

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

I.A. 2219 OF 2020

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Commercial Tax & GST Officer CT &
GST Circle, Bhubaneshwar-III,
Bhubaneshwar, Odisha

...Applicant

In the matter of

C.P.(IB) No. 1386/MB/2017

Ericsson India Pvt Ltd

Financial Creditor

Vs.

Reliance Telecom Ltd.

Corporate Debtor

Order delivered on: 26/10/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Maulik Bhansali, Advocate
For the Respondent/RP : Mr. Rishabh Jaisani, Advocate

ORDER

Per: V.G Bisht, Member (Judicial)

1. This Application IA 2219/2020 was filed by the Commercial Tax & GST Officer, C.T. & G.S.T. Bhubaneshwar III, Bhubaneshwar, Orissa (“Applicant”) in the matter of M/s Reliance Telecom Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking an order of this Tribunal for the condonation of delay in filing the claim in the Corporate Insolvency Resolution Process (“CIRP”) and for direction to the Resolution Professional Sh. Ashish Niranjana Nanavaty (“Respondent”).
2. This Tribunal vide order dated 15.05.2018 initiated the CIRP against the Corporate Debtor by admitting the application the creditor under the IBC, 2016 and Mr. Pradeep Kumar Sethi was appointed as the IRP. Further, the RP issued Public Announcement inviting claims on 07/05/2019 fixing the last date of submission as 21/05/2019. In the meantime, the respondent-Shri Anish Nanavaty has also been substituted as the Resolution Professional.

3. The Corporate Debtor, M/s. Reliance Telecom Limited, was carrying on its business activities within the State of Odisha and was registered within the jurisdiction of the Applicant under the erstwhile Orissa Value Added Tax Act, Orissa Entry Tax Act, 1999, Central Sales Tax (Orissa) Rules, 1957.

3.1. The Corporate Debtor was re-assessed under Orissa Entry Tax Act, 1999 for tax period of 01/04/2005 to 30/11/2009 vide order dated 22/10/2019 pursuant to the direction of the First Appellate Authority at the instance of the Corporate Debtor under the Orissa Entry Tax Act, 1999.

3.2. Similarly, the admitted entry tax dues since 2006 was paid by the Corporate Debtor, basing the interim order of stay passed by the Hon'ble High Court in a challenge to the vires of the Orissa Entry Tax Act and thereafter by the Hon'ble Supreme Court. The Hon'ble Apex Court vide order dated 28/03/2017 held the said Act as intra vires and as such the whole of the Entry Tax fell due for payment. In the manner stated above, the outstanding tax liabilities of the Corporate Debtor under the aforesaid taxing statutes stood at Rs.61,99,449/-

3.3. That the Assessing officer/applicant issued various demand notices to the declared place of business of the Corporate Debtor at Bhubaneswar, Odisha during 2019 which though received but no payment was made. The applicant-Assessing officer, once again vide notices dated 03/12/2019 and 10/06/2020 issued to the declared place of business of the

Corporate Debtor at Bhubaneswar, Odisha, demanded payment of the outstanding Tax dues. However, the said letters dated 03/12/2019 and 10/06/2020 returned un-served from the declared place of business and when the applicant sometime during July, 2020 contacted the local lawyer of the Corporate Debtor who usually appears in the Tax proceedings, the applicant came to know about initiation of the present Corporate Insolvency Resolution Process (CIRP) against the said Corporate Debtor.

3.4. That the applicant after having come to know about the present CIRP during July, 2020 in the manner stated above, made further enquiry and came to know that one of the Operational Creditor namely M/s. Ericsson India Pvt. Ltd. has initiated the present insolvency proceeding under IBC, 2016 against the Corporate Debtor.

3.5. That it none of the resolution professionals appointed by this Hon'ble Tribunal have ever published the public announcement in Form-A in any of the regional dailies in Odisha. As per Regulation 6 of the IBBI Regulations, 2016 the insolvency professional shall make public announcement in one English and regional daily with wide circulation at the location of the registered office of the Corporate Debtor as well as at its principal office and places where the Corporate Debtor conducts material business operation. In the present case, neither the initial public announcement dated 21.05.2018 nor the 'Public Announcement' in Form-A dated 07.05.2019 has

been published in any of the regional dailies in the State of Odisha notwithstanding the fact that the Corporate Debtor was conducting material business operations and was having principal place of business in the State of Odisha.

3.6. That further Shutdown and lockdown was declared throughout India including in the State of Odisha on account of COVID-19 pandemic since 23.03.2020. Owing to such restrictions, the normal functioning of the offices of the applicant has also been affected.

3.7. In the manner and for the reasons stated above, the petitioner although was having operational debt payable by the corporate debtor, yet could not submit the claim within the time fixed in the public announcement. It is only after coming to know about the initiation of such CIRP against the Corporate Debtor during July, 2020 and partial relaxation of the lockdown/shutdown restrictions, the petitioner submitted its proof of claim in Form-B on 12.08.2020 along with application explaining the reasons of delay to the respondent RP-Shri Anish

3.8. The Applicant filed a claim with the then IRP R P Mitali Shah vide email dated 12.08.2020 and was advised by the claim scrutinizer RBSA that the Respondent has substituted her as Resolution Professional, and also marked the mail of the applicant to the claim scrutiny agency engaged by the Respondent.

4. The Respondent has filed reply dated 19.04.2022 stating that the claim could not be accepted by him as the plan was approved on 4.3.2020 and the claim was submitted much after approval of the Plan. It was further submitted that the Respondent had made Public Announcement in the newspapers as required and mandated under the Regulation 6 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016, which requires publication at the place where the principal place of business of a Corporate Debtor is situated. The last date as per Public Announcement was 21.05.2019. It has also been disputed that the Applicant's communication dated 3.12.2019 and 10.6.2020 were not responded.
5. We heard the Counsel and perused the material available on record.
 - 5.1. We find that the last date for submission of claim was 21.05.2019; the Resolution Plan was approved by CoC on 4.3.2020; an application for the approval of Resolution Plan in IA 873 of 2020 was filed before this Tribunal on 6.4.2020 which is pending; and the Applicant filed its claim on 12.08.2020. It is also undisputed fact that the Corporate Debtor after initiation of the CIRP on 15.05.2018 has been issued with various notices regarding assessment as well as the demand letters dated 03.12.2019 & 10.06.2020, yet neither the Corporate Debtor nor the RP have ever intimated the petitioner about the present CIRP.
 - 5.2. It is Applicant's contention that it came to know about the commencement of CIRP only during the process of recovery of the demanded tax during July, 2020, and that the Respondent

has not made paper publication in any of the regional dailies in the State of Odisha, although the Corporate Debtor had substantial business activities in the State. Further, even though multiple show cause, letters and demand notices have been served upon the Corporate Debtor through e-mail but at no point of time either the Corporate Debtor or the RP has intimated the Applicant-Petitioner about the present CIRP proceeding. Further, the lockdown situation on account of COVID-19 prevailed in the country including State of Odisha since 23/03/2020. It is only after partial relaxation of the lockdown during August, 2020 the claim was submitted. But, the respondent-RP till date has not decided on the claim of the petitioner even though more than two months have elapsed in the meantime.

5.3. We also find that the amount of claim raised by the Applicant pertains to old outstanding demands which crystallised on 28.03.2017 after litigations reaching upto the level of Apex Court & another demand on 22.10.2019. CIRP in this case commenced on 15.05.2018. In so far as, demand of entry tax is concerned, we feel that this demand would have been part of contingent liability in the financial statements of the Corporate Debtor for the year ended on 31.03.2018 and prior years. As regards another demand arising out of re-assessment of tax liability for period from 01/04/2005 to 30/11/2009 is concerned, the said re-assessment took place pursuant to the remand by the first appellate authority, in which there was also a demand of tax. Hence, it can not be said that the information

in relation to these tax demands could not have been available in the books of accounts and records of the Corporate Debtor.

5.4. We find that the Hon'ble Supreme Court in the case of *M/s. RPS Infrastructure Ltd vs. Mukul Kumar & Another CIVIL APPEAL NO. 5590 OF 2021*, rejected the argument of the claimants that the Corporate debtor had not apprised it about CIRP process even during the course of Arbitration Hearing or the information about claimant's claim could have been ascertained from the Corporate Debtor's books of accounts, and held that -

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, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”

5.5. We also find that the Hon'ble Supreme Court rejected the contention of the Applicant relating to ascertainment of its claim from the books of accounts after taking note of the fact that *“Respondent no. 1 did what could be done to procure the Corporate Debtor's records by even moving an application under Section 19 of the IBC. That it was not fruitful is a consequence of the Corporate Debtor not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not”*.

5.6. In the present case, we find that there is nothing on record to suggest that the complete books of accounts or records of the Corporate Debtor were not available. To the contrary, the Corporate Debtor was a going concern at the time of commencement of CIRP, employing manpower in every vertical. The complete records were available in the ERP based accounting software. The claim was filed on 12.08.2020, though much after the plan was approved i.e. on 4.3.2020. However, considering the fact that the existence of demand

would be available in the records of the Corporate Debtor; the demand finally came to be raised pursuant to the decision of first appellate authority directing for re-determination of tax demand; and the plan is still not approved by this Tribunal, we consider it appropriate to condone the delay and direct the Resolution Professional to admit the claim after verification thereof.

6. In view of foregoing, IA 2219 of 2020 is allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)