

Office Of The Asst State Tax ... vs Parthiv Parikh Resolution ... on 26 March, 2021

National Company Law Appellate Tribunal

New Delhi

Company Appeal (AT) (Ins) No.583 of 2020

[Arising out of Impugned Order dated 19.03.2020 passed by the
Adjudicating Authority/National Company Law Tribunal,
Ahmadabad Bench in I.A. No. 593/2019 in Company Petition (IB)
No. 172/AHM/2018]

IN THE MATTER OF:

Office of the Asst. State Tax Commissioner
State Tax Department, Government of Maharashtra
Through
Sales Tax Officer,
Cabinet No. 370, 3rd Floor,
Goods and Service Tax Bhavan,
Airport Road, Yerwada,
Pune-6

.... Appellant

Versus

1. Shri Parthiv Parikh
Resolution Professional,
M/s. Jaihind Projects Ltd.
9, Vinati Apartments
Panchwati Second Lane,
Ambawadi, Ahmedabad-380006.Respondent No.1
2. SKE Projects Private Limited,
B-403, Ankit Residency,
Opp. Sarkar School, New CG Road,
Chandkheda, Ahmedabad-380015.Respondent No.2
3. Jaihind Projects Limited,
3rd Floor, Venus Altanits,
Nr. Reliance Petrol Pump,
Nr. Prahladnagar Garden,
Ahmedabad-380015.Respondent No.3
4. Parixit Irrigation Limited,
Survey No. 214/1-214/2,
Virpura Bus Stop, P.O. Iyava

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Taluka: Sanand,

Judgment
(Date: 26.3.2021)

{Per: Dr.Alok Srivastava, Member (T)}

1. This appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC) by the Appellant, who is aggrieved by the order of National Company Law Tribunal, Ahmedabad Bench, the Adjudicating Authority in IA 572/2019 in C.P. (IB) No. 172/AHM/2018.

2. The fact of the case as presented and argued by both the parties is that the Corporate Debtor(Respondent No.3) is a company registered with the Maharashtra SalesTax Department having TIN 27490008360V. In the course of its business, the Corporate Debtor defaulted in payment of State Tax and thereby created a liability of Rs.5,62,29,528/- (Five Crores Sixty Two Lakhs Twenty Nine Thousand and Five Hundred and Twenty Eight only) in accordance with the extant Maharashtra Value Added Tax Act, 2002 provisions which was due and payable to the Appellant. On an application filed by an Operational Creditor M/s. SKE Projects Private Limited (Respondent No.2) under Section 9 of IBC against

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the Corporate Debtor Jaihind Projects Ltd. (Respondent No. 3) Case No.CP(IB) No. 172/AHM/2018 was taken up for consideration by the Adjudicating Authority. This application was allowed as a

result of which Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and Premnarayan Ramanand Tripathi was appointed as Interim Resolution Professional. In pursuant to the CIRP, the Interim Resolution Professional issued a public notice on 2.11.2018. Subsequently, Parthiv Parikh was appointed as Resolution Professional on 23.01.2019 replacing earlier Interim Resolution Professional.

3. The Appellant has claimed that he was unaware of these proceedings and the insolvency proceedings against Respondent No.3 came to his knowledge only when the Joint Commissioner of Sales Tax forwarded the order of the Adjudicating Authority dated 30.09.2019 to him. In order to secure the interest of the State Tax Department, the Appellant filed a claim in Form B for Rs.5,62,29,528/- on 20.12.2019. This claim was rejected by the Resolution Professional vide email dated 31.12.2019 on the ground of delay in filing the claim and as the Resolution Plan had been submitted for approval to the Adjudicating Authority after approval by the Committee of Creditors.

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4. As the Appellant was not satisfied with the rejection of his claim, he sent an email on 10.02.2020 to erstwhile IRP Premanarayan Tripathi for condoning delay in filing claim and accepting his claim as Operational Creditor. As he was no longer handling the CIRP, the erstwhile IRP forwarded this request to the Resolution Professional for necessary action. The Resolution

Professional through an email dated 18.2.2020 rejected the claim. Thereafter, the Appellant filed appeal under Section 60(5) of the IBC (IA No.154 of 2020) on 21.2.2020 before the Adjudicating Authority. As the Adjudicating Authority was already considering the Resolution Plan submitted by the RP earlier, the IA No. 154 of 2020 was dismissed vide order dated 17.3.2020. Subsequently, through order dated 19.03.2020 in IA No.593 of 2019 in CP(IB) 172 of 2018 the Adjudicating Authority approved the Resolution Plan submitted by Respondent No. 4.

5. During the course of hearing, this Tribunal, vide order dated 25.8.2020, permitted the Appellant to implead the Successful Resolution Applicant as a necessary party in the appeal. Accordingly, M/s Parixit Irrigation Ltd., the Successful Resolution Applicant, was joined as Respondent no. 4 in the appeal.

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6. Reply to the Appeal Memo were filed by Respondent No. 1 and Respondent No. 4 and written submissions were filed by the Appellant, Respondent Nos. 1 and 4. Learned Counsels of the parties were provided ample opportunity for advancing their oral arguments.

7. The Ld. Counsel for Appellant has argued that the initiation of CIRP and the public notice inviting claims were not in his knowledge. He got to know of the CIRP through a communication of

his superior officer, the Joint Commissioner of State Tax. On receiving such information, although at a late stage, the Appellant filed the claim before the Resolution Professional in Form 'B' relating to the operational debt for an amount of Rs.5,62,29,528/- on 20.12.2019 which was rejected by the Resolution Professional on the ground of delay in filing the claim as also for reason that the Resolution Plan has already been submitted to the Adjudicating Authority for approval. He has contended that it is a statutory claim and should have been considered by the RP so that government would not have been denied its just claim. He has adverted to Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

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Persons) Regulations, 2016 to claim that it is permissible for the creditor to file its claim belatedly. Further he has contended that since the Resolution Plan was under the consideration of the Adjudicating Authority when the claim was filed, it would have been fair to consider it. Moreover, the statutory dues of state tax was included in the books of account of the Corporate Debtor which should have been considered for inclusion in the Resolution Plan even if no formal claim was filed. He cited the order of the NCLT, Delhi Principal Bench dated 05.12.2018 in the case State Bank of India v ARGL Ltd. (CA No. 1220(PB)/2018 in I.A. No. (IB)531(PB)/2017) in support of his arguments. He has also claimed that the Adjudicating Authority made a unilateral change in the proposed Resolution Plan as approved by the COC by

directing other financial creditors to contribute amounts on pro rata basis to the Axis Bank. In support he has cited the law as expounded by the Hon'ble Apex Court in the two cases viz. Committee of Creditors of Essar Steel v. Satish Kumar Gupta 2019 (16) SCC 319 and K. Sashidhar v. Indian Overseas Bank and Ors. 2019 SCCOnLine SC 257.

8. In reply, the Ld. Counsel of the Respondent No. 1 has opposed the acceptance of Appellant's claim at such a late stage

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pleading that it would completely upset the progress of the CIRP which was nearing completion when the said claim was preferred. According to him the CIRP, as stipulated in IBC, is a time-bound, result-oriented process which should be taken to its logical conclusion. If claims continue to be accepted even after the period specified in the Public Notice issued in accordance with the provisions of the IBC, and the extended time period of ninety days provided in Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has lapsed, there would be no end to such claims being preferred. This could become a never ending process and the CIRP will not reach its logical conclusion. This is certainly not the expressed objective of the IBC. He has also stated that the Resolution Plan as approved by the COC was under the active consideration of the Adjudicating Authority for approval

when the claim of Appellant was submitted to the RP and RP and the Adjudicating Authority have acted in consonance with provisions of law by rejecting the said claim.

9. The Ld. Counsel of the Successful Resolution Applicant (Respondent No. 4) has supported the arguments made by the Ld. Counsel for Respondent No. 1. He has, in addition, pointed out

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that in the present case the CIRP had already taken more time than the time period of 330 days that is envisaged in IBC and the Respondent No. 4 will have to bear irreplaceable loss in case there are further delays. He has prayed that he be allowed to start working in accordance with the approved Resolution Plan to save the Corporate Debtor from further deterioration, which is presently a going concern.

10. The IBC stipulates that CIRP is a time-bound process meant for resolution of the Corporate Debtor, which is in the throes of insolvency. If no successful Resolution Applicant can be found during the CIRP period, the Corporate Debtor, which is otherwise operational as a going concern, will go into liquidation. This would mean corporate death of the Corporate Debtor, a situation which must be avoided. Sincere efforts for successful resolution of the Corporate Debtor should, therefore, be undertaken to revive and strengthen the financial and economic condition of the Corporate Debtor, so that it continues to function as a useful economic entity

in the economy saving precious human and monetary capital.

11. Section 29 of the IBC provides for preparation of information memorandum as may be specified by the Insolvency and

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Bankruptcy Board of India for formulating a resolution plan.

Section 29(1) of the IBC is reproduced hereunder:-

"29. Preparation of Information Memorandum. -

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(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The Resolution professional shall provide to the resolution applicant access to all the relevant information in physical and electronic form, provided such resolution applicant undertakes

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(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with. Explanation. - For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which Company Appeal (AT) (Ins) No.583 of 2020 shall include the financial position of the corporate debtor and any other matter of the corporate debtor as may be specified."

12. Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 outlines the process for submission of the Information Memorandum and contents to be included therein to each member of the Committee of Creditors within two weeks of IRP's appointment. It is to be noted that Regulation 36(2)(d) mentions that the Information Memorandum shall contain 'a list of creditors containing the name of creditors, the amounts claimed by them, the amounts of their claims admitted and the security interest, if any, in respect of such claims;' among other particulars.

13. Further, in the same Regulations, very clear timeline has been prescribed under Regulation 12(2) for submission of claim with proof by financial and corporate debtor, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

Company Appeal (AT) (Ins) No.583 of 2020 "12. Submission of proof of claims. -

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. Xxxxxx "

The purpose of issuing public notice is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor and the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors is to provide the Resolution Applicant all relevant information so that the applicant can make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the IBC. Such Resolution Plan has to be submitted to the Resolution Professional under Section 30 of IBC, which is considered by the Committee of Creditors for approval and the final approval of the Resolution Plan is provided by the Adjudicating Authority under Section 31 of the IBC. It is quite logical to say that these actions have to be taken Company Appeal (AT) (Ins) No.583 of 2020 with alacrity so that the successful Resolution Applicant, if any, can take the reins of the management of the Corporate Debtor in good time for its proper management and consequent revival.

14. In the present case the Operational Creditor - State Tax Department, Government of Maharashtra submitted its claim on 20.12.2019, more than about one year and one month after the invitation of claims through public notice on 2.11.2018. The extended time period for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 31.01.2019. It is undisputed that the RP had filed the Resolution Plan as approved by the Committee of Creditors to the Adjudicating Authority, much before the said claim was preferred before the RP, and the Adjudicating Authority was actively considering the Resolution Plan for necessary approval. After rejection of claim of Appellant by RP, its appeal was filed before the Adjudicating Authority on 21.02.2020 under Section 60(5) of the IBC.

15. Thus, it is clear that much water had flown under the bridge from the date of issue of public notice (on 02.11.2018) and the extended time period of ninety days as provided under Regulation Company Appeal (AT) (Ins) No.583 of 2020 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Resolution Plan as approved by the COC was submitted to the Adjudicating Authority for necessary approval under Section 30. Any interruption in the CIRP Process at this stage by including a delayed claim/s would have meant setting the clock back and sending matter back to COC & RP. It cannot be ruled out that if the claim of the Operational Creditor State Tax Department, Government of Maharashtra was accepted at such a late stage, there could have been other such applicants too, who would have demanded accommodation on the same ground allowing late submission of their claims once this window would have opened. It would be trite to emphasise the fact that this would have meant complete disruption of the CIRP and the timelines stipulated therein. Delay would defeat Resolution as this would have resulted in the CIRP and approval of successful Resolution Plan to continue for an indefinite period of time, which is certainly not the intention of IBC. A real hazard in such an event could be liquidation, and corporate death, of an otherwise functional and corporate debtor, with which Resolution Plan approved is set to come out of the Red Company Appeal (AT) (Ins) No.583 of 2020

16. The order of NCLT, New Delhi Principal Bench cited by the Ld. Counsel of the Appellant in State Bank of India v ARGL Ltd. does not hold relevance in the present case as it relates to withdrawal of a successful (and approved resolution plan) on very different grounds and that too, upon recommendation/approval of the COC.

17. We have perused ratio of judgments in the two cases viz. Committee of Creditors of Essar Steel v. Satish Kumar Gupta and K. Sashidhar v. Indian Overseas Bank and Ors. (supra) cited by the Ld. Counsel of Appellant. These relate to the role of resolution applicants, resolution professionals, the Committee of Creditors that are constituted under the IBC, and the jurisdiction of the National Company Law Tribunal and the National Company Law Appellate Tribunal qua resolution plans. These Judgments are not helpful in the facts of the matter.

18. The relevant portion of the judgment in COC of Essar Steel case is reproduced below:-

"99. So far as Civil Appeal No. 7266 of 2019 and Civil Appeal No. 7260 of 2019 are concerned, the resolution professional has rejected the claim of the Appellants on the ground of non- Company Appeal (AT) (Ins) No.583 of 2020 availability of duly stamped agreements in support of their claim and the failure to furnish proof of making payment of requisite stamp duty as per the Indian Stamp Act despite repeated reminders having been sent by the resolution professional. The application filed by the Appellants before the NCLT came to be dismissed by an order dated 14.02.2019 on the ground of non-prosecution. The subsequent restoration application filed by the appellants then came to be rejected by the NCLT through judgment dated 08.03.2019 on two grounds:

one, that the applications could not be entertained at such a belated stage; and two, that notwithstanding the aforementioned reason, the claim had no merit in view of the failure to produce duly stamped agreements. The impugned NCLAT judgment, at paragraphs 93 and 94, upheld the finding of the NCLT and the resolution professional. In view of these concurrent findings, the claim of the Appellants therefore requires no interference. Further, the submission of the Appellants that they have now paid the requisite stamp duty, after the impugned NCLAT judgment, would not assist the case of the Appellants at this belated stage. These appeals are therefore dismissed."

The ratio in the *K. Sashidhar v. Indian Overseas Bank and Ors.* is also on the same lines. Quite clearly, the ratio in these judgments do not support the case of the Appellant. Moreover, the Appellant has not explicitly raised the issue of awarding a larger amount to Axis Bank in the Appeal and has raised it only at the stage of oral arguments. Appellant is not a party affected by the alleged change Company Appeal (AT) (Ins) No.583 of 2020 directed by the Adjudicating Authority. This matter has been dealt by the Adjudicating Authority in the Impugned Order in accordance with the provisions of the statute. The Appellant can't be given relief on a matter that has not been prayed for in the appeal.

19. It is also worth noting that the successful Resolution Applicant had objected to the IA No. 154/2020 filed by the Operational Creditor during the course of its hearing by the Adjudicating Authority inter-alia pointing out that he had already submitted a big amount of the Earnest Money more than a year ago and that for one reason or the other, the Resolution Plan though filed on 24.9.2019 could not be approved by the adjudicating Authority due to filing of number of applications by the Resolution Professional as well as dissenting creditors.

20. In the light of the aforementioned discussion, we find that Adjudicating Authority has dealt with the issue of approval of the resolution plan submitted by the Resolution Professional and, inter alia, rejecting the claim of the Appellant in accordance with the requirements of the statute, and in keeping with the overall objective and scheme of the IBC. The order of the Adjudicating Authority provides sufficient and cogent reasons for dismissing IA Company Appeal (AT) (Ins) No.583 of 2020 NO. 154/2020 filed by the Appellant under Section 60(5) on 21.02.2020. It has, thereafter, gone ahead with the approval of successful resolution Plan by passing order in IA No.593/2019 in CP(IB) (172)/2018 while considering all the legal provisions and facts of the case. We, therefore, find no ground and reason for interfering with the Impugned Order and consequently dismiss the appeal.

21. The appeal is thus dismissed with no order as to costs.

(Justice AIS Cheema) Member (Judicial) (Dr.Alok Srivastava) Member(Technical) New Delhi
_____March, 2020 Company Appeal (AT) (Ins) No.583 of 2020