IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA No. 2754 of 2022
IN
CP (IB) No. 918/MB/C-II/2020

In the Application of IA No.2754 of 2022

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

Department of State Tax
through the Deputy Commissioner of State Tax, (MUM-VAT-E-612)/(MUIVI-LTU-514), LTU-2, Mum, Cabin No.C-3, 4th Floor, Old Building, GST Bhavan, Mazgaon, Mumbai 400010.

… Applicant

V/s

IGOPL Offshore Private Ltd
Represented by Mr. Bhavesh Rathod, the Resolution Professional.
Floral Deck Plaza, a-Wing, 6th Floor, Unit Nos. 603-606, Central Opp., Seepz Rd A, Seepz,
Mumbai-400093

… Respondent

In the matter of

IGOPL Offshore Private Ltd

…Corporate Debtor

Order Delivered on : 09.10.2023

Coram:

Hon'ble Member (Technical)	**Hon'ble Member (Judicial)**
Mr. Anil Raj Chellan	**Mr. Kuldip Kumar Kareer**

Appearances:

For the Applicant	:	Adv. Sonal Darbar i/b
		Adv. Amar Mishra
For the Respondent	:	Adv. Yahya Batatawala a/w
		Adv. Uma Chatterjee

ORDER

Per: Anil Raj Chellan, Member Technical

1. The present application is filed by Department of State Tax, through Deputy Commissioner of State Tax, Government of Maharashtra under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) for directing the Respondent, the Resolution Professional for IGOPL Offshore Private Limited ('the Corporate Debtor') to register the claim of the Applicant submitted vide Form B (proof of claim by Operational Creditor) dated 05.05.2022 against the Corporate Debtor under the Code, and to stay the hearing and final disposal of the Application for

approval of the Resolution Plan during the pendency of this application.

2. Brief facts of the case leading to the filing of the present application are as under:

2.1 On a petition filed u/s.10 of the Code, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process ('CIRP') pursuant to an order passed by this Tribunal on 15.01.2021 and Mr. Bhavesh Rathod was appointed as Interim Resolution Professional (IRP). The IRP, as required under Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 ('CIRP Regulations') made public announcement/advertisement in newspapers on 22.01.2021 and invited claims with 04.02.2021 as the last date for submission of claims. The Applicant came to know regarding the initiation of CIRP of the Corporate Debtor on 15.04.2021 through an email from the Respondent and thereafter, the Applicant filed its claim in Form B for an amount of Rs.4,61,942/- on 05.05.2022 which was rejected by the Respondent on 10.05.2022.

2.2 While rejecting the claim the Respondent sated that the Resolution Plan in respect of the Corporate Debtor had already been approved by Committee of Creditors (‘CoC’) and filed before the Tribunal and that Respondent had no power to consider the request for admission/modification of claims or any of the liabilities of the Corporate Debtor at this stage.

Contentions of the Applicant

3. The Applicant raised the following contentions:

3.1 The resolution plan is yet to be approved by the Tribunal;

3.2 Regulation 14 of the CIRP Regulations, clearly state that IRP/RP shall make best estimate of the amount of claim based on information available with him. To buttress the above contention, the Applicant relied the decision of Hon’ble NCLT in *State Bank of India v. ARGL Ltd* where it was observed as under:

“.....It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are

to be collected in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in cases there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days."

The claim of the Applicant is statutory dues which is duly reflected in the financial statements of the Corporate Debtor and the same cannot be rejected like any other ordinary claim filed by other creditors. The IRP/RP is duty bound to get the said books of account audited and checked to ascertain the assets and liabilities of the Corporate Debtor, so that the proper resolution plan could be evolved for all the stake holders.

3.3 The Applicant raised that the timeline stipulated under Regulation 12 (2) had been held to be directory.

Contentions of the Respondent

4. The Respondent filed his reply stating that the CoC had already approved the Resolution Plan under Section 30 of the Code with 100% majority in its meeting held on 09.09.2021 and an application had been filed for approval of the Resolution Plan by the Hon'ble NCLT. The above application had also been heard on 28.07.2022 and reserved for orders. Hence, the present application cannot be considered at this stage.

5. In support of the above, the Respondent relied on the following decisions:

   (a) Harish Polymer Product Vs. Mr. George Samuel, Company Appeal (AT) (Insolvency) No.420 of 2021;

   (b) Office of the Asst. State Tax Commissioner, State Tax Department, Government of Maharashtra Vs. Shri. Prithiv Parikh; Company Appeal (AT) (Ins) No.583 of 2020,

   (c) Mukul Kumar Vs.M/s. RPS Infrastructure, Company Appeal (AT) (Ins) No.1050 of 2020.

Analysis and Findings

6. We have heard the Advocates appearing for the parties and perused the documents on records.

7. The main contention of the Applicant is that the claim of the Applicant being statutory dues are duly reflected in the financial statements of the Corporate Debtor and the IRP/RP is duty bound to get the said books of account audited and checked to ascertain the assets and liabilities of the Corporate Debtor. In support of the above, the Applicant also placed reliance on the decision of the Hon'ble Principal Bench, NCLT in *State Bank of India vs. AGRL Ltd (Supra)*. In the present application, it is observed that the claim of the Applicant is arising under DRC-07 issued by the Applicant dated 05.05.2022 and there is no case/evidence on record to prove that the claim of Applicant was reflected in the books of accounts of the Corporate Debtor. Further, it cannot be reasonably expected of the IRP/RP to prepare the books of accounts of the Corporate Debtor for the audit period subsequent to the CIRP Commencement Date, which in the present case was 15/01/2021,

for the purpose of determining the claim/liabilities of the Corporate Debtor which got crystallized on 05.05.2022 though it is for the period 2018-19. In the circumstances, the decision referred by the Applicant is not applicable in the facts and circumstances of the present case and the argument of the Applicant does not merit consideration.

8. As regards the contention of the Applicant that the timeline stipulated under Regulation 12 (2) of the CIRP Regulations, had been held to be directory, the Hon'ble Supreme Court in the case of *M/s. RPS Infrastructure Limited v. Mukul Kumar & Another* considered the above and observed that "....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". Thus, the time period stipulated in CIRP Regulations, even if considered as directory in nature, the facts of the case should justify its extension.

9. It is pertinent to mention here that Respondent invited claims with last date for submission of claims as 04.02.21. Thereafter, based on

the claims received, Information Memorandum issued, Resolution plans received, one plan approved by CoC, and the application for approval of Resolution plan was also heard and reserved by the Adjudicating Authority. Thus, there is no doubt that the claim of the Application was submitted at a belated stage i.e. much after the 90th day from the insolvency commencement date as specified in Regulation 12 of the CIRP Regulations. Admission of claims at such belated stage, more particularly after approval of the Resolution Plan by the CoC, was considered by Hon'ble Supreme Court in the case of *M/s. RPS Infrastructure Ltd (Supra)*, the Hon'ble NCLAT in the case of *Harish Polymer Product vs. Mr. George Samuel and others (Supra); Office of the Asst. State Tax Commissioner, State Tax Department, Government of Maharashtra vs. Shri. Parthiv Parikh and others (Supra)*, and in many other cases, and rejected the claims taking into consideration the objectives of the Code and the adverse impact on the resolution of corporate insolvency within the timeframe.

10. It is also observed from the records that the Respondent vide his email dated 15.04.2021 informed the Applicant intimating the

initiation of CIRP of Corporate Debtor, and the Applicant filed his claim on 05.05.2022 ie. more than one year later knowing about the CIRP process of Corporate Debtor. The Applicant ought to have been more vigilant and cannot seek preferential treatment on account of the claim being statutory dues.

11. The Counsel appearing for the Respondent, during the hearing on 27.09.2023 also submitted that the Resolution Plan as approved by the CoC had been approved by this Tribunal by order dated 11.11.2022 and the Resolution Plan is duly implemented.

12. In the facts and circumstances of the case, we do not see any merit in allowing the reliefs sought in the application.

13. In view of the above, the **Application bearing No. 2754 of 2022 is dismissed.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)