

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-II
KOLKATA**

**IA. (IB) No. 242/KB/2022
And
IA. (IB) No. 478/KB/2022
And
IA. (IB) No. 697/KB/2022
And
IA. (IB) No. 698/KB/2022
In
C.P. (IB) No. 1374/KB/2020**

In the matter of :
BIL Infratech Limited

... Corporate Applicant

-And-

IA. (IB) No. 242/KB/2022

*An application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of

West Bengal Medical Services Corporation Limited

...Applicant

Versus

Mr. Subodh Kumar Agarwal,
Resolution Professional of BIL Infratech Limited

...Respondent

-And-

IA. (IB) No. 478/KB/2022

*An application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of

V. K. Bansal & Co.

...Applicant

Versus

1. BIL Infratech Limited
2. Mr. Subodh Kumar Agarwal,
Resolution Professional of BIL Infratech Limited

...Respondent

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IA. (IB) No. 242/KB/2022, IA. (IB) No. 478/KB/2022, IA. (IB) No. 697/KB/2022, IA. (IB)
No. 698/KB/2022

-And-

IA. (IB) No. 697/KB/2022

*An application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of

Commercial Tax & G.S.T. Officer, C.T. & G.S.T. Circle, Bhubaneswar-IV,
Bhubaneswar, Odisha

...Applicant

Versus

Mr. Subodh Kumar Agarwal,
Resolution Professional of BIL Infratech Limited

...Respondent

-And-

IA. (IB) No. 698/KB/2022

*An application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of

Commercial Tax & G.S.T. Officer, C.T. & G.S.T. Circle, Bhubaneswar-I,
Bhubaneswar, Odisha

...Applicant

Versus

Mr. Subodh Kumar Agarwal,
Resolution Professional of BIL Infratech Limited

...Respondent

-And-

Order Pronounced on :10 February 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

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Counsels appeared through hybrid mode

Mr. Subodh Agarwal, PCS	:	Resolution Professional
Ms. Iram Hassan, Advocate	:	For the Applicant in I.A. 242 of 2022
Mr. Sanket Sarawgi, Advocate	:	
Mr. Subhojit Ghosh, Advocate	:	
Mr. Hansraj Jaria, PCS	:	For the Applicant in I.A. 478 of 2022
Mr. Sidharth Padhy, Advocate	:	For the Applicant in I.A. 697 & 698 of 2022.

COMMON ORDER

[IA. (IB) No. 242/KB/2022, IA. (IB) No. 478/KB/2022, IA. (IB) No. 697/KB/2022, IA. (IB) No. 698/KB/2022]

Per: Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. A common order is being passed in **IA. (IB) No. 242/KB/2022, IA. (IB) No. 478/KB/2022, IA. (IB) No. 697/KB/2022** and **IA. (IB) No. 698/KB/2022** as the prayer sought in the I.A.s are common and relate to condonation of delay in filing their claims.

IA. (IB) No. 242/KB/2022

3. This IA has been filed by West Bengal Medical Services Corporation Limited [“WBMSCL”] praying for setting aside the rejection of its claim by the Resolution Professional by its direction dated 27 December 2021 and for setting aside of the direction dated 27 December, 2021 of the Resolution Professional by which alleged counterclaims have been made by the Resolution Professional on behalf of the BIL Infratech Limited being the corporate applicant against the Applicant.
4. The learned Advocate submitted that on 06 April, 2017, there was a contract entered into between WBMSCL and the Corporate Applicant, wherein, the Corporate Applicant had to build a building of a tertiary healthcare hospital at Belda, West Bengal.
5. The learned Advocate submitted Corporate Applicant was in breach and did not do anything and ultimately abandoned the work on 28 April

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No. 698/KB/2022

2019, the scheduled date of completion of the hospital was 30 November 2018. Thereafter, upon the Corporate Applicant's request, extension was granted to complete the project as per Master Schedule Plan. Several letters were exchanged between the parties, including letter dated 29th April 2019, issued by the applicant to the Corporate Applicant, pointing out several breaches and letter dated 26th December 2019 requesting them to remedy the breach.

6. The Corporate Applicant has time and again made frivolous excuse of Elections in 2019 and the cyclone Bulbul to evade their responsibilities. The Corporate Applicant also did not extend the performance bank guarantee, which was its obligation under the contract. Evidently, the Corporate Applicant was in breach of contract, whereupon, the WBMSCL terminated the contract on 20 October 2020 and steps were taken for arbitration by its letter dated 13 July 2021.
7. On 28 July 2021, the corporate applicant was admitted in CIRP. WBMSCL is primarily responsible for rendering medical services in West Bengal and during the Covid-19 pandemic, its officers were extremely preoccupied in serving the nation.
8. On 10 September 2021, WBMSCL lodged its claim, which was rejected on 27 December 2021 and counterclaims were made by the Resolution Professional. The Resolution Professional rejected the claims on 27 December 2021, by adjudicating thereon.
9. The learned Counsel submitted that the order of rejection should be set aside since Resolution Professional has no power of adjudication. The learned Counsel placed reliance on *Swiss Ribbons Pvt. Ltd and Anr v. Union of India and Ors reported in (2019) 4 SCC 17* (para 88), *NTPC Limited v. Rajiv Chakraborty IRP of ERA Infra Limited (2020 SCC Online NCLAT 1061 and S. Rajendran, Resolution Professional v. Jonathan Muralidarane, 2019 SCCOnline NCLAT 758*, (para 3).
10. Hence, the Resolution Professional has no power to make counterclaims.

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No. 698/KB/2022**

Analysis and Findings

11. We have heard the learned Authorised Representative appearing on behalf of the Applicant and the Resolution Professional and have perused the record.
12. The Corporate Debtor was admitted into CIRP on 28 July 2021, the Resolution Professional published Form A on 29 July 2021 calling for submissions of claims from the creditors of the Corporate Debtor.
13. The last date for submission of claims was 11 August 2021. The Applicant filed its claim with the Resolution Professional on 26 February 2022 which was rejected by the Resolution Professional *vide* email dated 01 March 2022.
14. At this stage, an order of liquidation has been passed in I.A. (IB) 482/KB/2022, and the office of the Resolution Professional becomes *functus officio*, which makes this I.A. infructuous.
15. The applicant may now submit its claim before the Liquidator, if it so chooses.
16. Under the above circumstances, I.A. (IB) No. 242/KB/2022 is disposed of as infructuous.

I.A. (IB) No. 478/KB/2022

17. This I.A. has been filed by Mr. Vikram Bansal, as Proprietor of V.K. Bansal & Co. seeking condonation of delay in submission of claim before the Resolution Professional of BIL Infratech Limited (“Corporate Applicant”) and direction upon the Resolution Professional to process the claim submitted by the Applicant.
18. The learned Authorised Representative submitted that the Corporate Applicant owes Rs.37,15,420.37/- to the Applicant. The Corporate Debtor was admitted into CIRP *vide* order dated 28 July 2021 and public announcement was made on 29 July 2021 and the last date of submission of claim was 11 August 2021.
19. It is further submitted that during the said period, the Proprietor of the Applicant was suffering from high blood sugar and other ailments and

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IA. (IB) No. 242/KB/2022, IA. (IB) No. 478/KB/2022, IA. (IB) No. 697/KB/2022, IA. (IB) No. 698/KB/2022

was medically unfit and under strict bed rest as per the medical recommendation of the medical practitioner.

20. The Applicant was unaware of the commencement of the CIRP and the Public Announcement. The Applicant submitted its claim on 26 February 2022 which was rejected by the Respondent *vide* email dated 01 March 2022 wherein the Resolution Professional had expressed his inability to accept the claim owing to the delay in submission of the claim beyond 90 days from the date of commencement of CIRP.

Analysis and Findings

21. We have heard the learned Authorised Representative appearing on behalf of the Applicant and the Resolution Professional and have perused the record.

22. The Corporate Debtor was admitted into CIRP on 28 July 2021, the Resolution Professional published Form A on 29 July 2021 calling for submissions of claims from the creditors of the Corporate Debtor.

23. The last date for submission of claims was 11 August 2021. The Applicant filed its claim with the Resolution Professional on 26 February 2022 which was rejected by the Resolution Professional *vide* email dated 01 March 2022.

24. At this stage, an order of liquidation has been passed in I.A. (IB) 482/KB/2022, and the office of the Resolution Professional becomes *functus officio*, which makes this I.A. infructuous.

25. The applicant may now submit its claim before the Liquidator, if it so chooses.

26. Under the above circumstances, I.A. (IB) No. 478/KB/2022 is disposed of as infructuous.

IA. (IB) No. 697/KB/2022

27. This I.A. has been filed on 13 May 2022, by Commercial Tax & G.S.T. Officer, C.T. & G.S.T. Circle, Bhubaneswar-IV, seeking condonation of delay in submission of claim before the Resolution Professional of BIL Infratech Limited (“Corporate Applicant”) and direction upon the Resolution Professional to process the claim submitted by the Applicant.

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No. 698/KB/2022**

28. The Corporate Debtor was carrying on business activities within the State of Odisha and has been assessed under the Odisha Goods and Services Tax Act, 2017 for various tax periods from 01 April 2019 to 31 January 2021 and orders of assessments dated 09 March 2021, 24 March 2021, 26 March 2021 and 22 September 2021 in statutory Form GST DRC-07 have been passed raising a total tax, interest, and penalty of demand of Rs.1,45,53,540/-.
29. The learned Counsel submitted that only during the last week of October 2021, it came to the knowledge of the Applicant that the Corporate Debtor was undergoing Corporate Insolvency Resolution Process (“CIRP”).
30. The Corporate Debtor was admitted into CIRP *vide* order dated 28 July 2021. The learned Counsel further submitted that no public announcement in Form A was made in any of the regional dallies of Odisha.
31. The learned Counsel submitted that due to Covid-19 restrictions, the normal functioning of the offices of the Applicant was disrupted, hence the proper track of the status of assesses having arrear tax liabilities could not be maintained.
32. Therefore, the Applicant could not submit the claim within the time fixed in the public announcement.
33. The Applicant submitted its proof of claim in Form-B on 01 Novmeber 2021 along with an application explaining the reasons of delay to the Resolution Professional *via* post and email.
34. The learned Counsel submits that since no reply was received, the Applicant sent a reminder email on 15 March 2022. The Respondent *vide* email dated 20 March 2022 referred to its email dated 03 November 2021 wherein the Resolution Professional had expressed his inability to accept the claim owing to the delay in submission of the claim beyond 90 days from the date of commencement of CIRP.

Analysis and Findings

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35. We have heard the learned Counsel appearing on behalf of the Applicant and the Resolution Professional and have perused the record.
36. The Corporate Debtor was admitted into CIRP on 28 July 2021, the Resolution Professional published Form A on 29 July 2021 calling for submissions of claims from the creditors of the Corporate Debtor.
37. The last date for submission of claims was 11 August 2021. The Applicant filed its claim with the Resolution Professional on 01 November 2021 which was rejected by the Resolution Professional *vide* email dated 03 November 2021.
38. At this stage, an order of liquidation has been passed in I.A. (IB) 482/KB/2022, and the office of the Resolution Professional becomes *functus officio*, which makes this I.A. infructuous.
39. The applicant may now submit its claim before the Liquidator, if it so chooses.
40. Under the above circumstances, I.A. (IB) No. 697/KB/2022 is disposed of as infructuous.

IA. (IB) No. 698/KB/2022

41. This I.A. has been filed on 13 Amy 2022, by Commercial Tax & G.S.T. Officer, C.T. & G.S.T. Circle, Bhubaneswar-I, seeking condonation of delay in submission of claim before the Resolution Professional of BIL Infratech Limited (“Corporate Applicant”) and direction upon the Resolution Professional to process the claim submitted by the Applicant.
42. The Corporate Debtor was carrying on business activities within the State of Odisha and has been assessed under the Odisha Value Added Tax Act, 2004 and Central Sales Tax (Orissa) Rules, 1957 for tax periods from 01 April 2011 to 31 March 2014 and orders of assessment dated 30 September 3029 and 16 February 2016 respectively have been passed raising a total tax, interest and penalty demand of Rs.43,59,553/. The Corporate Debtor having paid a sum of Rs.3,01,937/- only, the balance outstanding of Rs.40,57,616/- remains.
43. The learned Counsel submitted that only during the last week of October 2021, it came to the knowledge of the Applicant that the Corporate

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Debtor was undergoing Corporate Insolvency Resolution Process (“CIRP”).

44. The Corporate Debtor was admitted into CIRP *vide* order dated 28 July 2021. The learned Counsel further submitted that no public announcement in Form A was made in any of the regional dallies of Odisha.
45. The learned Counsel submitted that due to Covid-19 restrictions, the normal functioning of the offices of the Applicant was disrupted, hence the proper track of the status of assesses having arrear tax liabilities could not be maintained.
46. Therefore, the Applicant could not submit the claim within the time fixed in the public announcement.
47. The Applicant submitted its proof of claim in Form-B on 02 November 2021 along with an application explaining the reasons of delay to the Resolution Professional *via* post and email.
48. The learned Counsel submits that since no reply was received, the Applicant sent a reminder email on 11 March 2022. The Respondent *vide* email dated 20 March 2022 referred to its email dated 03 November 2021 wherein the Resolution Professional had expressed his inability to accept the claim owing to the delay in submission of the claim beyond 90 days from the date of commencement of CIRP.

Analysis and Findings

49. We have heard the learned Counsel appearing on behalf of the Applicant and the Resolution Professional and have perused the record.
50. The Corporate Debtor was admitted into CIRP on 28 July 2021, the Resolution Professional published Form A on 29 July 2021 calling for submissions of claims from the creditors of the Corporate Debtor.
51. The last date for submission of claims was 11 August 2021. The Applicant filed its claim with the Resolution Professional on 02 November 2021 which was rejected by the Resolution Professional *vide* email dated 03 November 2021.

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52. At this stage, an order of liquidation has been passed in I.A. (IB) 482/KB/2022, and the office of the Resolution Professional becomes *functus officio*, which makes this I.A. infructuous.
53. The applicant may now submit its claim before the Liquidator, if it so chooses.
54. Under the above circumstances, I.A. (IB) No. 698/KB/2022 is disposed of as infructuous.
- 55. The liquidator shall consider all these claims on their merits, uninfluenced by the fact that the delay in submission of these claims before the liquidator has been condoned by this Adjudicating Authority.**
56. The Registry shall e-mail copy of this order to the Counsel on record for the Applicants and for the Respondents, and the Resolution Professional, for information and for taking necessary steps.
57. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 10th day of February 2023.

GGRB_LRA