

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

Interlocutory Applications:

I.A. (IB) No. 1058/KB/2022

And

I.A. (IB) No. 1908/KB/2023

And

I.A. (IB) No. 1873/KB/2023

And

I.A. (IB) NO. 19/KB/2024

In

Company Petition:

C.P. (IB) No. 250/KB/2021

IN THE MATTER OF:

SRF LIMITED

... Operational Creditor.

Versus

Birla Tyres Limited

... Corporate Debtor.

And

I.A. (IB) No. 1058/KB/2022

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

IN THE MATTER OF:

Sh. Prahlad Kumar, Prop. of Bharat Medical Hall

... Applicant.

Versus

Sh. Seikh Abdul Salam, Resolution Professional of M/s Birla Tyres Limited.

... Respondent.

And

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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I.A. (IB) No. 1058/KB/2022
I.A. (IB) No. 1908/KB/2023
I.A. (IB) No. 1873/KB/2023
I.A. (IB) No. 19/KB/2024
In
C.P. (IB) No. 250/KB/2021

I.A. (IB) No. 1908/KB/2023

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

IN THE MATTER OF:

**Assistant Commissioner, CGST & Central Excise, Balasore
Division**

... Applicant.

Versus

**Mr. Pratim Bayal Resolution Professional of M/s. Birla Tyres
Limited**

... Respondent/Resolution Professional.

And

I.A. No. 1873/KB/2023

*An application Sections 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

**Assistant Commissioner, CGST, Division-Badli, Delhi North
Commissionerate, 17B, I.A.E.A House, I.P. Estate, M.G. Marg,
New Delhi-110002.**

... Applicant.

Versus

**Mr. Pratim Bayal, Resolution Professional of M/s. Birla Tyres
Limited, 8th Floor, Birla Building, 9/1 R.N. Mukherjee Road,
Kolkata – 700001.**

... Respondent.

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In
C.P. (IB) No. 250/KB/2021

And

I.A. (IB) No. 19/KB/2024

*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:
IBC Impex Private Limited**

... Applicant.

Versus

Pratim Bayal, Resolution Professional for Birla Tyres

... Respondent.

Date of Pronouncement: February 23, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the RP:

**Mr. Shaunka Mitra, Adv.
Mr. Avishek Guha, Adv.
Ms. Arunika Dutta, Adv.
Mr. Amandeep Singh, Adv.
Mr. K. De Sarkar, Adv.
Mr. Pratim Bayal, RP.**

For the CGSTA in

I.A. No. 1873/KB/2023: Mr. U. Shankar Bhattacharya, Adv.

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For the CGSTA in

I.A. No. 1908/KB/2023: Mr. Tapan Bhanja, Adv.

For the Applicant in

I.A. No. 19/KB/2024: Ms. Alisha Khan, Adv.

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COMMON ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through a hybrid mode.

I.A. (IB) No. 1058/KB/2022

2. Heard.
3. This is an application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, for brevity “IBC” by one **Mr. Prahlad Kumar Proprietor of Bharat Medical Hall**, hereinafter referred as the “**Applicant**” against the **Resolution Professional of Birla Tyres Limited Sh. Seikh Abdul Salam** (hereinafter referred as the “**Respondent**” seeking following reliefs:
 - a. *That this instant application may kindly be admitted and allowed;*
 - b. *That the non-applicant be directed to consider, verify and accept the whole amount of claim of Rs.1,27,62,209/- as per Form B; and*
 - c. *Any such further orders/reliefs as this Hon’ble Tribunal may deem fit to pass and grant.*
4. The respondent be directed to consider, verify and accept the whole claim of Rs. 1,27,62,209/- as submitted in Form B or

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any such further orders/reliefs as this Adjudicating Authority may deem fit.

Factual Matrix:

5. The applicant being an operational creditor of the corporate debtor is a consigner and forwarding agent at regional distribution centre of the corporate debtor, Birla Tyres Limited, based on the agreements dated 01.04.2014, 10.04.2017 and 16.08.2017, executed between the parties.
6. The corporate debtor, Birla Tyres Limited was admitted into Corporate Insolvency Resolution Process (CIRP) on 05.05.2022, by this Adjudicating Authority and the respondent was appointed as Resolution Professional on 07.05.2022.
7. The applicant filed its claim as an operational creditor along with necessary annexures in support of the claim in Form B dated 16.05.2022.
8. The applicant submits that he could get to know the status of the claim only after getting the list of claims of operational creditor's, downloaded from the portal of IBBI.
9. It was found that an amount of Rs. 58,15,378/- was admitted and the balance amount of Rs. 69,46,832/- was rejected

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without informing the applicant/operational creditor and hence this application has been filed on 14.09.2022.

Submissions of the Ld. Counsel for the Applicant:

- 10.** Ld. Counsel for the applicant submits that the rejection of part of the claim by Resolution Professional is arbitrary, discriminatory and without any basis. He supports the claim with details mentioned in excel sheet which is in page No. 30 and 62 of the application. The excel sheet contains invoice detail of supplies made to corporate debtor, claims the Counsel.
- 11.** He also brought to our notice the agreements made between the corporate debtor and the claim which are in page No. 31 to 56 of the application. Through these agreements, the applicant was appointed as Consigning and Forwarding Agent (C&FA). As per these agreements, the applicant is required to maintain a godown to store the goods consigned by the corporate debtor and arrange for delivery and dispatch of the said products to the dealers/parties concerned strictly as per the agreements and in accordance with the written instruction of the corporate debtor.
- 12.** The applicant submits that he has fulfilled his obligations strictly as per the agreements and raised several invoices

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mentioned in the excel sheet. However, copies of the invoices have not been attached in the application.

- 13.** He submits that the entire claim of Rs. 1,27,62,209/- submitted in Form B should have been admitted by the respondent whereas, he has admitted only Rs. 58,15,378/- leaving a balance of Rs. 69,46,832/- be rejected.

Per contra submissions by Ld. Counsel for the Respondent:

- 14.** Ld. Counsel for the respondent submits that Resolution Professional has rightly collated the claims of the applicant and with whatever documents produced he has verified the claim and could admit only Rs. 58,15,378/- as the said amount was duly supported whereas, the balance amount claimed was not supported with sufficient proof and hence the same was rejected.

Analysis and Findings:

- 15.** We find that the operational creditor has filed Form B as required on 16.05.2022, which is within ten days from the date of initiation of CIRP as per IRPCP (Insolvency Resolution Process for Corporate Persons) regulations.
- 16.** However, neither the applicant nor respondent has placed anything on record to verify whether claim rejected by the

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respondent is correct or not and in the absence of with we are unable to proceed further.

- 17.** In any event, we find that the resolution plan of the Corporate Debtor was approved by the Adjudicating Authority vide order No. I.A. (IB)/1527/KB/2023 dated 19th October 2023 and we have noted that the resolution plan has dealt with amount payable to the various creditors including the amount payable to the applicant based on admitted claim. Consequently, we find that this application has become **infructuous and accordingly dismissed.**
- 18.** In terms of view above, this application being **I.A. (IB) No. 1058/KB/2022** stands **dismissed** accordingly.
- 19.** No Costs.

I.A. (IB) No. 1908/KB/2023

- 20.** Heard the Learned Counsels for both the parties.
- 21.** This is an application preferred by **Assistant Commissioner of CGST, Central Excise Balasore Division** (hereinafter referred as **Applicant**) against **Mr Pratim Bayal, Resolution Professional of Birla Tyres** (hereinafter referred as **Respondent**) seeking admission of claim of Rs.

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3,09,41,91,800/- The applicant is also seeking condonation of delay, in lodging the claim with the Resolution Professional as well filing this application before this adjudicating authority, in the interest of justice.

Factual Conspectus:

- 22.** We find that the applicant has filed a claim of Rs. 381,27,17,702/- before the interim resolution professional who admitted the claim of Rs. 219,22,47,443/- and rejected the claim to the tune of Rs. 162,04,65,259/-. The same was communicated to the applicant vide e-mail dated 10.01.2023. In the said e-mail, the respondent has communicated that a claim of about Rs. 162 crores out of Rs. 381 Crore can only be considered as contingent liability at this stage and consequently, no confirmed demand is crystalized to that extent and rejected it. Hence this application.
- 23.** Heard the Ld. Counsels for both the parties. Ld. Counsel for the applicant reiterated their submissions made in the application. Ld. Counsel for the respondent submits that the application is not only delayed considerably but also not maintainable on merits as the demand made by the department has not yet been crystalized.

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Analysis and Findings:

24. We find that claim of the GST Department was partially rejected on 10.05.2023, whereas, this application has been filed on 06.12.2023, which is nearly seven months after rejection of the claim. We would rely on the judgment and order passed by the Ld. NCLAT on 26.11.2021 in the matter of ***Assistant Commissioner, Central Tax, CGST & CX Vs. Avishek Gupta Resolution Professional*** that:

- “1. This Appeal has been filed under Section 61 challenging the order dated 08.07.2021 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata. The Appellant's claim has been rejected by the Resolution Professional and thereafter Application was filed by the Assistant Commissioner, Central Tax, CGST & CX before the Adjudicating Authority, which Application too has been rejected by the impugned order.*
- 2. The Learned Adjudicating Authority has noted that the last date of receipt of claim was 11.07.2019 and in the Application filed by the Applicant it has been stated that they came to know about CIRP proceeding on 19.01.2020 but they have filed the claim on 22.02.2021 i.e. after more than one year. Learned Counsel for the Appellant submits that it was duty of the Resolution Professional to see all records and notice the claim.*
- 3. The only question that needs consideration in the present Appeal is whether the Adjudicating Authority committed error in rejecting the Application filed by the Appellant.*

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4. There being gross delay in filing the claim by the Appellant, we see no reason to entertain this Appeal. There is no error committed by the Adjudicating Authority in rejecting the claim of the Appellant. Appeal is dismissed."

(Emphasis Added)

- 25.** We find that this application has been filed on 03.11.2023 where as we have approved the resolution plan of corporate debtor on 19.10.2023. Therefore, no purpose would be served in entertaining this application at this stage.
- 26.** In any case, we find that the corporate debtor's resolution plan has been approved by this Adjudicating Authority vide Order No. IA(IB)/1527/KB/2023 dated 19th October 2023 and consequently, the present application deserves to be dismissed on account of delay in filing the appeal as well as on account of the fact that **this application became infructuous**, consequent to appeal of resolution plan of corporate debtor before filing this application.
- 27.** In terms of view above, this Application being **I.A. (IB) No. 1908/KB/2023** stands **dismissed** accordingly.
- 28.** No costs.

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- 29.** Heard the Learned Counsel for both the parties.
- 30.** This application preferred by **Assistant Commissioner CGST, Division-Badli, Delhi North Commissionerate** against **Mr. Pratim Bayal**, Resolution Professional (RP) of M/s. Birla Tyres Limited, Corporate Debtor, seeks the following reliefs:
- a. To pass an order seeking setting aside the communication dated 31.07.2023, issued by the Respondent Resolution Professional who rejected the claim of the Applicant through the communication.*
 - b. To pass an Order by condonins the delay in filing the claim before the Resolution Professional.*
 - c. Delay if any, in filing the instant application before this Adjudicating Authority in the interest of justice.*

Factual Matrix:

- 31.** The Applicant filed in Form B along with requesting documents claiming an outstanding demand of Rs.34,09,100/-(Rupees Thirty Four Lakhs Nine Thousand One Hundred only). Along with applicable interest and penalty of Rs.34,09,100/-(Thirty Four Lakhs Nine Thousand One Hundred only). On

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28.07.2023, the Respondent *vide* email dated 31.07.2023 rejected the claim of the Applicant stated as under:

“This is to bring to your kind notice that the Corporate Insolvency Resolution Process (“CIRP”) of Birla Tyres Limited was initiated vide order dated 05th May, 2022 (“Insolvency Commencement Date”) passed by the Hon'ble National Company Law Tribunal, Kolkata Bench (“NCLT”) (“CIRP” order). Further, the Interim Resolution Professional published Form-A for calling the creditors for the submission of the claims on 07th May 2022.

Kindly note that the Resolution Professional has given ample chances to the creditors and has accepted the claims even beyond 90 days of commencement of the corporate insolvency resolution process of Birla Tyres Limited under the provision of Regulation 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

However, please note that since the Resolution plans from the Resolution Applicants have already been received by the Resolution Professional and the same is in the process of finalisation, hence, no claims can be accepted further by the Resolution Professional in order

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to ensure the merits of the process after 30th June, 2023 and so, the window for accepting claims has been closed on 30th June 2023.

Hence, your claim can not be accepted by the undersigned at this belated stage. This is for your kind information” and agreed by this communication of the Respondent.

In view of above, this application has been preferred by the Applicant seeking reliefs mentioned above.

Submissions of the Applicant:

- 32.** Learned Counsel for the Applicant submits that they were not aware about Corporate Debtor undergoing CIRP under IBC code and they came to know only from the communication received from the Respondents on 31.07.2023. Therefore, the delay in filing the claims cannot fatal as, the Respondent was aware of the show cause notice and the subsequent order passed demanding the claim amount and, therefore, the respondents should have made provision for the same without waiting for the formal claim to substantiate this argument.
- 33.** The Applicant relies on the Hon'ble Supreme Court in ***State Tax Officer vs. Rainbow Papers*** reported at **2022 SCC online SC 1162** wherein the Hon'ble Supreme Court held that there was no obligation on the part of the State to lodge its claim in

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respect of dues which are statutory in nature. He also relies on the Hon'ble Supreme Court ruling that if a Resolution plan ignores the statutory demand payable, the Adjudicating Authority is bound to reject the Resolution Plan. Thus, he submits that delay in submitting the claim has to be condoned and directions be given as per reliefs claimed. He further submits that delay in filing this application may also be condoned.

Submissions of the Respondent, per contra:

34. Learned Counsel for the respondents submits that this application is not maintainable as the orders passed in original 2/2023-24 dated 26.07.2023 is not a crystallized demand as the Corporate Debtor has got liberty to file an appeal before the Appellate Authority. Since the Corporate Debtor was undergoing CIRP the same was not initiated and considered the fact that the amount in question is not a crystallized demand the same was not considered, not only because of the reason that the claim was submitted beyond the stipulated time. He further submits that the communication rejecting the claim was issued on 31.07.2023 whereas this application has been filed on 11th October, 2023 which is nearly two and half months from the date of rejection. Since CIRP is a time bound process, delay in filing this application that also without stating any reason cannot be condoned.

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Analysis and Findings:

- 35.** We would find that there has been a delay in filing the claims before the Resolution Professional and the same has been communicated by the Resolution Professional on 31.07.2023. Further we find that Order-in-Original 2023-24 dated 26.07.2023 has confirmed the demand to the tune of Rs.39,09,100/- (Rupees Thirty-Nine Lakhs Nine Thousand One Hundred only) and since the company was undergoing CIRP this order has not been appealed yet. We find that the Corporate Debtor has got liberty to file appeal against this order before the Appellate Authority and the same has not been done due to CIRP proceedings. Therefore, non-crystalized demand submitted belatedly was not entertained by the Resolution Professional (RP).
- 36.** We would also find that there is a delay in filing this application which is more than two and half month's days of rejection of the claim. In this case we find that the application has not stated any reason for the delay in filing the appeal.
- 37.** We would note that IA No. 1873 of 2023 seeking approval of resolution plan of the Corporate Debtor was heard and reserved for orders on 26.09.2023 whereas this application has been

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filed on 13.10.2023 and hence this application cannot be entertained at this stage.

- 38.** We have approved the resolution plan of the Corporate Debtor *vide* Order No. I.A.(IB)1527/KB/2023 dated 19.10.2023 and hence this application is liable to be set aside as infructuous and hence dismiss the same without cost.
- 39.** Above facts and circumstances, we find that not only this application has become infructuous and accordingly, we **dismiss** this application being **I.A. (IB) No. 1873/KB/2023**.
- 40.** No Costs.

I.A. (IB) No. 19/KB/2024

- 41.** Heard the Learned Counsels for both the parties.
- 42.** This is an application preferred by **IBC Impex Private Ltd.**, hereinafter referred to as **Applicant** against **Mr. Pratim Bayal**, Resolution Professional for Birla Tyres, hereafter referred to as **Respondent** seeking for the following reliefs, inter alia: -

- a. An order be passed setting aside the letter dated 30th June, 2022 issued by the*

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- Respondent/Resolution Professional rejecting the claim of the Applicant;*
- b. An order be passed directing setting aside of the Information Memorandum as it has not been formed on correct records present with the Corporate Debtor.*
 - c. An order be passed directing setting aside of the Resolution Plan;*
 - d. An order be passed directing the Resolution Professional to admit the Applicant's Statement of claim which has been rejected by the Respondent/Resolution Professional;*

Brief Facts of the Case:

- 43.** The applicant is an Operational Creditor to the Corporate Debtor and is in the business of supply of Coal. The Corporate Debtor was a regular customer of the applicant. The Corporate Debtor used to place purchase orders from their Head Office situated at Kolkata to applicant and the applicant used to supply Coal from time to time to the Plant situated at Haridwar, Uttarakhand as per their instruction of the Corporate Debtor.
- 44.** The Corporate Debtor was put into CIRP by virtue of an Order passed by this Adjudicating Authority in CP (I.B.) No. 250/KB/2021 dated 05th May, 2022.
- 45.** It appears from records placed in the application that the Operational Creditor arranges for transportation and supply the material to the Corporate Debtor Factory situated at

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Haridwar, Uttarakhand. The transportation charges were to be borne by the Corporate Debtor and the same was to be paid to the concerned Goods Transport Agency (in short "GTA") at the time of every delivery.

- 46.** As per the ledger maintained by the applicant an outstanding amount due from the Corporate Debtor is computed to the tune of Rs. 90,01,983/- (Rs. Ninety Lacs One Thousand Nine Hundred Eighty-Three), which includes interest at the rate of 18 per cent per annum.
- 47.** It appears that the Corporate Debtor has claimed in his letter dated 10.04.2012 to the applicant that a sum of Rs. 74,38,514/- has been paid to the goods transport agency against supply of coal delivered by the GTA arranged by the applicant, whereas, the aforesaid letter dated 10.04.2012 claimed to have been not received by the applicant.
- 48.** When the applicant denied receipt of any such letter, the Corporate Debtor lodged an FIR (First Information Report) on 12.05.2012 with the Police Station, Haridwar against the goods transport agency for misappropriating a sum of Rs. 74,38,514/-, which was paid for supply of coal by the applicant and the matter is still pending in the Court for appropriate decision.

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- 49.** According to the Corporate Debtor the entire amount payable to the Operational Creditor has been claimed by the goods transport agency on behalf of the Operational Creditor, and the same was paid.
- 50.** It is the claim of the Corporate Debtor that goods transport agency has claimed to be authorised to collect payment on behalf of the Operational Creditor, in respect of supply of coal.
- 51.** Under the above said background, the applicant via e-mail dated 09th May 2023 submitted its claim under FORM – B along with a copy of Civil Suit Bearing No. 817 of 2015, which is pending before the Learned Civil Judge, Senior Division at Nagpur.
- 52.** It is the claim of the applicant that the respondent refuse to accept the claim of the applicant citing that there is no outstanding due payable and the dues are not reflecting in the books of account of the Corporate Debtor. Aggrieved by this rejection, this application has been preferred.
- 53.** The rival contentions were noted and the decisions were considered.

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

I.A. (IB) No. 1058/KB/2022
I.A. (IB) No. 1908/KB/2023
I.A. (IB) No. 1873/KB/2023
I.A. (IB) No. 19/KB/2024
In
C.P. (IB) No. 250/KB/2021

Analysis and Findings:

- 54.** We find that this is a case where payment has been made by the Corporate Debtor to goods transport agency for supply of goods made by the Operational Creditor which is apparent from the Civil Suit pending before the Civil Judge at Nagpur.
- 55.** Since, the payment has already been made, albeit, to the goods transport agency instead of the Operational Creditor the same is not appearing in the books of account of the Corporate Debtor and, consequently, the Information Memorandum prepared on the basis of the books of account of the Corporate Debtor did not contain this as due payable to Operational Creditor.
- 56.** Meanwhile, we find that this Adjudicating Authority has approved the Resolution Plan of the Corporate Debtor being I.A.(IB) No. 1527/KB/2023 dated 19.10.2023 wherein all the admitted claims have been dealt with.
- 57.** We further find that this application has been filed in January, 2024, whereas Resolution Plan of the Corporate Debtor was approved on 19.10.2023 by this Adjudicating Authority.
- 58.** When that being the case no purpose would be served in entertaining this application as it has become infructuous and

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consequently, we **dismiss** this application being **I.A. (IB) No. 19/KB/2024**.

59. No Costs.

60. Certified copies of the order(s), 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 23rd Day of February, 2024.

Prodipta, H. [PS]
SG [Steno]
AR [Steno]
Bose, R. K. [LRA]