THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA Nos.157/2021,592/2021
In
CP (IB) No.223/Chd/Hry/2018
(Admitted)

In the matter of:

Shri Amit Kansal …Petitioner-Operational Creditor

Versus

R.P. Basmati Rice Ltd. …Respondent-Corporate Debtor

And in the matter of:-

IA No.157/2021 **Under Section 60(5) of the IBC, 2016**

Ajit Kumar, Resolution Professional
of R.P. Basmati Rice Ltd.

….Applicant/RP

Versus

Income Tax Department, Karnal

….Respondent

And in the matter of:-

IA No.592/2021 **Under Section 60(5) of the IBC, 2016**

Excise and Taxation Commissioner, Haryana ….Applicant

Versus

Ajit Kumar, Resolution Professional
of R.P. Basmati Rice Ltd.

…Respondent/RP

Order delivered on 22.04.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing: -

IA No.157/2021

For the Applicant/RP	: Mr. Rakesh Gupta, Advocate Mr. Rakshit Gupta, Advocate
For the Respondent	: None

IA No.592/2021

For the Applicant	: Mr. Piyush Bansal, Advocate
For the Respondent/RP	: Mr. Rakesh Gupta, Advocate Mr. Rakshit Gupta, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.157/2021

The instant application filed by Resolution Professional against the Income Tax Department under Section 60(5) of the Code, prays for removing the lien marked over the bank account of the corporate debtor by the Income Tax Department.

2. It is submitted that this Adjudicating Authority vide its order dated 16.11.2018 admitted the petition filed by Operational Creditor and vide order dated 29.11.2018 imposed moratorium and appointed Mr. Harvinder Singh as an Interim Resolution Professional. Pursuant to the above orders for initiation of CIRP, the management and affairs of the Corporate Debtor were vested with Interim Resolution Profession as per clause (a) of sub-section (1) of Section 17 of Insolvency and Bankruptcy Code, 2016.

3. It is averred by the Applicant that the Bank Account of the corporate debtor maintained with State Bank of India has been attached by Income Tax Department (Respondent) under Section 226(3) of Income Tax Act, 1961. The details of the attached bank account is as follows:

ACCOUNT NO.	TYPE OF ACCOUNT	AMOUNT
10279741822	Current Account	Rs. 14,33,215.76/-

4. It is further submitted by the Applicant that the State Bank of India, being the lead Financial Creditor intimated the Applicant in the 5th CoC meeting qua marking of lien by the Respondent upon the bank accounts of the corporate debtor. It is contended that State Bank of India has prior lien on the bank accounts of the corporate debtor than the Respondent, and the same had been communicated by the said bank to the Respondent Income Tax Department.

5. It is averred by the Applicant that the respondent submitted their claim with the applicant/RP on 03.01.2019. However, even after filing their claim with the Applicant Resolution Professional of Rs.16,37,27,121/-, the Respondent has not removed the lien over the bank accounts of the corporate debtor.

6. Notices were served on the respondent and the service/compliance affidavits were filed by the applicant vide Diary No.00304/1 dated 03.08.2021 and Diary No.00304/2 dated 16.03.2022 respectively. Despite service of notice, none appeared on behalf of the respondent.

7. Admittedly, the above dues fall in the category of Operational Debt, as such, the respondent falls under the category of Operational Creditor. For the sake of clarity, the definition of Operational Creditor and Operational Debt are reproduced hereinbelow:

> *"Section 5 (20) "Operational Creditor" means a person to whom an operational debt is owned and includes any person to whom such debt has been legally assigned or transferred.*
>
> *Section 5 (21) "Operational Debt" means a claim in respect of the provisions of goods and services including employment or a debt in respect of the payment of dues arising under any law for time being in force and payable to the Central Government, any State Government or any local authority."*

8. In terms of the above definitions, the claim of the respondent is held to be an operational debt, and the respondent has already put their claim before IRP/RP in this regard. After lodging their claim with the Resolution Professional, the Income Tax Department has no further right to attach the bank account of the corporate debtor which otherwise should be now in the custody of the Resolution Professional.

9. It is further clarified that provisions under Section 238 of the I &B Code have overriding effect over all other law. For the sake of reference, the same is extracted below:

> *"Section 238: "Provision of this code to override other Laws- The Provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for time being in force or any instrument having effect by virtue of any such law.***"**

10. In the light of above discussion, we are of the considered view that the notice and act of the Income Tax Department under Section 226(3) of the Income Tax Act, 1961, is unjustified and shall now not be held good in view of the provisions of I&B Code.

11. Consequently, IA No. 157/2021 is allowed and the respondent is directed to remove the attachment lien marked by Income Tax Department Central Circle 2(2).

12. Accordingly, IA No. 157/2021 stands disposed of.

IA No.592/2021

The instant application is filed by the Excise and Taxation Commissioner, Haryana through the Excise and Taxation Officer under Section 60(5)(b) of the Code read with Rule 11 of the NCLT Rules, 2016, seeking acceptance of claim/revised claim regarding statutory dues of the department by the Resolution Professional.

2. It is submitted that the applicant filed a claim against the corporate debtor on 12.03.2019 on the basis of Assessment Orders dated 12.02.2019 and 05.03.2019 and the demands raised through Assessment Orders were not considered by the RP/Respondent.

3. The Respondent/Resolution Professional by its reply vide Diary No. 1271/2 dated 16.12.2021 has stated that the claim was declined on two grounds: firstly, the assessment order was passed in violation of the moratorium period as

envisaged under Section 14 of IBC; secondly, the claim was filed before the Resolution Professional after the expiry of the period of limitation. It is further stated that a meagre amount of Rs. 8.7 Lakhs has been earmarked in the Resolution Plan for Operational Creditor/ Creditors (statutory due) and the claim of the applicant if included, will lead to very minimal realization. He has also placed reliance on the decision of the Hon'ble NCLAT in ***Company Appeal (18) Insolvency No. 56 of 2021; the Assistant Commissioner of Central Taxes Vs. Mr. V. Shankar & others*** referring Para Nos.13, 14 and 15 wherein it is held that in case the tax authorities do not file claim within the time provided under Regulation 12(2) of the IBC, the same is bound to be rejected.

4. We have heard the learned counsel for the applicant as well as respondent and perused the records carefully.

5. The IBC stipulates that CIRP is a time-bound process meant for resolution of the Corporate Debtor, which is in the throes of insolvency. If no successful Resolution Applicant can be found during the CIRP period, the Corporate Debtor, which is otherwise operational as a going concern, will go into liquidation. This would mean corporate death of the Corporate Debtor, a situation which must be avoided. Sincere efforts for successful resolution of the Corporate Debtor should, therefore, be undertaken to revive and strengthen the financial and economic condition of the Corporate Debtor, so that it continues to function as a useful economic entity in the economy saving precious human and monetary capital.

6. Section 29 of the IBC provides for preparation of information memorandum as may be specified by the Insolvency and Bankruptcy Board of India for formulating a resolution plan. Section 29(1) of the IBC is reproduced hereunder:-

"29. Preparation of Information Memorandum.-xxxxxxx

(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.
(2) The Resolution professional shall provide to the resolution applicant access to all the relevant information in physical and electronic form, provided such resolution applicant undertakes-

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation. - For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor and any other matter of the corporate debtor as may be specified."

7**.** Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 outlines the process for submission of the Information Memorandum and contents to be included therein to each member of the Committee of Creditors within two weeks of IRP's appointment. It is to be noted that Regulation 36(2)(d) mentions that the Information Memorandum shall contain 'a list of creditors containing the names of creditors, the amounts claimed by them, the amounts of their claims admitted and the security interest, if any, in respect of such claims;'

among other particulars.

8**.** Further, in the same Regulations, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by financial and corporate debtor, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

> *"12. Submission of proof of claims.-*
>
> *xxxxxx*
>
> *(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*
>
> *Xxxxx "*

9. The purpose of issuing public notice is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor and the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors is to provide the Resolution Applicant all relevant information so that the applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC. Such Resolution Plan has to be submitted to the Resolution Professional under Section 30 of IBC, which is considered by the Committee of Creditors for approval and the final approval of the Resolution Plan is provided by the Adjudicating Authority under Section 31

of the IBC. It is quite logical to say that these actions have to be taken with alacrity so that the successful Resolution Applicant, if any, can take the reins of the management of the Corporate Debtor in good time for its proper management and consequent revival.

10. It is to be noted that the maximum period that could have been provided for submitting the claim is 90 days from the commencement of the CIRP i.e. 29.11.2018. Admittedly in this case the claim is filed by the applicant in proper form on 28.08.2019, which is much beyond the period of limitation. It is also noticed here that in the present case, the COC approved the Resolution plan on 12.02.2021. It is worthwhile to note that the present application before this Adjudicating Authority was filed on 28.09.2020 which is almost after 1 year and 1 months from the rejection of the claim, and just a few months before the approval of the Resolution Plan by the COC. The applicant has not mentioned any reasonable cause for the delay in filing the claim before RP or in filing the present petition before this tribunal. The present appeal has become infructuous since before this Appeal was filed, 7 (Seven) meetings of the COC had already taken place and the issue with regard to the claims had already crystallised in the Information Memorandum and one Prospective Resolution Applicant had already filed its resolution plan for revival of the corporate debtor based on, among other things, the claims were already collated by the RP. It is quite clear that there were delays and laches in filing the present application. We are of the considered view that in this case the delays and laches defeat the right of the Appellant to challenge the impugned rejection of claim.

11. The I&B Code expressly requires that the claim has to be filed within time. Further judgement of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel Ltd. Vs. Satish Kumar Gupta and Ors; [2019] ibclaw.in 07 SC***, has held that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after Resolution plan is submitted by him has been accepted as this would amount to be a hydra head popping up which would throw into the uncertainty and the amounts payable by the prospective Resolution Applicant who has taken over the business of the Corporate Debtor. All the 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 Corporate Debtor. This the Successful Resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.

12. The respondent has aptly relied upon the decision of the Hon'ble NCLAT in the case of the ***Assistant Commissioner of Central Taxes Vs. Mr. V. Shankar & others (supra)***, the relevant part of which is extracted below for the sake of clarity:

> "*13. It is apparent from the above that the Appellant was required to file claim in terms of IBC provisions but did not follow the procedure as laid down in the IBC read with regulations and did not duly file claim in proper format within time.************
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> *14. In the facts of the matter, we cannot find fault with Respondent No. 1 for not including such operational debt so as to be part of the Resolution Plan as necessary procedure was not followed. In IBC delay affects maximization of Value, and time bound steps for CIRP are prescribed. Reversal of stages, affects progress. Timely and duly taking steps by all stakeholders is material."*

13. In result to the above discussion, we do not find any merit in the appeal. Thus, the instant IA No. 592/2021 is dismissed and disposed of accordingly.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

April 22 ,2022
AV