

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 575 of 2023

**[Arising out of the Impugned Order dated 13.03.2023 passed by the
Adjudicating Authority, National Company Law Tribunal, Ahmedabad
Bench-II in I.A. No. 899/AHM/2022 in CP (IB) No. 232 (AHM) of 2018]**

In the matter of:

Commissioner of Income Tax (TDS-1), Mumbai
MTNL Building, Cumballa Hill
Peddar Road, Mumbai-400026

...Appellant

Versus

1. Mr. Sundaresh Bhat

Resolution Professional of JBF Petrochemical Ltd.
The Ruby, Level 9,
North West Wing, 29,
Senapati Bapat Marg, Dadar West,
Mumbai - 400028.

...Respondent No.1

2. Committee of Creditors

Though IDBI Bank Ltd.
Level 1&2, Max Towers,
C- 001/A Sector 16B,
Noida U.P. 201301.

...Respondent No.2

Present :

For Appellant : Mr. Sanjay Kumar, Ms. Easha Kadian, Stndg. Counsels for
Income Tax Dept.

For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Mr. Varun Kalra, Mr.
Shahan Ulla, Mr. Samir Malik, Mr. Rahul Gupta, Advocates for
R1.
Mr. Ramji Srinivasan, Sr. Advocate with Ms. Surabhi Khattar
and Mr. Nityesh Dadhich, Advocates for R2.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

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 13.03.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-II) in I.A. No. 899/AHM/2022 in CP (IB) No. 232 (AHM) of 2018. By the impugned order, the Adjudicating Authority has approved the resolution plan of the Corporate Debtor. Since the resolution plan did not incorporate the claims of the Appellant, aggrieved by the said order, this appeal has been preferred.

2. Outlining the factual matrix, we find that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) by the Adjudicating Authority on 28.01.2022 following a Section 7 application filed by the Financial Creditor-IDBI Bank Limited. Thereafter, an Interim Resolution Professional was appointed who took steps to invite claims having made the requisite Public Announcement besides constituting the Committee of Creditor (**"CoC"** in short). The IRP was confirmed as Resolution Professional (**"RP"** in short). The 90 days period for filing of claims expired on 28.04.2022. Post the initiation of CIRP and imposition of moratorium, the Commissioner of Income Tax-Appellant had initiated the income tax assessment proceedings of the Corporate Debtor and passed the assessment order for Assessment Year (**"A.Y."**

in short) 2018-19 on 31.03.2022. Thereafter, the Appellant filed claims in respect of the above tax assessment before the RP on 13.05.2022 in Form-B alongwith assessment order for A.Y. 2018-19 and CPC processed demand for A.Ys. 2019-20 to 2021-22. These claims were rejected by the RP. The CoC approved the resolution plan of the Corporate Debtor, following which, RP sought the approval of the Adjudicating Authority thereto. The Adjudicating Authority approved the resolution plan which did not factorise the claims of the Appellant on 13.03.2023. Aggrieved by the fact that the claim of the Appellant had been rejected, the present appeal has been preferred against the impugned order passed by the Adjudicating Authority approving the resolution plan.

3. For reasons of clarity, the salient dates and events are tabulated as below:

Sl.	Date	Particulars
1.	28.01.2022	The Corporate Debtor was admitted into corporate insolvency resolution process.
2.	04.02.2022	Public Announcement issued for the attention of the creditors inviting their claims.
3.	10.02.2022	RP intimated the Appellant that CIRP was initiated against Corporate Debtor.
4.	16.02.2022	Last date for submission of claims by the creditors as per the Public Announcement
5.	23.02.2022	List of creditors of the Corporate Debtor was uploaded by the RP. Appellant had not filed their claim till then.
6.	31.03.2022	Appellant passed an order against Corporate Debtor to pay Rs 9.94 cr for FY 17-18, AY 18-19 during moratorium.
7.	14.04.2022	List of creditors of the Corporate Debtors was uploaded by the RP on the Corporate Debtor's website as well as filed with the IBBI. Appellant had not filed its claim till then.
8.	18.04.2022	The RP issued form G and invited EoI for submission of Resolution Plan.
9.	28.04.2022	90 days period completed for submission of claims. No claims filed by Appellant.
10.	06.05.2022	List of Creditors of the Corporate Debtor was again uploaded by the RP. Appellant had not filed its claim till then.

11.	13.05.2022	The Appellant submitted its claim before the RP for Rs. 10.14 Cr. pertaining to TDS violations.
12.	01.06.2022	Request for Resolution Plan for the Corporate Debtor issued.
13.	14.06.2022	The office of the Appellant received an email from the RP seeking copies of orders for years 2018-19 to 2020-21 in respect of the claims.
14.	20.06.2022	List of creditors of the Corporate Debtor was uploaded by RP which indicated that the claim of the Appellant was rejected.
15.	27.07.2022	180 days of CIRP period expired. No challenge filed by Appellant on rejection of claim.
16.	04.08.2022	Updated list of creditors which showed claim of Appellant as rejected.
17.	15.10.2022	CoC approved the Resolution Plan by GAIL.
18.	20.10.2022	RP filed IA 899/22 before Adjudicating Authority for Plan approval.
19.	30.10.2022	270 days of CIRP period expired. No challenge filed by Appellant on rejection of claim.
20.	09.11.2022	Adjudicating Authority issued notice in IA 899/22 upon the Appellant.
21.	02.02.2023	Hearing conducted by the Adjudicating Authority. Appellant was present and did not make any submissions including in relation to their claims.
22.	21.02.2023	Hearing conducted by Adjudicating Authority Appellant present and did not make any submissions including in relation to their claims.
23.	13.03.2023	Adjudicating Authority passed the Impugned Order approving the Resolution Plan.
24.	16.03.2023	RP sent an email to App intimating approval of resolution plan by Adjudicating Authority.
25.	27.04.2023	Appellant filed the present appeal.

4. We have heard Shri Sanjay Kumar, Ld. Standing Counsel appearing for the Appellant; Shri Krishnendu Datta, Ld. Sr. Advocate representing Respondent No.1 and Shri Ramji Srinivasan, Ld. Sr. Advocate representing Respondent No.2.

5. Making his submissions on behalf of the Appellant, the Ld. Counsel for the Appellant submitted that the impugned order approving the resolution plan

was bad in law since it had not taken into consideration the claim filed by the Appellant. Submission was pressed that the Appellant had filed its claim in Form-B alongwith all supporting documents on 13.05.2022 which was before the CoC had approved the resolution plan. However, the RP, after a month, on 14.06.2022 sought supporting documents. Stating that since only a period of one day was allowed by the RP to furnish the documents to substantiate their claim, it was telephonically clarified to the RP that all supporting documents had already been annexed to the claim while submitting the same on 13.05.2022. It was further pointed out that the RP at no point of time thereafter had intimated the Appellant about the rejection of their claims. Hence the Appellant was under bonafide belief that their claims stood admitted. The Appellant came to know that the claim was rejected only on 16.03.2023 when it received an email from the RP communicating the impugned order passed by the Adjudicating Authority approving the resolution plan. The Appellant is aggrieved by non-consideration of its claim of Rs. 10.14 Cr, though their claim was complete in all respect and was accompanied by relevant assessment orders giving rise to their claim. It was also asserted that the RP had misrepresented before the Adjudicating Authority that none of the Government Authorities including the Appellant had claimed any security or charge over any assets of the Corporate Debtor nor had they filed their claims as a Secured Creditor. It was also contended that the Hon'ble Supreme Court in the case of ***Rainbow Papers Limited*** had held the Government Authorities to be secured creditors regardless of whether they filed their claim as a Secured Creditor or a claim simpliciter. It was vociferously contended that the claims of the Appellant had been rejected without giving them

an opportunity to present their case which amounted to violation of the principles of natural justice besides causing irreparable loss. It was further contended that the resolution plan was therefore liable to be rejected as it fell foul of Section 30(2) of the IBC.

6. Refuting the contentions put forth by the Appellant, the Ld. Senior Counsel for Respondent No.1-RP submitted that the Appellant has misrepresented that opportunity was denied to the Appellant in the matter of consideration of his claim by the RP and the Adjudicating Authority. It was pointed out that Appellant had been kept informed by the RP on 10.02.2022 regarding initiation of CIRP. Moreover, public announcement was issued as per IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”** in short) whereby claims were invited from the creditors of the Corporate Debtor. The RP had also complied with the prescriptions laid down under the CIRP Regulations for uploading the updated list of creditors with the status of their claims on the website of the Corporate Debtor and on the IBBI portal from time to time. The Appellant never filed their claim within the time stipulated by the Public Announcement or the extended timeline of 90 days as provided by the Regulation 12 of CIRP Regulations. However, the Appellant filed their claim on 13.05.2022 which was beyond the extended period of 90 days. It was further contended that the clarifications sought from the Appellant towards verification of the claims filed by the Appellant remained un-responded. On 20.06.2022 and 04.08.2022 the RP had uploaded the final list of creditors on the websites which clearly showed the

claim of the Appellant as rejected. However, the Appellant never agitated the rejection of their claims before the RP. Thus, when the Appellant had slept over its rights and failed to provide necessary documents in support of their claim, they do not have any grounds or basis to contend that the principle of natural justice had been violated. It is vociferously contended that even when the RP had filed IA No. 899 of 2022 before the Adjudicating Authority for approval of the resolution plan and the Adjudicating Authority had issued notice on the Appellant, the Appellant despite being present on two hearings on 02.02.2023 and 21.02.2023, no objections were raised in respect of their claim. It was therefore contended that it is not now open for the Appellant to challenge the impugned order approving the resolution plan on grounds of non-admission of their claim.

7. It was also added that once the resolution plan has been approved, new claims cannot be considered. Reliance was placed on the judgement of the Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657***, which held that once a resolution plan is duly approved by the Adjudicating Authority, the claims as provided in the resolution plan stands frozen and will be binding on all concerned including the Central Government and any State Government. Hence, any interference with impugned order will cause prejudice to the various stakeholders of the Corporate Debtor and the successful resolution applicant as well. As regards, the assessment orders passed by the Appellant on 31.03.2022 calling upon the Corporate Debtor to make payment of Rs 9.94 Cr. it was also

pointed out that the Appellant had unlawfully passed the order since moratorium had been declared as the Corporate Debtor was admitted into CIRP. It was also pointed out that the Appellant being the Income Tax Department could not have filed its claim as a Secured Creditor since the Income Tax Act does not provide basis for the Income Tax Department to be treated as secured Operational Creditor. In support of their contention, reliance has been placed on the judgment of this Tribunal in the case of ***AVIL Menezes Vs Principal Chief Commissioner of Income Tax 2024 SCC OnLine NCLAT 856***.

8. While reiterating the submissions made by the RP, the Ld. Sr. Counsel for Respondent No.2-IDBI made certain additional submissions. It was pointed out that the Appellant had not only submitted its claim beyond 90 days extended period, but had failed to provide reasons justifying the delay. It was also asserted that an order by the Adjudicating Authority approving a resolution plan can be challenged before the Appellate Authority only on the grounds specified under Section 61 of the IBC. However, no such grounds have been made out by the Appellant.

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

10. The primary issue which arises for our consideration is whether the Appellant had shown due diligence in submitting their claim before the IRP/RP and, if not, whether sufficient reasons/grounds exist to admit the belated claim at a time when resolution plan has already been approved by the Adjudicating Authority.

11. Before we dwell upon the issue which we have outlined for our consideration, it would be useful to notice the statutory construct of IBC and CIRP Regulations framed thereunder which govern the framework of the duties and responsibilities of the RP is receiving and collating claims submitted by creditors and the time-lines required to be followed.

IBC Statutory Provisions

18. Duties of interim resolution professional.- (1) *The interim resolution professional shall perform the following duties, namely:—*

(a)

(b) *receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*

13. Declaration of moratorium and public announcement.-(1) *The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –*

(a) *declare a moratorium for the purposes referred to in section 14;*

(b) *cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*

(c).....

15. Public announcement of corporate insolvency resolution process.- (1) *The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:—*

(a)

(b)

(c) *the last date for submission of [claims, as may be specified]*

(d)

(e)

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

CIRP Regulations

6. Public announcement.— *(1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.*

Explanation:— “Immediately” means not later than three days from the date of his appointment.

(2) The public announcement referred to in sub-regulation (1) shall:—

(a) be in Form A of the [Schedule I]

(b) be published—

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor; and

(iii) on the website, if any, designated by the Board for the purpose,

.....

(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

7. Claims by operational creditors.— *(1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule I*

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

8. Claims by financial creditors.— (1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule I

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

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) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36-B or ninety days from the insolvency commencement date, whichever is later:

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from 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.

(1A) *Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.*

.....

(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 [or their authorised representatives]

(c) displayed on the website, if any, of the corporate debtor;

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

.....

12. We have no doubts in our mind that the RP as a facilitator of the insolvency resolution process, it is incumbent upon him to discharge his responsibilities with the highest standards of professionalism, integrity and good faith while safeguarding the interest of all competing stakeholders in a non-partisan manner. The RP is expected to assist in the CIRP process in a fair and objective manner in the best interest of all stakeholders. Section 18 of the IBC sets out the various duties of IRP in respect of handling claims. Section 18(1)(b) lays down that the IRP shall receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Section 13 and 15 of the IBC.

13. To begin with our analysis and findings, we would like to examine whether the RP had adhered to the provisions of IBC and CIRP Regulations while receiving, collating and verifying the claims submitted to him by the Appellant. In the present case, we notice that after the Corporate Debtor was admitted into the rigours of CIRP on 28.01.2022, the Interim Resolution Professional made a Public Announcement on 04.02.2022, in compliance with Sections 13 and 15 of the IBC read with Regulation 6 of CIRP Regulations. The Public Announcement

had set 16.02.2022 as the deadline for claim submissions. On 10.02.2022, the RP also informed the Appellant of the CIRP initiation against the Corporate Debtor, a fact which has not been controverted by the Appellant. It is therefore an undisputed fact that the RP had sensitised the Appellant to the ongoing CIRP process of the Corporate Debtor. Thus, the Appellant cannot deny that he was unaware that the CIRP process had already commenced and that it was incumbent upon the Appellant to make due endeavours on their part to submit their claims. The RP had also not committed any error in making the Public Announcement in the newspapers. Regulation 6 of the CIRP Regulations only mandates pronouncement through newspapers and not through personal service and therefore the RP was not obligated to inform the Appellant through personal service. Thus, the process followed by the RP was reasonably transparent and is not found to be flawed in any manner.

14. Now that we find that the RP in inviting claims had adhered to the statutory provisions, we now proceed to examine whether the Appellant had made appropriate endeavours to file their claims within the prescribed time limit. When we peruse the records, we find that the Appellant did not file its claims within the period which was stipulated in the Public Announcement. Nor did it file its claims within the period of 90 days from the insolvency commencement date. From a plain reading of the CIRP Regulations, RP can accept claims as per extended period as provided in Regulation 12(1) of CIRP Regulations. After the lapse of extended period of 90 days of the insolvency commencement date, the RP is not obliged to accept any claim. Prima-facie, the said CIRP regulation does

not provide any discretion to RP for admitting their claim after the extended period.

15. We find that the Appellant submitted its claim on 13.05.2022 which was clearly beyond 90 days from the insolvency commencement date. Even at this belated stage, the RP did not reject the claim but had sought additional information from the Appellant in support of their claim. We are of the firm belief that the RP was well within his rights to seek additional information from the Appellant to substantiate his claims as permissible under Regulation 10 of the CIRP Regulation which permits the RP to *“call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim”*. The RP was well empowered to seek additional evidence to analyse the admissibility of claims before him. Thus, the RP cannot be faulted for having sought clarifications since the RP was duty bound to verify the claims and call for additional evidence in substantiation of the claims submitted. Coming to the contention of the Appellant that the RP had given only 24 hours’ time to furnish the supporting documents we find that since the 90 days period for submission of claims had already expired and the RP is required to adhere to the prescribed time-lines laid down under the IBC, it was not unreasonable on his part to have provisioned a tight time-frame for response. Having filed their claim belatedly, the Appellant cannot blame the RP for having allowed a small window of time for filing supporting documents. IBC is a time bound process and the Appellant should have been vigilant in taking the right steps to file their claim in a timely manner. The Appellant has been clearly found wanting in this regard. To our

minds, the Appellant had clearly failed to discharge their obligation to lodge claims within prescribed time period.

16. This brings us to the issue raised by the Appellant that they were kept in the dark by the RP that their claim had been rejected. When we look at the sequence of events, we notice that the RP in accordance with the CIRP Regulations had regularly uploaded from time to time the list of creditors of the Corporate Debtor both prior to submission of claim by the Appellant and even after the submission of claim. The status of their claims of the creditors was also put up on the websites of Corporate Debtor as well as the Insolvency and Bankruptcy Board of India (IBBI) portal on several occasions. From the material on record, it is clear that the list of creditors was uploaded five times – on 23.02.2022, 14.04.2022, 06.05.2022, 20.06.2022 and 04.08.2022. On 23.02.2022, the first updated list of creditors was published, indicating the status of claims received on the Corporate Debtor's website and the IBBI portal. This list clearly displayed that the Appellant had not submitted its claims by that date. The RP again updated the list of creditors on 14.04.2022, reflecting the status of their claims. The Appellant had still not submitted its claims. The same position continued even on 28.04.2022 which marked the 90th day for filing claims though the 90 day time-line constitutes the extended time period by which the claims are required to be filed in terms of CIRP Regulations 12(1) of IBC. This time-line therefore stood indisputably expired before the Appellant submitted his claim. On 06.05.2022, the RP released yet another list of creditors, once again indicating that the Appellant had not filed any claims. The updated

list of creditors dated 20.06.2022 and 04.08.2022 which dates were subsequent to the submission of claim by the Appellant, clearly showed that the claim of the Appellant was received for Rs 10.14 Cr. and that the same stood rejected. This amounted to deemed knowledge and constructive notice on the Appellant with respect to rejection of its claim. The Appellant cannot shift the burden of their own negligence of not checking the website to ascertain the status of their claim. Hence there is no force in the contention of Appellant that they became aware that their claim was rejected only when the impugned order was emailed by the RP.

17. We now proceed to examine whether the RP had dealt with the claim of the Appellant in a non-partisan manner or had wilfully stalled the claim of the Appellant. The Appellant admittedly had eventually filed their claim on 13.05.2022 for Rs. 10.14 Cr. in respect of TDS dues of the Corporate Debtor for FY 2017-18 to 2020-21. The RP sought copies of relevant orders on 14.06.2022 to which allegedly it did not receive any response from the Appellant. Per contra, it is the contention of the Appellant that it was allowed extremely short period to respond and hence they had telephonically informed that it had already sent the supporting documents earlier on 13.05.2022. Needless to add, the RP is not expected to process and verify the claims of a creditor without supporting proof and to that extent cannot be held to have acted in an unwarranted manner. In fact, the Appellant was remiss that it did not follow up with the RP anytime thereafter seeking any update about the status of their claim or the CIRP process.

18. Be that as it may, we find that the RP had rejected the claim for want of documents. Thus, the next logical question that craves for answer is whether

the RP ever agitated the issue of rejection of their claims. From the chronological sequence of events captured at Para 3 above, it is clear that even until 180 days of CIRP completion, no objections were raised by the Appellant regarding rejection of their claims. The same position continued even when the resolution plan came up for approval before the Adjudicating Authority. When the RP moved IA No. 899 of 2022 before the Adjudicating Authority seeking approval of the resolution plan, the Adjudicating Authority vide order dated 09.11.2022 directed issue of notice upon the Appellant. The copy of the order is as reproduced herein below:

“Application is filed by the RP MR. Sundaresh Bhatt of the Corporate Debtor u/s 30(6) of the IBC, 2016 for approval of the resolution plan. In another matter, an order passed by the IBBI dated 28.09.2022 had passed an order against Mr. Sundaresh Bhatt suspending the registration of Mr. Bhatt for a period of two years and order to come into force on expiry of 30 days from the date of order.

.....

Let notice alongwith copy of the application be served to the Successful Resolution Applicant, Suspended Management and Income Tax Department.

List on 06.12.2022.”

When the matter was heard by the Adjudicating Authority on 02.02.2023 and 21.02.2023, though the Appellant was represented on both these dates by their counsel, no objections were raised in relation to rejection of their claims as is noticed from the copies of the orders of the Adjudicating Authority as placed at pages 22 to 24 in the Reply Affidavit of the RP. Thus, despite sufficient notice and multiple opportunities given, we find that the Appellant never raised any objections before the RP or contested before the Adjudicating Authority the non-

admission of their claims. The Appellant's claim of not getting an opportunity to raise objections to the rejection of its claim is therefore clearly unfounded.

19. Given this backdrop that the resolution plan has not only been accepted by the CoC but also approved by the Adjudicating Authority, we now come to the question whether sufficient reasons/grounds exist to admit the belated claim at this stage and whether such undecided claims can be entertained once the resolution plan is approved by the CoC and the Adjudicating Authority.

20. When we look at the resolution plan approved by the Adjudicating Authority, it has been held by the Adjudicating Authority that it does not violate any provisions of the IBC including Section 30(2) and is in accordance with law. The plan was reviewed and found by Adjudicating Authority to comply with all legal requirements. The Appellant on the other hand, nearly six weeks after the resolution plan was approved by the Adjudicating Authority, filed the present appeal raising objections to the resolution plan approval and that too not on grounds of contravention of Section 30(2) of the IBC but on grounds of rejection of its claim. Had they submitted their respective claims even within the extended time-frame of 90 days and the RP refused to collate their claim, only then the Appellant could have rightly contended that there had occurred some irregularity. In the instant case, the facts on record do not show that the RP had acted in contravention of the IBC in rejecting or stalling the filing of belated claims or that he did not show due diligence in performing his duty. Hence the objections of the Appellant to the approval of the resolution plan approval merely on the ground that their claims were rejected lacks merit.

21. It is the case of the Respondents that any interference with the plan at this stage by introducing new claims would prejudice the stakeholders and disrupt the successful resolution of the Corporate Debtor. It was also canvassed that any indulgence by way of belated admittance of claim is likely to jeopardise the CIRP since the resolution plan is already under implementation. It was also asserted that if claims of Appellant are accepted at this hopelessly delayed stage and so long after the stipulated time provided for submitting claims, then the possibility of resolution plan failing to materialize becomes very high and tantamount to defeating the objectives of IBC of making CIRP a time-bound process. When we look at the impugned order, we notice that the Adjudicating Authority has adverted attention in para 17 of the impugned order that the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra supra** that claims as provided in the resolution plan stands frozen and becomes binding on all stake-holders including government authorities, the relevant excerpts being as extracted hereunder:

"86. 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.

87. 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 IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. "

22. There is a catena of judgements of the Hon'ble Apex Court wherein it has been held that no surprise claims should be flung on the successful resolution applicant so as to provide an enabling framework for the resolution applicant to start with a fresh slate on the basis of the resolution plan approved. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors*** 2019 SCC Online SC 1478 has held:

"107. 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 would successfully take 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. For these reasons, the NCLAT judgment must also be set aside on this count".

23. It has also been clearly held by the Hon'ble Supreme Court of India in ***M/s RP Infrastructure Ltd. vs Mukul Kumar & Anr.*** in ***Civil Appeal No. 5590 of 2021*** that even after the resolution plan is approved by the CoC and is pending before the Adjudicating Authority, new claims cannot be foisted upon the resolution applicant. The relevant excerpts of the judgement reads as under:

"21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the

reopening of the whole issue, particularly as there may be other similar person who may jump onto the bandwagon. As described above, in *Essar Steel*, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."

24. Claims not part of the resolution plan are considered extinguished under the settled position of law as held by the Hon'ble Supreme Court in the ***Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657***, wherein it held that:

68. 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.

"102.1. 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.

25. There is force in the contention of Respondents that allowing such belated claims would lead to a situation where the SRA is made to face the uncertainty of undecided claims. If new claims are entertained after the resolution plan is approved by the Adjudicating Authority, the plan would be jeopardised and this would set the clock back on the CIRP process which would militate against the intent and object of the IBC. We are therefore of the considered view that when the plan has already been approved by both the CoC and the Adjudicating Authority, it cannot be reopened now on the basis of claims being belatedly agitated by the Appellant who for no justifiable reasons had clearly dropped the guard of being vigilant in pursuing his claims within the time-lines laid down by IBC.

26. Coming to the contention of the Appellant that the RP had misrepresented before the Adjudicating Authority that none of the Government Authorities including the Appellant had claimed any security or charge over any assets of the Corporate Debtor nor had they filed their claims as a Secured Creditor, we find the records show otherwise. We find that the Appellant on their own volition had filed their claim in Form-B which is meant for Operational Creditors. Even if we assume that this was a curable error, we cannot gloss over the fact that the Appellant in the said Form has categorically mentioned “NIL” against the details of the security held by it. The relevant extract from Form-B is as reproduced below:

FORM B

**PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT
WORKMEN AND EMPLOYEES**

13.05.2022

“4. In respect of the said sum or any part thereof, neither I nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL”

27. However, contending that regardless of Form-B, the Appellant being a Government Department was a secured creditor and entitled to realise security interest, reliance has been placed on the judgment of the Hon’ble Supreme Court in **State Tax Officer vs. Rainbow Papers Limited Civil Appeal No. 1661 of 2020**. It was contended by the Appellant that the Hon’ble Supreme Court in the case of **Rainbow Papers Limited** had held the Government Authorities to be secured creditors regardless of whether they filed their claim as a Secured Creditor or a claim simpliciter. However, we are of the view that this judgement does not cannot come to the rescue of the Appellant in view of 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**, wherein it has been held that the ratio of the **Rainbow Papers supra** has to be confined to the facts of that case. In the **Rainbow Papers** case, the Operational Creditor was held to be a secured creditor on the basis of relevant statutory provisions of Gujarat Value Added Tax, 2003. We also find that the Respondents have contended that the Appellant can claim the status of a Secured Creditor

only if the relevant statutory provision provides basis for such a claim. We also agree that the creation of a charge by operation of law must be apparent from the express words of the statute. However, the provisions of Income Tax Act do not create any charge or security interest in favour of the Appellant or provides any foundational basis for the Income Tax Department to be a secured Creditor. We are therefore of the considered view that the claim of the Appellant of being a secured creditor lacks force.

28. In view of the foregoing discussion, we are of the considered view that the Appeal is devoid of merit. The Appeal is dismissed. The resolution plan may be implemented in terms of the resolution framework as approved by the Adjudicating Authority. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 15.10.2024

Abdul/Harleen