

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 319 of 2020

[Arising out of Impugned Order dated 18th December 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Delhi Bench, bearing No. CA-1552/(ND)/2019 in Company Petition No. IB-137/(ND)/2018]

IN THE MATTER OF:

**State of Haryana
Through Excise & Taxation
Officer-cum-Assessing Authority Mewat
O/o Dy. Excise & Taxation Commissioner (ST)
HUDA Field Hostel, Roz ke Meo
Nuh (Mewat), Haryana**

...Appellant

Versus

- 1. Uttam Strips Ltd.
Plot No.496 (A&C)
Phase 1, RIICO Industrial Area
Bhiwadi, Rajasthan - 301019**

Also At:

**Uttam Strips Ltd.
Village & Post Rangala
Distt. Mewat, Haryana
TIN No.06413101935**

...Corporate Debtor

- 2. Mr Sanjay Gupta
Resolution Professional
Uttam Strips Ltd.
IBBI/IPA-003/IP-N00047/2007-18/10354
Email: sanjay@sgaindia.in**

...Resolution Professional

- 3. Jyoti Strips Pvt. Ltd.
Plot No. 100-106
HUDA Sector 59, Phase-II
Faridabad, Haryana - 121004**

...Resolution Appellant

Present:

For Appellant : Mr Alok Sharma, Advocate

**For Respondent : Mr Ankur Mittal and Ms Jasveen Kaur, Advocates
for R-1 & 3**

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This Appeal emanates from the Impugned Order dated 18th December 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Delhi Bench, bearing No. CA-1552/(ND)/2019 in Company Petition No. IB-137/(ND)/2018, whereby the Adjudicating Authority has disposed of the Application and passed an order that the grievance of the Applicant is highly belated and cannot be looked into at this stage when the entire Resolution Plan has been implemented. The Parties are represented by their original status in the Company Petition for the sake of convenience.

2. These brief facts of the case are as follows:

The Adjudicating Authority/NCLT Delhi Bench vide an Order dated 09th April 2019 admitted an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor Uttam Strips Limited, filed by Power2SME Private Ltd. on 26th December 2018. After the completion of CIRP and approval of the Resolution Plan by the Adjudicating Authority, the Resolution Plan got implemented.

3. The Appellant Excise & Taxation Officer-cum-Assessing Authority, Mewat (Nuh), State of Haryana assessed Tax for Rs.9,03,665/- on gross turnover of Rs.1,08,21,691/- for the Assessment Year 2015-16. The Appellant came to know about the Corporate Insolvency Resolution Process initiated against the Assessee/Corporate Debtor before the Adjudicating Authority/NCLT in the first week of June 2019 through the Chartered Accountant by an email dated 04th June 2019. The Assessment order, along

with the tax demand notice, was served upon the dealer through Sh. Mahesh Aggarwal, Chartered Accountant, who appeared on 29th March 2019 before the Appellant/Assessing Authority. The Chartered Accountant further informed that the following Assessment order had been passed against the Corporate Debtor:

The details of the assessment of the Corporate Debtor are as follows:

S. No.	Demand/A.Y.	Order Date	Gross Turnover (GTO)	Volume Paid	VAT Dues (Rs.)
1.	515/2013-14	27.3.17	72591278	37,00,000	8,13,708/-
2.	400/2014-15	26.3.18	26709438	11115000	53,15,274/-
3.	553/2015-16	29.3.19	10821691	46,919	9,03,665/-
4.	85/2016-17	12.7.19	151445120	Nil	1,25,29,584/-
Total dues (Rs.) 1,95,62,231/-					

4. The Appellant contends that for four Assessment Years, i.e. 2013-14 to 2016-17 total outstanding Dues against the Corporate Debtor is Rs.1,95,62,231/- (Rupees One Crore Ninety-Five Lacs Sixty Two Thousand Two Hundred Thirty One only). The Appellant/Excise & Taxation Officer-cum-Assessing Authority in the first week of June 2019 and vide email dated 04th June 2019 came to know about the CIRP initiated against the Corporate Debtor, immediately after that, they contacted Mr Navneet Kumar Jain, IRP and submitted the Proof of Claim along with the Assessment Orders and Tax Demand Notices for Assessment Years 2013-14 to 2016-17 in the prescribed manner. But the IRP, vide email dated 04th June 2019, informed that he is not dealing with the case. It is contended that due to

non-cooperation of the IRP and lack of information/notice from any source, the Appellant was not aware of the Order of the Adjudicating Authority dated 06th June 2019. The whole situation was brought to the knowledge of the higher officials in the Excise Department, State of Haryana. But due to the declaration of Legislative Assembly Elections in the State of Haryana in October 2019, the Appellant could not file the documents before the NCLT. The Counsel informed the Appellant about the passing of the Order dated 06th June 2019 and Resolution Plan submitted by M/s Jyoti Strips Private Limited. After that, the Appellant applied Section 60(5) of the I&B Code, seeking directions against the Resolution Professional to accept its claim as an Operational Creditor and modify the Resolution Plan by incorporating the statutory dues of the Appellant. But the Adjudicating Authority has dismissed the said application by a non-speaking Order which is under Appeal before this Tribunal. It is on record that the Adjudicating Authority has passed the impugned Order stating that:

“CA-1552/19 has been filed on behalf of the Excise and Taxation Officer, Nuh (Mewat), Haryana. It is submitted that there is total outstanding of Rs.1,95,62,231/- from the Corporate Debtor. This grievance of the applicant is highly belated and cannot be looked into at this stage when the entire resolution plan has been implemented. No directions can be given to the non-applicant who has taken over the Operation of the Corporate Debtor to settle this liability as no claim was filed.

This Court is also apprised that an appeal arising out of against the order approval the Resolution Plan is pending before the Hon'ble NCLAT. The Resolution Plan has been implemented subject to the outcome of the Appeal. The monitoring committee wishes to be discharged.

Keeping in view the Appeal is still pending for disposal; we consider it expedient not to discharge the monitoring committee till such time as the Appeal is a final disposed off. To come up on 29th January 2020.”

5. We have heard the arguments of the Learned Counsel for the parties and perused the records.

6. Admittedly, the Corporate Insolvency Resolution Process was admitted against the Corporate Debtor Uttam Strips Limited by Order of the Adjudicating Authority/NCLT dated 09th April 2018. It is also clear that the Committee of Creditors with 100% votes share approved the Resolution Plan submitted by Jyoti Strips Limited by its Order dated 06th June 2019, which was finally approved by the Adjudicating Authority. It is also on record that the Appellant/Excise & Taxation Officer-cum-Assessing Authority assessed the tax Rs.1,95,62,231/-, for the year 2013-14 to 2016-17 on the corporate debtor.

7. The I&B Code envisages the treatment of all debts, whether statutory or contractual, operational or financial, secured or unsecured, arising out of or related to a period prior to the Insolvency Commencement Date, be brought under a common umbrella, so as to enable the Resolution Applicant

to comprehensively deal with them. The main objective required to be served is that once a treatment is given to the debts under the Resolution Plan, no other action may be taken either against the Corporate Debtor or against a Resolution Applicant who acquires the Corporate Debtor through the Corporate Insolvency Resolution Process.

8. As per the statutory provision, a Resolution Applicant stepping into the shoes of the corporate debtor, by acquiring the Corporate Debtor undergoing CIRP, should be given a fresh slate to be able to effectively revive the Corporate Debtor and fulfil the purpose of the I&B Code. Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions] ("Essar Case") **2019 SCC OnLine SC 1478** had observed as follows:

Para 88.

“For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. 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. For these reasons, the NCLAT judgment must also be set aside on this count.”

9. Based on the above case, the law laid down by Hon’ble Supreme Court; it is clear that a Successful Resolution Applicant is not to be burdened with undecided claims at the stage of implementation of the Resolution Plan. The Successful Resolution Applicant is to be provided with a company free from past liabilities. It has been rightly understood that a Successful Resolution Applicant cannot be saddled with past liabilities indefinitely. Such an act will make it impossible for the Successful Resolution Applicant to run the business of the Corporate Debtor effectively. In fact, saddling a Resolution Applicant with past claims will defeat the entire purpose and mechanism set out under the I&B Code, mainly when all claims have been appropriately dealt under the Resolution Plan itself.

10. The statutory dues are operational debts, and once a resolution plan is approved by the NCLT, the treatment of all stakeholders, including Operational Creditors, is to be determined as per the terms of the approved Resolution Plan.

11. In the case of Pr. Director General of Income Tax (Admn. TPS) vs M/s Synergies Doorway Automotive Ltd. & Ors. [Company Appeal (AT) (Insolvency) No.205 of 2017], while considering the issue of whether 'Income Tax', 'Value Added Tax' or other statutory dues, such as 'Municipal Tax', 'Excise Duty', etc. come within the meaning of 'Operational Debt' or not, this Tribunal has held that all such dues shall fall within the definition of 'Operational Debt' under Section 5(21) of the IB Code.

12. Further, the Resolution Plan submitted by the Resolution Applicant has provided a mechanism for the treatment of operational dues. Once a Resolution Plan is approved by the NCLT, all dues, whether financial or operational, have to be dealt with in the manner provided under such Resolution Plan. Even otherwise, any creditor of the Corporate Debtor should not be allowed to raise such belated claims and challenge the approved Resolution Plan, much after its implementation.

13. That insofar any contingent liabilities or claims are concerned, or any creditors who failed to file any claim during CIRP, the same were duly accounted for in the Resolution Plan of the corporate debtor and were given a NIL value. It is to be noted that the liquidation value of the Appellant's claim, in any case, would have been NIL.

14. Relevant clauses of the approved Resolution Plan is as under:

“iii. The Operational Creditors shall not have any rights or claims against the Company relating to the period prior to the Effective Date. The Company shall not have any liability towards

Operational Creditors for the amounts owed prior to the Effective Date.

v. Any and all legal proceedings initiated by any of the Operational Creditors whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future against the Company towards rights or claims relating to the period prior to the Effective Date shall also be withdrawn, and shall be of no legal consequence insofar as Company is concerned.”

15. Based on the terms of the approved Resolution Plan, it is clear that the Operational Creditors has no rights against the acquiring Company relating to the period, before the Effective Date. The Acquiring Company shall not have any liability towards Operational Creditors for the amounts owed prior to the Effective Date. Since the claim of the Appellant, i.e. the Statutory dues are the operational debt of the corporate debtor, Uttam Strips Pvt Ltd, and no claim was filed by the Appellants before the Resolution Professional, despite the knowledge of the Corporate Insolvency Resolution Process against the Corporate Debtor Uttam Strips Ltd, therefore the Appellants does not have any right to claim its dues from the acquiring Company, i.e. Jyoti Strips Ltd. The approved Resolution Plan is binding on all the stakeholders; therefore, the Appellant is abode by the terms of the Approved Resolution Plan.

Learned Counsel for the Appellant contends that the Assessment Order, along with the Tax Demand Notice was served through Chartered Accountant Sh. Mahesh Aggarwal on 29th March 2019. Admittedly, petition

for Initiation of CIRP was admitted against the Corporate Debtor on 09th April 2018 and Resolution Applicant Jyoti Strips Limited was approved by the Adjudicating Authority on dated 06th June 2019. The Appellant has annexed affidavit of Sh. Rakesh Kumar Dahia E&TO-cum Assessing Authority along with the Form B regarding proof of claim by Operational Creditor dated 11th November 2019, which is from page No. 41 to 53 of the paper book.

16. The Appellant further contends that he got to know about the CIRP initiated against the Corporate debtor on 04th June 2019 vide email. It is also claimed that he contacted the Insolvency Resolution Professional Mr Naveen Kumar Jain and submitted the proof of claim along with the assessment order and tax demand notices from 2013-14 to 2015-16. But he informed that he is not dealing with the case. It is further stated by the Appellant that due to the Haryana Assembly Election, he could not submit the claim before the Resolution Professional. It is also contended that Counsel was engaged by State of Haryana, who had informed about the approval of Resolution Plan dated 06th June 2019. Appellant also alleges that he submitted fresh claims along with updated proof of claim on 11th November 2019, to the Mr Sanjay Gupta Resolution Professional. But he didn't receive any reply of Mr Sanjay Gupta after that application was filed under Section 60(5) of the Code before the Adjudicating Authority, which has been rejected by the impugned Order.

17. It is beyond doubt the claims of the Appellant is relating to the statutory dues, which is an Operational Debt. It is also on record that the

Appellant had not properly filed its claim before the Resolution Professional up to the prescribed time limit. Since the Appellant failed to submit its claim before the Resolution Professional and the Resolution Plan submitted by Jyoti Strips Private Limited was implemented after approved from the Adjudicating Authority. Therefore as per the law laid down by Supreme Court in the case of Committee of Creditors of Essar Steel India Limited (supra), Successful Resolution Applicant cannot be burdened with the past liabilities. Such an act will make it impossible for the successful resolution applicant to run the business of the corporate debtor. It will ultimately defeat the entire purpose and mechanism set out under the I&B Code.

18. In view of our finding as aforesaid, no interference is called for against the impugned Order dated 18th December 2019. In the impugned Order, the statutory dues have been treated as 'Operational Debt' and equated them with similarly situated 'Operational Creditors'. Thus we find no reason to interfere with the impugned Order. No cost.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

[Alok Srivastava]
Member (Technical)

NEW DELHI
23rd JUNE, 2020

pks/nn