



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

IA/418/2024 & IA/378/2024
In
C.P.(IB)/27/I&B/MB/C-III/2019

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

IA 418/2024

**Municipal Corporation of Greater Mumbai
Through the Assistant Engineer, Water Works**

“L” Ward (I/C), Having Office address at
“L” Ward Office, S.G. Barve Marg,
Kurla (West), Mumbai – 400 070

... **Applicant**

Vs.

Abhay Narayan Manudhane,

*Resolution Professional of
Housing Development and Infrastructure Limited
1204, Maker Chamber V, Jamnalal Bajaj Road,
Nariman Point, Mumbai – 400021*

... **Respondent**

IA 378/2024

**Municipal Corporation of Greater Mumbai
Through the Water Department,**

“S” Ward, MCGM Amenity Building, Lodha
Complex, Kanjur Village Road, Kanjur
Marg (East), Mumbai - 400042

... **Applicant**

Vs.

Abhay Narayan Manudhane,

*Resolution Professional of
Housing Development and Infrastructure Limited
1204, Maker Chamber V, Jamnalal Bajaj Road,
Nariman Point, Mumbai – 400021*

... **Respondent**

In the matter of

Bank of India

... **Financial Creditor**

Vs.

Housing Development & Infrastructure Limited

... **Corporate Debtor**



Order Pronounced on: 11.07.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant	: IA/378/2023 & IA/418/2023 Adv. Prakash Sehjal a/w Adv. Abhishek Khare and Mr. R.P. Shirole
For the Respondent/RP	: Mr. Shadab S. Jan a/w Adv. Prerana Wagh a/w Adv. Prangana Barva, Mr. Mufaddal Paperwala i/b M/s Crawford Bayley & Co.

Per: Charanjeet Singh Gulati, Member (Technical)

ORDER

1. IA 418/2024

- 1.1. This Interlocutory Application has been filed under section 60(5) of the I&B Code, 2016 by the Municipal Corporation of Greater Mumbai ('MCGM') through the Water Department, L ward, seeking following reliefs:
- a. *To pass necessary orders directing the Resolution Professional of the Corporate Debtor i.e. the Respondent herein to consider and accept the claim of Rs.3,59,09,043/- (Rupees Three Crores Fifty-Nine Lakhs Nine Thousand and Forty-Three Only) towards water supply dues submitted by the Applicant in respect of the outstanding dues payable by the Corporate Debtor in the capacity of the statutory creditor.*
 - b. *To condone the delay if any occurred in filing the claim by the Statutory Creditor i.e. the Applicant with the Respondent as laid down under Regulation 12 of the CIRP Regulation;*
 - c. *To condone the delay if any in filing the instant Application before this Tribunal.*



- 1.2. The Corporate Insolvency Resolution Process (CIRP) was initiated against Housing Development and Infrastructure Limited (Corporate Debtor) vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (Respondent) was appointed as the Interim Resolution Professional (IRP) and was subsequently confirmed as the Resolution Professional (RP).

- 1.3. It is submitted that the Corporate Debtor is the Owner/Developer of various properties which are situated within the limits of the MCGM, and the Water Department of MCGM has provided the Corporate Debtor with a water connection since 2006. The Corporate Debtor is liable to pay statutorily dues of the water supply to the Applicant in respect of various properties that are owned/developed or under development by the Corporate Debtor. However, the Corporate Debtor has failed to pay the dues and an amount of Rs.3,59,09,043/- is outstanding as of 19.01.2024.

2. I.A. No. 378

- 2.1 This Interlocutory Application has been filed u/s section 60(5) of the I&B Code, 2016 by the Municipal Corporation of Greater Mumbai ('MCGM') through the Water Department, S ward, seeking following reliefs:
 - a. *To pass necessary orders directing the Resolution Professional of the Corporate Debtor i.e. the Respondent herein to consider and accept the claim of Rs. 1,03,52,710/- (One Crore Three Lakhs Fifty-Two Thousand Seven Hundred and Ten only) towards water supply dues submitted by the Applicant in respect of the outstanding dues payable by the Corporate Debtor in the capacity of the statutory creditor;*
 - b. *To condone the delay if any occurred in filing the claim by the Financial Creditor i.e. the Applicant with the Respondent as laid down under Regulation 12 of the CIRP Regulation;*
 - c. *To condone the delay if any in filing the instant Application before this Tribunal.*



- 2.2 The total outstanding claim of the Water department of the MCGM with respect to “Dreams the Mall”, from FY 2013-2014 to 2019-2020, is Rs.1,03,52,710/- . Further, the Water Department is consolidating the amount for the period of 21.02.2022 till 22.09.2023.
- 2.3 The Applicant has sent a Demand Notice dated 14.01.2020 to Mr. Wariyam Singh stating that the outstanding amount is pending since January/ February of 2013-2014 till October/November of 2018-2019. The outstanding amount of Rs.88,25,006/- is still pending which he was to pay within 3 days of the receipt of the said letter.
- 2.4 The Applicant has made a representation to Mr. Wariyam Singh via letters dated 19.08.2020 regarding the payment of dues under the “Abhay Yojna” Scheme. The Applicant states that as per the contents of the said letter on the balance amount of Rs.1,03,52,710/- , the department has levied an interest of 2% as per Section 202 of Municipal Corporation Act, 1888 but as per the scheme, for the duration 15.02.2020 till 31.12.2020, the interest of 2% has been forgiven amounting to Rs.61,09,087/- . Therefore, the final balance amount that must be paid amounts to Rs.42,43,623/- .
- 2.5 The Corporate Debtor HDIL is liable to pay statutory dues, outstanding of the water supply to Applicant (MCGM) since 2013 in respect of various properties that are Owned/Developed or Under Development by the Corporate Debtor which they have failed to do despite MCGM providing them with multiple opportunities for the same.

3. Submissions of the Applicant:

Since the issues involved herein is common and the MCGM is the Applicant in both the applications, commons submissions have been made which are summarized below:



- 3.1 It is submitted that the claim of the Applicant is the first charge under Section 212 of the Mumbai Municipal Corporation (MMC) Act, 1888. The amount payable to the Applicant includes pending dues and penalty amount as per the provisions of the MMC Act and that the amount mentioned hereinabove will change till the realization of the actual payment.
- 3.2 The Applicant (MCGM) being a State body, falls under the category of a Statutory Creditor and a Secured Creditor. Under the I&B Code, the definition of the Secured Creditor does not exclude any Government Authority.
- 3.3 It is submitted that the Resolution Professional is duty bound by law, to follow the process as mandated under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and that he has failed to verify the liabilities of the Corporate Debtor through the Book of Accounts under Regulation 4 thereof. Further, the Resolution Professional does not have the Authority to reject claims of Statutory creditors, and it is the settled position of law that if a Resolution Plan ignores the statutory demands payable to any State or Central Government, the Adjudicating Authority is bound to reject such resolution plan.
- 3.4 The Applicant further submits that Regulation 12(2) of the CIRP Regulations, 2016 provides that a Creditor can submit the proof of claim even after the stipulated date mentioned in the public announcement and such claim can be filed till the approval of a resolution plan by the CoC. In the present case, the resolution plan of the Corporate Debtor has not been approved by the COC and therefore, the Respondent must accept the claim of the Applicant in terms of the regulation stated hereinabove and probably on consideration that every



claimant may not notice the public announcement or fail to submit claim by the last date.

4. Submission of Respondent/Resolution Professional:

The Resolution Professional has filed a common reply in respect of both these Interlocutory Applications, which is briefly extracted here in under:

- 4.1 At the outset, MCGM has never filed its claim for Rs.3,59,09,043/- and Rs.1,03,52,710 in the requisite Form and the said claim has been raised for the first time only after the final hearing of the Interlocutory Applications for approval of the Resolution Plan by this Tribunal commenced.
- 4.2 The objection raised by MCGM does not fall within the ambit of Section 30(2) of the Code and thus would be irrelevant for the purpose of deciding the legality of the Resolution Plans.
- 4.3 The bills/invoices as annexed to IA No. 378 of 2024, are not in the name of HDIL but in the name of one Mr. Waryam Singh, Dreams Mall.
- 4.4 The claim has been filed at a very belated stage and includes claims of MCGM, that calculated till 19th January 2024, and not until the date of initiation of CIRP by HDIL. Therefore, claims of MCGM post initiation of CIRP have also been included.
- 4.5 The claim of MCGM constitutes as an Operational debt. Section 5(21) of the Code, while defining what constitutes as an operational debt clearly lays down that any dues towards Central Government, State Government and Local Authorities would constitute as an operational debt.
- 4.6 Furthermore, as per the contention of MCGM, the claim of MCGM as per section 212 of the MMC Act, should be considered as a secured financial



debt. Reliance has been placed on the judgment of **Hirabhai Ashabhai Patel & Ors. Vs. State of Bombay & Ors. (1954 SCC OnLine Bom 77)** wherein it was held that dues towards water charges/ taxes cannot be considered as a secured debt under section 212 of MCGM Act, and MCGM cannot have a charge on the property/asset for amounts due towards water charges/taxes.

Analysis & Findings

5. We have heard the Ld. Counsel for the Applicant and the Respondent/RP. Perused the record. It is noted that in both these IAs, the Applicant is the Water Department of MCGM albeit different Wards of the Department and the issue is identical. The RP has filed common reply and both IAs were heard together. Accordingly, this Tribunal deems it fit to decide these two IAs by a common order.
6. From the facts of the case, it is noted that pursuant to insolvency petition filed by the Bank of India, Financial Creditor under section 7 of the I&B Code, Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor ('CD') was initiated vide order dated 20.08.2019 and thereafter the Resolution Professional in accordance with the applicable Regulations invited claims and collated it for necessary action.
7. The present two IAs have been filed on 22.01.2024. Further, it is the submission of the RP that the MCGM has never filed its claim for Rs. 3,59,09,043/- and Rs. 1,03,52,710/- in the requisite Form and the said claims have been raised for the first time only after the final hearing of the Interlocutory Applications for approval of the Resolution Plan by this Tribunal commenced. We also note that though the Applicant states that a claim to the RP can be filed before the approval of the Resolution Plan by the CoC as per Regulation 12 of the CIRP Regulations and seeks condonation of delay for that purpose, we nowhere in the application find any document/form evidencing submission of claim to the RP in the prescribed form. It therefore means that the claims in prescribed form



have not been filed by the Applicant any time before the resolution plan has been approved by the CoC and even till date.

8. As already noted above, the instant IAs have been filed in 22.01.2024 whereas Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated on 20.08.2019, which shows that there has been a delay of around four years. At this belated stage, if the claims are admitted, it would take entire process of Corporate Insolvency Resolution Process backward and the very intention of the speedy resolution of the Corporate Debtor as enshrined in the provisions of the I&B Code would fail.
9. It is relevant to refer to certain Regulations of the CIRP Regulations that govern submissions of claims by creditors to the RP:

12. Submission of proof of claims.

(1) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later: Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.”

12A. Updation of claim.

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

13. Verification of Claims

(1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may



be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.”

10. It is explicit from the above referred Regulations that it mandates the creditors to file their claim to the RP within the prescribed period and neither the Code nor the Regulations permit the RP to consider a claim received after the mandated timeline and at such a belated stage.
11. In this regard, we refer to the Judgement of **Committee of Creditors of Essar Steel Vs. Satis Kumar Gupta and Ors. (2020) 8 SCC 53**, wherein, the Hon'ble Supreme Court has held that-

“105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors, it shall be binding on all stakeholders including guarantors. This is for the reason that this provision ensures at the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were.

107.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 would 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...”

12. Further, the Hon'ble Supreme Court in the case of **RPS Infrastructure Limited vs. Mukul Kumar and Anr. (2023) 10 SCC 718**, has held that-

“19. The second question is whether the delay in the filing of the claim by the appellant ought to have been condoned by the Respondent No. 1. The IBC is 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.

21. The mere fact that the adjudicating authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the CoC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."

13. We would also like to refer to Hon'ble NCLAT's observation in **Harish Polymer Product vs. George Samuel & Anr [Company Appeal (AT) (Ins) No. 420/2021]** has observed as follows:

"10. ... if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated."

14. The aforesaid dictums make it clear that the admission of claims at a belated stage could potentially perpetuate the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor endlessly, leading to adverse consequences for the insolvency regime. Thus, the belated claim



of the Applicant cannot be directed to be admitted in view of the Resolution Plans being already approved by the CoC.

15. The Applicant submitted that it had sent various demand notices calling for payments of the outstanding water supply charges. However, we note that though the demand notices are dated 14.01.2020, 19.08.2020, 14.11.2020, 26.02.2021 and 07.06.2021, the same were not addressed to the Corporate Debtor or the RP but was sent to one Mr. Wariyam Singh, who is purportedly connected to the Dream Malls Project. This cannot in any way be construed as a claim submitted to the RP in accordance with I&B Code and applicable Regulations.
16. The RP is bound under the I&B Code to carry out a wide range of functions and duties which includes collation and verification of claims received from the creditors. Regulation 13(1) of the CIRP Regulations clearly states that "*the interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*"
17. During submissions, MCGM had relied on **State Tax Officer vs. Rainbow Papers Limited [Civil Appeal No. 1661 of 2021]** to contend that the authority has no obligation to file a claim. It is pertinent here to reproduce the relevant paragraphs of the said judgement:

"22. Prior to amendment by Notification No.IBBI/2018-19/GN/REG013 dated 3rd July 2018, with effect from 4th July, 2018, Sub-Regulation (1) of Regulation 12 read with Sub-Regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub-Regulation (2) was amended with effect from 4th July, 2018 and now reads "a



creditor shall submit claim with proof on or before the last date mentioned in the public announcement".

24. In this case, claims were invited well before the 5th October, 2017 which was the last date for submission of claims. Under the unamended provisions of Regulation 12(1), the Appellant was not required to file any claim. Read with Regulation 10, the appellant would only be required to substantiate the claim by production of such materials as might be called for. The time stipulations are not mandatory as is obvious from Sub-Regulation (2) of Regulation 14 which enables the Interim Resolution Professional or the Resolution Professional, as the case may be, to revise the amounts of claims admitted, including the estimates of claims made under Sub-Regulation (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision.

25. In this case, at the cost of repetition, it may be noted that there was no obligation on the part of the State to lodge a claim in respect of dues which are statutory dues for which recovery proceedings have also been initiated. The appellants were never called upon to produce materials in connection with the claim raised by the Appellants towards statutory dues. The Adjudicating Authority as well as the Appellate Authority/NCLAT misconstrued the Regulations."

18. From a bare reading of the above judgment, it is clearly understood that the observations therein were pertaining to the unamended provisions under Regulation 12 of the CIRP Regulations, 2016.
19. By Notification No. IBBI/2018-19/GN/REG013 dated 03.07.2018 (with effect from 04.07.2018), the CIRP Regulations, 2016 was amended and the words "*shall submit proof of claim*" in Regulations 7, 8, 9 and 12 were substituted with "*shall submit claim with proof*". Thus, from the effective date of the said amendment i.e. 04.07.2018, it became mandatory for creditors to submit their claim with proof.
20. The observations in **Rainbow Papers** (supra) has a reference to pre-amended regulations considering the fact that public announcement in



that case was issued prior to the amendment. Further, the Hon'ble Supreme Court in para 25 of **Rainbow Papers** (supra) as reproduced above in Para 20 has stated that "*in this case, there was no obligation for the State to lodge a claim*" which clearly indicates that the said observations are confined to the facts of that case only. In the present case, the Corporate Debtor was admitted into CIRP on 20.08.2019 i.e. post the amendment dated 04.07.2018 and therefore, is governed by the amended provisions of the CIRP Regulations, 2016. In view thereof, the **Rainbow Papers** (supra) judgment, to the extent above, has no applicability in the present case.

21. The Applicant contended that the RP ought to have verified claims through books of accounts of the Corporate Debtor. In this regard, we refer to the Hon'ble NCLAT's observations in **Kalyan Dombivali Municipal Corporation vs. NRC Limited & Anr. [Company Appeal (AT) (Ins) No. 223 of 2021]**:

"11. ... The Appellant has not denied the fact that he did not file any claim but its whole case is that the books of accounts of the Corporate Debtor would have reflected the liability of the Appellant but the RP did not examine the books of accounts and included the same in the IM and hence, the resolution plan is not in conformity with the statutory requirement of the Code.

13. ... in the present case public announcement for inviting claim was made on 07.12.2018 much after the amendment in Regulation 12 of the Regulations which now provides that a creditor shall submit a claim with proof. Meaning thereby, after the amendment in Regulation 12 filing of the claim has become a sine quo non. It is pertinent to mention that being a statutory authority, it cannot feign ignorance about the necessity to file claim after having been informed by the RP of the CIRP proceedings vide letter dated 11.12.2018. As a matter of fact, the Appellant is to be blamed for not initiating the steps to set up its claim before the RP. Moreover, it has now been settled that if the claims are not submitted to the RP and are not part of the resolution plan then the same shall be deemed to have been extinguished."



22. We further refer to the Hon'ble NCLAT's judgement in **Alok Kailash Saksena, RP vs. State of Karnataka [Company Appeal (AT) (Ins) No. 170 of 2021]** wherein it was held as follows:

"39. It is an admitted fact that the I.A. No.85 of 2021 filed by the Respondent herein, more than 800 days after 'initiation' of 'CIRP' and almost one year after approval of plan by the 'CoC'. Further, it is an admitted fact that the Respondent had not filed any claim in the proper format within the time before the RP. The 'Adjudicating Authority' vide order dated 26.10.2018 initiated 'CIRP' against the 'Corporate Debtor' and the 'Resolution Professional' published the 'Public Announcement' and invited 'Claims' from all creditors in the month of November, 2018. The paper advertisement has been enclosed at Annexure A-7 page 204. In spite of said advertisement in the newspaper the Respondent failed to file its claim before the 'RP' nor filed any application before the 'Adjudicating Authority' during the CIRP proceeding. The RP collated and verified the claims received by it and on the basis of same the 'CoC' was constituted in December, 2018. After deliberations on the plans of the Prospective Resolution Applicants (in short 'PRAs'), the 'CoC' approved one of the plans and the CIRP process has been completed.

42. It is apt to note that one of the most crucial principles is that **'Time is Essence' in any Resolution Process within which the process has to be completed in a time bound manner as contemplated under the 'Code'**. The Hon'ble Supreme Court in the landmark judgment of M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr. Reported in (2018) 1 SCC 407 at paras 12, 16 & 31 held that "it can be seen that time is time of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation".

43. **Therefore, this 'Tribunal' finds that the 'Claim' of the Respondent is belated and cannot be considered** and the finding of the 'Adjudicating Authority' in directing the 'Appellant / RP' to place the 'Claim' of the Respondent in 'Form-C' before 'CoC' per se illegal and unsustainable. Accordingly, the point is answered against the Respondent.

44. The next point for consideration is whether the Resolution Professional has power to admit the Claims suo-motu?



45. The I & B Code, 2016, prescribes the duties to be performed by the 'Interim Resolution Professional' and 'Resolution Professional' as per Section 18 and Section 25 of the Code. The IBBI CIRP Regulations prescribed the procedure to be adopted followed. As per Chapter IV Regulation 7 the claims by 'Operational Creditor' to be submitted with proof to the 'IRP' in 'Form-B' and as per Regulation 8 of the Regulations the 'Financial Creditors' shall submit the 'Claims' to the 'IRP' in 'Form-C'. After receipt of claims, the 'IRP' shall verify the 'Claims' in accordance with Regulation 13 and the 'IRP' maintained list of creditors containing 'Names of Creditors' along with the amount claimed by them, the amount of their Claims admitted and the Security Interest, if any, in respect of such claims. **There is no such provision that the 'IRP' shall admit the Claim without filing a Claim either in 'Form-B' or in 'Form-C'. Therefore, this 'Tribunal', is of the view that the 'IRP' suo-motu cannot admit the 'Claims' without their being a 'Claim' by the 'Claimants' viz. 'Operational Creditors', 'Financial Creditors' and the 'Claims' by other 'Creditors'. Every 'Claim' shall be submitted by the 'Claimant' with proof. Accordingly, the issue is answered."**

(Emphasis Provided)

23. Thus, it is clear that the RP has to collate and verify claims only after receipt of such claim from the creditors within the time prescribed. Since the Applicant herein has not filed any claim to the RP, the prayer seeking admission of the Applicant's claim by the RP is rejected.
24. Considering the same, it is not necessary to deal with the case any further, however, since the Applicant has specifically pleaded it to be a 'secured creditor' under the Code, we would like to touch upon the same. It is noted that as per the contention of MCGM, the claim of MCGM as per section 212 of the Mumbai Municipal Corporation (MMC) Act, 1888 should be considered as a secured financial debt. However, the RP, relying on the judgment of **Hirabhai Ashabhai Patel & Ors. Vs. State of Bombay & Ors. (1954 SCC OnLine Bom 77)** (paragraph no. 21) argues



that dues towards water charges/ taxes cannot be considered as a secured debt under section 212 of MMC Act, and MCGM cannot have a charge on the property/asset for amounts due towards water charges.

25. Section 212 of the Mumbai Municipal Corporation Act, 1888 is reproduced below:

“212. Property taxes to be a first charge on premises on which they are assessed.

Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon be a first charge in the case of any building or land held immediately from the Government upon the interest in such building or land of the person liable for such taxes and upon the goods and chattels, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes.”

26. It is relevant to quote relevant portion of paragraph 21 of **Hirabhai Ashabhai** (supra) which is reproduced below:

“21. ... our Court has held in -- 'Bombay Municipality v. Haji Eisa Haji Oosman', AIR 1936 Bom 48 (A), that a water-charge under Section 169 is not a tax and, therefore, it cannot be a charge on the property under Section 212.”

27. As can be seen from the above that the Hon'ble Bombay High Court in Hirabhai Ashabhai (supra) has relied on **Bombay Municipality vs. Haji Eisa Haji** wherein it has been held as follows:

“Mr. Coltman has contended that Section 212 provides a method of recovery. I do not agree with him. Section 212 imposes a charge; and unless you have got a charge, you cannot take steps to enforce that charge. This being a charging Act, I think it must be construed strictly. It would have been quite easy to provide in the Act that the charge for water supplied by measurement should be deemed to be a property-tax or should be upon the same footing as a water-tax, with which Section 140 deals. There is no such provision in the Act. I do not think we are justified, therefore, in treating the charge for water supplied by measurement as a



water-tax, when the Act merely states that sums payable on account of such water shall be recoverable "as if it were an arrear of water-tax." Accordingly, I think that the appellants fail in their contention that there is a charge on the premises in respect of the water supplied by measurement, and that this appeal fails upon that point."

28. It is clear from the averments in the applications that the amount claimed therein by the Applicant are towards water charges and not tax. Thus, MCGM cannot be considered as a secured creditor under section 212 of the Mumbai Municipality Corporation Act, 1888.
29. In the result, for the reasons discussed above, the present applications are liable to be dismissed.
30. Accordingly, the present applications are **dismissed**. No order as to cost.

Sd/-

Charanjeet Singh Gulati
(Member Technical)

Sd/-

Lakshmi Gurung
(Member Judicial)