

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 1285/2023

In

CP(IB)No. 3784/MB/C-II/2018

Application filed under section 60 (5) of Insolvency and Bankruptcy Code, 2016 and Rule 11, r/w Rules 15 and 32 of the National company Law Tribunal Rules, 2016.

M/s Abnco Vie Win Ent Private Limited

...Applicant

V/s

M/s Steamline Industries Limited

In the matter of

Oriental Bank of Commerce

...Financial Creditor

V/s

M/s Steamline Industries Limited

...Corporate Debtor

Order Pronounced on :- 11.08.2023

Coram:

Shyam Babu Gautam : Kuldip Kumar Kareer

Member Technical : Member Judicial

Appearances (through video conferencing)

For the Applicant :- **Adv. Priyanka Jain**

For the Resolution Professional :- **PCA, Ayush Rajani**

ORDER

Per :- Kuldip Kumar Kareer, Member Judicial

1. The present Application is been filed by the Applicant seeking directions against the Resolution Professional of the Corporate Debtor to make payment of GST liability of Rs. 60,34,448/- with the GST department and to file GSTR – 3B return for the tax period 01.07.2017 to 31.08.2017.
2. The Applicant had purchased H.R. coil from the Corporate Debtor of Rs. 3,35,24,713/- in the month of July 2017 and the Corporate Debtor raised the invoice along with 18% GST of Rs. 60,34,448/- aggregating to total amount of invoice of Rs. 3,95,59,162/-. The Applicant had made full payment against the invoices along with GST. The said is corroborated through in the copy of the ledger of the Corporate Debtor in the books of the Applicant and the bank statements reflecting the amount of Rs. 3,95,00,000/-.
3. In respect of the abovementioned purchase, the Applicant claims Input Tax Credit (ITC) under Section 16(2) of the Central Goods and Service Tax Act, 2017 of Rs. 60,34,448/- consisting of 9% Central Goods and Service

Tax (CGST) and State Goods Service Tax (SGST) @ 9% amounting to Rs. 30,17,224/- each respectively under section 16(2) (C) of Central Goods and Service Tax, 2013.

4. As per provision of section 16(2) (c) of the Central Goods and Service Tax Act, 2017 the supplier is required to pay the tax charged on goods/services to its customers and in the event of non-payment of the GST liability by the supplier, for GSTR 3B is required to pay to the GST department and the ITC claimed by the Applicant will be reversed. The GST department issued notice dated 21.12.2020 to conduct the GST Audit of the Applicant and directed to reverse the ITC credit as claimed by the Applicant. The said notice was brought to the notice of the Applicant that the Corporate Debtor has defaulted in the payment of GST liability. The Applicant also approached the RP of the Corporate Debtor vide mail dated 02.08.2022 for making compliance good vide filing the GSTR 3B form and to make the payment of GST liability on the invoice value. However, the Applicant did not receive any reply from the RP.

Reply of the Respondent

5. The Respondent Resolution Professional has filed its reply dated 19.04.2023. The Respondent submits that the Application is not maintainable and is barred by limitation as the Resolution Plan has already been approved by the Committee of Creditors in the 8th CoC meeting held on 04.12.2019. the Respondent hence cannot accept the claim of the Applicant nor the Applicant can ask GST amount as till date the Applicant also did not file its claim with the Respondent.

6. The Respondent made publication on IBBI website on 09.04.2019 and in newspapers on 10.04.2019 for inviting the claims from the creditors of the Corporate Debtor till 23.04.2019. The Applicant never submitted its claim with the Respondent within the specified time frame in the publication neither anytime afterwards. The Applicant has filed the present application after 3 years, 9 months when the deadline had passed long ago and hence it is a time barred application. As per Regulation 12(2) of the CIRP Regulations, it provides that if a creditor fails to submit a claim within the stipulated time as mentioned in the public announcement, the creditor may submit the claim with proof to the RP on or before the ninetieth day of the Insolvency commencement date. In the present case the ninetieth day expired on 11.06.2019. Even during the said period, the Applicant failed to file its claim with the RP. Hence, the Applicant cannot ask for the GST amount/claim as the RP at this belated stage has no authority under the code.

7. The Respondent further states that the Resolution Plan has been approved by the CoC and the RP filed Application bearing MA 4129 of 2019 under section 30(6) of the Code for approval of the Resolution Plan on 20.12.2019 and the matter was reserved for orders on 11.08.2021. However, due to reconstitution of Bench, the said matter was dereserved. The Application was filed on 03.02.2023 much after the approval of the Resolution Plan by the CoC and no amount is shown to be payable with regard to GST in the books of account of the Corporate Debtor.

8. Hence, the Application filed after a gap of 3 years cannot be entertained and needs to be rejected.

FINDINGS

9. We have heard the Counsel appearing for the Applicant and the Respondent.

10. It is observed from the available records and documents that the Respondent herein had made public announcement about the Insolvency proceedings of the Corporate Debtor on IBBI website on 09.04.2019 and also in newspapers viz Free Press Journal and Navshakti on 10.04.2019 having wide circulation in Mumbai.

11. 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 to provide the Resolution Applicant so that a legally and financially sound Resolution Plan for the Corporate Debtor is received.

12. In the present case, the Applicant has neither lodged its claim within the time stipulated in the public announcement nor within the time prescribed in Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which permits the filing of the claim on or before 90th day of the insolvency commencement date.

13. The Resolution Plan has been approved by the CoC as on 04.12.2019 and also has been submitted to this Tribunal for necessary approval on 20.12.2019 under Section 30 of the Code. Any interruption in the CIRP process at this stage by including the delayed claim would amount to setting the clock back. It would be complete disruption of the CIRP and the timelines stipulated therein.

14. Thus, it is clear that much water has flown from the date of issue of public notice, approval of the Resolution Plan by the members of the CoC and submission of the Plan to the Tribunal for necessary approval.

15. In the light of the abovementioned discussion, we hereby reject the claim of the Applicant in accordance with the requirements of the statute and in keeping the overall objective of the Code and on account of the inordinate delay in filing the claim.

16. Hence, **IA 1285 of 2023 is rejected.**

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)