

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 977 of 2022

[Arising out of order dated 20.06.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench Court-I in IA-160(AHM)/2022 in CP (IB)/137 of 2018]

IN THE MATTER OF:

Assistant Commissioner of Income Tax,
Central Circle-3, Room No. 603,
6th Floor, Aaykar Bhavan, Race Course,
Vadodara, Gujarat-390007

.....Appellant

Versus

1. Resolution Professional of
M/s Diamond Power Infrastructure Ltd
Mr. Prashant Jain, A-501,
A-501, Shaniheights, Plot No. 2,3,
9B/10, Sector 11, Koparkhairne,
Navy Mumbai-400709
2. M/s Gujarat State Export Corporation Ltd
2nd Floor, Gujarat Chamber's Building
Ashram Road, Ahmedabad-380009
Gujarat.
3. M/s Diamond Power Infrastructure Ltd
5/9-10 Essen House, BIDC Gorwa
Vadodara, Gujarat-390016.

.....Respondents

Present:

Appellant: Shri Pratyaksh Gupta, Sr. SC, Shri Ruchi Bhatia,
Sr. SC, Shri Ashish Kumar, Advocates.

For Respondents: Mr. Malak Bhatt, Ms Neeha Nagpal, Mr. Mandeep
Singh, Advocates for R-1.
Mr. Udit Gupta, Prachi Gupta, Nishtha Goel,
Advocates.

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

Company Appeal (AT) (Insolvency) No. 977 of 2022

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**IBC** in short) by the Appellant arises out of the Order dated 20.06.2022 (hereinafter referred to as **Impugned Order**) passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench Court-I in IA-160(AHM)/2022 IN CP (IB)/137 of 2018. By the impugned order, the Adjudicating Authority has approved the resolution plan submitted by the Successful Resolution Applicant (**SRA** in short) in respect of Corporate Debtor - M/s Diamond Power Infrastructure Ltd as placed before it's consideration by the Resolution Professional – Respondent No. 1. Aggrieved by this order, the present appeal has been preferred by the Assistant Commissioner of Income Tax – Appellant for not having taken into cognizance of the claims filed by it in respect of the outstanding income tax demands raised on the Corporate Debtor while approving the resolution plan.

2. The chronological sequence of events of the present case which are necessary to be noticed for consideration of the matter by us is as hereunder:

- On 24.08.2018, the Corporate Debtor - M/s Diamond Power Infrastructure Ltd - Respondent No.3 was admitted into Corporate Insolvency Resolution Process (**CIRP** in short) vide order dated 24.08.2018.
- Subsequently, the Respondent No. 1 was appointed as the Resolution Professional (**RP** in short). The RP constituted the Committee of Creditor (**CoC** in short).
- On 25.10.2018, Notices under relevant provisions of the Income Tax Act for A.Y. 2013-14 to A.Y. 2018-19 was issued by the Appellant to the Respondent No. 3 Company to furnish their Income Tax returns.

- On 08.11.2019, Form B was submitted by the Appellant to the RP/Respondent No. 1 in respect of proof of claim.
- On 27.05.2020, the Appellant approached the Adjudicating Authority seeking permission to carry out the assessment proceedings of Respondent No. 3 Company for the A.Y. 2013-14 to 2019-20. The said application was allowed by the Adjudicating Authority vide its order in IA No. 672 of 2019 dated 27.05.2020 wherein the RP was directed to extend cooperation to the Appellant.
- On 06.06.2020, the Appellant informed the RP that though the tax demand of Respondent No. 3 Company could not be crystallized, however, there was a likelihood of a heavy demand.
- On 20.01.2021, 22.01.2021, 25.01.2021, 09.02.2021, 15.02.2021 and 26.02.2021, the Respondent No. 3 Company was served with Notices by the Appellant under the Income Tax Act. This was followed up with a special audit which report was received on 02.12.2021.
- The resolution plan submitted by SRA/Respondent No. 2 was approved by CoC and subsequent thereto, the RP filed an application for approval of the resolution plan which was allowed by the Adjudicating Authority on 20.06.2022.
- The assessment proceedings were completed for A.Y. 2013-14 to 2019-20 and a Show Cause Notice issued to the Corporate Debtor Company on 15.06.2022. Thereafter, the Appellant served Demand notices under the Income Tax Act upon Respondent No. 3 Company for A.Y. 2013-14 to 2019-20 on 29.06.2022, 30.06.2022 and 01.07.2022 by which time resolution plan was approved by Adjudicating Authority

3. The Learned Counsel for the Appellant making his submissions stated that following a search and seizure operation conducted on the Corporate Debtor which had already been admitted into CIRP on 24.08.2018, it had come to the notice of the Appellant of a likelihood of a huge income tax liability on Corporate Debtor Company. The Appellant therefore submitted Form B to the RP on 08.11.2019 and informed the RP that assessment proceedings of the Corporate Debtor Company was pending from A.Y. 2013-14 to 2019-20. Further to proceed with the assessment proceedings, Appellant had moved an I.A. before the Adjudicating Authority seeking permission which was allowed on 27.05.2020. The assessment proceedings were completed for A.Y. 2013-14 to 2019-20 within the time-frame permitted under the provisions of the Income Tax Act, 1961 and followed up by service of Demand Notice on the Corporate Debtor Company on 29.06.2022, 30.06.2022 and 01.07.2022. It is contended by the Learned Counsel for the Appellant that prior to service of Demand Notice, the Adjudicating Authority had been apprised of the outstanding tax demand on the Corporate Debtor Company by way of a letter dated 02.03.2022 as communicated by the Standing Counsel on 28.03.2022. However, the Adjudicating Authority without taking into consideration the letter dated 02.03.2022 allowed the application filed by the RP approving the resolution plan submitted by the SRA on 20.06.2022.

4. It was vehemently contended that the Adjudicating Authority committed an error in approving the resolution plan prior to finalisation of the assessment proceedings being conducted by the Appellant and without considering their claims. It was also submitted that Regulation 12 of the IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (**'CIRP Regulation'** in short) which deals with the time period for submission of claim following public announcement is directory in nature and not mandatory. Reliance was placed in the case of ***State Tax Officer Vs Rainbow Paper Ltd in C.A. No. 1661 of 2020*** to contend that delay in filing the claim cannot be the sole ground for rejecting the claim. Submission was also pressed that Section 29 of IBC casts a statutory duty on the RP to prepare the Information Memorandum in which details of all material litigation and ongoing investigation or proceedings initiated by Government and statutory authorities needs to be incorporated as provided in CIRP Regulation 36(2)(h). In the present case, this CIRP Regulation acquires significance since the Appellant had informed the RP vide Form B on 08.11.2019 and by a letter dated 06.06.2020 regarding likelihood of huge tax demands in the case of the Corporate Debtor Company. Despite these explicit communications, the claim of the Appellant was not included in the resolution plan.

5. Assailing the impugned order, it has been submitted that this order has proved prejudicial to the interests of revenue since the income tax liability owed to the Appellant has not been provided for or accepted in the approved resolution plan. If the resolution plan ignores statutory demands payable to any Government or legal authority, the Adjudicating Authority is bound to reject the resolution plan. Such a resolution plan cannot be binding on the State, when outstanding statutory dues of a Corporate Debtor have not been catered for. Such plan is therefore inherently invalid as it does not meet the requirements of Section 30(2) of the IBC.

6. Countering the submissions made by the Appellant, it was submitted by the Learned Counsel for the Respondent No. 1/RP that though the Appellant had filed its purported claim in Form B on 08.11.2019 with the RP, the said claim was not a crystalized claim. In the absence of claims being lodged in specific terms, the RP cannot be expected to collate such amorphous claims. Moreover, no faults can be attributed to the RP for dereliction of his duties and responsibilities. The Appellant was duly mentioned in the list of creditors published by the RP, which was also published on the website of IBBI as well as on the website of the Corporate Debtor Company.

7. It was also added that CIRP Regulation 12(2) prescribes a time limit of 90 days from the commencement of CIRP for the filing of claims. It is therefore not open for the Appellant to seek the admittance of such a delayed claim after the resolution plan stood approved. It was also submitted that the CoC of the Corporate Debtor having approved the resolution plan with requisite majority, the Adjudicating Authority cannot be asked to sit in appeal over the commercial wisdom of the CoC. It was pointed out that this precept has been propounded from time to time by the Hon'ble Supreme Court in a catena of judgments.

8. The Learned Counsel for Respondent No.2-SRA while rebutting the arguments of the Appellant also reiterated that during the entire tenure of the CIRP proceedings, the Appellant had not preferred their claim in specific terms before the RP. The Appellant had merely informed the RP that the Income-Tax demand on the Respondent No.3 is likely to be heavy in nature without quantifying the claim. It was also submitted that the Resolution Plan

was approved by the Adjudicating Authority on 20.06.2022 while the Income-Tax assessment orders were passed thereafter on 29.6.2022, 30.6.2022 and 01.07.2022. Clearly, therefore, the assessment orders were passed after the Resolution Plan was approved by the Adjudicating Authority. Allowing such belated claim of the Appellant which did not form part of the Information Memorandum ('**IM**' in short) would militate against the 'clean slate' principle propounded by the Hon'ble Supreme Court in a catena of judgments. Further, allowing such belated claims would lead to financial perils for the SRA besides disrupting CIRP timelines.

9. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

10. The first issue before us is whether the claim was filed by the Appellant within time and, if so, how the claim was treated by the RP in the CIRP of the Corporate Debtor Company. There is no dispute over the fact that the Appellant had apprised the RP well before the approval of the resolution plan that there was a likelihood of huge demand of income tax liability to be discharged by the Corporate Debtor Company. There is also no dispute that the Appellant filed its claim in Form B. Coming to the role of RP, we notice that the RP had published the list of creditors which included the Appellant. This clearly shows that the RP had followed the applicable procedure for collating the claim received from the Appellant.

11. At this stage, we may take notice of the Form B filed by the Appellant which is as below:

FORM B
PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN
AND EMPLOYEES

(Under Regulation 16 of the Insolvency and Bankruptcy Board of India
(Voluntary Liquidation Process) Regulations, 2017)

08.11.2019

To,
The Resolution Professional
Shri Bhuvan Madan,
Diamond Power Projects Limited
Reg. Address-A-103, Ashok Vihar, Phase-III, New Delhi-110052

From
Dy. Commissioner of Income Tax, Central Circle -3
Room No. 603, 6th Floor, Aayakar Bhavan,
Race Course Circle, Vadodara

Subject: Submission of proof of claim in respect of the voluntary liquidation of Diamond Power Infrastructure Ltd. under the Insolvency and Bankruptcy Code, 2016.

Madam/ Sir,

Dy. Commissioner of Income Tax, Central Circle-3, Vadodara, hereby submits this proof of claim in respect of the voluntary liquidation of Diamond Power Infrastructure Ltd. The details for the same are set out below:

1.	NAME OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS *OF ALL THE PARTNERS OR THE INDIVIDUAL)	Department of Income Tax. O/o. The Dy. Commissioner of Income Tax, Central Circle-3, Vadodara
...		
3.	TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT VOLUNTARY LIQUIDATION PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM	As per annexure-A
4.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS	1. Company petition no. 19/2016 for winding up of the company filed before hon'ble High Court of Gujarat by Agrawal Metal Works Pvt. Ltd.

		<p>2. IA 672 of 2019 in CP(IB)137 of 2018 before the Hon'ble NCLT.</p> <p>3. IA No. 196 of 2019 in Company Petition (IB) No. 137/7/NCLT/AHM/2018 filed by Bhuvan Madan.</p> <p>4. Company petition (IB) No. 137/NCLT/AHM/2018</p>
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It is stated that assessment proceedings are pending in this case from AY 2013-14 to 2019-20 and a heavy demand is likely to be raised in these cases. On primary analysis of the material available on records, certain discrepancies have been noticed which may lead to crystallization of huge demand in the case of the corporate debtor in the instant case in AY as enumerated below:

- a. *Incorrect Valuation of plants and machineries*
- b. *Sale of its product in cash through its distributors*
- c. *Wrong claim of depreciation (Rs. 165.48 cr on Plant & Machinery)*
- d. *Sum of Rs. 3,19,52,07,863/- transferred for non-business purpose*
- e. *Funds of Rs. 48,24,95,500/- which have been transferred and re-routed in the form of share capital)*

In view of the above, tentatively a huge demand is likely to be raised by the department.

12. Perusal of Form B supra shows that no determinative or crystallised amount has been indicated by the Appellant as their claim amount. Mere intimation by the Appellant to the RP of heavy income-tax demand on the Corporate Debtor cannot be construed in any manner to be equated with filing a claim before the RP. Apart from not indicating any firm claim amount, the Appellant has mentioned in Form B the multiple litigations surrounding the

said claims. This is indicative of the nebulous and indeterminate claim amount in Form B. The Appellant was required to submit the crystallised claim within the stipulated time frame in terms of CIRP Regulations to the RP for collation and verification of the same for the same to be duly reflected in the IM. However, as the Appellant had not indicated any claim amount, it could not be reflected in the IM.

13. In this regard, it may be relevant to notice the cardinal observation made by the Hon'ble Supreme Court in the matter of ***Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd. & Ors., Civil Appeal No. 3395/2020*** which is extracted hereunder:

“135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicants also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12”.

The Appellant in the present facts of the case is trying to make recovery of claims which it is not entitled to recover because of inaction of their part to file their claim on time. On this count, in the absence of the Appellant having filed firm and determinate claims on time, we do not find any reason to hold the conduct of the RP to be faulty or questionable.

14. It is however the case of the Appellant that not only had it apprised the RP by filing Form B of its claims but that the Adjudicating Authority in its

orders dated 27.05.2020 had permitted them to carry out assessment proceedings. Yet the Adjudicating Authority while passing the impugned order did not await the outcome of the assessment proceedings which was completed within the time frame permitted under the provisions of the Income Tax Act, 1961. Thus, by not considering the claim of the Appellant, the Adjudicating Authority had caused grave injustice to the Appellant.

15. When we examine the material on record, it is undisputed that the Appellant had approached the Adjudicating Authority seeking permission to carry out assessment proceedings of the Corporate Debtor Company despite the moratorium under Section 14 of the IBC which came to be allowed on 27.05.2020. For ease of reference, we may notice the relevant paragraphs of the order of the Adjudicating Authority dated 27.05.2020 which are as reproduced hereunder:

“8.3 The present application has been preferred by the Applicant to seek permission from this Adjudicating Authority to carry out the assessment proceedings, under Section 153A read with 281B of the Income Tax Act. Considering the necessity of the assessment of tax, the prayer of the Applicant is accepted to the extent of only doing assessment for the AY 2013-14 to 2019-20.”

8.7 The Income Tax Department may file their claim , if any, as an Operational Creditor with the Resolution Professional of the Corporate Debtor in time. The Resolution Professional may examine the claim of the Income Tax Department in accordance with the provisions of the Code.”

(Emphasis supplied)

16. Two critical inferences which can be drawn from the above order of the Adjudicating Authority is that it had specifically directed the Appellant to

carry out the requisite assessment only for the AYs 2013-14 to 2019-20 and thereafter file the claim with the RP within time. It is noticed that the Adjudicating Authority had also clearly indicated that the income tax assessment should not delay the conduct of CIRP. While there is no doubt that timelines for submissions of claim are not mandatory and that the stipulated time-limit can always be expanded in justifiable circumstances, yet, we cannot lose sight of the fact that the preamble of the IBC seeks to make insolvency resolution as a time bound process.

17. This brings us to the facet of timeliness in the completion of assessment proceedings by the Appellant. As regards the additional demand for A.Y. 2009-10, such proceeding has been contended by the RP to have fallen beyond the purview of the order of the Adjudicating Authority dated 27.05.2020. Be that as it may, what is pertinent to note is that this demand was finalised on 02.03.2022, but no claims were filed in this regard before the RP. The Appellant has admitted that it had submitted this claim to the Registrar of the NCLT on 28.03.2022 and not before the RP. It is pertinent to note that the CoC had already approved the Resolution Plan by then. It is also clear from material available on record that the Appellant had crystallised their tax demands for A.Y. 2013-14 to A.Y. 2019-20 by passing assessment orders dated 29.06.2022 to 01.07.2022. This leaves no doubt in our minds that the demand was raised by the Appellant on the Corporate Debtor Company after the CoC and the Adjudicating Authority had already approved the resolution plan on 20.06.2022.

18. This brings us to the next question as to whether such belated claim can be admitted after the approval of the resolution plan. It is the case of the Appellant that the Adjudicating Authority had committed an error in approving the resolution plan prior to finalisation of the assessment proceedings being conducted by the Appellant and without considering their claims at a time when the RP had been kept apprised of the likelihood of heavy income tax demand on the Corporate Debtor Company. Moreover since the resolution plan ignored the statutory demands payable to the Government, it did not meet the requirements of Section 30(2) of the IBC and hence the resolution plan cannot be binding on the State.

19. Before we analyse the issue at hand, it will be constructive to find out how the Adjudicating Authority in the impugned order has viewed the resolution plan. The relevant excerpts of the impugned order is as reproduced hereunder:

“8. The resolution plan submitted by M/s GSEC Ltd. was discussed and deliberated by the COC in their 19th, 20th, 21st, and 22nd meetings, and in 23rd meeting held on 06.01.2022, the resolution plan submitted by the M/s. GSEC Ltd. in consortium with Mr. Rakesh Shah has been approved by the COC with 89.46% votes. The same plan has been submitted before us for our approval under Section 30(6) of the IBC, 2016. The liquidation value and fair value of the CD is reported at Rs. 364.53 crores and Rs. 587.76 crores respectively.

12. On 22.02.2022 this Adjudicating Authority issued notice to the Suspended Management and the Income Tax Department. In response thereto the Income Tax Department on 02.03.2022 filed its report that the Income Tax Department had certain demands against the Corporate Debtor pending since 2009 till the date. It has to be held that the Income Tax Department, being an Operational Creditor must have submitted its claim to the IRP. Provision is made in the plan for payment of a certain sum of money to the operational creditor.

13. *The resolution plan submitted before us has been examined in view of the provisions of Section 30(2) of the IBC, 2016. The plan amount is more than the liquidation value of the assets of the Corporate Debtor. In the plan, the provision for payment towards CIRP costs, payment towards workmen and employees, and payment towards claim submitted by the Operational Creditor has been made. Thereby, the provision of Section 30(2)(a) has been complied with.*

16. *As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021 in the following words:*

(i) *"The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

(ii) *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief....."*

17. *In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the Corporate Debtor in form of various licenses, leases, and others alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure."*

20. It is therefore clear that the Adjudicating Authority has concluded that once the Resolution Plan was duly approved by the CoC, the claim filed with the RP stands frozen. Since Appellant had failed to file its claim with the RP before the Resolution Plan was approved by the CoC, their claim stands extinguished. The Appellant having failed to file its claim on time before the RP, it cannot be allowed to saddle the SRA with the liability of its claim which

was never filed on time. In support of their stance that belated claims cannot be now called for inclusion in the Resolution Plan, Adjudicating Authority has adverted attention to the judgment passed by Hon'ble Supreme Court *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.*

21. To assess the propriety of the findings of the Adjudicating Authority, we would like to glance at the broad contours of the IBC. The statutes of IBC provide that once a CIRP application is admitted under Sections 7, 9 or 10 of IBC, the RP causes a public announcement inviting claims from all the stakeholders of the Corporate Debtor. Thereafter the RP collates the claims and updates the same in the IM, basis which potential resolution applicants submit their resolution plan before the CoC. The plan as approved by the CoC is placed before the Adjudicating Authority which plan ensures that while paying off the dues, whether in full or in part, to the Financial Creditor, Operational Creditor and other stakeholders, the Corporate Debtor is revived and is made a going concern. After the CoC approves the Plan, the Adjudicating Authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as provided under Section 30(2) of IBC and only thereafter the Adjudicating Authority grants its approval to the Resolution Plan. It is significant to note that when the Adjudicating Authority approves the Resolution Plan, the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. These steps are in sync with the objective of

IBC which is to revive a corporate debtor which is on the verge of becoming insolvent.

22. We find that the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***State Tax Officer vs. Rainbow Papers Limited- Civil Appeal No. 1661 of 2020*** to claim that the resolution plan could not have ignored the statutory demands payable to them on grounds of delay in filing the claim. We may add here that in a subsequent judgment of the Hon'ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors.*** in ***C.A. No. 7976 of 2019***, it has been held that the ratio of the ***Rainbow Papers*** has to be confined to the facts of that case. In that case the Operational Creditor was held to be a secured creditor on the basis of relevant statutory provisions of Gujarat Value Added Tax, 2003 whereas there is no such basis to claim in the case of the Appellant to be a secured Operational Creditor. Hence, the ***Rainbow Papers judgment*** does not come to the aid of the Appellant in the present case.

23. Having noticed the statutory framework and the purpose and objective of the IBC, we are of the considered view that the approval of a resolution plan is statutorily recognized as a closure to all claims that persons or entities may have against a corporate Debtor. There is a concomitant need to impart finality to the resolution process by protecting a successful resolution applicant from unnecessary litigation arising out of undecided claims. No proceeding can be initiated or continued in respect of a claim which is not part of the resolution plan or was not preferred at the relevant time. No fresh claims can be lodged or enforced against the SRA after the approval of a

resolution plan for when any sudden and fresh claim pops out in respect of the Corporate Debtor, the very calculations on the basis of which the SRA has submitted its plans, would go haywire and the plan would be unworkable. The SRA cannot be left open to defend or oppose claims which have not been factored in the resolution plan. More significantly, in the facts of the present case, taking into cognisance the belated claims of the Appellant would amount to re-opening of the resolution plan which would not only be wholly impermissible but would also amount to overriding the pronouncements of the Hon'ble Apex Court in a catena of judgements.

24. The Hon'ble Supreme Court has affirmed this clean slate principle in their judgment in **CoC of Essar Steel India Ltd Vs Satish Kumar Gupta in C.A. No.8766-67 of 2019** wherein it has held:

“67. For the same reason the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.....”

(Emphasis supplied)

25. The fresh slate principle was captured again by the Hon'ble Supreme Court subsequently in **Ghanashyam Mishra and Sons Private Limited v. Company Appeal (AT) (Insolvency) No. 977 of 2022**

Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657 as

hereunder:

“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub- section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition

under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to

the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

26. This clean slate principle has been affirmed in subsequent judgements too. In this regard, it may be relevant to notice the cardinal observation made by the Hon’ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd. & Ors., Civil Appeal No. 3395/2020** which is extracted hereunder:

“135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicants also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12”.

27. Yet again the Hon’ble Supreme Court in **M/s R.P.S. Infrastructure Vs Mukul Kumar in C.A. No. 5590 of 2021** held that in order to ensure that CIRP does not become an endless process, after the approval of the plan by the CoC, belated claims cannot be entertained.

28. In the present case there is no dispute with the facts that the claims made by the Appellant in pursuance to the assessment proceedings were finalised after the approval of the resolution plan by the CoC and the Adjudicating Authority. Allowing the claim at this belated stage would unleash the hydra-headed monster of undecided claims on the SRA and

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would have the effect of setting the clock back causing further delay in the CIRP of the Corporate Debtor, which does not commend us.

29. In result, we are of the view that no error was committed by the Adjudicating Authority in approving the resolution plan. The Appeal fails and is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 21.05.2024
Ashok Kumar