

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1417/KB/2023

In

Company Petition (IB) No. 82/KB/2019

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.***

IN THE MATTER OF:

Rahul Carbon Commercials Private Limited

... Operational Creditor.

Verses

Kohinoor Steel Private Limited

... Corporate Debtor.

And

IN THE MATTER OF:

**Income Tax Department, through Mr. Siddharth Kumar Pandey,
S/O - Surendra Kumar Pandey, R/O- Sonari, Jamshedpur,
Jharkhand,**

**Income Tax Officer, TDS Ward Jamshedpur, Jharkhand, its
Headquarter at Income Tax Building, B.C. Patel Path Road, Patna
- 800001, Bihar.**

... Intervener/Petitioner.

Verses

**Kohinoor Steel Private Limited (Corporate Debtor), Registered
Address at: 16A, Everest House 45C, Jawaharlal Nehru Road,
Kolkata - 700071.**

... Respondent.

Date of Pronouncement: February 29, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

**For the Resolution Professional: Ms. Urmila Chakraborty, Adv.
Mr. S. Dawn, Adv.**

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ORDER

PER D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.
3. This Application has been filed by the Income Tax Department, TDS Jamshedpur (hereinafter called as “Petitioner” against the Resolution Professional of Kohinoor Steel Private Limited (hereinafter called “Respondent/RP) seeking direction to RP to clear the TDS dues of the Corporate Debtor (Kohinoor Steel Private Limited) to the tune of Rs. 4,31,090/-.

Factual Matrix:

4. The Corporate Debtor was put into CIRP in November 2019 by an Order of this Adjudicating Authority and accordingly public announcement was made announcing the date of submission of the claim to be December 4, 2019.
5. The Applicant filed its claim in the prescribed form on 25th November 2022, which is nearly 3 years after the due date for submission of the claim.
6. The Applicant is not praying for condonation of delay in filing the claim with RP and instead asking for direction of payment of alleged TDS dues of Rs. 4,31,090.

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Petitioner's submissions:

- 7.** The Petitioner submits that they were unaware of the CIRP proceedings of the Corporate Debtor and when they became aware, they submitted the claim with the Resolution Professional on 25.11.2022, by way of a demand notice.
- 8.** Further, it is submitted that the claim in the prescribed form for Rs. 4,31,090/- for outstanding TDS in the case of the Corporate Debtor was submitted in the capacity of operational Creditor on 9.12.2022. Further, it is claimed that as the Corporate Debtor's registered office is in Bangalore, the public announcement made was not known to the Applicant's office situated in the state of Jharkhand.
- 9.** Further, it is contended that the demand notices were issued on 15.11.2019 and 05.02.2020 to the Corporate Debtor. However, no cognizance of the above notices was taken by the Resolution Professional of the Corporate Debtor.
- 10.** It is further contended that at least six such demand notices have been sent to the Resolution Professional and yet he ignored the same. He relied on the decision rendered by the **Principal Bench of the NCLT, New Delhi**, in **SBI v. APGL Ltd**, in **(IB)-531(PB)/2019** wherein it was held that it was irrelevant whether the claim was lodged or not since the government dues would always be reflected in the books of accounts of the Corporate Debtor and the Resolution Professional would be required to take

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cognizance of the dues as per the books of accounts. Therefore, the application has to be allowed.

Respondent's Submissions per contra:

- 11.** The Learned Counsel, Ms. Urmila Chakraborty appearing on behalf of Resolution Professional (RP) submits that such TDS dues are not reflected in the books of accounts of the Corporate Debtor and hence case law relied on by the Applicant is not applicable in the present case.
- 12.** She further submits that as a creditor of a Corporate Debtor, during the CIRP, must first lodge its claim within the time prescribed.
- 13.** She would contend that no payment could be made to any creditor during the moratorium period as this will lead to preferential payment to one creditor over others and therefore notices received in 2019 and 2022 could not be entertained in the absence of reflection of such dues in the books of Accounts of the Corporate Debtor.
- 14.** We would note that on November 30, 2023, the matter was reserved for order and none appeared for the petitioner. We have further noted that the petitioner is not being represented for quite some time. Thus, we decided to proceed and consider the case of the petitioner on merits and based on the documents available with us.

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Analysis and Findings:

- 15.** It is evident that the TDS dues have not been reflected in the books of accounts of Corporate Debtor, in the absence of which, Respondent is correct in saying that the Applicant ought to have submitted the claim within the time limit prescribed. He is also right in saying that the decision rendered by the **Principal Bench of the NCLT, New Delhi**, in ***SBI v. APGL Ltd***, would not be applicable in this case, as dues were not reflected in the books of accounts of the Corporate Debtor in case at hand.
- 16.** We find that the Resolution Professional finally rejected the claim of the Applicant on 27.04.2023, whereas this application has been filed on 03.08.2023, long after 96 days after the receipt of the rejection from RP.
- 17.** In this case, the reasons for the delay in preferring the appeal have not been spelt out. On the other hand, the Applicant by relying on the judgement of the Principal Bench of the NCLT in ***Edelweiss Asset Reconstruction Company Ltd*** appears to be canvassing that delay by an Applicant, like the present one will have to be ignored or condoned.
- 18.** We would note that there is no merit in such argument. The reasons for the delay in lodging the claim and delay in preferring an appeal against the rejection decision of the liquidator will have

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to be explained and the applicant should have sought for condonation of such delay with sufficient reasons, in the absence of which we are inclined to dismiss this application and while doing so, we rely on the following judgements:

a. In *Deputy Commissioner, UTGST, Daman Vs. Rajeev Dhingra IRP* reported in (2023) ibclaw.in 592 NCLAT at para 44, it was held that:

“From a plain reading of the CIRP Regulation 12, RP can accept the claim as per extended period as provided in CIRP Regulation 12(2). After extended period of 90 days of the insolvency commencement date, the IRP/RP is not obliged to accept the claim. Prima-facie, the said CIRP regulation has not provided any discretion to RP for admitting their claim after the extended period. Therefore, when a resolution plan has already been received and approved by the CoC, we are inclined to agree that if the claims of creditors are accepted at a belated stage after the stipulated time provided for submitting claims, then the possibility of resolution plan failing to materialize becomes very high and tantamount to defeat the objectives of IBC making the CIRP a time bound process.”

(Emphasis supplied)

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b. Further, in **V.K. Abdul Rahim Vs. Jasin Jose, RP/Liquidator** reported in (2023) **ibclaw.in 632 NCLAT**, the Hon'ble NCLAT has taken a view that:

*“20. This Tribunal, is of the considered view that **IBC is a time bound process** and the Liquidator cannot accept a belated Claim, which would go against with the provisions of the IBC, 2016 as well as the scope and objective of the `Code`. It is also seen from the record that the Appellant had made every effort to derail the process and this Tribunal, does not find any substantial grounds to interfere with the well-reasoned order of the Adjudicating Authority.”*

(Emphasis supplied)

c. Further, we are fortified by the decision of a Coordinate Bench. NCLT, Chennai Bench in the matter of **Employees State Insurance Corporation vs. Chinnam Poorna Chandra Rao** reported in [2020] **ibclaw.in 180 NCLAT** where it was held that *the extraordinary delay [...] in submission of claim by applicant, is devoid of merits. Further in interest of Justice also we could not condone the delay as sought for. If such extraordinary delay is condoned, it shall defeat the very purpose of the IBC, 2016.*

(Emphasis supplied)

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- 19.** In the view foregoing, we **dismiss** this application being **I.A. (IB) No. 1417/KB/2023** accordingly.
- 20.** No costs.
- 21.** Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 29th Day of February, 2024.

Tiwari. V. [LRA]/ Bose, R. K. [LRA]