
(2022) 05 NCLT CK 0020
In the National Company Law Tribunal
Case No : ?IA(I.B.C) 983/2021

Bhagwati Power and Steel Limited

APPELLANT

Vs

Central Coalfields Limited

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 5(20), 7, 15, 25, 29, 30, 31, 31(1), 60(5)
Customs and Tarrif Act, 1975 — Section 3
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Rule 7, 12(2)

Citation : (2022) 05 NCLT CK 0020

Hon'ble Judges : Rajasekhhar V.K, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Anuj Singh, Madhuja Burman, Aman Agarwal, Trinisha De, Roshni Singhee, Debashish Ghosh, Subhajit Roy, Deepak Kumar Singh

Final Decision : Dismissed

Judgement

Rajasekhhar V.K., Member (Judicial):

1. The court convened via hybrid mode.
2. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') was filed by the State Bank of India ('Financial Creditor') against Adhunik Alloys and Power Limited ('Corporate Debtor'). Subsequently, vide order dated 23 August, 2017 this Adjudicating Authority admitted the Corporate Debtor into Corporate Insolvency Resolution Process ('CIRP') and Mr. Sumit Binani was appointed as the Interim Resolution Professional ('IRP'). Later on the appointment of IRP was confirmed as the Resolution Professional ('RP'). Thereafter, on 25 August 2017 public announcements were made by the RP in various forums, including IBBI website.
3. This Adjudicating Authority vide order dated 07 December, 2018 approved the Resolution Plan¹ submitted by Bhagwati Power and Steel Limited

and Amalgam Steel, Successful Resolution Applicant ('SRA') along with consortium of SRAs. As stated in the Resolution Plan, a lump-sum payment of Rs.441 Crores to be given by BSPL and no other undecided or unadmitted claims would be entertained.

4. Further, the total claim received from the Operational Creditors was of Rs.28.96 Crores, whereas a sum of Rs14.94 Crores was only admitted by the RP. However, the SRA settled the claims of the Operational Creditors at Rs.12.87 Crores.

IA (IB) No. 800/KB/2021

5. This is an application under section 60 (5) of the Code by Bhagwati Power and Steel Limited and Amalgam Steel, Successful Resolution Applicant('BSPL' or 'Applicant No.1' or 'SRA') and Corporate Debtor ('Applicant No. 2') against Commissioner of Customs (Preventive) Commissionerate, Bhubaneswar ('Respondent No. 1') and Assistant Commissioner, Dharma Customs Division ('Respondent No. 2'), inter alia, seeking for the following reliefs;

a. An order for quashing notices of hearing dated 13 March, 2019, 22 April, 2019 and 14 May, 2019.

b. An order for quashing the order-in-appeal dated 31 May, 2019.

c. An order for quashing the demand notice dated 01 may, 2019.

d. An order for quashing the show cause notice dated 16 August, 2019.

e. An order directing the Respondents to desist from making any further claim or desist from the Applicant for any period prior to 07 December, 2018 being the date, when the Resolution Plan of the Applicant was approved by this Adjudicating Authority.

6. Submissions by the Ld. Counsel appearing on behalf of the Applicant No. 1 and Applicant No.2.

6.1 It is pertinent to mention that the respondents never filed their claim before the RP even after public announcement and notices by the RP during CIRP.

6.2 The approved Resolution Plan categorically states that in case of any claims and contingent liabilities made after the approval of the Resolution Plan, such creditors shall not be entitled to receive any payment by the SRA or the Corporate Debtor. Section C and D of the Resolution Plan. Further, it also provides that any unclaimed statutory liabilities existing at the date of approval of the Resolution Plan, whether or not recorded in the books of accounts would be subject to a 100% write-off since the liquidation value is insufficient for meeting such liabilities.

6.3 After the approval of the Resolution Plan by the Adjudicating Authority, the SRA through appropriate representations filed replies to the ongoing proceedings pertaining to the period prior to the date of approval of the Resolution Plan.

6.4 As envisaged under section 5(20) of the Code statutory dues fall within the purview of the Operational Debt. Hence, the Respondents also fall within the category of Operational Creditors.

6.5 By an order dated 20 December, 2017, the Respondent No. 2 imposed a penalty of Rs.20,000/- on the Corporate Debtor. Aggrieved by such decision of the Respondent No. 2, the Respondent No. 1 preferred an appeal before Office of the Commissioner (Appeal), GST, CX & Customs ('Appellate Authority'). Subsequently, vide letters dated 13 March, 2019, 22 April, 2019 and 14 May, 2019 to the Respondent No. 1 and the Corporate Debtor, the Appellate Authority intimated various dates for hearing of such appeal.

6.6 Pursuant to the last letter dated 13 March, 2019 of the Appellate Authority, the Corporate Debtor vide its letter dated 26 March, 2019 replied to the Appellate Authority. The Corporate Debtor intimated the Appellate Authority of approval of the Resolution Plan submitted by BSPL. The Corporate Debtor also requested for four weeks time to produce the relevant documents. On 31 May, 2019, the Appellate Authority set aside the order of the Respondent No. 2 and enhanced the penalty to a sum of Rs.2,00,000/- (Rupees Two Lakh only). Annexure – E of the Petition.

6.7 Instead of the letter dated 26 March, 2019 of the Corporate Debtor, the Respondent No. 2 vide its letter dated 01 May, 2021 called for the payment of revised penalty amount.

6.8 On 16 August, 2019, the Respondent No. 1 issued a fresh show cause notice on the Corporate Debtor on the grounds of differential customs duty of Rs.70,27,311/-(Rupees Seventy Lakh Twenty Seven thousand Three Hundred Eleven only). The reason for such notice was that the Corporate Debtor had imported South African coal in bulk in 2012 and had classified the same as CTH 27011920 declaring the same as steam coal (non-coking) and paid only 1% additional duty levyable under section 3 of the Customs and Tarrif Act, 1975.

6.9 The claim appearing in the aforesaid notice pertains to the period prior to the completion of the CIRP. Therefore, the Respondents do not have legitimate claim against the Applicants.

IA (IB) No. 801/KB/2021

7. This is an application under section 60 (5) of the Code by Bhagwati Power and Steel Limited and Amalgam Steel, Successful Resolution Applicant ('BSPL' or 'Applicant No.1' or 'SRA') and Corporate Debtor ('Applicant No. 2') against Senior Divisional Commercial manager, South Eastern Railways, Chakradharpur ('Respondent No. 1') and General manager, South Eastern Railway, Kolkata ('Respondent No. 2'), inter alia, seeking for the following reliefs;

a. An order for quashing the claims in the show cause notice dated 05 July, 2016 and demand notice dated 05 April, 2018.

b. An order directing the Respondents to desist from making any further claim or desist from the Applicant for any period prior to 07 December, 2018 being the date, when the Resolution Plan of the Applicant was approved by this Adjudicating Authority

8. Submissions by the Ld. Counsel appearing on behalf of the Applicant No. 1 and Applicant No.2.

8.1 The Respondent No. 1 issued a show cause notice to the Corporate Debtor on 05 July, 2016 stating that the Corporate Debtor had availed transportation of 3,71,234.64 M.T. of Iron Ore during the period April, 2011 to March, 2012.

8.2 Being aggrieved by the show cause notice dated 05 July, 2016, the Corporate Debtor filed a Writ Petition, being W.P. No. 26033 (W) of 2016, before the High Court at Calcutta. The Hon'ble High Court at Calcutta by an order dated 15 December 2016 passed an interim order for stay of the said show cause notice. However, the Hon'ble High Court also observed that the said order shall not preclude the Respondents from filing any appropriate suit before any appropriate forum in accordance with law.

8.3 While the Writ Petition was pending before the Hon'ble High Court, an application under section 7 of the Code was filed. Thereafter, the Corporate Debtor was admitted into CIRP on 23 August, 2017 and on 07 December, 2018 the Resolution Plan was approved by the Adjudicating Authority.

8.4 In pursuance of the show cause notice dated 05 July, 2016, the Respondent No.1, on 05 April, 2018, again issued a demand notice against the Corporate Debtor. Further, in 2019 the Respondents filed a Civil Suit No.122 of 2019 before the High Court at Calcutta for recovery of Rs.2,87,15,19,301/- along with accrued interest at 18% per annum.

8.5 The Applicant No.1 i.e., the SRA had provided in the Resolution Plan to make a lump-sum payment of Rs.441 Crore to all the stakeholders to take over the Corporate Debtor. This lump-sum amount takes into account the liability of the Corporate Debtor, both existing and contingent. If all the contingent dues are revived or kept alive and to be proceeded against the Corporate Debtor then the Resolution Plan would become completely unviable and it would be impossible to revive the Corporate Debtor.

8.6 Since the Resolution Plan has been approved by the Adjudicating Authority, the Respondents have no jurisdiction to interfere with the order dated 07 December, 2018 i.e., the approval of the Resolution Plan. Reliance has been placed on Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited through the directors and others (2021) 9 SCC 657 decided on 13 April, 2021 (Para 61,62,67,77,86,87 and 95).

9. Submissions by the Ld. Counsel appearing on behalf of the Respondents

9.1 The Ministry of Railways had formulated a scheme where, whoever transports iron ore through Indian Railways for production of iron and steel and cement in India will get a rebate of 50% on the freight. Since, the Corporate Debtor failed to submit sufficient documents to get rebate in freight of iron ore, a debit note of Rs.1,47,90,207/- was raised against the Corporate debtor on 08 May, 2014.

9.2 An aggregate demand of Rs.1,54,54,482/- (including the above debit of Rs.1,47,90,207/-) was raised against the Corporate Debtor. The final adjustment was vetted and communicated through Traffic Accounts vide letter dated 23 December, 2020, where a sum of Rs.1,52,58,160/- was payable by the Corporate Debtor after adjustment.

9.3 The Debit Note raised was never cleared by the Corporate Debtor but instead they filed a Writ Petition being WP(C) No.3153 on 02 July, 2018 before the Hon'ble High Court, Jharkhand, challenging the said Debit Note. The debit note was raised against the Corporate Debtor i.e, Applicant No.2, BPSL has no locus to file this instant application before the Adjudicating Authority.

9.4 The Writ Petition filed by the Corporate Debtor before the Jharkhand Hon'ble High Court, is still pending for adjudication. The action taken by the respondents for realization of the dues cannot be the subject matter of the Code but only the Hon'ble High Court and the Apex Court.

IA (IB) No. 881/KB/2021

10. This is an application under section 60 (5) of the Code by Bhagwati Power and Steel Limited and Amalgam Steel, Successful Resolution Applicant ('BSPL' or 'Applicant No.1' or 'SRA') and Corporate Debtor ('Applicant No. 2') against Senior Divisional Commercial manager, South Eastern Railways, Chakradharpur ('Respondent No. 1') and Chief Commercial Manager, (FM), South Eastern Railway, Kolkata ('Respondent No. 2') and Chief Goods Supervisor, Kandra Station, Chakradharpur, Jharkhand ('Respondent No. 3') inter alia, seeking for the following reliefs;

a. An order for quashing the claims in the demand notices dated 11 February, 2016, 27 August, 2016 and 13 June, 2016.

b. An order directing the Respondents to desist from making any further claim or desist from the Applicant for any period prior to 07 December, 2018 being the date, when the Resolution Plan of the Applicant was approved by this Adjudicating Authority

11. Submissions by the Ld. Counsel appearing on behalf of the Applicant No. 1 and Applicant No.2.

11.1 The Corporate Debtor received a demand notice dated 11 February, 2016 from the Respondent No.3 stating to pay a sum of Rs.1,47,90,207/- , alleging that the Corporate Debtor failed to provide sufficient documents while availing freight services. The demand notice also recorded that the respondent authorities

have internally verified the liability of the Corporate Debtor and have found the same to be tenable and admitted debt.

11.2 Another letter dated 13 June, 2016 was received by the Corporate Debtor from Respondent No. 2 demanding to pay a sum of Rs.83,100/- towards another admitted debt of Kandra Station, Rs.1,84,037/- towards shunting charges and a sum of Rs.3,97,138/- towards demurrage charges.

11.3 In pursuance to the demand notices received by the Corporate Debtor, the Corporate Debtor made a representation to the respondent authorities and called upon them to refrain from creating illegal pressure on them. Further, vide letter dated 21 June, 2017 the Corporate Debtor informed the authorities about the unjustified and incorrect billing of Rs.1,47,90,207 and to investigate the matter.

11.4 By a letter dated 27 April, 2018, the RP of the Corporate Debtor informed the Respondent No. 1 about the admission of the Corporate Debtor into CIRP and also represented that the claims of the Respondents, if any, have to be submitted to the RP. However, the respondent authorities continued to raise their demands. Under such circumstances, the Corporate Debtor proceeded to file a Writ Petition being W.P. No. 3153/2018 before the Hon'ble High Court, Jharkhand challenging the demand letter by the respondent authorities.

11.5 By virtue of a Private Freight Terminal Agreement dated 20 August, 2013 entered into between the Railway Administration and the Corporate Debtor, the Corporate Debtor was allowed to operate its siding as Private Freight Terminal. In terms of the said Agreement and the Rate Circular No.24 of 2018, the Corporate Debtor applied for refund on 10 January, 2020 of Rs.1,34,32,029/- for the period from December, 2018 to August, 2019 and for Rs.53,44,59/- for the period from September, 2019 to December, 2019 towards the refund of Terminal Charges.

11.6 The Respondents i.e., the Statutory Authorities have failed to submit their claim during the CIRP period despite receiving intimation from the RP on 27 April, 2018. After the approval of the Resolution Plan all the claims/demands/dues owed by the Corporate Debtor stands extinguished.

IA (IB) No. 983/KB/2021

12. This is an application under section 60 (5) of the Code by Bhagwati Power and Steel Limited and Amalgam Steel, Successful Resolution Applicant ('BSPL' or 'Applicant No.1' or 'SRA') and Corporate Debtor ('Applicant No. 2') against Central Coalfields Limited ('Respondent')inter alia, seeking for the following reliefs;

a. An order to quash the supplementary bills raised by the Respondent in its notice dated 17 September, 2015 also to quash the claim raised by demand notice dated 10 November, 2015.

b. An order directing the Respondents to desist from making any further claim or desist from the Applicant for any period prior to 07 December, 2018 being the date, when the Resolution Plan of the Applicant was approved by this

Adjudicating Authority

13. Submissions by the Ld. Counsel appearing on behalf of the Applicant No. 1 and Applicant No.2.

13.1 The Corporate Debtor had a Captive Power Plant for the purpose of meeting its own power requirements of production of sponge iron. On or about 02 September, 2009, the Respondent decided that the Corporate Debtors power plant was not entitled to benefits under the Tapering Linkage Tapering Linkage is the short-term linkage which is provided to those coal consumers who have been allocated captive coal blocks for meeting the coal requirements of their linked end use plants and in cases where the production of coal form these captive coal blocks does not synchronize with the requirement of the end use plants. Policy. Thereafter, the Corporate Debtor received two letters dated 17 September, 2015 and 05 October, 2015, where they had informed the Corporate Debtor of the supplementary bills raised for a sum of Rs.13,46,66,861.42 for 09 April, 2015 and 23 April, 2015.

13.2 The Corporate Debtor again received a letter dated 10 November, 2015 from the Respondent stating to clear the said dues. Thereafter, the Corporate Debtor filed a Writ Petition being W.P. No. of 4178 of 2016 before the Hon'ble Jharkhand High Court, challenging the unlawful claim by the Respondent in its letters. However, the said Writ Petition is pending before the High Court.

13.3 When the Corporate Debtor went in CIRP, a public announcement for invitation of claims from respective creditors was made but no claims were received from the respondent. After the approval of the Resolution Plan all the claims/demands/dues owed by the Corporate Debtor stands extinguished.

14. Issue involved in all the IAs

14.1 Can the dues/outstanding be claimed by any of the Creditors of the Corporate Debtor after the approval of the Resolution Plan?

Analysis and Findings

15. We have heard the Ld. Counsel appearing on behalf of the parties and perused the record. No reply has been filed by the Respondents in IA (IB) No. 800/KB/2021 and IA (IB) No. 881/KB/2021 even after receipt of court notices dated 03 February, 2022 and emails dated 10 February, 2022 from the Registry. Neither any reply has been filed by the Respondents in IA (IB) No. 983/KB/2021.

16. The issue involved in these IAs has already been well settled by the Hon'ble Supreme Court in Ghanashyam Mishra(Supra), wherein the Apex Court has clearly held that the intention behind the enactment of the Code was to help the Corporate Debtor revive and the SRA who is actively involved in such revival should be given a fresh slate. Hence, the Resolution Plan submitted by the SRA and once approved by the Adjudicating Authority as per section 31 (1) of the Code shall be binding on all the stakeholders. If every time a new claim is tossed

over towards the SRA after the approval of the Resolution Plan then the prima facie objective of the Code i.e., to make the Corporate Debtor as a going concern will rendered otiose. The term 'stakeholders' includes Central Government, any State Government or any local authorities, including tax authorities.

17. The Apex Court also opined that the claims/dues which are not forming the part of the Resolution Plan shall stand extinguished on the date of approval of the Resolution Plan by the Adjudicating Authority, and no creditor is entitled to initiate or continue any proceeding in respect of such claim.

18. Further, the Hon'ble High Court at Calcutta in *Sirpur Paper Mills Limited v. I.K. Merchants Private Limited* (formerly known as I.K. Merchants) 6 2021 SCC Online Cal 1601 decided on 07 May, 2021. has held that the fate of undecided or pending claims can be drawn from Section 25, 29, 30 and 31 of the Code. If these provisions of the Code are read harmoniously with *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others* (2020) 8 SCC 531 and *Ghanashyam Mishra (Supra)*, it would be apparent that for a claim to be considered by the RP and the CoC, the said claim must be recorded in the Information Memorandum and also to be provided to the SRA who will take over the business of the Corporate Debtor. Further, as envisaged under Regulation 7 of CIRP Regulations, 2016, an Operational Creditor shall submit the claim with proof to the IRP on or before the last date mentioned in the Public Announcement; the Creditors are under obligation to take active steps under the provisions of the IBC instead of waiting for the adjudication of the proceedings before any Authority (paras 18 & 21)

19. As per section 15 of the Code, the public announcement of the CIRP shall contain the last date for submission of claims. However, if any of the creditor fails to submit proof of claim within the time stipulated in the public announcement, may submit such proof to the IRP or the RP, as the case may be, on or before the ninetieth day of the insolvency commencement date as per Regulation 12 (2) of CIRP Regulation, 2016.

20. In light of the above provisions and precedents it is pertinent to mention that the Corporate Debtor was admitted into CIRP on 23 August, 2017 and the Resolution plan was approved by this Adjudicating Authority on 07 December, 2018, whereas demand notices issued by various statutory authorities deals with the debt prior to the CIRP period. Also, no steps were taken by any of the Respondents to file their claim before the IRP or RP.

21. Further, the Resolution Plan as approved by CoC, by majority, states that any unclaimed statutory liabilities (including without limitations, claims under all taxes, fines from authorities and provident fund payments) existing as on date of approval of the Resolution Plan, whether or not recorded in the books of account would be subject to a 100% write-off because the liquidation value for meeting such liabilities is insufficient.

22. It is, therefore, hereby ordered as follows:-

a. The prayers from (a) to (e) of the Applicants in IA (IB) No. 800/KB/2021 are allowed, notices of hearing dated 13 March, 2019, 22 April, 2019 and 14 May, 2019, order-in-appeal dated 31 May, 2019 demand notice dated 01 may, 2019 and show cause notice dated 16 August, 2019 shall stand quashed.

b. In IA (IB) No. 801/KB/2021, since the Corporate Debtor had filed a Writ Petition, being W.P. No. 26033 (W) of 2016, and the matter is pending adjudication before Hon'ble Calcutta High Court, the application stands dismissed.

c. In IA (IB) No. 881/KB/2021, since the management of the Corporate Debtor had filed a Writ Petition being W.P. No. of 3153 of 2016, and the matter is pending adjudication before Hon'ble Jharkhand High Court, the application stands dismissed.

d. In IA (IB) No. 983/KB/2021, since the management of the Corporate Debtor had filed a Writ Petition, being W.P. No. of 4178 of 2016, and the matter is pending adjudication before Hon'ble Jharkhand High Court, the application stands dismissed.

23. The main CP (IB) No. 387/KB/2017 shall come up on 19 May, 2022.

24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.