

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH)(Insolvency) No. 42 of 2021

[Arising out of Impugned Order dated 28 January 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Kochi Bench, Kochi in MA/205/KOB/2020 in MA/140/KOB/2020 in TIBA/11/KOB/2019]

IN THE MATTER OF:

**Bijoy Prabhakaran Pulipra
Resolution Professional
PVS Memorial Hospital Private Limited,
Ground Floor TC – 11/789(1),
Plamoodu- Nalanda,
Junction Road, Nanthancode,
Kowdiar. PO, Kerala – 695003**

Appellant

Versus

**State Tax Officer (Works Contract)
SGST Department, Kerala State
02nd Floor, Clas Tower
Old Railway Station Road,
Kargil Lane Ernakulam – 682018**

Respondent

Present:

**For Appellant : Mr Bijoy Prabhakaran Pulipra, Advocate
[PCS – Insolvency Professional]**

**For Respondent : Mr B Sarath Babu, Advocate
For Mr E K Kumaresan, Advocate**

J U D G M E N T

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

1. This Appeal emanates from the Impugned Order dated 28 January 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Kochi Bench, Kochi in MA/205/KOB/2020, seeking clarification about the Order passed in MA/140/KOB/2020 in TIBA/11/KOB/2019, wherein the

Adjudicating Authority has passed an order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short '**I&B Code**') holding that there is no error in the Order in MA/140/KOB/2020, to be clarified by this Tribunal. Accordingly, the original status of the parties in the Company Petition is retained in this Appeal for the sake of convenience.

2. **Brief Fact**

2.1 The present Appeal is filed under Section 61(1) of Insolvency and Bankruptcy Code, 2016 arising out of the Impugned Order dated 28.01.2021 passed by the National Company Law Tribunal, Kochi Bench in MA/205/KOB/2020 about MA/140/KOB/2020 in TIBA/11/KOB/2019 filed under Section 60(5) of IBC, 2016.

2.2 The Adjudicating Authority/NCLT disposed of the IA/140/KOB/2020 on 04.11.2020 with the following Order: -

"In view of the aforesaid decision of the CoC, the Resolution Professional is directed to immediately, at any rate within two weeks from today, to file an appeal before the Joint Commissioner, State Sales Tax Department with the relevant papers for re-assessing the GST amount payable, based on the audited financial statements for the financial year 2018-19 and also based on the Notification No.9/2017-Integrated TA (Rate) dated 28.6.2017 issued by the Government of India. Needless to mention here that on receipt of the Appeal from the Resolution Professional, the Joint Commissioner shall take a decision in the matter, as early as possible, so that the recovery of the GST amount from the Corporate Debtor should not be delayed any further."

2.3 After that the Appellant/Resolution Professional had filed MA/205/KOB/2020 before the Hon'ble NCLT, Kochi Bench seeking clarifications, as under, before the Hon'ble NCLT, Kochi Bench in the Order dated 4 November, 2020 passed in MA/140/KOB/2020.

a. Issue necessary clarification to the Applicant as to whether the Resolution Professional has the authority under Regulation 13 and 14 of the CIRP Regulations to file an appeal before the Joint Commissioner, GST, as part of the verification and determination of a claim submitted by the GST department in Form B.

b. Issue necessary clarifications to the Applicant as to whether the judgement, decree or Order, if any, passed by the Appellate Authority under CGST Act pursuant to the Appeal, against the Corporate Debtor shall be binding on Corporate Debtor when the Moratorium declared by the Hon'ble National Company Law Tribunal Bench by virtue of section 14 of the Insolvency and Bankruptcy Code is in effect.

c. Issue necessary clarifications to the Applicant as to whether the requirement of the pre-deposit of Rs. 3,79,64,304/- (Rupees Three Crore Seventy-Nine Lakh Sixty-Four Thousand Three Hundred and Four Only) mandated under Section 107 of the GST Act, shall be prejudicial to the interest of the Corporate Insolvency Resolution Process, as the said section is inconsistent with Regulation 13 and 14 of the CIRP Regulations due to the overriding effect of Insolvency and Bankruptcy Code, 2016 over the Goods and Service Tax Act, 2017.

2.4 The Adjudicating Authority disposed of the Application by the impugned Order dated 28 January 2021 with the following observations;

2.4.1 *"This Tribunal carefully gone through the averments made by the applicant Resolution Professional and the reply statement filed by the Respondent State Tax Department and considered the decisions placed before the Tribunal. After considering the entire gamut of the matter, this Tribunal disposed of MA No. 140/KOB/2020 directing the Resolution Professional to file an appeal before the Joint Commissioner, that too on the submission of the Resolution Professional before this Tribunal that the CoC resolved to file an appeal before the GST Commissioner for revisiting the claim amount of the applicant. The relevant portion of the minutes of the CoC meeting held on 15 July, 2020 is reproduced below:*

2.4.2 *"Chairman further informed that in the best interest of CIRP, an appeal may be filed before the Joint Commissioner, GST, Kochi to reduce the claim amount based on information given by Mrs. P.V Mini, Promoter and suspended Managing Director of the Corporate Debtor. Mrs. P.V. Mini had informed the RP that Mr. Jigesh who is the Internal Auditor of the Company was handling the matter and that will be able to provide required information to RP in the matter. The RP recommended to appoint a Chartered Accountant who is specialised in GST to make the revised computation and accept the revised claim amount accordingly. The RP then place the matter before the CoC for their deliberation", and based on the Notification No.9/2017 Integrated Tax (Rate) by the Government of India dated 28.6.2017. The Health Care Services by clinical establishment is exempted from GST and hence revenue generated under the Head, "In-patient Collections", "Outpatient Collections" and "Laboratory and Diagnostic Services being the Health Care Services rendered to admitted Outpatient respectively are not liable to GST. Hence a*

further clarification as sought for in this MA is not called for as to whether he can file an appeal before the Joint Commissioner GST. Regarding the relief that when Moratorium is declared by this Tribunal, the Order of the Appellate Authority under CGST Act is binding on the Applicant Resolution Professional, the decision of the Calcutta High Court in Burn Standard (supra) is significant which states that the Moratorium will not stand in the way of Resolution Professional to file an appeal before the State Tax Department. The relevant paragraph of that decision is quoted below:-

2.4.3 "Undisputedly in the present case, M/s. Burn Standard Co. Ltd., the plaintiff is the corporate debtor and the suit has not been filed against the corporate debtor within the meaning of Section 14 of the said Code, namely, M/s. Bum Standard Co. Ltd. Therefore, submission made by the petitioner that in view of Section 14(1), the suit is not maintainable or cannot proceed, is absolutely a baseless submission and cannot be sustained in law. So far as the submission that in view of Section 17 the powers of the Board of Directors or the partners of the corporate debtor has vested to the Resolution professional, suit cannot proceed, is also not to be approved because the suit can very well be proceeded at the instance of such Resolution professional appointed under the Code, if the same cannot be proceeded by M/s. Bum Standard Co. Ltd.

Therefore, both limbs of the arguments advanced by the petitioner fail, and the submission that the suit cannot proceed, is untenable. Accordingly, prayer for stay is refused. The Application being GA No.2287 of 2017 is dismissed."

2.4.4 In view of the aforesaid findings there is no error in the Order in MA 140/KOB/2020 to be clarified by this Tribunal. In

view of our finding as above the third prayer need not be considered at present."

3. The Application for the Corporate Insolvency Resolution Process was filed by Dr N P Kamlesh (TIBA/11/KOB/2019) and M/s OCS Group (India) PRIVATE LIMITED (IBA/28/KOB/2019) against PVS Memorial Hospital Private Limited ("Corporate Debtor") under Section 9 of the IBC, 2016 read with Rule 6 of the IBBI (Application to Adjudicating Authority) Rules, 2016 was admitted by NCLT, Kochi Bench, vide Order dated 16.10.2019. The Appellant was appointed as the Interim Resolution Professional ("IRP"), who was later confirmed as Resolution Professional (RP) based on the Resolution passed by the Committee of Creditors in its 1st Meeting held on 17.12.2019.

4. The Respondent had submitted the claim for ₹ 28,41,59,349.06 (Rupees Twenty-Eight crore Forty-One Lakh Fifty –Nine Thousand Three Hundred and Forty-Nine and Paise Zero six) in 'Form B' under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 20.02.2020.

5. During CIRP, the RP had revised the admitted claim amount of the Respondent to ₹ 1, 06, 09, 299 after due verification of the GST claim with the books of accounts of the Corporate Debtor and the electronic register maintained by the Respondent, in accordance with Regulation 14 of CIRP regulation and had sent detailed information on the revision of the admitted claim to the Respondent on 10.08.2020.

6. Being aggrieved by the action of RP, the Respondent' State Tax Officer (Works Contract)' filed an application bearing No. MA/140/KOB/2020 before the Adjudicating Authority under Section 60(5) of the IBC to allow the claim amount submitted by the Respondent in full.

7. The Adjudicating Authority vide its Order dated 04.11.2020 had directed the Appellant to file an appeal before the Joint Commissioner, State Sales Tax Department for a reassessment of the GST amount payable, based on the audited financial statements for the Financial Year 2018–19 and the Notification issued by the government of India dated 28.06.2017 within two weeks from the date of the Order.

8. The RP stated that after receiving proper and validated information from the promoters of the Corporate Debtor, the COC, in a meeting held on 15 July 2020, directed the RP to explore other possibilities to re-verify the claim amount.

9. After that, with the permission of the COC at its 23rd Meeting held on 12.11.2020, the Appellant had filed Miscellaneous Application MA/205/KOB/2020 before the NCLT, Kochi bench to issue necessary clarification to the Appellant in respect to the filing of the Appeal before the Joint Commissioner, SGST Department as directed by the NCLT vide its Order dated 4.11.2020.

10. On the said clarification petition, MA/140/KOB/2020, the Adjudicating Authority/NCLT vide the impugned Order dated 28.01.2021 had directed that

there is no error in its earlier Order to be clarified by the Tribunal and had also ordered that the third prayer about clarification of the pre-deposit of ₹3,79, 64, 304/- mandated under section 107 of the GST Act for preferring the Appeal, need not be considered at present. This Order is under challenge in this Appeal.

Appellants submission

11. The Appellant contends that the CIRP was initiated against Corporate Debtor 'PVS Memorial Hospital private limited vide Order dated 16 October 2019. Consequently, a moratorium order was passed prohibiting all the transactions stipulated under section 14 of the Code.

12. The RP had submitted the claim of ₹ 28,41,59,349.06 in Form B on 20 February 2020. However, the Appellant was unable to verify the claim with the books of accounts and other records of the Corporate Debtor as the Corporate Debtor was inoperative since July 2019. In addition, the electricity connection was disconnected due to the non-payment of electricity charges. Therefore, considering the uncertainty for restoring the electricity connection, the Appellant had provisionally admitted the Respondent's entire claim of Respondent of ₹ 28,41,59,349.06.

13. Subsequently, on 13 July 2020, Mrs P.V. Mini, the Promoter and Suspended Managing Director of the Corporate Debtor, had informed the RP that the amount claimed by the GST department is exorbitantly high as the department had erroneously charged GST on the total turnover of the

Corporate Debtor without taking into account the Notification No. 9/2017-integrated tax rate dated 28 June 2017 issued by Government of India.

14. After getting access to the financial information of the Corporate Debtor maintained in the in-house IT server, the Appellant had verified the records of the Corporate Debtor with the assistance of the suspended Managing Director and verified the claims submitted by the GST Department with the books of accounts maintained by the Corporate Debtor and the information provided by the suspended Managing Director.

15. Further, on verification, it is found that the GST Department had calculated the GST liability for non-filing of return for the Financial Year 2018-19 and 2019-20 on the best judgement basis on the total turnover of the Corporate Debtor. However, as per Notification No.9 of the 2017-integrated tax rate dated 28 June 2017, the healthcare services by a clinical establishment or authorised medical practitioner or para medics are exempted from Goods and Service Tax. Accordingly, revenue under the head "inpatient collections" and "outpatient collections" and laboratory and diagnostic services being the healthcare services rendered to admitted patients and outpatients respectively are not liable to GST. Also, the pharmacy sales to 'inpatients' and canteen collections on food supplied to the inpatients as advised by the Doctor/Nutritionists are a part of the composite supply of healthcare and is not separately taxable. The said liability was also not crystallised as on the insolvency commencement date.

16. Based on the above premise and in the best interest of the CIRP, the RP revised the admitted claim amount of the Respondent to ₹ 106,09,299/- after due verification of the GST claims with the books of accounts of the Corporate Debtor and the electronic register maintained by the Respondent by Regulation 14 of the CIRP regulations and sent a detailed intimation on the revision of the admitted claim amount to the Respondent on 10 August 2020.

17. Consequent to the above, the Respondent filed the Application bearing No. MA/140/KOB/2020 before the Adjudicating Authority under Section 60 (5) of the IBC to allow the claim amount submitted by Respondent in full. After perusing the whole case records, the learned Adjudicating Authority/NCLT vide its Order dated 4 November 2020 had directed the Appellant to file an Appeal before the Joint Commissioner, State Sales Said Department for the assessment of the GST amount payable, based on the audited financial statements for the Financial Year 2018-19.

18. Based on the Committee of Creditors, Resolution dated 15 July 2020 passed in its 12th Meeting to file an Appeal before the Joint Commissioner for the reassessment of the GST liability of the Corporate Debtor, which costed an additional burden of ₹ 3,79,54,304/-, in the form of pre-deposit, mandated under Section 107 of the GST Act, upon the Corporate Debtor and COC as part of the claim verification. On the said Application, the learned Adjudicating Authority/NCLT had issued an order directing the Appellant to file an Appeal before the Joint Commissioner, SGST department.

19. **Respondents Submission**

19.1 The Respondent contends that the Corporate Debtor M/s. PVS Memorial Hospital Private Limited is registered under State Tax Officer (Works Contract), SGST Department, Ernakulam, Kerala State, having GST No.GSTIN32AABCP3914G2ZT. The assessee is in arrears of a total amount of ₹ 28,41,59,349.06 as tax, interest and penalty. The Respondent submitted their claim before the Appellant on 19.02.2020. Further, the Appellant admitted the entire claim amount on 18.03.2020 after verifying relevant records submitted by the Respondent.

19.2 After five months from the date of admitted claim, on 10.08.2020, the RP revised the claims only to an amount ₹ 1,06,09,299/- and rejected a substantial portion of the claim submitted by the Tax Department purporting to be under the exercise of Regulation 14 of the CIRP Regulations on the ground that the charging of the GST liability on the total turn over of the Corporate Debtor is not correct given the notification No.9/2017/Integrated Tax (Rate) dated 28.6.2017.

19.3 It is pertinent to point out here that the Corporate Debtor Company purchased both exemption and non-exemption of tax, and a Notification will not supersede the GST Act.

19.4 Against the rejection of the claim, the Respondent filed an Application, MA/140/KOB/2020 in (TIBA/11/KOB/2019 and IBA/28/KOB/2019) before the NCLT, Kochi Bench. The contentions raised by the Respondent in the above mentioned MA is that the rejection of the claim by the RP under the exercise of Regulation 14 is not sustainable because there is no un-

preciseness in the amount claimed by the creditors either due to any other contingency or reasons. Regulation 14 of the CIRP verifies the preciseness of the claim made, and the same does not provide for any adjudicatory role to the RP. It is pertinent to refer to Judgement of the NCLAT in the matter of 'Navneet Kumar Gupta Vs. Bharat Heavy Electrical Ltd (CA(AT)(INS) No.743/2018)' dismissing the Appeal thereof in para 5 of the said Order, by following the decision of Apex Court as made in para 85 of the Apex Court judgment and the subsequent paras thereof in 'Swiss Ribbons Pvt. Ltd & Another Vs. UoI' (2019 SCC online 73) categorically held that the RP has no adjudicatory powers under the IBC law. Hence, the Appellant herein has no power to adjudicate the Order passed by the Respondent.

19.5 Section 62 of CGST/SGST Act 2017 permits assessment of non-filers of Returns by which assessing authority can, after due service of notice, assess the said taxable person to the best of his judgment, taking into account the relevant materials, which is available or which has been gathered and issued 18 assessment orders. Accordingly, eighteen assessment orders were issued against the Corporate Debtor. In the absence of any challenge against the above said eighteen orders under the Statutory provisions against the Assessee / Corporate Debtor, the same has attained finality. Therefore, the Appellant herein cannot reduce the said amount during the resolution period. Further, RP has no adjudicatory power regarding the GST claim for which the Statute has prescribed specific remedies. Accordingly, the AA/NCLT, Kochi Bench disposed of the above MA/140/KOB/2020 in (TIBA/11/KOB/2019 and IBA/28/KOB/2019) vide Order dated 04.11.2020 and directed the

Appellant herein to file Appeal before the Joint Commissioner, State Sales Tax Department, within two weeks from the date of Order and the Joint Commissioner shall decide the matter, as early as possible, as per the GST Act, 2017.

19.6 Further, the Appellant filed clarification petition MA/205/KOB/2020 in MA/104/KOB/2020 in (TIBA/11/KOB/2019 and IBA/28/KOB/2019 before the Hon'ble NCLT, Kochi Bench, praying to issue necessary clarification to the Appellant herein as to whether the RP has the authority under Regulation 13 & 14 of CIRP Regulations to file Appeal before the Joint Commissioner, GST, as part of verification and determination of claim submitted by the GST Department in Form-Band also, to issue necessary clarification to the Appellant herein as to whether the judgement, decree or Order if any passed by the Appellate Authority under CGST Act, pursuant to the Appeal filed by the Corporate Debtor shall be binding on the Corporate Debtor when Moratorium declared by the NCLT by virtue of Section 14 of the Insolvency and Bankruptcy Code is in effect and to issue necessary clarifications to the Appellant herein as to whether the requirement of pre-deposit of ₹3,79,64,304/- mandated under Section 107 of GST Act, shall be prejudicial to the interest of CIRP and the said section is inconsistent with Regulation 13 & 14 of CIRP Regulations due to the overriding effect of IBC Code, 2016 over the Goods and Service Tax Act, 2017.

19.7 However, the Appellant herein, without complying with the Order of NCLT to file an appeal under the provision of the GST law against the said

assessment order, instead filed an Application seeking clarification, which the Hon'ble NCLT, Kochi Bench, dismissed.

19.8 The Respondent herein stated that all the assessment orders are passed before the declaration of Moratorium, in the absence of any challenge against the assessment order before the Appellate Authority as provided under the Statute by the Corporate Debtor/RP/ Appellant herein the same has become final.

19.9 Further, the time prescribed under Section 107 of the Act for filing Appeal was over; even though the Hon'ble NCLT Kochin Bench has given two weeks time to file an Appeal before the GST Appellate Authority, instead the Appellant filed clarification petition and the same was dismissed on 28.1.2021 with elaborate Order.

19.10 The Appellant filed an IA (IBC)/13/KOB/2021 before the NCLT under Section 30(6) and 31(1) of IBC, 2016, seeking approval of the Resolution Plan submitted by the Resolution Applicant, M/s. Lissie Medical Institution and the same was allowed by Hon'ble NCLT, Kochin, on 22.2.2021. Therefore, after approval of the Resolution Plan, the present Appeal has been filed on 23.2.2021 as an attempt to escape from this liability and to avoid contempt proceedings against the Appellant for not obeying the Order of the Hon'ble NCLT. Hence, the present Appeal is not maintainable.

19.11 The GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017; it cannot be edited or reduced by the Appellant himself. Therefore, even if the Appellant was aggrieved by the

said claim, the Appellant should have filed the Appeal U/S 107 of the CGST/SGST Act, 2017, read with Rule 108 of GST Rules, 2017.

19.12 Any revision of assessment orders can be made only in accordance with GST law, and Section 238 of IBC, 2016 cannot be read as conferring any appellate or adjudicatory jurisdiction in respect of issues arising under other Statutes.

19.13 The revision and reduction of admitted claims by the Appellant were unjustified, arbitrary, malafide and in any case, without jurisdiction. The reduction of the claim amount and further reduced allocation is illegal and prejudicial to Nation's public interest and economy.

19.14 Further, there is no provision to make such provisional admission. The Respondent also did not mention that the admission of the claim filed by the Respondent is provisional. Admittedly, the revision was made only at the instance of the Suspended Managing Director of the Corporate Debtor, and thus, the same is not bonafide.

19.15 The alleged issue of applicability of Notification is a matter for statutory adjudication by the authorities under the GST law. Thus, there is no jurisdiction for any of the authorities under the IBC. Therefore, section 238 of IBC would apply only when the IBC has jurisdiction over the subject issue.

19.16 Admittedly, the Corporate Debtor participated in the Assessment Proceedings not filed any appeal against the 18 assessment Orders passed under Section 62 of the SGST Act, even after a specific direction given by the

Hon'ble NCLT. Section 14 of IBC and the Moratorium apply to the proceedings like recovery or claims against the Corporate Debtor. In contrast, the Assessment Proceedings are in the nature of statutory determination as to the Application of tax implications in respect of the activities of the Corporate Debtor. The Respondent could take recovery proceedings only after assessment proceedings. Thus accordingly, the Respondent filed the claims before the Appellant by the provisions of IBC, and thus the same is valid and proper. It was also not legal and not proper for the Appellant to file for the approval of the Resolution Plan when his petition for clarification was pending before Hon'ble NCLT.

Discussion and Findings

20. We have heard the argument of the learned counsel for the parties and the record. Based on the argument advanced by the parties, the position that emerges is as follows;

20.1 Admittedly, the Appellant filed Clarification Petition MA/204/KOB/2020 before the Hon'ble adjudicating authority/NCLT, Koachin Bench seeking the necessary clarification as to whether the RP has authority under Regulation 13 and 14 of CIRP Regulations to file Appeal before the Joint Commissioner, GST, as part of verification and determination of claim submitted by the GST department. The RP further sought clarification as to whether judgement, decree or Order if any passed by the Appellate Authority under the CGST Act, pursuant to the Appeal filed by the Corporate Debtor, shall be binding on the Corporate Debtor when Moratorium declared by Adjudicating Authority/NCLT by virtue of Section 14 of the Insolvency and

Bankruptcy Code, 2016. The RP further sought clarification as to whether the requirement of Pre deposit of ₹ 37,964,304 mandated under Section 107 of the GST act shall be prejudicial to the interest of CIRP.

20.2 The Appellant, instead of complying with the Order of Hon'ble NCLT to file an Appeal under the provisions of the GST Act against the said assessment order, being the proper remedy, preferred the clarification petition, which was dismissed by the impugned Order.

20.3 It is pertinent to mention that all the assessment orders were passed before the declaration of Moratorium. Therefore, it has attained finality in the absence of any challenge against the assessment orders before the Appellate Authority as provided under the statutes.

20.4 It is also important to mention that the GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017. It cannot be edited or reduced by the Resolution Professional himself. Even if the IRP/Resolution Professional was aggrieved by the said Order, they should have filed the Appeal under Section 107 of the CGST/SGST Act, 2017, read with Rule 108 of the GST Rules 2017. Any revision of assessment orders also cannot be made under the pretext of Section 238 of IBC. Section 238 of Insolvency and Bankruptcy Code cannot be read as conferring any appellate or adjudicatory jurisdiction in respect of issues arising under other statutes.

20.5 Another very important question for our consideration is the scope of revision by the Resolution Professional in the exercise of powers conferred under Regulation 14 of the CIRP regulations. Before interpreting the scope of

Regulation 14 of the CIRP regulations, it is necessary to go through the relative provisions which are given as under;

"Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016¹

10. Substantiation of claims.—

The interim Resolution professional or the Resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

12. Submission of proof of claims.—(1) Subject to sub-regulation (2), a creditor shall submit ²⁹[claim with proof] on or before the last date mentioned in the public announcement.

³⁰[(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim Resolution professional or the Resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.]

(3) Where the creditor in sub-regulation (2) is ³¹[a financial creditor under Regulation 8], it shall be included in the Committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the Committee prior to such inclusion.

³²[**12-A. Updation of claim.—***A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.*]

13. Verification of claims.—(1) The interim Resolution professional or the Resolution professional, as the case may be,

shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be—

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate debtor ³³[or their authorised representatives];
- (c) displayed on the website, if any, of the corporate debtor;

³⁴[(ca) filed on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;]

- (d) filed with the Adjudicating Authority; and
- (e) presented at the first Meeting of the Committee.

14. Determination of amount of claim.—

(1) **Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim Resolution professional or the Resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.**

*(2) The interim Resolution professional or the Resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, **when he comes across additional information warranting such revision.**"*

20.6 After going through the Regulations 10 to 14 of the CIRP Regulations, it is clear that IRP/RP may, under Regulation 10, call clarifications from a creditor for substantiating the whole or part of its claim. Furthermore, under Regulation 12, the IRP/RP is entitled to updation of the creditor's claim based on the satisfaction of the claim. Finally, Regulation 13 mandates to verify every claim as on the insolvency commencement date within seven days from the last date of the receipt of the claims.

20.7 Under Regulation 14, IRP/RP is entitled to determine the amount of claim in a case where the amount claimed by the creditor is not precise due to any contingency or other reasons. In such circumstances, IRP is authorised to make the best estimate of the amount of the claim based on the information available with him.

20.8 However, under regulation 14(2), IRP/RP is empowered to revise the amounts of claim admitted, including the estimates of the claims made under sub-regulation (1) **when you come across additional information warranting such revision.**

20.9 In the instant Appeal, IRP/RP has stated "**that on 13 July 2020 the promoter and Suspended Managing Director of the Corporate Debtor**

informed that the amount claimed by GST Department is exorbitantly high as the Department has erroneously charged GST on the total turnover of the Corporate Debtor without taking into account the Notification No. 9 of 2017 about integrated tax rate dated 28 June 2017 issued by Government of India. After getting access to the financial information of the Corporate Debtor maintained in the in-house IT server, he had verified the records of the Corporate Debtor with the assistance of the suspended Managing Director. He verified the claims submitted by the GST Department with the books of accounts maintained by the Corporate Debtor and the information provided by the Suspended Managing Director. Further, on verification, it is found that the GST Department had calculated the GST liability for an on the filing of return for the Financial Year 2018-19 and 2019-20 on the best judgement basis on the total turnover of the corporate debtor. However, as per Notification No. 9 of 2017 dated 28 June 2017, the healthcare services by a clinical establishment are exempted from Goods and Service Tax. Accordingly, the revenue under the head "inpatient collections" and 'outpatient collections'. Based on the above and in the best interest of the CIRP, he had revised the admitted claim amount of the Respondent to ₹ 106,09,299 after due verification of the GST claims with the books of accounts of the corporate debtor in accordance with regulation 14 of the CIRP Regulations."

20.10 Undisputedly, the IRP/RP has revised the admitted claim of the Respondent based on the circumstances stated above. The above exercise of

revision of the GST assessment order was beyond the jurisdiction of the IRP/RP. It is pertinent to mention that the IRP/RP was not having the adjudicatory power given by the GST Act. Regulation 14 of the CIRP Regulations only authorises the IRP/RP to exercise power where the claim is not precise due to any contingency or other reasons.

20.11 It is pertinent to mention that Hon'ble Supreme Court in Embassy Property Developers Private Limited¹ has held that **Section 60 (5)(c) of the Insolvency and Bankruptcy Code, 2016 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to Insolvency Resolution. But the decision taken by the Government or Statutory Authority in relation to the matter which is in the realm of public law, cannot be brought within the fold of the phrase "arising out of or in relation to the Insolvency Resolution" appearing in Section 60 (5) (c) of the Code.**

21. However, in the instant case, the Adjudicating Authority has rightly considered the statutory provision and suggested filing an Appeal before the appropriate forum. But at the same time, the Resolution professionals, considering the CoC as an authority in law, had exercised the powers of GST authorities. Therefore, the said act of the Resolution Professional is without jurisdiction and not sustainable in law.

22. It is also important to mention that Insolvency and Bankruptcy Code is a complete code in itself. Section 25 of the Code provides the duties of the

¹ MSE Property Developers Private Limited versus State of Karnataka and Others (2020) 13 SCC 308

Resolution professional. Section 28 makes the provision for approval of the Committee of creditors for certain actions in the CIRP. The Committee of creditors is empowered to exercise its commercial wisdom in the Corporate Insolvency Resolution Process. But under the exercise of commercial wisdom, it cannot exercise judicial power. It has no role in the acceptance or rejection of the claim. Acceptance or rejection of a claim is under the duties of IRP/Resolution Professional, and the aggrieved party can agitate the same before the Adjudicating Authority. For this reason, the Committee of Creditors has also recommended filing an Appeal before the appropriate forum.

23. In the circumstances stated above, we consider that the Resolution professional committed an error in exercising their power and exercised the powers of GST Authorities under the pretext of Regulation 14 of the Code, which is not sustainable.

24. Based on the above discussion, we believe that Appeal sans merit and deserves to be dismissed.

Order

In fine, Appeal stands dismissed-no Order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

CHENNAI
7 October, 2021

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