

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/1298/2019

In

IBA/130/2019

Application filed under section 60(5) of the IBC, 2016

In the matter of Kiran Global Chem Limited

T. R. Ravichandran, RP

For (Kiran Global Chem Limited)

---Applicant

Vs

The Asst. Commissioner (ST)

Kilpauk Assessment Circle & 12 Ors

--- Respondents

Order delivered on: 05.12.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant : *Shri. S. Sathiyarayanan, Advocate*
Shri. Arun Mohan, Advocate

Counsel for R-1 : *Shri. Mohamed Shaffiq, Advocate*
Special Govt. Pleader (Taxes) of Tamilnadu
Shri. M. Hariharan, Advocate
Addl. Govt. Pleader

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order dictated in Open Court on 28.11.2019

It is an MA filed by Resolution Professional of M/s. Kiran Global Chem Limited seeking permission to the Corporate Debtor to have

access to its GST Portal Account to file GST Returns during the period of CIRP and to allow the Applicant to pay the net GST liability from the date of commencement of CIRP till its completion disregarding non-payment of arrears dues of GST for the period prior to commencement of CIRP.

2. Counsel appearing on behalf of 1st Respondent (The Assistant Commissioner (ST), Anna Nagar East, Chennai) stated that the above reliefs cannot be granted because no provision has been set out in GST Act to accept current dues before clearing past dues, therefore this application is liable to be dismissed.

3. On hearing the above submissions of Applicant as well as the 1st Respondent Counsel, it appears that any company once it has gone into CIRP, if at all the Corporate Debtor is to be run as a going concern, it can be obligated to pay the taxes from the date of initiation of CIRP. As to the dues of pre-admission period, the creditors, including Tax authorities, are entitled to make a claim against the Corporate Debtor as mentioned in the Insolvency and Bankruptcy Code.

4. In view thereof, if the Corporate Debtor's GST Portal is blocked, it is difficult to the Corporate Debtor to generate bills falling within the ambit of GST and pay the taxes for the post-admission period.

5. Since law is clear that Tax authorities fall within the ambit of the Operational Creditor, as to the pre-admission claims are concerned, they are at liberty to make their claims before the Resolution Professional instead of insisting upon the Resolution Professional to pay the pre-admission dues before accepting the tax liabilities arising during the CIRP period.

6. As to provisions of GST Act, since Section 238 of the Insolvency and Bankruptcy Code having categorically mentioned that IBC will have over riding effect on all other laws which are in contravention to the provisions of the IBC, R1 cannot raise an objection saying since no provision has been made in GST or in its software to accept such accounts, the business happening in the market after initiation of CIRP through debtor company will come to

stand still and in such situation no company under CIRP can function as a going concern.

7. In view thereof, we hereby direct all the Respondents including the 13th Respondent to allow the Corporate Debtor to have access to its GST Net Portal Account, permit the applicant to file GST Returns of the Corporate Debtor generated after commencement of CIRP without insisting upon payment of past dues of GST during the pre-admission period and accept net GST liability after availing eligible ITC from the date of commencement of CIRP and adjust such GST payment so remitted by the Corporate Debtor towards discharge of GST during the CIRP period.

8. Accordingly, this MA/1298/2019 is hereby disposed of.

-Sd-

(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-

(B. S.V. PRAKASH KUMAR)
Member (Judicial)

KNP/TJS