



**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 6221/2022**

**IN**

**Company Petition No. (IB) – 937/(PB)/2018**

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

**IN THE MATTER OF:**

CORPORATION BANK

.... PETITIONER

**VERSUS**

M/S. UNITECH MACHINES LTD.

.... RESPONDENT

**AND IN THE MATTER OF-**

EXCISE & TAXATION OFFICER-CUM-ASSESSING  
AUTHORITY, WARD-1, GURUGRAM (NORTH), HARYANA

.... APPLICANT

**VERSUS**

M/S. UNITECH MACHINES LTD.

...RESPONDENT NO 1/  
CORPORATE DEBTOR

MR. VIVEK RAHEJA RESOLUTION PROFESSIONAL FOR  
M/S. UNITECH MACHINES LTD.

...RESPONDENT NO 2/  
RESOLUTION PROFESSIONAL



**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

For the Applicant: Dr. Hemant Gupta and Mr. Shivang Jain, Adv(s)  
For the RP: :Mr. Vivek Raheja, Resolution Professional, Mr.  
Abhishek Anand Adv., Mr. Mohak Sharma Adv.  
& Ms. Supriyo Banerjee Adv

**ORDER**

**PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**Order Pronounced on: 09.11.2023**

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking condonation of delay in filing the claims before the IRP/RP against M/s. Unitech Machines Ltd (Corporate Debtor).

2. The applicant in the present application has prayed for the following reliefs: -

*a) To condone the delay of around 621 days in filing of claims by the applicant with IRP/RD and pass a consequential direction to the RP to consider and include*



*the claim for an amount of Rs. 30,94,52,897/- calculated as on 02.02.2021, pertaining to the Applicant Department.*

*b) To pass any other/further orders(s) which this Hon'ble Tribunal may deem fit and proper keeping in mind the facts and circumstances of the case in the interest of justice.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That the Applicant is an Excise & Taxation Officer-cum Assessing Authority, Gurugram (North), Haryana and the Corporate Debtor / Assessee is a registered dealer under the Haryana Value Added Tax (HV AT) Act, 2003 as well as under the Central Sales Tax (CST) Act, 1956 with TIN No.06131818003 and was assessed at Gurugram, Haryana. Being a registered dealer, the Assessee was required to file the quarterly returns in Form VAT R-1 under the HVAT Act and Form-I under the CST Act for the financial years under assessment.



- ii. That CIRP of CD commenced on 01.03.2019 and IRP was appointed.
- iii. That the publication so effected by the IRP escaped to the notice of the applicant department. Thus, the claim could not be submitted within the period prescribed in public announcement.
- iv. That there was a complete failure of performance of statutory duties at the end of the IRP/RP who failed to take any suitable steps in accordance with the provisions of IBC. It is submitted that the Applicant filed its claims pertaining to the A Y 2014-15, 2015-16, 2016-17 and 2017-18 for an amount of Rs.25,04,280/-, Rs.31,91,030/-, Rs.25,33,44,320/-, Rs.5,04,13,267 /- respectively, total amounting Rs.30,94,52,897/-
- v. That the Applicant was not having any information pertaining to commencement of CIRP against CD. It is submitted that the Applicant came to know about the commencement of CIRP proceedings on 01.12.2020 when the Applicant was trying to attach the property of the CD in order to recover its statutory dues



- vi. That the RP ought to have included all the statutory claim of the Corporate Debtor suo moto.
- vii. That the delay was neither intentional nor deliberate. Hence, the preset application should be allowed.

4. The Resolution Professional of the Corporate Debtor has filed reply to the present applicants. The defence taken by the Resolution Professional, respondent herein, are stated in brief as below: -

- i. That the Applicant through the present application is seeking directions against the Resolution Professional to accept the claim of the Applicant and to further condone the delay of around 700 days in filing of the claims by the Applicant under the purview of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”). In the instant case, the Adjudicating Authority passed the CIRP order under Section 7 on 01.03.2019 and pursuant thereto the CIRP order was communicated to the Respondent on 05.03.2019.
- ii. That the Respondent made the public announcement on 05.03.2019 and the Committee of Creditors was



constituted on 28.03.2019. That pursuant to the formation of the CoC the Respondent in furtherance of his duties, had convened, held, and conducted the meeting of the Committee of Creditors. The 11th CoC meeting was held on 23.07.2021 wherein, the Resolution Plan was considered by the members of the CoC.

iii. That the Respondent had conducted the 12th and 13th CoC meetings on 29.07.2021 and 21.08.2021 respectively wherein, the Resolution Plan had gyrated in a whirlpool of negotiations until the negotiations could attain quietus in the 13th meeting of CoC (2nd round) convened on 25.08.2021. In the said adjourned meeting the Resolution Plan was approved by the CoC members with 89.97% voting shares. Pursuant to the approval of the Resolution Plan by the members of the CoC, the Respondent filed an application on 07.10.2021 for the approval of the Resolution Plan before this Adjudicating Authority.

iv. That the Applicant vide letter dated 02.02.2021 submitted its claim by filing Schedule FORM B, seeking



admission of its claim i.e., after expiry of 700 days as calculated from the date of public announcement (05.03.2019) till the date of filing of FORM B by the Applicant (02.02.2021). That the Respondent vide email dated 05.09.2022 rejected the claim of the Applicant on the ground that the claim was filed at a belated stage.

- v. That it is pertinent to mention herein that the mandate of Regulation 12(2) of the CIRP Regulations, 2016 is quite clear that the claim has to be filed within 90 days from the Insolvency Commencement however, in the instant case the claim has been filed after the lapse of 700 days.
- vi. That the Applicant herein is an Operational Creditor under Section 5(20) of the Code and as per Regulation 8 read with Regulations 6 & 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the claims can be filed for consideration of the IRP/RP within the stipulated time i.e., 90 days from the Insolvency Commencement date



- vii. It is submitted that the undecided claims of the creditors which do not form part of the Resolution Plan cannot suddenly be thrown at the Resolution Applicant. The Resolution Applicant must be aware as to what exactly has to be paid by the Resolution Applicant once plan is approved by the Adjudicating Authority.
- viii. Thus, in view of the aforesaid facts and circumstances, and in terms of settled position of law, the present Application is misconceived, untenable in the eyes of law and therefore, should be dismissed.

5. We have gone through the application and documents on record filed by both the parties and arguments advanced by counsels of both the parties.

6. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant



all relevant information so that the resolution applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC, 2016.

7. In the present case, the public announcement was made on i.e., 05.03.2019 according to which last date for submission of the claim was 18.03.2019. The Information Memorandum (hereinafter referred to as IM) was prepared by the RP on 01.06.2019 and the IM was shared with the PRA(s) on 01.07.2019. The Resolution Applicant submitted its resolution plan on 22.08.2019. Further, after multiple rounds of negotiations between the CoC and the Resolution Applicant, the Resolution Applicant revised the Resolution Plan and finally on 25.08.2021, the Resolution Plan was approved by members of COC in its 13<sup>th</sup> meeting with 89.97% voting shares. The applicants had submitted their respective claim on 02.02.2021 after approx. 687 days from the last date of submission of claims as per the Public Announcement. The application for approval of the Resolution Plan as approved by the Committee of Creditors was filed to the Adjudicating



Authority on 07.10.2021. Since, the claim of the applicant was not part of the Information Memorandum, the Resolution Applicant could not have included the claim of the applicant.

8. It is pertinent to refer to the judgment of Hon'ble Supreme Court in the matter of *Essar Steel India Limited vs. Satish Kumar Gupta & Ors* (2020) 8 SCC 531 dated 15.11.2019 wherein it was held that *"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."*

9. Further in the matter of *Tata Capital Financial Services Limited and Ors. vs. Santanu T. Ray and Ors.* (02.09.2021 -



NCLT - Mumbai) : MANU/NC/3503/2021 in para 86 it was held as under : -

*86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. **The legislative intent behind this is, to freeze all the claims so that the resolution applicant***



***starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.***

10. The Hon'ble Supreme Court very recently in the matter of *RPS Infrastructure Ltd. vs. Mukul Kumar and Ors.* (11.09.2023 - SC) : MANU/SC/1001/2023 held as under: -

19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. 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. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. **We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect. The result, of course, is that the Appellant to an extent has been left high and dry.**

20. **Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public**



**announcement of the CIRP through newspapers. This would constitute deemed knowledge on the Appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.**

**21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.**

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the Appellant. **We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.**

**23. The result of the aforesaid is that the appeal is dismissed** leaving the parties to bear their own costs.

11. Keeping in mind the very objective of the Insolvency and Bankruptcy Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of



assets and based on the judgement of Hon'ble Supreme Court in the matter of *RPS Infrastructure Ltd. vs. Mukul Kumar and Ors.* (11.09.2023 - SC): MANU/SC/1001/2023 this Adjudicating Authority dismisses the application filed the applicant.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**