

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.3

IA/439(AHM)2023 in C.P.(IB)/39(AHM)2021

Proceedings under Section 60(5)(C) IBC,2016 r.w Rule 11 of NCLT rules,2016

IN THE MATTER OF:

Assistant Commissioner CGST & Central Excise Division**Applicant**

V/s

Pradeep Kumar Kabra RP of Cengres Tiles Ltd**Respondent**

Order delivered on: 13/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1**

**IA No. 439 of 2023
In
CP(IB) 39 of 2021**

IA No.439 of 2023

[An application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016]

In the matter of

**Assistant Commissioner
CGST and Central Excise Division
Kadi, Gandhinagar Commissionerate
4th Floor, Janta Super Market
Near Vepari Jin, Kalol
Gandhinagar**

Applicant

Versus

**Pradeep Kumar Kabra
Resolution Professional of
Cengres Tiles Limited
Having its Office at:
3rd Floor, Reegus Business Centre
Above Mercedes Showroom
New City Light Road
Barthana, Vesu, Surat**

Respondent

In the matter of CP(IB) 39 of 2021:

[An application under Section 7 of the Insolvency & Bankruptcy Code, 2016]

Axis Bank Limited

Applicant

Versus

Cengres Tiles Limited

Corporate Debtor

Order Pronounced on: 13.09.2023

**Coram: Shammi Khan, Member (Judicial)
Kaushlendra Kumar Singh, Member (Technical)**

Appearance:

For the Applicant : Ld. Sr. Adv. Mr. Navin Pahwa, a.w. Ld. Adv. Ms. Pragati
Bansal
For the Respondent Ld. Adv. Mr. Tirth Nayak
For the CGST Ld. Adv. Mr. C.B. Gupta a.w. Ld. Adv. Mr. Love Modi

ORDER

1. This application is filed under Section 60(5) of Insolvency & Bankruptcy Code, 2016 by Assistant Commissioner, CGST and Central Excise Division (Applicant) against Pradeep Kumar Kabra Resolution Professional (RP) (Respondent) of the corporate debtor-M/s Cengres Tiles Limited seeking direction to the RP to accept and admit the claim of the applicant amounting to Rs.39,86,04,041/- (as claimed in Form-C) instead of admitted claim amount of Rs.11,76,90,942/-.

2. The averments made by the applicant in the present application and as argued by the learned counsel are summarized as under:

i. That as per the Central Excise and Service Tax returns filed by the corporate debtor for the financial year 2015-16 to 2017-18 (upto June, 2017) the liability of the corporate debtor to pay Central Excise and Service Tax amounts to Rs.5,87,62,325/- and the liability for financial year 2017-18 (July, 2017 onwards) to 2020-21 to pay Goods & Service Tax amounts to Rs.33,98,41,716/-. The sum of the said liabilities amounts to Rs.39,86,04,041/-, however, the same is still outstanding.

ii. The goods amounting to Rs.5,10,12,500/- was seized by the Department. Moreover, the audit report dated 02.02.2018 of the corporate debtor reflects the outstanding statutory dues amounting to Rs.39,86,04,041/-.

iii. The corporate debtor was admitted into CIRP on 27.04.2022 and the claim was filed by the applicant along with the documents in Form-B on 02.06.2022 for an amount of Rs.39,62,94,872/-. The applicant submitted the revised documents to the RP on 08.11.2022 and thereafter again submitted the revised claim on 19.01.2023 to the RP in Form-C in the category of the secured creditor for an amount of Rs.39,86,04,041. However, the RP admitted only Rs.11,76,90,942/- against the claim filed in Form-B of Rs.39,62,94,872/- in the category of operational creditor.

iv. Further the Adjudicating Authority has not approved any resolution plan of the said corporate debtor and therefore the claim of the applicant as submitted in Form-C amounting to Rs.39,86,04,041/- can be considered.

3. The RP through its reply submitted that the applicant filed its claim on 02.06.2022 amounting to Rs.39.62 crores in Form-B as an operational creditor, however, after around 7 months the applicant filed its revised claim on 19.01.2023 of Rs.39.86 crores in Form-C to be treated as secured creditor. Moreover, the bifurcation given by the applicant in Form-C is highly inflated and consequently, the respondent sought documents from the applicant to verify the claim however, the applicant failed to provide documents even after several reminders. Therefore, the respondent based upon the documents provided by the suspended management and GSTR returns on the portal verified and admitted an amount of Rs.11,76,90,942/-.

4. We heard the learned counsel for the applicant & RP and on perusal of records it is noted that the corporate debtor was admitted into CIRP on 27.04.2022 and the applicant submitted its claim on 02.06.2022 in Form-B amounting to Rs.39,62,94,872/- and thereafter submitted the revised claim in Form-C on 19.01.2023 amounting to Rs.39,86,04,041/- as secured creditor. It is also noted that as against the said claim the RP has admitted Rs.11,76,90,942/- in the category of operational creditor.

5. It is further noted that the CoC approved the resolution plan of Thirdeye Tradelink Private Limited (in consortium with Turba International LLP, Baluram Lahoti, Radheshyam Nuwal) with 99.86% votes in its 11th CoC meeting which was held on 24.01.2023 and the application under section 30(6) of the Code for approval of the said resolution plan was filed on 20.03.2023 before this Adjudicating Authority.

6. It is also noted that the liquidation value is Rs.49,88,25,122/- as such if the said liquidation value was to be considered in the event of liquidation

as a total amount to be distributed as per section 53 then the operational creditors would have got nothing. Similarly, we find that the proposed plan value is Rs.45,20,00,000/- and if that was to be distributed in accordance with section 53 then also nothing would have remained for the operational creditors.

7. Considering the facts of the case we are of the view that even if the claim amount is admitted in full then also the operational creditor will not be paid more than what is proposed to be paid and therefore, at this stage when the resolution plan is approved by the CoC and the same is pending for approval before this Adjudicating Authority, we are not inclined to intervene in the decision taken by the RP.

8. With this IA 439 of 2023 is disposed of.

-Sd-
Kaushalendra Kumar Singh
Member (Technical)

-Sd-
Shammi Khan
Member (Judicial)

Swati Khandelwal