

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

**IA No. 1018 of 2023**

**IN**

**MA No. 1721 of 2019**

**IN**

**CP(IB) No. 1371 of 2017**

**AND**

**CP(IB) No. 1372 of 2017**

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

**IA No. 1018 of 2023**

**In the Application of**

**Patanjali Foods Limited (Formerly**

**Known As Ruchi Soya Industries Limited)**

**...Applicant**

**Versus**

**Additional Commissioner of Customs, Kandla  
and Anr.**

**...Respondents**

**In the matter of**

**Shailendra Ajmera**

**...Applicant**

**In the matter of**

**Standard Chartered Bank and**

**DBS Bank Limited**

**...Financial Creditors**

**Versus**

**Ruchi Soya Industries Limited**

**...Corporate Debtor**

**Order Delivered on : 13.02.2024**

***Coram:***

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

***Appearances:***

For the Applicant : Mr. J. P. Sen, Senior Advocate

For the Respondent : Mr. Subir Kumar, Sr. Standing Counsel,  
Ms. Disha Shah, Advocate

**ORDER**

***Per: Virendrasingh Bisht, Member (Judicial)***

1. This Application bearing **IA No. 1018/2023** is filed by Patanjali Foods Limited, formerly known as Ruchi Soya Industries Limited (“**Applicant**”) in the Corporate Insolvency Resolution Process (“**CIRP**”) of Ruchi Soya Industries Limited (“**Corporate Debtor**”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) seeking the following reliefs :

a) That this Tribunal be pleased to quash and / or set aside the Order dated 21.11.2022 bearing reference no.KDL/ADC/RHM/24/2022-23 passed by Respondent No.1 and / or any further notices / orders that may be issued by the Respondent(s) and / or any other officers under them and / or any other officers in furtherance of the above Order and further direct the Respondent(s) and / or any other officer / department / authority / person acting through or under them, to not initiate any proceedings / raise any demand / claims for any amount (including interest) in relation to / furtherance of or to take any steps or actions (coercive or otherwise) in relation to / furtherance of the above Notices and / or Order;

- b) That this Tribunal be pleased to direct the Respondents and / or any other relevant officer in the concerned department to refund to the Applicant, the aggregate sum of Rs.95,21,009/- being the drawback amount of Rs.90,31,365/- (deposited by the Appellant under protest towards drawback amount) and Rs.4,89,644/- (deposited by the Appellant under protest against interest) along with statutory interest accrued thereon;
- c) That pending the hearing and final disposal of the present Application, this Tribunal be pleased to quash and / or set aside or in the alternative to stay the effect, operation and implementation of the Order dated 21.11.2022 bearing reference no. KDL/ADC/RHM/24/2022-23 passed by Respondent No.1 and any further notices / orders that may be issued by the Respondent(s) and / or any other officers under them and / or any other officers in furtherance of the above Order;
- d) That pending the hearing and final disposal of the present Application, this Tribunal be pleased to direct the Respondent(s) and / or any other officer / department / authority / person acting through or under them, to not take any steps, coercive or otherwise, attaching any accounts / assets of the Applicant and / or to recover any liability / dues, in furtherance of the Order dated 21.11.2022 bearing reference no.KDL/ADC/RHM/24/2022-23 passed by Respondent No.1 and any further notices / orders that may be issued by the Respondent(s) and / or any other officers under them and / or any other officers in furtherance of the above Order;
- e) For ad interim / interim reliefs in terms of prayer clauses (c) and (d) above;

**Brief Facts**

2. The Applicant is engaged inter alia in the export of agriculture products including Soyabean De-Oiled Cake ("**DOC**"). The Applicant had exported Soyabean De-Oiled Cake from Kandla Port under the claim of drawback.
3. Respondent No.1 is the Additional Commissioner of Customs, who has passed the Impugned Order against the Applicant and raised a demand against the Applicant which relates to a period prior to the approval of the Resolution Plan. Respondent No.2 is the Commissioner of Customs (Appeals), Kandla, i.e. the officer having administrative charge with respect to Respondent No.1.
4. In the year 2009 – 2010, the Respondents conducted their investigation and issued various summons to the Applicant. It was the Respondents' case that:
  - 4.1 The Applicant had exported the said DOC while availing duty drawback and that the said DOC was purchased by the Applicant from various manufactures who had purchased the same from M/s Rama Phosphates Ltd., Indore, who had manufactured the same while availing the benefit of Rule 19(2) of the Central Excise Rules, 2002 by procuring hexane without payment of central excise duty;
  - 4.2 the said hexane procured without payment of central excise duty was used to manufacture the said DOC which was exported by the Appellant under claim of drawback @ 1% of the FOB value in terms of Chapter 23 of the drawback schedule as per relevant notifications; and
  - 4.3 that it appeared that the drawback claimed by the Applicant was not admissible on export of De-oiled Cake which was manufactured in terms of Rule 19(2) of the Central Excise Rules,

2002 by using excisable material (hexane) in respect of which duty had not been paid.

5. In response to the summons and during the course of investigation, the Applicant has deposited the duty as demanded by the Respondents “under protest” so as to avoid any interest liability, if any.
6. The Applicant has deposited a sum of Rs.95,21,009/- in the following manner:
  - 6.1 Vide the Applicant’s letter dated 06.08.2010, the Applicant deposited two demand drafts, one being DD No.542080 dated 06.08.2010 for Rs.90,31,365/- and DD No.542081 dated 06.08.2010 for Rs.22,44,975/-;
  - 6.2 Vide the letter dated 17.11.2010, the Applicant deposited two further demand drafts, one being DD No.875507 dated 16.11.2010 for Rs.4,89,644/- and DD No. 875508 dated 16.11.2010 for Rs. 3,83,878/-.
7. On 28.12.2010, Respondent No.1 issued a Show Cause Notice, whereby the Applicant was called upon to show cause, as to why duty drawback amounting to Rs.95,52,613/- on export of DOC during the period 2007-2008 to 31.12.2009 should not be disallowed and recovered under Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 and proviso to Section 28 of the Customs Act, 1962.
8. Vide the Letter dated 15.02.2013, the Applicant replied to the aforesaid show cause notice by filing a detailed reply dated 15.02.2013 while denying the allegations leveled in the said Show Cause Notice.

9. In the meantime, vide the Order dated 15.12.2017, this Tribunal initiated CIRP against Ruchi Soya Industries Ltd. In furtherance thereof, on 21.12.2017, a Public Notice was issued by the IRP inviting 'claims'.
10. No "claim" was filed by the Respondents in terms of the Show Cause Notice or otherwise.
11. The Patanjali Consortium submitted its Resolution Plan on 26.04.2019. On the basis of the claims verified by the RP, the total verified amount in respect of the Statutory Dues (Claims by Government Authorities) was a sum of Rs.44.96 crores. Against the verified amount of Rs.44.96 crores, the PAL Consortium proposed payment by the way of a sum of Rs.25 crores. This resolution plan was approved by the Committee of Creditors on 30.04.2019, with a majority of 96.95%.
12. This Tribunal, vide its Orders dated 24.07.2019 read with the Order dated 04.09.2019 has approved the Resolution Plan submitted by the Patanjali Consortium.
13. DBS Bank Ltd., Singapore challenged the Orders dated 24.07.2019 and 04.09.2019 vide Company Appeal (AT) (Insolvency) No.1068 of 2019. The Hon'ble NCLAT was pleased to dismiss Company Appeal (AT) (Insolvency) No.1068 of 2019 vide its Order dated 09.12.2019.
14. On 18.12.2019, the Patanjali Consortium made the payment in terms of the Resolution Plan and took over the Applicant. From 06.09.2019 till 18.12.2019, the Monitoring Agent was in charge of the Applicant. Further, on 24.06.2022, the name of the Applicant was changed from Ruchi Soya Industries Ltd. to Patanjali Foods Ltd.
15. Three years later, in October, 2022 and November, 2022, the Applicant was directed to attend personal hearings before Respondent No.1.
16. The Applicant filed an Additional Reply dated 11.11.2022 before Respondent No.1 inter alia stating that since the matter related to the

year 2007-09 and in view of no claims having been filed before the RP, the same stands extinguished and cannot be raised against the Applicant who has undergone successful CIRP.

17. Respondent No. 1 passed Order dated 21.11.2022 bearing Reference No. KDL/ADC/RHM/24/2022-23 passed by Respondent No.1 (“**Impugned Order**”) whereby Respondent No.1 has decided the Show Cause Notice No. F.No.IV(6)INV/RUI/37/09 dated 28.12.2010 (“**Show Cause Notice**”) and *inter alia* ordered that:

- 17.1 A sum of Rs.95,52,613/- be recovered from the Applicant in respect of duty drawback paid to the Applicant;
- 17.2 Interest be charged and recovered on Rs. 95,52,613/- under Section 28AB of the Customs Act, 1962 (“Customs Act”)
- 17.3 A sum of Rs.90,31,365/- be appropriated against the liability to be recovered and a sum of Rs.4,89,644/- against interest liability;
- 17.4 A penalty of Rs.5,21,248/- under Section 114 of the Customs Act; and
- 17.5 A penalty of Rs.10,00,000/- under Section 114AA of the Customs Act.

**Submissions made by the Ld. Counsel on behalf of the Applicant**

18. The Applicant submits that the Impugned Order relates for a period prior to the date of the approval of the Resolution Plan. A person having a claim, ought to have filed it with the Resolution Professional. The law is well settled that on the approval of a resolution plan, all liabilities relating to a period prior to the date of such approval stand extinguished i.e. claims that were filed stand extinguished in the manner dealt with in the plan and claims that were not filed stand extinguished and cannot be agitated again.

19. The Patanjali Consortium has taken over the Applicant on a ‘clean slate’ and Respondent No.1 cannot vide the Impugned Notices and Order seek

to create and/or impose claims on the Applicant for a period prior to the date of the approval of the Resolution Plan.

20. The Applicant also submits that as per the Order dated 04.09.2021 approving the Resolution Plan, anyone who has not filed their claim, cannot agitate the same again. The same reads as under:

*“(...) However, it is to be made clear that while approving the resolution plan, we have dealt with every aspect of the resolution plan in details and **all the claims which have been admitted during CIRP are being dealt with by us in terms of the resolution plan. Anyone who has not filed its claim then he will not have any right to agitate the same after the approval of the resolution plan.**”*

21. The Applicant also states that in view of Section 32A of the Code, no proceedings/prosecution can be commenced against the Applicant either, as threatened in the said Impugned Order.

22. The Patanjali Consortium has taken over the Applicant on a ‘clean slate’ and Respondent No.1 cannot vide the Impugned Notices and Order seek to create and/or impose claims on the Applicant for a period prior to the date of the approval of the Resolution Plan.

23. The Applicant has relied on the following judgement to support its contention :

- a. Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors decided by the Hon’ble Supreme Court of India [(2020) 8 SCC 531]
- b. Ghanshyam Mishra & Ors. v. Edelweiss Asset Reconstruction Company decided by the Hon’ble Supreme Court of India [(2021) 9 SCC 657]
- c. Ruchi Soya Industries Ltd. v. Union of India & Ors. decided by the Hon’ble Supreme Court of India [(2022) 6 SCC 343]

24. The Respondents have contended that the Tribunal does not have the jurisdiction to pass the Orders being sought for. In that regard, the Applicant submits that the Tribunal has time and again exercised powers under Section 60(5) and granted similar reliefs to the Applicant in recent Orders. Additionally, in cases where the Tribunal did not grant reliefs to the Applicant on the ground of jurisdiction, the Hon'ble NCLAT has set aside the same and quashed demands/orders which relate prior to the CIRP.
25. The Applicant also submits that the Respondents are making a "further claim" and are passing an Order whereby the monies already deposited are being adjusted. It is submitted that the same is incorrect as in the event the Respondents had any claim, they ought to have filed the same with the RP and would have thereafter received monies proportionately. The Respondents have no right to unilaterally try and set off monies deposited with them and adjusting any amount payable by staying outside the IBC proceedings. This would lead to a situation where creditors with securities will not file their claim and simply seek to unilaterally adjust the claims by staying outside the IBC proceedings. The same is contrary to the scheme of the IBC.

**Submissions made by the Ld. Counsel on behalf of the Respondent**

26. The Respondent submits that the present IA ought to be dismissed at the outset as this Tribunal is not the appropriate forum for agitating the reliefs prayed by the Applicant. The Applicant ought to have filed an appeal under Section 128A of the Customs Act, 1962 read with Rule 3 of the Custom Appeal Rules, 1982 within 60 days of the date of communication of the Order. However, the Applicant did not file the appeal in time and has filed this IA after the expiry of appeal period and so, the Applicant is being estopped by his conduct from claiming the pre-deposited amounts.

27. It is the Respondent's case that the manufacturers have procured hexane by availing the benefit under Rule 19(2) of Custom Excise Rules, 2002 and used the same for manufacture of DOC and sold the same to the Corporate Debtor. Further, the entire quantity of DOC manufactured by them has been manufactured using hexane procured without payment of duty and hence duty drawback at 1% FOB value is not admissible to the Corporate Debtor on the export of such DOC and the duty drawback amounting to Rs. 95,52,613 erroneously paid to the Corporate Debtor under Rule 16 of the Customs Central Excise Duty Service Tax Drawback Rules, 1995 is liable for recovery under Proviso 2 of Section 28(1) of the Customs Act, 1962, along with interest at the appropriate rate under Section 75 read with Section 28AB.
28. The Respondent further states that their claim involves sums already paid by the Corporate Debtor, hence it cannot be construed that the Order dated 21.11.2022 makes provisioning towards the "further claim" after Resolution Plan being approved by the Adjudicating Authority, it would in fact related to the pre-deposited/already appropriated amounts of the year 2010 which cannot be asked to be forfeited or refunded by the Corporate Debtor.
29. The Respondent also states that the Resolution Professional, while preparing the Information memorandum ought to have included the statutory dues which would have reflected as liability of the Corporate Debtor towards the Respondents in the books of accounts of the Corporate Debtor. In addition to the above, the Respondent states that a Resolution Plan which is not in conformity with Section 30(2) cannot be approved and may be rejected by the Adjudicating Authority using its discretionary powers and such a Resolution Plan would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditors to whom a debt in respect of dues arising under any law for the time being in force is owed.

**Findings**

30. Heard learned Counsel and perused the material available on record.

31. The issue before us is whether the demand by the Respondent No. 1 vide Order dated 21.11.2022 bearing Reference No. KDL/ADC/RHM/24/2022-23 whereby Respondent No.1 has decided the Show Cause Notice No. F.No.IV(6)INV/RUI/37/09 dated 28.12.2010 can be raised at a stage where the CIRP of the Corporate Debtor has been successfully concluded and the Corporate Debtor is now being managed by the Successful Resolution Applicant, when it was not filed as a claim before the Resolution Professional.

32. We are of the opinion that this proposition is squarely covered in the decision of the Hon'ble Supreme Court of India in the matter of Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. Where 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 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;*

*(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;*

*(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.*

33. In light of the above decision, it is abundantly clear that the demand raised by the Respondent No.1 does not hold at this stage, as the dues relate to a period prior to the date of the Approval of the Resolution Plan of the Corporate Debtor. The Respondents also failed to file their claim with the Resolution Professional and are now in no position to question the validity and binding status of the Resolution Plan as approved by the Tribunal.
34. The Applicant has also prayed for the refund of the amount deposited under protest towards drawback amount and interest. In this regard, we find it prudent to rely on the decision of the Hon'ble Supreme Court in the matter of Ruchi Soya Industries Limited (Supra) where the Apex Court held that as on the date of the approval of the Resolution Plan by the NCLT, all claims stood frozen, and no claim, which is not part of the Resolution Plan, would survive and accordingly directed that the amount deposited by the Appellants at the time of admission of Appeals be refunded.
35. In the present case also, the Applicant had deposited a sum of Rs. 95,21,009/- towards the purported demand which came to be finally adjudicated on 22.11.2022, which is after the date of approval of the Resolution Plan. It is further noted that no claim has been filed by the Respondents in this case and the money deposited at the notice stage has not been appropriated prior to commencement of CIRP. In view of this, no claim of the Respondent could be admitted at this stage leaving the pre-deposit unappropriated to the credit of the Corporate Debtor, i.e. the Applicant. Accordingly, we direct the Respondent to refund this amount to the Corporate Debtor within 30 days from the date of communication of this Order.

36. Accordingly, IA No. 1018/2023 is allowed.

Sd/-

**Prabhat Kumar**

Member (Technical)

/SP/

Sd/-

**Justice V.G. Bisht**

Member (Judicial)