

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 31.01.2024 TIME: 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC)/976/2022 in CP (IB) No.158/7/HDB/2018
NAME OF THE COMPANY	Ciscons Projects Private Limited
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	7 of IBC

**ORDER**

**IA(IBC)/976/2022**

Orders pronounced, recorded vide separate sheets. In the result, this application is partly allowed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**IA No.976 of 2022 in**  
**CP(IB) No.158/07/HDB/2018**

**Between:**

Rocksolid Infra Private Limited  
(Formerly Ciscons Projects Private Limited),  
Flat No.604, Tirumala Shah Residency,  
Yellareddyguda, Ameerpet,  
Hyderabad – 500 016.

....Applicant

Vs.

Income Tax Officer,  
Ward 1 (4), IT Tower,  
AC Guards, Masab Tank,  
Hyderabad – 500 004.

....Respondent No.1

Employees Provident Fund Organiation,  
Prashanti Nagar, TSRTC Bus Complex,  
2<sup>nd</sup> Floor, Near Y Junction,  
Kukatpally,  
Hyderabad – 500 018.

....Respondent No.2

Office of Principal Commissioner of  
Central Tax,  
GST Bhavan, LB Stadium Road,  
Basheerbagh,  
Hyderabad – 500 004.

....Respondent No.3

Commercial Tax Department,  
Asst. Commissioner (State),  
Srinagar Colony Circle,  
Punjagutta Division,  
D.No.5-9-279, 6<sup>th</sup> Floor,  
Mayur Kushal Complex, B-Block,  
Beside Charmas, Abids,  
Hyderabad – 500 001.

....Respondent No.4

**Date of Order : 31.01.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr. VVSN Raju, Advocate

Heard on : 08.01.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. The Applicant herein M/s Rocksolid Infra Private Limited (formerly M/s. Ciscons Projects Private Limited) is the Corporate Debtor (**CD**) which was acquired by the Successful Resolution Applicant (**SRA**) Mr. Sashikanth Vallipalli. The

application has been submitted against the Income Tax Officer, Employee Provident Fund (EPF) Organization, Principal Commissioner of Central Tax, and the Commercial Tax Department. Allegedly, these authorities have issued various Show-cause Notices, framed assessments, imposed penalties, and enforced prohibitory orders against the Applicant. The Applicant contends that these actions were initiated to recover arrears of tax and EPF contributions, which pertain to liabilities incurred before the approval of the Resolution Plan by the Adjudicating Authority under the IBC<sup>1</sup>. The Applicant seeks the setting aside of these purportedly illegal actions undertaken by the authorities.

2. In this case, CIRP<sup>2</sup> commenced with the Order of NCLT dated 31.01.2019. During the course of CIRP, various Resolution Plans were received, of which, the Plan submitted by Mr. Sashikanth Vallipalli was accepted by CoC and eventually approved by this Tribunal on 10.12.2019.
3. The proceeds of the Resolution Plan were distributed among the stakeholders, including Respondents No. 1 & 4, in accordance with the approved plan. The Income Tax Department (Respondent No. 1) and Commercial Tax Department (Respondent 4) had previously submitted their

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<sup>1</sup> Insolvency and Bankruptcy Code, 2016

<sup>2</sup> Corporate Insolvency Resolution Process

respective claims amounting to Rs. 44,93,280 and Rs. 1,99,96,913 to the Resolution Professional (RP). However, under the approved Resolution Plan, the Income Tax Department received only Rs. 2.15 lakhs, and the Commercial Tax Department received Rs. 9.53 lakhs, significantly less than their originally claimed amounts submitted before the RP.

4. The fact of the approval of the Resolution Plan was duly conveyed by the RP on 05.03.2020 to various Statutory Authorities, including Respondents in the present Application. It is claimed that, at this stage, the CD stood discharged of all its liabilities. Consequently, it is argued that no governmental or non-governmental claims should subsist against the CD following the successful resolution process.
5. It is asserted that, despite having been informed about the implementation of the Resolution Plan, the Respondent Authorities have been demanding payments on account of arrears arising out of the period prior to the commencement of CIRP.
6. It is stated that the Income Tax Department has continued to issue show-cause notices, frame assessments, imposed penalties and demand arrears for the Assessment Years (AY) 2014-2015, 2017-2018 and 2018-2019 which pertain to the period before commencement of CIRP. Similarly, it is stated

that the EPF Organization has taken coercive steps including passing of prohibitory orders against the Applicant claiming an amount of Rs.1,03,237 towards arrears for the period of March 2012 to March 2019 and have collected Rs.10,847 from the Applicant's Bank. GST Commissionerate and the Commercial Tax Department have also issued Notices claiming payment of arrears of Rs.3,44,31,905 (GST) for 2016-17, and Rs. 25,60,304 (Commercial Tax) for 2013-14 respectively.

7. Citing the Order of this Tribunal dated 12.12.2019 wherein it was held that:

“Upon approval of the Resolution Plan by the Adjudicating Authority, all Non-Compliances of the Corporate Debtor for the period prior to the approval of the Resolution Plan by Adjudicating Authority (including but not limited to those relating to Tax) shall be deemed to be waived by all the Governmental Authorities.

Any contingent liabilities, Litigation, Court cases, Income Tax Search/Survey Proceedings, Investigation, Non deduction/Delay deduction/Non-payment tax deducted/collected at Source, Provident Fund Cases, Employee State Insurance Cases, Excise Duty, Custom Duty Cases, Various State Sales tax cases, Non-compliance of Registrar of Company filing, Income Tax filing, Sales Tax/Laws, Inspection, Tax Assessments etc. or any other proceedings pending agents “Ciscons Project Private Limited” is deemed to be settled and none of this proceedings against shall be carried forward.”

It is argued that the acts of the Respondents are gross violation and contempt of the Authority of the Hon'ble NCLT, decision of the Hon'ble Supreme Court and Law of the Land.

8. It is prayed therefore that various show-cause notices, prohibitory orders, assessment orders, penalty notices issued by the Respondents pertaining to the period prior to the commencement of CIRP be set aside and Respondent No.2 be directed to refund the recovered amount of Rs.10,847.

**Counters:**

9. The Income Tax Officer i.e. Respondent No.1 in his Counter has stated that the case of the CD for AY 2017-18 (FY 2016-17) was picked up for scrutiny under Computer Aided Scrutiny Selection (**CASS**) and proceedings were initiated on 14.08.2018 under the Income Tax Act. It is claimed that these proceedings were pending when the CIRP commenced. In the same vein, it is stated that for AY 2018-19 (FY 2017-18), the CD case was again picked up under CASS on 21.09.2019 which was also before the approval of Resolution Plan.
10. It is further claimed that once the cases were selected for scrutiny for both years, the Assessing Officers were duty bound to complete the assessment proceedings. And, as during the assessment proceedings, there was no compliance on part of the CD, penalty notices were issued as part of the proceedings.

So far as the intimation dated 02.06.2022 was concerned, it is claimed that this was issued for the purpose of reconciliation of demand and pending actions to be completed in respect thereof.

11. It is averred that earlier there was no provision or mechanism provided in the Income Tax Act to reduce the tax demanded consequent upon CIRP implemented under IBC. A reference is made to the new Section<sup>3</sup> 156A of the Income Tax Act which now allows for giving effect to the order passed by the Adjudicating Authority under IBC for reducing demand raised under Section 156 in consequent to Assessment/Penalty Orders. It is thus submitted that, further action in this case would be taken as per the Provisions of Section 156A of Income Tax Act by duly following the Orders passed by this Tribunal.
12. Employees Provident Fund Organization i.e. Respondent No.2, in their Counter have claimed that the inquiry<sup>4</sup> against the CD for the period 01/2015 to 12/2020 was initiated on 02.03.2021. Since no suitable representation was made in respect of the inquiry findings, it was concluded on 08.09.2021 for an amount of Rs 1,03,237, of which Rs 10,347 was collected from the CD's bank after issuing a prohibitory order following the prescribed procedure. It is insisted in the counter that the

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<sup>3</sup> Introduced in the Income Tax Act w.e.f. 01.04.2022

<sup>4</sup> Under Employees Provident Fund & Misc Provisions Act 1952

actions under the EPF Act did not contradict the provisions of IBC, and several case-laws to support this argument have been mentioned (without any citation). The decision of the Hon'ble NCLAT in the case of 'Sikander Singh Jamuwal vs Vinay Talwar & Ors, has been mentioned, wherein as per Respondent No. 2 it was held that:

“no sections of the EPF Act contradict with any of the IBC Code's and if the Resolution Plan fails to provide for paying the entire EPF dues, the Resolution Applicant is also liable to pay the EPF arrears.”

Based on the above, it has been argued that the present application deserves to be dismissed so far as the EPF dues are concerned.

13. So far as the Respondent No. 3 is concerned, it was submitted during the hearing on 17.08.2023 that, the proceedings initiated by them vide show-cause notice dated 14.12.2021 were abated. The Applicant therefore sought this Tribunal to dismiss the Application against Respondent No.3, which was accepted.
14. Respondent No.4 did not file any Counter and remained *ex-parte*.

**Decision:**

15. The issue in the present case is about whether liabilities of the CD prior to the date of commencement of CIRP can be imposed on the Successful Resolution Applicant (SRA) after the

Resolution Plan has been approved and implemented. This question has been answered in the negative by various Courts including Hon'ble Supreme Court, most notably in the case of ***Essar Steels India Ltd***<sup>5</sup> where it clarified that:

*“A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All 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 the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

16. Later again, in the matter of Ghanshyam Mishra and Sons Pvt Ltd<sup>6</sup> the Apex Court held:

*“That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any*

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<sup>5</sup> Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531

<sup>6</sup> Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657

*State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.”*

17. Clearly under the scheme of IBC, no liability can be fastened on the CD after the commencement of CIRP. All Claimants including the Government Authorities can lodge their claim during the CIRP, and will receive their dues as per the Resolution Plan approved under the provisions of IBC. Moreover, under Section 238 the provisions of IBC have an overriding effect, notwithstanding anything inconsistent therewith contained in any other Law.
18. Therefore, whatever demands have been raised by the Tax Authorities for the period prior to CIRP stand extinguished once the Resolution Plan is approved. The CD under the current management cannot be asked to make any payments towards such demands.
19. Accordingly, Respondents No.1 and 4 are directed to take necessary steps and eliminate the Tax or any other demands raised on the CD that pertains to the period prior to the

commencement of CIRP. The Application is therefore allowed in respect of Respondent No.1 and 4.

20. The Employee Provident Fund (EPF) dues however stand on different footing. In this regard it is useful to reproduce from the order of Hon'ble NCLAT in **SK Constructions Vs. EPF Organisation & Anr**<sup>7</sup> where the following decision of the Adjudicating Authority was recently upheld:

*Since the EPF dues are not a part of the assets of the Corporate Debtor and are merely in possession of Corporate Debtor, we are of the view that the Applicant was not required to file his claim. Rather, the Resolution Professional was duty bound to release the dues of the Applicant. The EPF dues are to be given priority over all the other creditors during Liquidation. We thereby direct the Respondent/Resolution Professional to consider the claim of the Applicant.*

*Further, since the Resolution Plan has already been approved by the CoC, the Resolution Professional should take steps to apprise the Successful Resolution Applicant (SRA) about the claim of the Applicant to enable the SRA to make amends in the Resolution Plan to provide for the claim of the Applicant. In the alternative, the SRA may file an additional affidavit undertaking to settle the claim of the Applicant.”*

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<sup>7</sup> CA (AT) (Ins) No. 910 of 2023 & I.A. No. 3093 of 2023 Order dated 25.07.2023: (2023) ibclaw.in 471 NCLAT

21. Facts in the present case are similar to the one decided by Hon'ble NCLAT. In an earlier case of **Jet Aircraft Maintenance Engineers Welfare Association**<sup>8</sup> also the NCLAT had similarly held, that:

*In view of the aforesaid discussion, we arrive at following conclusions the workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.”*

These conclusions of Hon'ble NCLAT have also been upheld by Hon'ble Supreme Court<sup>9</sup>.

22. Consequently therefore, the SRA cannot escape the liability of EPF dues even if these pertain to the period prior to the commencement of CIRP. The present application against Respondent No.2 is therefore dismissed.

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<sup>8</sup> Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia & Ors. CA(AT) (Ins) Nos. 752 of 2022 Decided on 21-Oct-22: **(2022) ibclaw.in 861 NCLAT**

<sup>9</sup> Order dated 30.01.2023 in CA No. 423, 465-469 of 2023

23. Application against Respondent No.3 has already been dismissed through the docket order dated 17.08.2023.

In these consequences, this Application is partly allowed.

**Sd/-**  
**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

**VL**