

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A(IB) No. 511 of 2023
In
Company Petition (IB) No. 170/KB/2017**

***An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Rules, 2016;***

**IN THE MATTER OF:
RBL Bank Limited**

Versus

... Financial Creditor.

MBL Infrastructure Limited

And

... Corporate Debtor.

**IN THE MATTER OF:
MBL Infrastructure Limited & Anr.**

Versus

... Applicants.

Employees State Insurance Corporation & Ors

... Respondents.

Date of Pronouncement: May 17, 2024.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Ratnanko Banerji, Sr. Adv.] For the Applicant

Mr. Shaunak Mitra, Adv.

Mr. Kanishk Kejriwal, Adv.

Ms. Neha Somani, Pr.CS

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

Mr. Anjan Chakraborty, Adv.] **For Respondent** in
Mr. Raja Satyajit Banerjee, Adv. IA(I.B.C)/1178(KB)2022
Ms. Krishnika Chatterjee, Adv.

Mr. Dipankar Das, Adv.] **For Respondent** in
Ms. Sanjana Nandi, Adv. IA(I.B.C)/1102(KB)2022

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through a hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been preferred under Section 60(5) of IBC read with Rule 11 of NCLT Rules 2016 by **Mr. Anjane Kumer Lakhota, Successful Resolution Applicant (SRA) of the corporate debtor MBL Infrastructure Limited.** This application has been filed against **Employees State Insurance Corporation (ESIC) Bhopal** seeking following reliefs:

***a.** Injunction restraining the Respondent from acting in contravention of the Resolution Plan or making any demands not contemplated in the Resolution Plan;*

***b.** Order of injunction restraining the Respondents from making any claims or demands for the period to initiation of CIRP proceedings i.e. 30.03.2017;*

***c.** Order of injunction restraining the Respondents from demanding payment of dues of ESI, if any, prior to 01.01.2024 and/or from alleging any default in payment by the Applicants prior to expiry of three years from 01.01.2025;*

***d.** Order of injunction restraining the Respondents from claiming any penal interest, simple interest, compound interest, damages, penalties, or compounding charges for demands pertaining to the period upto the approval of the Resolution Plan and/or for*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

demands raised pursuant to matters which were sub-judice or under dispute at the time of approval of the Resolution Plan;

- e. Order of injunction restraining the Respondents from raising any demand for a matter which was sub-judice or under dispute at the time of approval of the Resolution Plan, for a period of 7 years after the final judgment is delivered in the sub-judice matters;*
- f. Order be passed to quash and adjudge null and void, the demand notices, penalty notices and show cause notices to the Applicants after the approval of the Resolution Plan as detailed in paragraph No. 22;*
- g. Order of injunction restraining the Respondents from taking any steps or further steps on the basis of the demand notices, penalty notices and show cause notices as detailed in paragraph No. 22;*
- h. Ad-interim orders in terms of prayers above;”*

Factual Matrix:

- 4.** MBL Infrastructure Limited (Corporate Debtor) was put into Corporate Insolvency Resolution Process (CIRP) on 30.03.2017 by an Order dated 30.03.2017, passed by this Tribunal. As per the direction, paper publications were made for inviting claims. The respondent herein did not file claim form with the resolution professional for the period July, 2015 to March 2016.
 - 5.** Resolution plan of MBL Infrastructure Limited (Corporate Debtor) was approved by an Order dated 18.04.2018, passed by this Tribunal. The said Order was challenged before the Hon’ble NCLAT which was dismissed by upholding the Order of this Tribunal *vide* Order dated 18.04.2018. The Hon’ble NCLAT’s Order was also challenged before the Hon’ble Supreme Court of India. The Apex Court *vide* Order dated 18.01.2022, dismiss the appeal filed against
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

the Order passed by the Hon'ble NCLAT. Thus, resolution plan had achieved finality.

6. By virtue of approval of the resolution plan, the applicant became the Successful Resolution Applicant (SRA). Meanwhile, on an ongoing dispute with the respondent, an appeal was filed by the corporate debtor against their demand under the ESI Act on 24.11.2017. In the appeal, the applicant company (corporate debtor) had made a case of non-applicability of depositing 50% of the alleged amount due under Section 75 of ESI Act.
7. Not accepting with the contentions of the corporate debtor, the ESIC Court Bhopal directed the corporate debtor to deposit 50% of the amount in dispute under Section 75 of ESI Act between 23.09.2022 to 28.10.2022. The ESI Court without considering merits of the appeal, dismissed the appeal filed by the corporate debtor in the year 2017 for not depositing 50% of the amount under dispute, and on 01.12.2022, the respondent ESIC Authorities issued notice of demand as well as notice to prosecute for recovery of the disputed amount and hence this application.

Ld. Counsel for the Applicant:

8. Ld. Counsel for the applicant brought to our notice that any claim which has not been claimed prior to the approval of the resolution plan will have to be extinguished. Any claim made within the time frame or at least before the approval of the resolution plan will be paid as per the plan. In this case, the amount claimed by the ESI Department has not been claimed before approval of the plan. The respondent herein has sent a notice now for Rs. 29,47,093/- along with interest.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

- 9.** This claim which included interest is not payable because the claim was not lodged in time. Meanwhile, the interest portion representing Rs. 13,39,851/- out of the total amount of Rs. 29,47,093/- is anyway not payable as per the approved resolution plan.
- 10.** Ld. Counsel appearing on behalf of the applicant submits that in view of settled legal proposition, any dues for the pre-CIRP period claimed during CIRP and not provided in the approved resolution plan, stands prima facie and automatically extinguished by operation of law without any recourse.
- 11.** Even assuming without prejudice to above arguments, the Ld. Counsel submits that approved resolution plan provides that any statutory dues which were sub judice at the time of approval of the plan is to be paid over a period of 7 years, after the judgment without any interest and penalty subject to rights and remedies to the corporate debtor.
- 12.** In view of above, Ld. Counsel for applicant submits that this application may be allowed and Order for restraining the respondent in making any claim or demands for the period prior to initiation of CIRP on 30.03.2013, be made and the demand made by the respondent to be set aside.

Analysis and Findings:

- 13.** We have perused the approved resolution plan; the plan contains a clause/relief/concession as under:

“The payment of statutory liabilities (like Income Tax, Service Tax, VAT, royalties, cess, stamp duties and other statutory demand etc.) are proposed to be made over a period of three years from 1st April

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

2001, with waiver of penal interest, simple interest, compound interest, damages, penalties, compounding charges etc. on all statutory duties such as PF, ESI, TDS, road taxes, income tax, service tax, VAT etc.”

- 14.** Further we find the resolution plan provides that payment of liabilities of the corporate debtor which arises out of matters which are sub judice or under dispute at the time of approval of resolution plan is to be made over a period of 7 years up to the final judgment is delivered in the sub judice matter without any interest or penalty thereon. The relevant extract of the resolution plan is reproduced for ease of reference:

“The main reliefs/concessions as envisaged in the resolution plan are as under:

Liability arising out of the matter, which is presently sub-judice/under dispute/contingent leads to liability against the corporate debtor is proposed to be paid over a period of 7 years after the judgment without any interest and penalty, subject to rights and remedies to the corporate debtor”

- 15.** Further the plan provides that all amounts will be paid after proper reconciliation and without prejudice to legal remedies available to the corporate debtor.
- 16.** On perusal of resolution plan, we find that statutory demands which were sub judice at the time of approval of the plan will be paid without interest and penalties over a period of 7 years. However, even that disputed amount has to be claimed so that it can be recorded in the information memorandum and consequently, the resolution plan shall be made. In this case we find that no claim has
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

been made by the ESI Department within the time limit prescribed in the Corporate Insolvency Resolution Process. In fact, no claim was made even before the approval of the resolution plan.

17. It is not the case of the respondent that the books of the corporate debtor carried this liability as a “confirmed liability”. Nothing has been placed on record to suggest that resolution professional who prepared the Information Memorandum had prior knowledge of this liability from the books of accounts.

18. In view of above, any claim not filed prior to the approval of the resolution plan cannot be entertained. We place reliance on the following case laws:

a. ***RPS Infrastructure Ltd. v. Mukul Kumar and Anr.*** reported at **(2023) ibclaw.in 102 SC**, where in the Hon’ble Apex Court has already taken the view that after approval of the plan by the CoC, the claims cannot be entertained. The Hon’ble Apex Court held that:

*“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*, 8 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.”

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017

b. Further, in ***Deputy Commissioner, UTGST, Daman Vs. Rajeev Dhingra IRP*** reported in ***(2023) ibclaw.in 592 NCLAT***, the Hon'ble NCLAT has laid down that:

“44. From a plain reading of the above CIRP Regulations, RP can accept the claim as per extended period as provided in CIRP Regulation 12(2). After extended period of 90 days of the insolvency commencement date, the IRP/RP is not obliged to accept the claim. Prima-facie, the said CIRP regulation has not provided any discretion to RP for admitting their claim after the extended period. Had they submitted their respective claims within the extended time-frame and the RP had not chosen to collate this claim as provided for in IBC, only then can it be rightly contended that there has occurred some material irregularity. In the instant case, the facts on record do not in any manner show that the RP was not diligent in performing his duty or acted in contravention of the of the IBC in rejecting the belated claims of UTGST and AC-CGST.’

xxx

xxx

xxx

“48. This Tribunal while applying its judicial mind in the exercise of its appellate jurisdiction cannot be oblivious of the fact that CIRP is a time bound process. Therefore, when a resolution plan has already been received and approved by the CoC, we are inclined to agree that if the claims of creditors are accepted at a belated stage after the stipulated time provided for submitting claims, then the possibility of resolution plan failing to materialize becomes very high and tantamount to defeat the objectives of IBC making the CIRP a time bound process. If the belated claim is considered at this stage, it shall adversely affect further implementation of resolution plan and be detrimental to the functioning of the Corporate Debtor. It is also pertinent to note that the SRA-Vama has claimed to have already made payments of Rs.7.90 crore while implementing the resolution plan.”

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

*I.A(IB) No. 511 of 2023
C.P. (IB) No. 170/KB/2017*

c. Further in ***Suraksha Realty Ltd. Vs. Mr. Anuj Bajpai*** reported at **(2023) ibclaw.in 709 NCLAT**, it is held that:

“7. [...] There is no dispute with the facts that the claim was filed by the Appellant after approval of the plan by the CoC. The Appellant has also not been able to show that claim of the Appellant was reflected in the records of the Corporate Debtor.”

“8. We thus are of the view that no error has been committed by the Adjudicating Authority rejecting I.A. There is no merit in the Appeal, the Appeal is dismissed.”

(Emphasis Added)

- 19.** In view of the facts and circumstances of the case in hand and the case laws relied herein, we **allow this application** and Order of injunction restraining the respondent from making any claims or demands for the period prior to initiation of CIRP proceedings in respect of claims which were not submitted before the approval of the resolution plan is granted.
- 20.** In view of this direction, we feel that the other reliefs sought for, need not be dealt with and accordingly, this application being **I.A(IB) No. 511 of 2023** stands **allowed**.
- 21.** A certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this order on 17th Day of May, 2024.

PH(PS)/ Bose, R. K. [LRA]
