the same claim amount before the Hon'ble CESTAT.
9. The Respondent has relied on the decision of the Appellate Tribunal (New Dehli) (NCLAT) in the matter of Mukul Kumar vs M/s RPS Infrastructure (Company Appeal (AT)(Ins.) No. 1050 of 2020 dated 30.07.2021 wherein it is held as under:

“34. With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated. Hon'ble Supreme Court in the case

of CoC of Essar Steel India Ltd. (Supra) held as under:-

88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. 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. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

Findings

10. We have perused the records and heard the parties, we observed that the

delay of 302 days on part of the Applicant in submission of the claim form cannot be condoned at such a belated stage when the Resolution Plan is already approved by the CoC on 02.06.2021 and is pending approval from this bench. Further, the Applicant submitted the plan on 18.08.2021 which is after the additional period until 90th day of the insolvency commencement date.

11. Further, the contention of the Applicant that the delay be condoned in light of the order passed by the Supreme Court in *MA 21 of 2022 in MA 665/2021 in Suo Moto Writ Petition No. 3/2020*, the Hon'ble NCLAT in the matter of *Harish Polymer Product v George Samuel and Anr.* (Company Appeal (AT) (Ins.) No. 420 of 2021 while adjudicating a matter having similar facts held as under:

“8. The Nationwide lockdown was imposed on 25th March, 2020. When the period of 90 days expired on 17th March, 2020, if Regulation 12(2) read with Regulation 40C is kept in view, the Appellant cannot take advantage by claiming that because of the COVID-19 situation, the Appellant could not file the claim with the Resolution Professional. Submitting of the claim cannot be equated with filing of the application so as to rely on the judgment of the Hon'ble Supreme Court referred above. It is admitted position that already Resolution Plan has been approved and perusal of the record shows that after much efforts the Resolution

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*Professional could take the CIRP to the stage of approval of Resolution
Plan.”*

12. In the present case the claim has been filed after the approval of Resolution Plan by the CoC. In the light of the decision of the Hon’ble Appellate Tribunal (supra) the instant application is **IA No. 2598 of 2021 in CP (IB) No. 920 of 2020** is dismissed.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
14.10.2022
SAM

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)