

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

Company Appeal (AT) (Insolvency) No.1340 of 2022

[Arising out of the order dated 28.09.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench in IA /265(AHM) 2022 in CP(IB) No.669/2019]

IN THE MATTER OF:

**Deputy Commissioner, UTGST, Daman,
3rd Floor, Udyog Bhawan,
Bhenslore, Nani Daman,
Dadra and Nagar Haveli and
Daman and Diu-396210**

...Appellant

Versus

**Rajeev Dhingra
IRP for Radha Madhav Corporation Ltd.
BG 5A/48B, DDA Flats,
Paschim Vihar,
New Delhi -110063**

...Respondent

Present:

**For Appellant: Mr. Siddhartha Sinha, Mr. Nring Chamwibo Zelang and
Ms. Anu Priya Nisha Minz, Advocates.**

**For Respondent: Mr. Kanishk Khetan, Advocate for R-1 (RP).
Ms. Varsha Banerjee, Advocate for R-6 (SRA).**

With

**Company Appeal (AT) (Insolvency) No.1245 of 2022
& I.A. No.3809 of 2022**

[Arising out of the order dated 01.08.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench in IA /78(AHM) 2022 in CP(IB) No.669/2019]

IN THE MATTER OF:

Deputy Commissioner, UTGST, Daman

**3rd Floor, Udyog Bhawan,
Bhenslore, Nani Daman,
Dadra and Nagar Haveli and
Daman and Diu-396210**

...Appellant

Versus

**Shri Rajeev Dhingra,
IRP of Radha Madhav Corporation Ltd.
BG 5A/48B, DDA Flats,
Paschim Vihar,
New Delhi -110063**

...Respondent No.1

**Committee of Creditors,
A-270, 1st & 2nd Floor,
Defence Colony,
New Delhi – 110024**

...Respondent No.2

**Shri Mitesh Anil Kumar Agarwal,
Ex-Managing Director of the Corporate Debtor,
H. No.13/728/15, Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman-396210**

...Respondent No.3

**Shri Abhishek Agarwal,
Ex-Joint MD of the Corporate Debtor,
H. No.13/728/15, Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman-396210**

...Respondent No.4

**Income Tax Department,
Income Tax Office,
VAPI, 8th Floor, Fortune Square-II,
Above TBZ, Chala, Gujarat – 396191**

...Respondent No.5

**Shri Harish Vedkumar Anand,
Operational Creditor,
C-204, Kanti APTS, Mount Mary Road,
Bandra (West),
Mumbai -400050**

...Respondent No.6

**M/s Radha Madhav Corporation
(Under CIRP) Corporate Debtor,
Represented by IRP Shri Rajeev Dhingra,
Survey No.50/9, Adaman Industrial Estate,
Village Kadaiya,**

**Nani Daman,
Daman & Diu – 396210**

...Respondent No.7

Present:

**For Appellant: Mr. Siddhartha Sinha, Mr. Nring Chamwibo Zelang and
Ms. Anu Priya Nisha Minz, Advocates.**

**For Respondents: Mr. Kanishk Khetan, Advocate for R-1 (RP).
Mr. Nakul Mohta and Ms. Alina Merin Mathew,
Advocates for R-2. (FC)
Ms. Varsha Banerjee, Advocate for R-6 (SRA).**

With

**Company Appeal (AT) (Insolvency) No.1262 of 2022
& I.A. No.3863 of 2022**

**[Arising out of the order dated 01.08.2022 passed by the Adjudicating
Authority, National Company Law Tribunal, Ahmedabad Bench in IA
/78(AHM) 2022 in CP(IB) No.669/2019]**

IN THE MATTER OF:

**Crp Infrastructure Pvt. Ltd.
1st Floor, Narayan Complex,
Navrang Industrial Soc,
Nr. Sarvodaya Petrol Pump,
Opp. Ambanagar, U.M. Road,
Udhna Gujarat - 395002**

...Appellant

Versus

**Rajeev Dhingra
RP of Radha Madhav Corporation Ltd. & Ors.
BG 5A/48B, DDA Flats,
Paschim Vihar,
New Delhi -110063**

Or

**Witworth Insolvency Professionals Pvt. Ltd.,
D54, First Floor, Defence Colony,
New Delhi – 110024.**

...Respondent No.1

**Committee of Creditors,
A-270, 1st & 2nd Floor,
Defence Colony,
New Delhi – 110024**

...Respondent No.2

**Shri Mitesh Anilkumar Agarwal,
Ex-Managing Director of the Corporate Debtor,
H. No.13/728/15, Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman-396210**

...Respondent No.3

**Shri Abhishek Agarwal,
Ex-Joint MD of the Corporate Debtor,
H. No.13/728/15, Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman-396210**

...Respondent No.4

**Income Tax Department,
Income Tax Office,
VAPI, 8th Floor, Fortune Square-II,
Above TBZ, Chala, Gujarat – 396191**

...Respondent No.5

**Vama Construction Co.
Siddharth Apartment, Sai Baba road,
Tithal Road, Valsad, Gujarat – 396001**

...Respondent No.6

Present:

For Appellant: Mr. Himanshu, Advocate.

**For Respondents: Mr. Kanishk Khetan, Advocate for R-1 (RP).
Mr. Nakul Mohta and Ms. Alina Merin Mathew,
Advocates for R-2. (FC)
Ms. Varsha Banerjee, Advocate for R-6 (SRA).**

With

**Company Appeal (AT) (Insolvency) No.1542 of 2022
& I.A. No.4849 of 2022**

**[Arising out of the order dated 28.09.2022 passed by the Adjudicating
Authority, National Company Law Tribunal, Ahmedabad Bench in IA
/223(AHM) 2022 in CP(IB) No.669/2019]**

IN THE MATTER OF:

**Assistant Commissioner CGST
& Central Excise, Division-IV
Daman Commissionerate,
3rd Floor, GST Bhavan,
RCP Compound, Vapi-Daman Road,
Vapi - 396191**

...Appellant

Versus

**Radha Madhav Corporation Ltd.
through Rajeev Dhingra,
Resolution Professional,
Survey No.50/9, Daman Industrial Estate,
Kadaiya, Nani Daman, Daman-396210**

...Respondent

Present:

For Appellant: Ms. Shivalakshmi, Advocate.

**For Respondent: Mr. Kanishk Khetan, Advocate for R-1 (RP).
Ms. Varsha Banerjee, Advocate for R-6 (SRA).**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

Present is a set of four appeals filed under Section 61 of Insolvency and Bankruptcy Code, 2016 (“**IBC**” in short) by the Appellants which arises out of two orders dated 01.08.2022 and 28.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court-1) in CP (IB) No 669 of 2019 and related IAs. Aggrieved by the said impugned orders, the present appeals have been preferred.

2. The brief facts of this case are as follows:

- The Adjudicating Authority vide impugned order dated 22.10.2020 initiated CIRP of the Corporate Debtor- Radha Madhav Corporation Ltd. ("**RMCL**" in short).
- IRP issued Public Announcement on 12.11.2020 inviting claims. The last date for submission of claims was 25.11.2020.
- Upon receiving the claims, the IRP collated a list of creditors and constituted the CoC on 03.12.2020.
- The 1st CoC meeting resolved to replace the IRP with Resolution Professional ("**RP**" in short). RP published Form G on 06.02.2021 calling upon Prospective Resolution Applicants ("**PRA**s in short") to submit their Expression of Interest ("**EoI**" in short) with last date being 21.02.2021.
- RP informed the office of Deputy Commissioner, UTGST, Daman (hereinafter referred to as "**UTGST**") to submit their claims in Form B in writing vide letters dated 17.03.2021, 09.07.2021 and 24.08.2021. UTGST submitted their claim on 09.11.2021. These claims were rejected by RP on 03.12.2021 on grounds of being belated following which UTGST filed IA 265 before the Adjudicating Authority seeking to get their claims admitted.
- The Assistant Commissioner CGST and Central Excise (hereinafter referred to as "**AC-CGST**") had submitted their claim in Form B on 02.11.2021 relating to penalty imposed on Corporate Debtor amounting to Rs. 37.73 crore. These claims were rejected by RP on 02.12.2021 on

grounds of delay in filing of the claim following which AC-CGST filed IA 223 before the Adjudicating Authority seeking to get their claims admitted.

- The Respondent received 8 EoIs of which 4 PRAs were found eligible to participate in submission of Resolution Plan, last date for which was 12.04.2021.
- Post approval in 4th CoC meeting, RP sought extension of 90 days in the CIRP period which the Adjudicatory Authority allowed on 07.04.2021 extending the CIRP period upto 19.07.2021.
- The 5th CoC meeting held on 27.05.2021 sought exclusion of 99 days from the CIRP which the Adjudicating Authority allowed on 06.07.2021 thus allowing the CIRP to continue upto 26.10.2021.
- As the PRAs sought further time for submission of resolution plan, the CoC in the 6th meeting held on 20.08.2021 terminated the CIRP and authorized the RP to publish another Form G.
- The RP published fresh Form G on 22.08.2021 with last date for submission of EoI as 06.09.2021. The RP received 8 Eols out of which 7 PRAs were declared eligible.
- CRP Infrastructure Pvt Ltd (“**CRP**” in short) submitted its EoI on 05.10.2021 which the RP refused to entertain as last date of submission was over.

- Extension for submission of Resolution Plans was allowed by the CoC till 26.10.2021 in the 8th CoC meeting held on 14.10.2021.
- Only one Resolution Plan was received from VAMA Construction Company (“**Vama**” in short) before the last date for submission of the Resolution Plan.
- CRP approached the Adjudicating Authority vide IA No. 750/2021 seeking permission to submit its Resolution Plan which was allowed on 03.11.2021 giving seven days’ time.
- On 13.11.2021, CRP submitted by email its Resolution Plan. In the 11th CoC meeting held on 18.11.2021, the CoC decided to reject the resolution plan of CRP as it was found to be defective and not in compliance with the IBC.
- The Revised Resolution Plan received by RP from Vama on 17.12.2021 was duly circulated to the CoC for their review and consideration.
- During the 15th CoC meeting, the RP verified the revised resolution plan of Vama along with the addendum dated 18.12.2021. This resolution plan was put to vote in 15th CoC meeting on 20.12.2021. CoC members representing 100% voting share cast their vote in favour of resolution plan. Letter of Intent was issued on 23.12.2021 to the Successful Resolution Applicant - Vama who unconditionally accepted it on 23.12.2021.

- RP preferred an application before the Adjudicating Authority vide No IA 78 of 2022 seeking approval of Resolution Plan submitted by Vama - Successful Resolution Applicant (**'SRA'** in short). The Adjudicating Authority on 01.08.2022 approved the Resolution Plan which is hereinafter referred to as the "**first impugned order**".
- Following approval of resolution plan on 01.08.2022, the Adjudicating Authority dismissed IA 265 of the UTGST and IA 223 of the AC-CGST as infructuous and directed them to approach a proper authority. This order of the Adjudicating Authority dated 28.09.2022 is hereinafter referred to as the "**second impugned order**".
- Aggrieved by the two impugned orders, following four sets of appeal have been preferred with the following prayers.
- CA(AT)(Ins.) No. 1262/2022 has been filed by CRP for setting aside the first impugned order dated 01.08.2022 and to allow invitation of fresh EoIs and consideration of resolution plans afresh.
- CA (AT)(Ins.) No. 1245/2022 has been filed by UTGST praying for setting aside the first impugned order dated 01.08.2022 approving the resolution plan of Vama and for consideration of their claims in the resolution plan.
- CA (AT) (Ins.) No.1340/2022 has been filed by UTGST praying for setting aside the second impugned order of the Adjudicating Authority dated 28.09.2022 and for consideration of their claims in the resolution plan.

- CA(AT)(Ins.) No.1542 of 2022 has been filed by AC-CGST praying for setting aside the resolution plan of Vama and to consider their claims for payment of statutory dues to them.

3. At the outset, we propose to separately deal with the rival contentions made in each of the four appeals and thereafter focus on the issues which require our consideration.

CA(AT)(Ins)1262/2022

4. Assailing the first impugned order, the Learned Counsel for the Appellant-CRP while making his submissions stated that though the CRP had requested the RP on 06.10.2021 to accept their EoI, the RP had declined their request stating that the time for submission of EoI was over. When this decision of the RP was challenged by the CRP, the Adjudicating Authority on 03.11.2021 allowed them to submit a resolution plan. The plan was submitted on 13.11.2021 but again not accepted by RP on 18.11.2021 on hyper-technical grounds making it clear that the intention of RP was to scuttle the resolution plan of CRP. By illegally excluding the plan of CRP from the purview of consideration of the CoC, it was contended that the RP has failed to elicit the most viable commercial plan and thus prevented the CoC to bring about an effective resolution of the corporate debtor.

5. Advancing the argument that the RP acted in an arbitrary manner, it was pointed out that RP approved a resolution plan by Vama well below the

liquidation value of Rs 57.84 cr and the fair value of Rs 75.65 cr. Further, as against a debt of approximately Rs. 533.64 crores due to the secured financial creditors, the resolution plan provides for only Rs. 36 crores. This works out to haircut of 93.65%. It has also been contended by the Learned Counsel for the Appellant that CoC in the 13th meeting held on 13.12.2021 had raised serious concerns on the plan yet the RP had put up the same for the consideration by the CoC. This amounts to material irregularity in the exercise of powers by the RP and the CoC thereby rendering the approval of the resolution plan by the Adjudicating Authority in the first impugned order as null and void.

6. It has also been submitted that Vama and the Corporate Debtor are related parties within the meaning of Section 5(24) of the IBC and share key managerial persons. Further, there is no certainty in the resolution plan as to whether the resolution applicant or its affiliate proposes to be the final resolution applicant. The CoC and RP have also failed to examine as to how the resolution plan provides for implementation and supervision of the resolution plan which is a mandate of Section 30 (2)(c) of the IBC.

7. The Learned Counsel for the CoC-Respondent No.2 refuting the contentions of the Learned Counsel for the Appellant-CRP submitted that the resolution plan of CRP has been rightly rejected by RP due to carelessness of the CRP in submitting its plan on time. Further, the plan did not comply with the mandatory requirements of IBC as well as the RFRP. It is also the contention of the Learned Counsel for the CoC that CRP was only making a

malafide attempt to thwart and derail the entire CIRP process. Moreover, following the rejection of its plan, the Appellant-CRP having not challenged the rejection before the Adjudicating Authority, they have no case or locus to seek interference in the order.

8. It is also the contention of the CoC that CRP being an unsuccessful resolution applicant has no locus-standi to challenge the resolution plan of Vama. CRP as a rank outsider to the resolution proceedings which has already been approved by the Adjudicating Authority can have no reasons to feel aggrieved. On the issue of related status of the SRA and the corporate debtor, it has been contended that CRP has failed to make any case of ineligibility of SRA under Section 29 A. Submitting further that the Adjudicating Authority does not have any jurisdiction to sit in appeal over the commercial wisdom of the CoC, reliance has been placed on the judgement in the matter of **K. Shashidhar v. Indian Overseas Bank MANU/SC/0189/2019: (2019) 12 SCC 150** (“**Shashidhar**” in short).

9. The Learned Counsel for the RP-Respondent No.1 echoing the views raised by Respondent No.2 also stated that the Adjudicating Authority has issued a well-reasoned order which does not warrant any interference. The CIRP of the Corporate Debtor has already culminated into a resolution plan by 100% majority of CoC and also approved by Adjudicating Authority.

CA (AT) (Ins.) 1340/2022 and 1245/2022

10. Assailing the first and the second impugned order, the Learned Counsel for UTGST in these two appeals submitted that though the last date for filing claim for 25.11.2020, since Covid pandemic was prevailing at that time, and the administration was stretched on that count, their claim could not be filed on time. Eventually on the basis of demand orders/assessment order/show-cause notice issued to the Corporate Debtor, it could be determined that a claim of Rs.26.51 crore was pending against them. UTGST raised their claim on 02.11.2021 for Rs.26.51 crore which was sent to the RP by email and post on 09.11.2021. Their claim was wrongly rejected and not admitted by the RP on account of the fact that proof of claim has not been filed within prescribed time limit.

11. It was pointed out that aggrieved by the rejection of their claims by the RP, UTGST had taken up the matter again with the RP on 23.12.2021 pointing out that in view of Hon'ble Supreme Court's orders in MA No.665/2021, the period from 15.03.2020 till 02.10.2021 should stand excluded in computing the period of limitation. IA 265/2022 was also filed in CP (IB) No. 669/2019 before the Adjudicating Authority for issue of directions to the RP to admit their claim by allowing exclusion of certain period for purposes of limitation in terms of Supreme Court Orders in MA No.665 of 2021. However, before deciding on this IA, the Adjudicating Authority had passed the first impugned order on

01.08.2022 allowing the application of the RP regarding approval of the Resolution Plan submitted by Vama.

12. It was also pointed out that in the present case the CoC consisted of only one member and the resolution plan provided for Rs. 36 crore to be paid to the sole CoC member out of total resolution plan of Rs.36.40 crore. When there are outstanding statutory dues of a Corporate Debtor, the resolution plan does not meet the requirements of Section 30(2) of the IBC and therefore is not binding on the State. It was contended that the judgment of the Hon'ble Supreme Court in the matter of **State Tax Officer v. Rainbow Papers Limited 2022 SCC OnLine SC 1162** ("**Rainbow**" in short) is squarely applicable.

13. The Learned Counsel for the RP while rebutting the contentions of the UTGST stated that RP is required to follow the timelines in Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, ("**CIRP Regulations**" in short) which lays down the process for filing the claim. Since the present claim was filed beyond the prescribed period, the RP was constrained not to accept the claims.

14. It was emphatically asserted that once a Resolution Plan is approved by the Adjudicating Authority it shall be binding on the Corporate Debtor including government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force and other stakeholders involved in the Resolution Plan. Reliance was also placed

on the judgement of the Hon'ble Supreme Court in ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531*** which has held that 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 the Resolution Applicant.

CA (AT) (Ins.) No.1542 of 2022

15. It was submitted by the Learned Counsel for AC-CGST that in the present case, the AC-CGST had issued show cause notice on 26.02.2021 to the Corporate Debtor and RP was kept informed regarding issue of the show cause notice on 02.03.2021. Subsequently, the Joint Commissioner, CGST on 20.10.2021 had imposed a penalty of Rs.37.73 crore on the Corporate Debtor which order was also shared with the RP. The RP in reply had informed on 26.10.2021 that since the claim was for a period prior to 22.10.2020 which was the date of commencement of CIRP, the same be sent in Form B. The AC-CGST had thereafter submitted their claim on 02.11.2021 but this was arbitrarily rejected by the RP on grounds of delay in filing of the claim.

16. It was also submitted that the Adjudicating Authority failed to consider that there was no obligation on the part of the State to lodge a claim in respect of statutory dues for which recovery proceedings have been initiated; that the RP did not have adjudicatory powers to accept or reject

their claim; that the resolution plan would not bind the State as it ignores statutory demands payable to it; and that the Adjudicating Authority failed to consider that the State is a secured creditor.

17. It has been countered by the Learned Counsel for SRA-Vama that the claim of AC-CGST is legally untenable on account of having been raised after CIRP had been initiated on 22.10.2020. Show-cause notice had been issued by AC-CGST on 26.01.2021 which culminated into an order dated 21.10.2021 which is the basis of the belated claim. Since the show-cause notice and order has been passed during CIRP, the claims based on them are non-est in law. Moreover, the SRA-Vama has already initiated implementation of the resolution plan. Hence, allowing a creditor's claim at a belated stage will be unfair to the SRA-Vama as it would cripple the entire basis on which the SRA-Vama had submitted its resolution plan.

18. It was further submitted that Department of Revenue, Ministry of Finance has issued a circular dated 23.03.2020 which clearly envisaged therein that no coercive action can be taken against the Corporate Debtor with respect to dues for the period prior to insolvency commencement date. This has been reiterated in a subsequent circular dated 27.12.2022. Further, it was obligatory for AC-CGST to file the claim within timeline prescribed under IBC and having failed to fulfil their duty, they cannot be shown indulgence at this belated stage.

19. It was strenuously contended that **Rainbow (supra)** does not come to the aid of AC-CGST since that judgment was passed on 06.09.2022, whereas the resolution plan in this matter was approved on 01.08.2022 and in terms of the settled position of law of prospective overruling, **Rainbow (supra)** is not applicable in the present matter.

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

21. From the submissions made by the parties and the material available on record, the following two questions arise for consideration: -

- (i) whether any material irregularity been committed by the RP and the CoC in rejecting the resolution plan of the CRP or by the Adjudicating Authority in approving the resolution plan of SRA-Vama.
- (ii) whether on account of the rejection by RP of the claims filed by the UTGST and AC-CGST, the resolution plan of Vama, as approved by the Adjudicating Authority, does not meet the requirements under applicable law.

22. To answer the first question, we notice that it is the contention of CRP that the RP treated them unfairly and unjustly by not entertaining their resolution plan. Even after the Adjudicating Authority had allowed

consideration of their plan by the RP, the RP had managed to persuade the CoC to not consider the resolution plan on its own merits by raising hyper-technical objections. Thus, the RP failed to discharge the duties as mandated by law to ensure the revival of the corporate debtor by not adopting a fair and transparent process. Furthermore, CRP has alleged that the RP had endorsed the resolution plan of Vama though it was not meeting the requirements under applicable law.

23. For a proper appreciation of this issue, we need to have a quick glance at some of the important milestone dates in the CIRP proceedings which have already been captured in details at para 2 above. The CIRP against the Corporate Debtor had commenced on 22.10.2020. Publication was made by the RP on 12.11.2020. Form G was published on 06.02.2021 inviting EoIs. As PRAs had sought more time, a fresh form G was published on 22.08.2021 with last date of submission being 06.09.2021. CRP had submitted EoI on 05.10.2021 which being after the last date of submission was not entertained by the RP.

24. However, when the CRP agitated this matter before the Adjudicating Authority, the RP was directed by the Adjudicating Authority in IA No. 750(AHM)2021 on 03.11.2021 to consider the plan of CRP. At this stage, we may take a look at the operative portion of the directions issued by the Adjudicating Authority which is as extracted below: -

*Be that as it may, it appears to us that CIRP is still on and CoC is considering one plan. Let there be competitive bidding in view of the object of IBC, 2016 for maximization of the value of assets of the Corporate Debtor. Hence, we direct the RP to consider the plan that would be submitted by the Applicant. **We direct the Applicant to submit the plan within seven days without fail.***

With this direction, IA/750(AHM)2021 stands allowed and disposed of.

(Emphasis supplied)

25. The above directions of the Adjudicating Authority while giving the liberty to CRP to submit its resolution plan had clearly placed stringent time conditionalities of “seven days without fail”. We cannot be oblivious of the use of the phrase “without fail”. However, we notice that CRP failed to submit the resolution plan within the given window of seven days specially allowed by the Adjudicating Authority. Clearly, therefore, the CRP had twice failed to submit their plans on time.

26. Eventually on receipt of the resolution plan from CRP, the RP brought the plan to the notice of the CoC in its 11th meeting held on 18.11.2021 including the infirmities of this belated plan like non-submission of duly signed net worth certificate, audited financial statements, etc., and non-deposit of EMD. The relevant minutes of the 11th CoC meeting is reproduced below: -

“Though COC member was categorical and serious of the non-compliance of timeline of 'within seven days without fail' of the order of Hon'ble AA, as CRP was allowed to submit its Resolution Plan under the orders of Hon'ble AA, COC member suggested opening of the hard copy of Resolution Plan / discussion on the plan submitted.

In the presence of representative of COC member, the plan was opened by the representative of IPE and during this opening of the

plan, absence of Pen Drive, which too had to be submitted as per terms of RFRP, was noticed and taken note of.”

27. Pursuant to the decision taken in the 11th CoC meeting, the RP informed CRP on 22.11.2021 that their resolution plan had been rejected by the CoC. However, as the CRP still insisted to remit the EMD amount on 04.12.2021, the RP brought this matter to the notice of the CoC in the 13th meeting held on 13.12.2021 and the relevant extracts of the said meeting are as reproduced below: -

“RP further informed the COC members that CRP had already been conveyed on 22.11.2021 itself about the decision of member of the COC but still CRP remitted EMD amount on 04.12.2021. RP also shared that it asked CRP for its Banking credentials for refund of EMD on 08.12.2021 but instead CRP had written an email on 10.12.2021 attaching therewith copy of Resolution Plan and an undated Letter. An envelope, yet to be opened, too has been received at the office of IPE on 13.12.2021 supposedly containing hard copies of the attachments mentioned in the email dated 10.12.2021.

COC instructed the RP that it has already taken a call that CRP Resolution Plan is non-compliant due to defiance of Eligibility Criteria specified in EOI, RFRP etc. and RP should ask CRP to share its banking coordinates for refund of EMD besides conveying decision of non-acceptance/non-consideration of Resolution Plan of CRP for the reasons shared herein above amongst others.”

28. From the facts of the case we have no doubt in our mind that the CRP did not submit their EOI on time either in the first or second round of Form G. However as and when it was received the RP had apprised the CoC. Besides being non-serious and casual about complying with timelines stipulated in the IBC, even while submitting their EoI they had failed to adhere to mandatory requirements of RFRP. Even the EMD payment was made belatedly and that too for Rs. 2.25 crore as against requirement of Rs 2.5 crore. The CoC

deliberated upon the matter and ultimately passed the resolution not to consider the non-compliant plan of CRP in the interests of the corporate debtor and this was communicated to CRP. We do not find any lapse or irregularity on the part of the RP or the CoC in not entertaining the belated and defective plan of CRP.

29. It is the case of the CRP that by rejecting their plan and thereafter accepting the plan of Vama, the RP had failed to bring on table the most viable resolution plan and therefore failed to bring about an effective resolution of the Corporate Debtor. Per contra, it is the case of the RP and CoC that once CRP was out of the fray, it has no locus to question the approved resolution plan of Vama. In this regard, reliance has been placed by them on the judgment of this Tribunal in the matter of ***M.K. Rajagopalan v. S. Rajendran and Anr in CA (AT)(Ins) No. 58 of 2023*** as extracted hereunder: -

31. On a careful consideration of the respective contentions advanced on either side, this Tribunal, keeping in mind of a vital fact that the Petitioner/Appellant', being an 'Unsuccessful Resolution Applicant', has no 'Locus', to 'assail' a 'Resolution Plan' or its implementation" coupled with a candid fact that he is not a 'Stakeholder', as per Section 31 (1) of the I & B Code, 2016, in relation to the Corporate Debtor', this Tribunal', without any 'haziness', holds that the Petitioner/Appellant', is not an 'Aggrieved Person', coming within the ambit of Section 61 (1) of the I & B Code, 2016, especially, when he is not a 'Privy', to the Resolution Plan'. Viewed in that perspective, the 'Leave', sought for in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, sans merits."

30. Coming to the first impugned order, we notice that the Adjudicating Authority in para 18 of the first impugned order had taken up the resolution plan of Vama for examination as envisaged by Section 30(2) of the IBC and

after doing so held in para 23 of the impugned order that the resolution plan does not contravene any provision of law. The relevant excerpts from the first impugned order is as reproduced below: -

*“23. The RP has certified that the Resolution Plan does not contravene any provisions of law for the time being in force. **On examination of the Resolution Plan, we also find that the Resolution Plan does not contravene any provisions of law. We also hold that the Resolution Plan is in compliance with the provisions stated in Regulations 38 and 39 of the IBBI (CIRP of the Corporate Person) Regulations, 2016, and the interests of all stakeholders are taken care of.** The term of the plan is also stated. Hence, we see no reason to reject this Resolution Plan on any grounds.”*

(Emphasis supplied)

31. We also notice that the Adjudicating Authority in the first impugned order has also dealt with the fact that the resolution plan value of Rs.36.46 crore is less than the liquidation value of the Corporate Debtor. However, it has come to a finding that there is nothing irregular if the plan value is less than the liquidation value by relying on a judgment of the Hon'ble Supreme Court in **Maharashtra Seamless Ltd v. Padmanabhan Venkatesh 2020 SCC OnLine SC 67**. The relevant portion of the impugned order at para 16 is reproduced below: -

*“16.....**The Hon'ble Supreme Court in the case of Maharashtra Limited Seamless in Padmanabhan Venkatesh & Ors. Civil Appeal No. 4242 of 2019 held that no provision in the Code or Regulations was brought to their notice under which the bid of any Resolution Applicant should match liquidation value.** The object behind prescribing such valuation process is to assist the CoC to take decision on a Resolution Plan properly. Once, a Resolution Plan is approved by the CoC, the statutory mandate on Adjudicating Authority under Section 31(1) of*

the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof.

(Emphasis supplied)

32. It may be useful to notice that Section 30 of the IBC which deals with submission of Resolution Plan and sub-section (6) states that “the resolution professional shall submit the Resolution Plan as approved by the Committee of Creditors to the Adjudicating Authority”. In the present case, the RP after approval of the plan by the CoC filed an application before the Adjudicating Authority seeking approval of the Resolution Plan under Section 31 of the Code. Section 31 deals with approval of Resolution Plan. Section 31 (1) provides that if the Adjudicating Authority is satisfied that the Resolution Plan as approved by the CoC under Section 30(4) meets the requirements as referred to Section 30(2), it shall by order approve the resolution plan which shall be binding on the Corporate Debtor and other stakeholders involved in the Resolution Plan. As per the provision and procedure prescribed with regard to approval of Resolution Plan and the powers and functions of the CoC as outlined in the IBC, the CoC in the present matter held detailed deliberations on feasibility and viability of Resolution Plan of Vama. The Adjudicating Authority in turn on its part has clearly recorded in the first impugned order that on examination of the resolution plan of Vama it has found that no provision of law appears to have been contravened and that there is compliance to Regulations

38 and 39 of CIRP Regulations, 2016. It has also noted that interests of all stakeholders have been taken care of. CRP has failed to point out the contravention of any provision by the CoC in approving the plan.

33. We are of the considered view that the CoC has meticulously evaluated the matrix in approving the plan of Vama and the sole member of CoC having 100% voting share has already approved the plan in their commercial wisdom as contemplated under the law. That being the case, the Adjudicating Authority cannot substitute its views with the commercial wisdom of the CoC nor deal with the merits of Resolution Plan unless it is found it to be contrary to the express provisions of law and against the public interest. There is neither any material regularity nor contravention of any provisions of law by the CoC and the plan has been rightly approved by the Adjudicating Authority.

34. In the given statutory framework of IBC, there is only limited review which can be exercised by the Adjudicating Authority without trespassing upon the business decision of the CoC. There can be no fetters on the commercial wisdom of CoC and the supremacy of commercial wisdom of CoC has been reaffirmed time and again by the Hon'ble Supreme Court. The reliance placed by the Learned Counsel of the RP on the judgment of the Hon'ble Supreme Court in

Shashidhar (supra) makes eminent sense and para 52 thereof is reproduced below:

“52..... Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

35. The approved resolution can only be challenged before the Appellate Authority on limited grounds in terms of Section 61 (3) of the IBC and CRP has failed to make out a case of applicability of any such limited grounds. The CoC has approved the resolution plan of Vama after taking into consideration all relevant facts and circumstances. The decision making of the CoC which is based on commercial wisdom is not amenable to judicial intervention as laid down by the Supreme Court. The IBC provides for an initiation of timely resolution of the corporate debtor and in the instant case the resolution plan having already been approved by the CoC and the Adjudicating Authority and implemented by the SRA, it cannot now be open to interference on an appeal preferred by an unsuccessful resolution applicant. It is equally significant to note that following the rejection of the plan of CRP by the CoC, CRP accepted the EMD refund and did not approach the Adjudicating Authority objecting to the resolution plan. It is, therefore, clear that CRP did not challenge the

resolution plan before the Adjudicating Authority at the right point of time and raking up the matter belatedly.

36. Answering the first question, we therefore hold that no case has made by CRP to establish any procedural or material irregularity committed by the RP/CoC in rejecting their EoI and that the challenges raised by the CRP clearly fall within the domain of commercial wisdom of the CoC which is non-justiceable. Nor has CRP been able to establish any contravention of law by the Adjudicating Authority in approving the resolution plan of Vama.

37. This now brings us to dwell upon the second issue of the tenability of the contentions raised by UTGST and AC-CGST that rejection of their claims by the RP and CoC was not in consonance with the requirements of law and that the Adjudicating Authority ignored the settled position of law that if any resolution plan ignores the statutory demands payable to any State Government or a legal authority, such a resolution plan is bound to be rejected. Since the grounds raised in support of their contention are common and over-lapping, we will consider them in a combined manner.

38. It is the case of the UTGST and AC-CGST that delay in filing a claim cannot be the sole ground for rejecting a claim since timelines stipulated in the IBC for completion of CIRP proceedings are directory and not mandatory. Furthermore, the RP does not have adjudicatory powers to accept or reject the claim and his duty is confined only to receive, verify and collate the claims. The RP is only a facilitator of resolution process and has no power to accept or

disallow claims. Hence, their claims would not get extinguished unless it is adjudicated upon by a competent forum or by operation of a law.

39. It is the case of the RP that it is an established practice that the RP is not duty bound to collate claims which are belatedly received after the last date as same will delay the CIRP process. In support of their contention, reliance has been placed on the judgement of this Tribunal in ***Deputy Commissioner, Central GST v. Mr. Kiran Shah, Resolution Professional, CA (AT) (Ins) No. 328 of 2021*** and in ***Mukul Kumar, Resolution Professional of KST Infrastructure Ltd. v. M/s RPS Infrastructure Ltd, CA (AT) (Ins) No. 1050 of 2020*** wherein it has been held that that whenever any claim is filed after extended period provided in Regulation 12(2) of CIRP Regulations, the RP should have rejected the claim. The legislation has not provided any discretion to RP for admitting any claim after the extended period.

40. To arrive at our finding, we may first note some critical dates of the CIRP proceedings and then look at the relevant Regulations. The CIRP commenced on 22.10.2020. The last date for filing claims was 25.11.2020. The 90 days extended period therefore ended on 24.02.2021. AC-GST and UTGST filed their respective claims on 02.11.2021 and 09.11.2021 which happen to be after the expiry of the extended 90 days period. The last date for submission for resolution plan was 26.10.2021. The resolution plan of Vama was approved on 20.12.2021 by the CoC in its 15th meeting.

41. Coming to the relevant regulations, Regulation 12 of the CIRP Regulations provides as follows:

12. Submission of proof of claim.

(1) Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

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

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

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

42. We notice from material on record that it has been admitted by UTGST that the RP had sent letters to them on 17.03.2021, 09.07.2021 and 24.08.2021 for submission of claim along with supporting documents in Form B. We notice that the UTGST was served with these letters even though it was not required for the RP to personally intimate stakeholders to submit claims since a public announcement has been done. These letters are not in denial and there is an averment that they received such communications. Despite notice, UTGST waited for more than a year of the commencement of the CIRP before filing the claim. The delay in submission of the claim by the UTGST was on account of the fact that they had instituted new proceedings and passed several Demand Orders, Assessment Order and Show Cause Notice. The UTGST on 15.12.2021 also acknowledged the fact that UTGST did not have

confirmed demand against the corporate debtor as on the last date of submission of the claim on 25.11.2020. The said claim was rejected by the RP for having been filed belatedly.

43. As regards AC-CGST, show cause notice was issued by them on 26.02.2021 to the Corporate Debtor and on 20.10.2021 they imposed a penalty of Rs.37.73 crore on the Corporate Debtor. There is no dispute therefore that they did not have confirmed demand against the corporate debtor as on the last date of submission of the claim on 25.11.2020. The RP had informed on 26.10.2021 that as the claim was for a period prior to 22.10.2020 which was the date of commencement of CIRP, the same was required to be sent in Form-B. The AC-CGST had thereafter submitted their claim on 02.11.2021 but rejected by the RP on grounds of delay in filing of the claim since it was received outside the prescribed time limit of 90 days extended period.

44. From a plain reading of the above CIRP Regulations, RP can accept the claim as per extended period as provided in CIRP Regulation 12(2). After extended period of 90 days of the insolvency commencement date, the IRP/RP is not obliged to accept the claim. Prima-facie, the said CIRP regulation has not provided any discretion to RP for admitting their claim after the extended period. Had they submitted their respective claims within the extended time-frame and the RP had not chosen to collate this claim as provided for in IBC, only then can it be rightly contended that there has occurred some material irregularity. In

the instant case, the facts on record do not in any manner show that the RP was not diligent in performing his duty or acted in contravention of the of the IBC in rejecting the belated claims of UTGST and AC-CGST.

45. It is vehemently contended by the Learned Counsels for the RP and the SRA-Vama that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and derailed. This would militate against the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value.

46. It was further added that the RP had categorically stated by email to UTGST that one of the reasons for rejecting their claims was attributable to the judgement of this Tribunal in the matter of **Harish Polymer Product v. George Samuel & Anr. in CA (AT) (Ins.) No. 420 of 2021** wherein it has been held that:

.....if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated."

47. There is adequate force in the above contention. The Report of Bankruptcy Law Reform Committee dated November 2015 propounds that time is the essence in any resolution process. The Preamble to the IBC, 2016 also clearly emphasizes that the IBC was enacted to consolidate and amend existing laws relating to, inter-alia, reorganization and insolvency resolution of corporate entities in a time bound manner. The Hon'ble Supreme Court has in a catena of landmark judgements including ***M/s Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*** and ***Arcelor Mittal India Private Limited v. Satish Kumar Gupta (2019) 2 SCC 1*** emphasized on the legislative fiat of timeliness in the conduct of CIRP and that the model timelines provided in Regulation 40A of the CIRP Regulations needs to be adhered to by all the parties as closely as possible.

48. This Tribunal while applying its judicial mind in the exercise of its appellate jurisdiction cannot be oblivious of the fact that CIRP is a time bound process. Therefore, when a resolution plan has already been received and approved by the CoC, we are inclined to agree that if the claims of creditors are accepted at a belated stage after the stipulated time provided for submitting claims, then the possibility of resolution plan failing to materialize becomes very high and tantamount to defeat the objectives of IBC making the CIRP a time bound process. If the belated claim is considered at this stage, it shall adversely affect further implementation of resolution plan and be detrimental to the functioning of the Corporate Debtor. It is also

pertinent to note that the SRA-Vama has claimed to have already made payments of Rs.7.90 crore while implementing the resolution plan.

49. It is the case of the UTGST and AC-CGST that they have reasons to feel aggrieved since applications filed bearing IA No. 265/2022 and IA No.233/2022 respectively seeking directions of the Adjudicating Authority for admission of their claims by the RP have been dismissed. We notice that both applications have been dismissed by the Adjudicating Authority vide second impugned order on the ground that the resolution plan having already been approved on 01.08.2022, prior to the ***Rainbow (supra)***, both applications have been rendered infructuous.

50. Assailing the second impugned order, it is contended by both UTGST and AC-CGST that ***Rainbow (supra)*** is applicable in the present facts of the case. It was also submitted that the resolution plan is totally silent regarding payment of dues of UTGST and AC-CGST which are both government departments and that the CoC cannot secure their own dues at the cost of statutory dues owed to any government or governmental authority. It has also been contended that assessment/adjudication proceedings of any company are not covered under the purview of moratorium imposed while in liquidation.

51. Advancing counter arguments, it is the contention of Vama that since ***Rainbow (supra)*** was passed on 06.09.2022, whereas the resolution plan in

the present case was approved on 01.08.2022, in terms of the settled position of law of prospective overruling, the **Rainbow judgment (supra)** is not applicable in the present matter. Reliance has been placed on the judgement of the Hon'ble Supreme Court in **Paschimanchal Vidyut Vitran Nigam Ltd v. Raman Ispat Private Limited 2023 SCC Online SC 842** wherein the Supreme Court has specifically concluded that the judgement of **Rainbow (supra)** has to be confined to the facts of that case alone. That apart it was added that the resolution plan as submitted by the SRA takes into account the interest of government authorities and provides for appropriate treatment of admitted government dues.

52. Coming to the facts of the present case, we find that the facts of the **Rainbow (supra)** is distinguishable since in that case the recovery proceedings by the department were initiated prior to initiation of CIRP proceedings and it was in this factual context that the Hon'ble Supreme Court had held that delay in filing of claim cannot be sole ground for rejecting the claim. In the present case, both UTGST and AC-CGST have filed claims on the basis of demand orders, assessment order and show cause notice which were issued after the commencement of CIRP. We must add here that in a similarly placed factual matrix, as in the present case, it has been held by this Tribunal in the matter of **Commercial Tax Department v. Sajjan Kumar Dokania & Ors. in CA (AT) (Ins.) No. 1412 of 2022**, that the benefit of the **Rainbow judgment (supra)** cannot be availed. The relevant excerpts are as reproduced below:

“5. From the facts brought on the record, there is no dispute that at the time when claim was filed by the Appellant on 01.06.2022, the CoC has already approved the Resolution Plan. The judgment of Hon’ble Supreme Court in “State Tax Officer (1) vs. Rainbow Papers Ltd.” was considering a claim which were invited on 05.10.2017 which was much prior to amendment in the Regulation, as has been noted in the judgment.

*6. It is to be noted that in the facts of the present case, **the plan approved has also been implemented and the amount received has been disbursed to the Financial Creditors and other claimants as per the Resolution Plan. The submission of learned counsel for the Appellant that the Appellant being a Secured Creditor as per the law laid down by the Hon’ble Supreme Court in “State Tax Officer vs. Rainbow Papers Ltd.” cannot be accepted in the facts of the present case. When there is no claim filed by the Appellant within time, no error has been committed by the Adjudicating Authority in approving the Resolution Plan, which was approved by the CoC much prior to filing of the claim by the Appellant.”***

(Emphasis supplied)

53. It is pertinent to add here that certain circulars issued by the GST Policy Wing of the Central Board of Indirect Taxes and Customs, Ministry of Finance, Government of India have been placed on record. One such relevant circular dated 23.03.2020 clearly provides that in accordance with provisions of IBC, institution and continuation of pending suits in proceedings against the corporate debtor is prohibited during CIRP and the same is reproduced below:

CBEC-20/16/12 /2020 -GST

New Delhi, dated the 23rd March, 2020

To,
The Principal Chief Commissioners / Chief Commissioners / Principal

Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director

Generals (All) Madam/Sir,

Subject: Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016 - Reg.

Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").

2.
3.

S.No.	Issue	Clarification
1.	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.

54. It has been clearly envisaged in the above circular that no coercive action can be taken against the Corporate Debtor with respect to dues for the period prior to insolvency commencement date. It has also been clarified therein that the dues of the period prior to commencement of CIRP will be treated as operational debt. The notification further states that since Section 14 of the IBC mandates imposition of a moratorium period wherein institution of suits or continuation of pending suits or proceedings against the Corporate Debtor is prohibited. This has been reiterated in a subsequent circular bearing no. 187/19/2022-GST dated 27.12.2022.

55. Thus, to answer the second issue, we hold that given these facts and circumstances, there has been no dereliction of duty on the part of the RP in rejecting the belated claims of UTGST and AC-CGST. We therefore do not find any error or irregularity on the part of RP to have rejected the belated claims of UTGST and AC-CGST. Furthermore, we find that the Adjudicating Authority in the first impugned order has taken note that the resolution plan submitted by the SRA – Vama has taken into account the interest of government authorities and provided for appropriate treatment of admitted government dues. The Resolution Plan submitted by the Vama has dealt with the claims of Operational Creditors to the extent of Rs. 10 lakhs besides earmarking an additional sum of Rs. 25 lakhs for all the Government Department claims and undertaken to pay all the PF dues at actuals based on the outcome of an

ongoing legal case at Delhi High Court with respect thereto. Thus, the approval of resolution plan of SRA-Vama by Adjudicating Authority, which was approved by the CoC with 100% vote share, does not suffer from any material or procedural infirmities.

56. In view of the foregoing discussion, we do not find any illegality in either the first or second impugned order of the Adjudicating Authority which may warrant any interference in the exercise of our appellate jurisdiction. There is no merit in any of the four appeals. All appeals are dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 14.09.2023

PKM