

145

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD  
COURT - 1

ITEM No 145

IA/70(AHM)2021 in CP(IB) 497 of 2019

Order under Section 60(5) IBC

IN THE MATTER OF:

Office of the Collector of Electricity Duty  
V/s

.....Applicant

Raj Kumar Podar RP of Vadraj Energy (Gujarat) Ltd

.....Respondent

Order delivered on 02.08.2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)  
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**IA/ 70(AHM) 2021 in  
C.P.(IB) 497/NCLT/AHM/2019**

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

**In the matter of:**

Office of the Collector of Electricity Duty,  
Block No. 18, 7<sup>th</sup> Floor,  
Udhyog Bhawan, Sector 11,  
Gandhinagar-382010

.... Petitioners

**Versus**

Shri Raj Kumar Podar,  
Resolution Professional of M/s Vadraj Energy (Gujarat) Ltd.,  
Practus Advisors Pvt. Ltd.,  
C/o Smart Works,  
12<sup>th</sup> Floor Tower 1, Indiabulls Finance Centre,  
Senapati Bapat Road, Elphinstone,  
Mumbai-400013.

...Respondent

**Order reserved on 26<sup>th</sup> July, 2021  
Order delivered on 02<sup>nd</sup> August, 2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)  
VIRENDRA KUMAR GUPTA, MEMBER (T)**

**Appearance...**

For the Applicant : Advocate, Mr. K.M Antani a.w. Advocate, Ms. Garima Malhotra.



For the Respondent : Advocate, Mr. Devarajan Raman a.w. RP Mr. Rajkuar Podar.

**ORDER**

[ Per : VIRENDRA KUMAR GUPTA, MEMBER (T) ]

- 1) Through this application, the Applicant is seeking direction from this Adjudicating Authority to the Resolution Professional to admit the claim of Applicant with respect to the statutory dues to the tune of Rs. 42.74 Crores, which represents principal sum of Electricity Duty as well as interest upto January, 2020.
- 2) The facts, in brief, are that the Corporate Debtor had set up a 50 MW power plant comprising of 2 Generating Sets of 25 MW each. The Corporate Debtor for said Generating sets applied for registration in Form C, which was granted by the Applicant department on 04.06.2013. It is claimed by the Applicant that Corporate Debtor was liable to pay electricity duty under Rule 9 of the Bombay Electricity Duty(Gujarat) Rules, 1986. However, Corporate Debtor defaulted in payment of said electricity duty since the commissioning of the power plant. The Applicant filed its claim with the

Resolution Professional in the course of CIRP proceeding, which were initiated in respect of the Corporate Debtor vide order of this Adjudicating Authority dated 08.01.2020. It is further submitted that on the E-mail sent by the Resolution Professional on 24.03.2020, the Applicant submitted its claims on 08.04.2020. The Resolution Professional, however, on 29.06.2020 required documents to be provided for verification and admission of claims of the Applicant, to which a detailed reply was submitted by the Applicant on 09.07.2020. The Resolution Professional, however, vide its E-mail dated 16.12.2020, on the basis of its interpretation of the provisions of Gujarat Electricity Duty Act, 1958 rejected the claims of the Applicant. It is also submitted that response to E-mail of Resolution Professional rejecting the claim of Applicant was filed on 20.07.2020, in spite of that Resolution Professional did not admit the claims, hence, this application.

- 3) The learned counsel appearing on behalf of Applicant after narrating these basic facts took legal plea that Resolution Professional is to act in administrative capacity and Resolution Professional does not have power to adjudicate

upon the claims submitted by a creditor, hence, such action of Resolution Professional is against the mandate of law. For this proposition, reliance has been placed on decision of the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. Vs Union of India & Ors. [2019(4) SCC 17] and in the of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [2019 SCC OnLine SC 1478].

- 4) On merits, the learned counsel contended that as per Rule 9 of Bombay Electricity Duty (Gujarat) Rules, 1986, the Corporate Debtor, being a person other than a licensee, was required to pay the duty after getting the registration done in prescribed Form C of said rule. It was also pleaded that the Corporate Debtor was governed by the provision of Section 4(2) or Section 4(5) of Gujarat Electricity Duty Act, 1958, however, on enquiry from the Bench, the learned counsel took stand that the Corporate Debtor fell under the provision 4(5) of Gujarat Electricity Duty Act, 1958, as it was generating electricity for consumption of its parent company. It was also claimed that the Resolution Professional has

wrongly interpreted the provisions of Electricity Duty Act, 1958 and Rules made thereunder in not admitting its claims.

- 5) The learned counsel for the Resolution Professional and Resolution Professional in person appeared and made submissions in support of stands taken by the Resolution Professional for not admitting the claim of the Applicant. The Resolution Professional also submitted that it had not admitted the claim, therefore, the issue of rejection of claim was not involved, hence, Resolution Professional did not act beyond its mandate under law. It was also pleaded that Resolution Professional was well within its power to not to admit such claim as per provisions of Code, as disputed claims cannot be admitted mechanically by Resolution Professional and in such situation the Applicant could approach this Adjudicating Authority.

- 6) We have considered the submissions made on behalf of both the parties and material on record. As far as, first plea regarding scope of responsibility and nature of duties, which can be performed by the Resolution Professional during the

CIRP is concerned, it is noted that on commencement of CIRP, IRP is appointed to conduct CIRP, who publishes notice under Section 13 inviting claims in terms of provisions of Section 15 of IBC, 2016. As per Section 15 of the IBC, 2016, such public announcement contains the last date of submission of claims. As per Section 18(1)(b) of the IBC, 2016, IRP is required to receive and collate claims submitted by the creditors to him pursuant to public announcement made under Section 13 and 15 of the IBC, 2016. As per Section 25(2)(e) of the IBC, 2016 Resolution Professional is required to maintain and update the list of claims. Regulation 7 to 9 (A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter called "CIRP Regulations") prescribed the mode and manner in which claims will be filed by various categories of creditors. The existence of a claim by a creditor may be proved on the basis of various documents as prescribed in such regulations. As per Regulation 10 of CIRP Regulations, IRP/RP has got the power to call for such other evidence or clarification as it deems fit from a creditor for substantiating the whole or part

of its claims. As per Regulation 12, creditor is required to submit the proof of claims within the specified period or latest before 90<sup>th</sup> day of the insolvency commencement of the date. Regulation 13 of CIRP Regulations provides for verification of claims and maintenance of list of creditors. Such list of creditors should contain the details of **amount claimed** by them, the amount of their **claims admitted** and security interest, if any. The IRP is also obliged to update such list. As per Regulation 14, IRP/Resolution Professional is required to make best estimate of the amount of claim based on the information available with him, which can also be revised subsequently on receipt of additional information warranting such revision. Thus, IRP/RP is not only required to receive and collate the claims but it is also obliged to verify such claims, as per regulations, if we look at the provisions of Regulation 13, it clearly provides for details as regard to amount claimed and amount of claims admitted, therefore, by necessary implication, it means that all the claims submitted cannot be admitted as such. This is also so because for resolution of insolvency of a Corporate Debtor,

claim amount is the most significant aspect. It is not only the amount but nature of such claims as well as security interest, if any, is also to be determined by the IRP/RP. This aspect is also significant from the perspective of settlement of claims. In our view, if this contention of the Applicant is admitted then the very purpose of appointing IRP/RP shall be defeated, as in that situation every claimant would approach this Adjudicating Authority only because even COC is not empowered to take a final call in respect of said aspect. It may also be useful to mention that Section 18(1)(b) of IBC, 2016 uses the term "Collate". This word has not been defined in the Code, however, as per Merriam-Webster Dictionary, this term means (a) to compare critically (b) to collect, compare carefully in order to verify and often to integrate or arrange in order. As per free dictionary, it means to examine and compare carefully in order to note points of agreement or disagreement. The term "Collate" also means the grouping together of related items to provide a record of events and facilitate further processing. The procedure for further processing is prescribed in the Regulation narrated briefly

hereinbefore. Regulation 13 of CIRP Regulations authorises IRP or RP to verify the claims. The process of verification involves authentication or confirmation of truthfulness. However, RP in this process cannot act in arbitrary manner. In case of any doubt as regard to legality of claim and that too of this magnitude, Resolution Professional is duly empowered to take legal opinion so that matter can be closed in a satisfactory manner without approaching this Authority to the extent possible. Thus, considering this legal position, we hold that RP, though not having power to adjudicate upon the claim is duty bound to discharge his duties as regarding to collation of claims

- 7) In this legal background, now we would examine the facts of this matter. It is noted that in the present case, RP himself has approached the Applicant to file its claims, if any, with all necessary documents and the claim has been made thereafter. The RP also requested to file additional documents. Till this stage nothing appears to be wrong, however, thereafter the Resolution Professional has not admitted the claim for the reason that there is no legal

liability to pay such amount of such Electricity Duty based upon the interpretation of the provisions of Section 4(1) of Gujarat Electricity Duty Act 1958. It is also to be noted that earlier the parent company of the Corporate Debtor who has consumed the energy generated by the Corporate Debtor approached the Competent Authority to grant exemption under Section 3(2)(vii) of the relevant statute, which was not granted. The Applicant has also provided the details of duty payable from March, 2012 to March, 2019, which amounts to Rs. 42.74 Crores. In the first E-mail sent on 24.03.2020, the RP has admitted that the Corporate Debtor was supplying power to its holding company. It has also been mentioned that both entities were sharing the same premises and staff. It is also stated that the holding company was undergoing winding up process under Companies Act, 2013 before Hon'ble Bombay High Court. Now, we come to the merits of the claim filed by the Applicant, it is not in dispute that application by the Corporate Debtor has been made in Form-C, which is prescribed for a person who is governed by Section 4(2) and 4(5) of the Gujarat Electricity Duty Act,

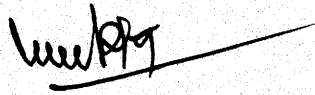
1958. It is also not in dispute that application has been filed under Rule 9 of Bombay Electricity Duty (Gujarat) Rules, 1986. It is also noted from the reply of the Applicant that in case of Applicability of Section 4(1) of the Gujarat Electricity Duty Act, 1958 prescribed Forms are A and B and governing rule for this provision for completion of formalities is Rule 3 of said Rules. Thus, on this basis only it can be said that the RP has not correctly appreciated the provisions of liability and has wrongly invoked the provisions of Section 4(1) of the Gujarat Electricity Duty Act, 1958 for disputing the claim filed by the Applicant, whereas, in the present case Section 4(2) or Section 4(5) Gujarat Electricity Duty Act, 1958 is applicable. Accordingly, we direct the RP to consider the claim of the Applicant and admit the same after due verification as per relevant provisions of IBC, 2016 and CIRP Regulations, 2016.

- 8) We may further add that Applicant/Creditor has given detailed reply narrating the legal position which would be applicable and no reply has been given by RP to the Applicant on such legal submissions. The RP has also not taken a legal

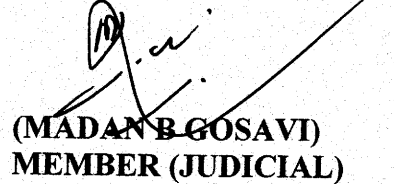
opinion to ascertain the correct legal position, as no such opinion has been brought on record. Further, it is generally observed that even for small issues like applications under Section 19(2) of the IBC, 2016, the legal counsels are appointed and argue the matter before this Adjudicating Authority, hence, it does not stand to reason as to why RP did not consider it appropriate, in the present case, to take a legal opinion before not admitting such claim of this magnitude of a statutory body and disputing the same relying on a provision of Section 4(1) of Gujarat Electricity Duty Act, 1958, which even to a layman would not be found to be applicable, if more fact of filing of an application in Form C and registration granted by competent authority is taken into consideration. Thus, according to us it is a case where Resolution Professional has disputed the claim for the sake of disputing and without any substantial reason. This has resulted into burdening of this Adjudicating Authority, hence, in our opinion, Resolution Professional needs to be made liable and accountable for this. Accordingly, we impose a cost of Rs. 50,000/- (Rupees Fifty Thousands Only) on Resolution

Professional, which RP is required to deposit from his personal account to Prime Minister Relief Fund and submit the proof of payment along with acknowledgment of receipt of payment within 10 days.

- 9) Accordingly, this application is allowed and disposed of in above terms.



(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)

Abhishek