

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 3924/2023

IN

Company Petition No. (IB) – 694/(PB)/2018

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

M/S. L & T FINANCE LTD

.... PETITIONER

VERSUS

M/S ZILLION INFRAPROJECTS PVT. LTD.

..... RESPONDENT

AND IN THE MATTER OF-

JOINT COMMISSIONER OF COMMERCIAL TAXES & GST

AT: JAJPUR ROAD, ODISHA

.... APPLICANT

VERSUS

RESOLUTION PROFESSIONAL FOR M/S ZILLION
INFRAPROJECTS PVT. LTD.

...RESPONDENT

CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Mr. Anand Das, Advocate

ORDER

PER-MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Order Pronounced on: 18.12.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against rejection of claim of the Applicant by the Resolution Professional on 20.02.2021.

The applicant in the present application has prayed for the following reliefs: -

- a) *The Tribunal may be pleased to admit the Petition and direct the Respondent to admit the claim of the Applicant.*
- b) *To further treat its claim under Secured Creditor and update the list of stakeholders accordingly.*

c) *Such further or other order or orders be made and / or direction or directions be given as this Tribunal may deem fit and proper.*

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That the IRP has published the "Public Announcement" in FORM-A on 06.02.2019 and the last date of submission of claim was 19.02.2019. However, notwithstanding the fact that the Corporate Debtor was conducting material business operations and was having principal place of business in the State of Odisha, the IRP had not published the public announcement in any of the regional dailies in the State of Odisha.
- ii. That on account of COVID-19 pandemic since 23.03.2020 the normal functioning of the office of the applicant was affected.
- iii. That the Applicant 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 and partial relaxation of the lockdown/shutdown restrictions, the Applicant submitted its proof of claim in FORM-B on 04.09.2020.

- iv. That the RP vide e-mail dated 04.09.2020 without considering the matter in its proper perspective, rejected to consider the claim submitted by the Applicant on the ground that the CoC had approved the resolution plan and the plan is pending for final approval before this Tribunal.
- v. That in view of the judgement of the Hon'ble Supreme Court in the matter of *State Tax Officer Vs Rainbow Papers Ltd. Civil Appeal No. 1661 of 2020*, the Applicant prays for a direction to the Respondent to admit its claim and further treat the claim as a secured creditor and update the existing list of creditors accordingly.

3. We have heard both the parties and through the submissions of the Applicant. The purpose of making public announcement is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum

which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Resolution Applicant all relevant information to enable the Resolution Applicant to submit a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC.

4. We find that in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by the creditor. The relevant regulation is reproduced hereunder:

“12. Submission of proof of claims. –

(1) 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.

(3) Xxxxxx ”

5. Adverting to the facts of the present case, the public announcement was made on i.e., 07.02.2019 according to

which last date for submission of the claim was 19.02.2019. The Committee of creditors had approved the resolution plan in its 23rd COC meeting held on 03.07.2020. The Applicant submitted its claim on 04.09.2020 i.e., after more than 2 years from Insolvency Commencement date.

6. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 06.05.2019 (i.e., 90 days from public announcement). It is undisputed that the CoC approved the resolution plan on 03.07.2020 whereas, the Applicant submitted its claim on 04.09.2020.

7. It is pertinent to refer to the judgment of Hon'ble Supreme Court in the matter of ***Essar Steel India Limited vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531*** dated 15.11.2019 wherein it was held as follows:

"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.”

8. We would also like to refer to the judgement of the Hon’ble Supreme Court in the matter of *M/s. RPS Infrastructure Ltd Versus Mukul Kumar & Anr. Civil Appeal No. 5590 of 2021*, wherein it was held as follows:

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.

9. The Applicant has relied on the judgement of Hon'ble Supreme Court in the matter of *State Tax Officer Vs Rainbow Papers Ltd. Civil Appeal No. 1661 of 2020*, and stated that the Applicant should be treated as a secured creditor. However, reliance on the above mentioned judgement is misplaced. In the said judgement, the Hon'ble Supreme Court had held as follows:

“Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.”

With respect to the claim of the Applicant in this matter, nothing is on record to suggest that the Applicant has created security interest on the assets of the Corporate Debtor. Further, it is nowhere pleaded or argued that the Applicant in the present matter has any secured interest on the assets of the Corporate Debtor by the operation of law. Thus, the claim

under dispute is that of an operational creditor, not that of a secured creditor as defined under section 3 (30) read with section 3 (31) of the IB Code. Therefore, the ratio in the above mentioned case is not applicable to this case

10. In view of the above, we hold that the Applicant has failed to show due diligence in submitting the claim before the Resolution Professional. The Applicant had sufficient opportunities to file the claim within time. If the claim of the applicant is admitted at this stage, then the very purpose of IBC would be defeated. Keeping in mind the very objective of the Insolvency and Bankruptcy Code, 2016 which is resolution of the Corporate Debtor in a time bound manner to maximize the value of assets, this Adjudicating Authority dismisses the application filed the Applicant.

11. IA/3924/2023 stands dismissed.

Let copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)