

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 286 of 2025

(Arising out of Judgement and order dated 11.12.2024 passed by the National Company Law Tribunal, Jaipur Bench in I.A.(IBC)(Plan) No. 05/JPR/2024 in CP (IB) 52/7/JPR/2022)

In the matter of:

Income Tax Officer,

Ward 1 (3), Jaipur

Aayakar Bhawan, NCRB Statue Circle

Jaipur, Rajasthan

...Appellant

Vs.

M/s Solar Voltaic Power LLP

(M/s Valente Life Space Creators Private Limited

for M/s Solar Voltaic Power LLP)

58, Bajaj Nagar Enclave,

Jaipur, Rajasthan- 302015

...Respondent No.1

Mr. Prashant Agarwal, IRP

F-106 (1st floor), Sumer Complex,

Gautam Marg, B/h Bagadia Bhawan,

C-Scheme, Jaipur- 302001

...Respondent No. 2

Present:

For Appellant: **Mr. Shlok Chandra, Ms. Madhavi Shukla and
Ms. Naincy Jain, Advocates.**

For Respondents: **Mr. Abhinav Mathur, Mr. Gourav Asati, Ms. Ishita
Arora, Advocates.**

Cont'd..../

J U D G M E N T

(13th March, 2026)

INDEVAR PANDEY, MEMBER (T)

This appeal has been filed by the Income Tax Officer, Ward 1(3), Jaipur (Appellant) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') who is aggrieved by the order dated 11.12.2024 passed by the Ld. National Company Law Tribunal, Jaipur Bench (Adjudicating Authority), in I.A.(IBC) Plan No. 05/JPR/2024, in C.P.(IB) No.52/7/JPR/2022, whereby the Adjudicating Authority allowed the application of the Resolution Professional [RP]/Respondent No. 2 for approval of the Resolution plan of M/s Solar Voltaic Power LLP (Corporate Debtor)/Respondent No.1.

2. The Appellant is aggrieved by the fact that the resolution plan does not consider the outstanding Income-tax demands and demands which were raised by the Appellant against the corporate debtor for various Assessment Years to the tune of Rs.3,11,11,442/-. The Appellant asserts he had submitted all the documents through email to the RP on various occasions, but RP failed to consider his claim and without providing any cogent reason has allocated a paltry sum of Rs.1,50,000/- towards statutory dues of the appellant.

Brief facts of the case

3. The brief facts of the case are as given below:
 - i. The Corporate Insolvency Resolution Process (CIRP) of M/s Solar Voltaic Power LLP (Corporate Debtor)/Respondent No. 1 commenced on 19.09.2023, when the Adjudicating Authority admitted a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter the 'Code') and appointed the Mr. Prashant Agarwal/ Respondent No. 2 as the Interim Resolution Professional, who was later confirmed as RP.
 - ii. The RP issued a public announcement on 22.9.2023 as per Regulation 6 of the CIRP Regulations 2016 read with Sections 13 & 15 of the Code in two newspapers inviting claims from creditors of the corporate debtors.
 - iii. Pursuant to the public announcement, the Appellant herein filed its claim on 08.10.2023 in Form B evidencing a claim of Rs.3,11,11,442/, being outstanding income tax dues of the corporate debtor. The Form B was submitted along with notice of demand under section 156 of the Income Tax Act, 1961.
 - iv. Thereafter vide email dated 29.11.2023, the RP requested the appellant to file additional documents in support of its claims. The appellant vide email dated 01.12.2023 once again submitted all the documents evidencing the outstanding dues of Rs. 3,11,11,442/- to the RP.

- v. The RP Once again requested the appellant to furnish additional documents in support of its claims vide email dated 20.05.2024. The appellant diligently once again shared the documents evidencing the outstanding dues/claims against the corporate debtor to the RP vide email dated 30.05.2024.
- vi. In reply, the RP sent a communication vide email dated 06.06.2024 intimating the Income Tax Department of the rejection of its claims however, such e-mail had gone to the spam folder and was not seen by the officers at all. Further, this important and significant communication was not sent to the appellant by speed post/registered post/ courier.
- vii. The RP vide the email dated 06.06.2024 informed the IT authorities that in the meeting of COC held on 25.04.2024, plan submitted by a Successful Resolution Applicant i.e. M/s Valente Lifespace Creators Pvt. Ltd. had been accepted by the COC. Further, in terms of Regulation 13(1B) of the CIRP Regulations, the claim of the appellant could not be considered by the RP.
- viii. Through email dated 02.01.2025, the appellant came to know that resolution plan submitted by M/s Valente Lifespace Creators Pvt. Ltd. had been approved by the Adjudicating Authority vide order dated 11.12.2024 and the appellant had been left high and dry with a paltry sum of Rs.1,50,000/- towards the outstanding dues of the corporate debtor. It is submitted that no basis of allocating Rs.1,50,000/- was provided in the impugned order despite that fact

that the RP had been duly aware of the outstanding dues of Rs.3,11,11,442/- of the appellant from the beginning of the CIRP proceedings.

Submissions of the Appellant:

4. The submissions of the Appellant are as given below:
 - i. Ld. Counsel submits that the Impugned Order is passed without appreciating proper facts and the same is arbitrary and is liable to be set aside. The Impugned order fails to take into account the outstanding dues of Rs.3,11,11,442/- of the appellant.
 - ii. Ld. Counsel further submits that the impugned order fails to take into account the fact that the appellant had duly submitted its claims before the RP along with all the supporting annexures evidencing the outstanding demand not once, but multiple times, but still the RP had failed to consider the same and rejected the same without providing any cogent reason/basis.
 - iii. He submits that the impugned order fails to take into account the fact that the RP had failed to provide any cogent reason/basis in the resolution plan for allocating a sum of Rs.3,00,000/- towards statutory dues/government dues. The RP despite being aware of the outstanding dues/claims of the appellant, failed to bring the same before the CoC at the time of finalizing the resolution plan.
 - iv. It is further submitted that the Impugned order fails to take into account that these dues are of the Revenue Department and if not paid, grave injustice would be caused to the Revenue Department, as

a paltry sum of Rs.1,50,000/- has been allocated to the appellant in the resolution plan against a demand of Rs.3,11,11,442/-.

- v. Ld. Counsel further submits that if the impugned order is not modified, the balance demand of Rs. 3,09,61,442/- against the corporate debtor would be extinguished and public exchequer would suffer for the arbitrary acts of the Resolution Professional.

Submission of Respondent No. 2/RP:

5. The submission of the Respondent No.2/RP who is the contesting respondent here are as follows:

- i. Ld. Counsel for the Respondent No. 2/RP submits that the present Appeal is exfacie not maintainable as it seeks consideration of a claim, which never formed part of the approved Resolution Plan and therefore, now stands extinguished in law.
- ii. He submits that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced on 19.09.2023. Pursuant to Regulation 6 of the CIRP Regulations, a public announcement was issued on 22.09.2023, prescribing 05.10.2023 as the last date for filing claims. The Appellant's claim though dated 29.09.2023 was filed on 08.10.2023 i.e. beyond the stipulated period.
- iii. The Respondent 2 submits that in support of the claim, the Appellant had provided only the demand notice dated 13.06.2019, 03.09.2021, 24.12.2018, 15.12.2019 issued for AYs 2016-17 and

2017-18. It is stated that said demand notices have no independent existence unless it flows from subsisting and enforceable assessment orders.

- iv. Ld. Counsel submits that however, despite repeated requests of the Respondent No. 2 through several emails dated 11.10.2023, 29.11.2023, 17.01.2024, 30.03.2024, 16.05.2024 and 20.05.2024 the Appellant did not provide the supporting assessment order in the absence of which the income tax demand is unenforceable in law and accordingly, kept under verification.
- v. It is the submission of the RP that after the approval of resolution plan with 100% voting in 8th CoC meeting dated 17.05.2024 and 20.05.2024 and after filing of application under Section 30(6) of the IBC for approval of the Resolution Plan on 28.05.2024, the Appellant for the first time vide email dated 30.05.2024 provided the copy of assessment order dated 24.12.2018 for tax demand of Rs.3 ,66,00,910/-.
- vi. Respondent No. 2 submits that the fact regarding pendency of plan approval application was also communicated by the vide email dated 06.06.2024 to the Appellant at which point of time the Appellant had one more opportunity to raise its grievance however, for reasons best known to the Appellant itself, it did not bother to raise the present issue before the Ld. NCLT during the pendency of the plan approval application which remained pending until 11.12.2024. The Appellant remained a silent spectator and therefore, the legal

principle ~ that "equity aids the vigilant and not those who sleep over their rights" squarely applies in the facts of present case.

- vii. Ld. Counsel submits that without prejudice to the foregoing, it is submitted that out of the total plan value of Rs. 20 lakhs, a sum of Rs. 3 lakh were earmarked for the Operational Creditors, which included Government dues against an admitted claim of Rs.1,092.61 lakhs, amounting to a haircut of 99.86%. The Operational Creditors thus received approximately 0.14% of the total admitted claim value. In contrast, the Appellant was paid a sum of Rs. 1.5 lakh, at the sole discretion of the SRA, against its total claim of Rs. 3.11 crores, which works out to 0.5% after haircut. Evidently, the Appellant has already received its fair share of the claim, which the Appellant would not have otherwise been entitled to upon admission of its claim under normal circumstances. Accordingly, the present Appeal is liable to be dismissed on this ground alone.
- viii. Ld. Counsel further submits that the Appellant's assertion that the email dated 06.06.2024 went to the spam folder is wholly baseless and merely an afterthought, as throughout the CIRP, all communications between the Respondent No. 2 and the Appellant were consistently exchanged through email, and every prior email was duly received, acknowledged, and acted upon by the Appellant. There is no plausible explanation as to how only the crucial communication regarding rejection of the claim allegedly landed in

the spam folder, while all other emails from the same sender were successfully received.

- ix. He further submitted that the Respondent No. 2 had repeatedly sent multiple reminder emails dated 11.10.2023, 29.11.2023, 17.01.2024, 30.03.2024, 16.05.2024, and 20.05.2024, all of which were successfully delivered and responded to by the Appellant. These emails specifically requested supporting documents for verification of the claim. In light of this consistent email communication, the selective claim that only one specific email fell into the spam folder is entirely unsubstantiated and contrary to the record.
- x. Ld. Counsel further submits that the plea regarding the spam folder is an attempt to justify the Appellant's own delay, inaction, and failure to exercise remedies at the appropriate stage. Even after being informed that the application for approval of the Resolution Plan had been filed and was scheduled for listing on 10.06.2024, the Appellant did not appear before the Ld. NCLT or raise any objection. The belated excuse of a spam folder issue is therefore a deliberate afterthought to overcome the consequences of its own negligence and cannot be accepted in law.
- xi. Ld. Counsel places reliance on the judgment passed by the Hon'ble High Court of Calcutta in *NILANJANA KUNDU V. BHARAT PETROLEUM CORPORATION LIMITED AND OTHERS, W.P. NO. 5663 (W) OF 2019* wherein the Hon'ble Court observed that "*The internet*

allows users to categorize emails, including marking them as spam or regular mail. Users can still check their spam folder to see if any important emails are there. It is the user's responsibility to regularly check both inbox and spam folders. In this case, the petitioner failed to exercise due care by not checking her emails properly during an online application and selection process, where all communication was conducted online."

- xii. Ld. Counsel further places reliance on the judgment passed by the Hon'ble High Court of Delhi in the matter of OPUS GROUP AB vs. MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, W.P.(C) No.2999/2013 & CM No. 7146/2013, CM No.6675/2013 & CM No.6759/2013 wherein Hon'ble Court observed that "*if the petitioner had been more vigilant in checking her email, she could have responded to the respondents in time. As a result, no significant fault was found on the part of the respondents, and there was no justification to interfere with the tender process at such a late stage.*"
- xiii. Ld. Counsel submits that the Appellant's claim was never admitted and never formed part of the Resolution Plan. Nevertheless, the SRA, as a gesture of consideration, allocated an amount of Rs. 1.5 lakh noting that some claim was filed, although the same remained under verification.
- xiv. It is submitted by the Ld. Counsel that as of today, the Resolution Plan stands fully implemented, and the final report under Regulation 39(4) was duly filed and accepted by the Ld. NCLT vide

order dated 22.04.2025. At this stage, the attempt of the Appellant to reopen or challenge the finality of the CIRP is impermissible in law. The law is now well settled that once a Resolution Plan is approved under Section 31 of the IBC, all claims not forming part of the plan stand irrevocably extinguished as per the judgment of *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9SCC 657*.

- xv. Ld. Counsel further submits that the Resolution Plan (Clause 20(c)) also provides express protection to the SRA from all past liabilities or demands prior to commencement of the CIRP based on "*clean slate*" principle.
- xvi. It is the submission of Ld. Counsel that it is evident from the facts of the case that the Appellant slept over its rights during the entire CIRP period and failed to utilise the statutory remedies available to it. However, despite repeated notices, complete opportunities, and specific intimation of the hearing before the Ld. NCLT, no steps were taken. The Appeal is filed only after full implementation of the Resolution Plan and post-closure of the CIRP, rendering the reliefs sought infructuous and contrary to settled judicial precedent. He therefore prayed for dismissal of the appeal as the same is barred by delay, laches, acquiescence, and non-exercise of statutory remedies.

Analysis and findings

6. We have heard both the parties in detail, gone through the voluminous records of the case and also seen the written submission of the Respondent No.2. The appellant did not submit the written submissions even though time was allowed to both the parties.

7. The Appellant/ Income Tax Department contended that the impugned order fails to take into account the fact that the appellant had duly submitted its claims amounting to Rs.3,11,11,442/- before the RP alongwith all the supporting annexures evidencing the outstanding demand not once, but multiple times, but still the RP had failed to consider the same and rejected the same without providing any cogent reason/basis.

8. The contesting Respondent No.2/ RP on the other hand submitted that the appellant had only provided the demand notices for assessment years 2016-17 and 2017-18 but no enforceable assessment orders were attached with the claim which could have enabled RP to crystalize the said claim. Its only after the approval of resolution plan with 100% voting in the 8th CoC meeting on 20.05.2024 and after filing of the application under Section 30 (6) of the Code for approval of the resolution plan on 28.05.2024 that appellant for the first time provided the copy of assessment order dated 24.12.2018 for a tax demand of Rs.3,66,00,910/-. The RP duly communicated the fact of pendency of plan approval application with Adjudicating Authority vide email dated 06.06.2024 which gave the appellant a further opportunity to raise its grievance before

Adjudicating Authority, till the disposal of the aforesaid plan approval application on 11.12.2024.

9. The appellant has stated that the email dated 06.06.2024 send by RP regarding resolution plan approval was received in the spam folder due to which they could not take follow up action. Per contra the Respondent No. 2 has stated that all the emails were sent to the same email address of the Department and they were duly replied to by the concerned officials of the Department. It is not possible in such a situation that one particular email went to the spam folder of the appellant.

10. There are two issues to be decided in this case; firstly whether there is any error on the part of RP in not considering the claim of the IT Department; and secondly whether such non-consideration of the claim of the IT Department by the RP has led to reduction in amount receivable by the IT Deptt. under the resolution plan.

11. It is seen from the records of the case that both appellant and RP have been in regularly interacting through emails regarding the claims of IT Department. RP has been repeatedly seeking the assessment orders for crystalising the claim of appellant. However, we note that for the first time such assessment order was shared with the RP on 30.05.2024. This was after the resolution plan has been approved by the CoC and an application has been filed by the RP before the Adjudicating Authority for approval of resolution plan on 28.05.2024.

12. At this stage, also the appellant could have filed an application before the Adjudicating Authority for admission of the claim, but the same was not done as the appellant claims, that the email dated 06.06.2024 sent by the RP in this regard, went to the spam folder. We also note from the record that all earlier emails sent by the RP/Respondent No.2 were sent to the same email address and they were duly responded to by the appellant. We are of the view that the failure to file the application before the Adjudicating Authority regarding the claim happened due to delay on the part of the appellant for which RP cannot be held responsible. Therefore, we do not find any laxity or irregularity on the part of RP in dealing with the claim.

13. The second issue relates to whether the appellant has received lesser amount in the resolution plan compare to what they would have received if the claim was admitted.

14. The facts of the case relevant to this issue are as follows:

- (i) The expression of interest inviting submissions of proposals for Resolution of CD [Corporate Debtor] was published thrice respectively on 18.11.2023, 09.01.2024 & 08.02.2024. In the first two occasions no bidder applied for the same.
- (ii) In the third and final time, only one Prospective Resolution Applicant (PRA) applied, whose plan was approved by CoC in its 8th Meeting vide dated 20.05.2024. The aforesaid PRA is the successful resolution applicant in the present case.

- (iii) The liquidation and fair value of the CD was Rs. 1.09 lakh
- (iv) The total size of the resolution plan was Rs. 20 lakhs and it involved upfront one-time payment to all stakeholders.

15. The distribution of resolution amount among different categories of creditors is given below:

S. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan #	Amount provided to the Amount Claimed in %
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	CIRP cost				13.50	
2.	Unsecured Financial Creditors	who voted in favour of the resolution plan	147.26	146.99	3.50	2.38
3.	Operational Creditors	Government	2072.20	1092.61	3.00	0.28
Grand Total			2219.46	1239.6	20.00	2.52

16. The distribution of the amount received under the resolution plan is governed by the water fall mechanism provided in Section 53 of the Code. The same is reproduced below:

*“Section 53: **Distribution of assets.**”*

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and

within such period and in such manner as may be specified, namely:—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following: —

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.— For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).”

17. We note from the resolution plan that there are three categories of payments which have to be made from the resolution proceeds of Rs. 20 lakhs. The CIRP cost figures at Section 53 (1) (a) of the Code and it has the first priority in the water fall mechanism and has to be paid in full. Accordingly, In this case the full amount of Rs. 13.5 lakhs towards the CIRP cost have been provided.

18. The next category of creditors in the present case is unsecured financial creditor, which figure at Section 53 (1) (d) of the Code. The total claim admitted for the unsecured financial creditor is Rs. 146.99 lakhs, against which an amount of Rs. 3.50 lakh have been provided, this amounts to 2.38% of the admitted claims in the category.

19. The third and last category in this case is Operational Creditor (Government Creditors). This category is covered by Section 53 (1) (e) of the Code and has last priority among the creditors in this case. The admitted claim in this category amounted to Rs. 1092.61 lakhs against which Rs. 3 lakh have been provided in the resolution plan which comes to 0.28% of the admitted claims. Out of Rs. 3 lakh provided for government creditors, Rs.1.5 lakhs has been provided for Income Tax Department which comes to 0.14% of the claim amount.

20. In the present case, the liquidation value and fair value of the CD was Rs.1.09 lakh. The resolution plan provided for an amount of Rs.20 lakhs, out of which Rs. 13.5 lakhs were earmarked for CIRP cost. Only a meagre sum of Rs. 6.5 lakh was left for distribution amongst unsecured creditors and Operational Creditors (Govt. Creditors). The unsecured Financial Creditor had the 100% voting shares in the CoC. Considering the fact that they are higher in the priority for payments we find that the resolution plans normally provide a nominal sum for Operational Creditors after providing bulk of the amount for the secured/ un-secured finance creditor. In this case, the SRA and CoC have been relatively very generous to the government creditors considering that they had provided about 46% of the balance amount and retained only 54% for the un-secured financial creditor, considering the fact that the unsecured Financial Creditor who was the sole CoC Member had a higher priority under the waterfall mechanism provided under Section 53 (1) of the Code, he would have been well within the rights to allocate only a token amount to the Operational Creditor/ Govt. Creditors and retain the major portion with him.

21. We also note that the SRA/CoC has provided Rs. 1.5 lakh towards the claim of Income Tax Department, even though the said claim was not crystalized and admitted by the RP. For the sake of computation, if the claim of IT Deptt. was to be admitted in full (upto the assessed amount of Rs.366.01 lakhs), the total claim in the category would have been Rs.1458.62 lakhs and based on their proportion of the total claim of the category, the IT Department would have received Rs. 75,000/- only. In this case the Department has received Rs. 1.5 lakh which is twice the amount they would have got if their claim was admitted.

22. We can see from the discussion above that contrary to the submission of the appellant they have received an amount of Rs. 1.5 lakh towards their claim in the resolution plan, which is twice the amount which they would have received if the said claim was admitted by the RP. We, therefore, hold the view that no injustice has been done to the appellant and there is no infirmity in the impugned order.

23. We are of the view that the present case is a perfect example for wastage of valuable public resources in pursuing frivolous litigations by public agencies. The Insolvency & Bankruptcy Code has been in operation for ten years now and all the statutory authorities/ government agencies are aware of positions of their claim in hierarchy of claims prescribed by water fall mechanism under Section 53 of the Code. The IT Deptt. would have been aware of maximum amount, which they could have received in a resolution plan of Rs. 20 lakhs, out of which Rs. 13.5 lakhs was the CIRP cost, and only Rs. 6.5 lakhs were available for distribution among all other

stake holders. The impugned order had provided all the relevant details and these were available to the IT Department. Despite availability of this information, the present appeal has been filed and pursued vigorously by the Department knowing fully well that this would not lead to any fruitful result. The valuable resources of the government and Tribunal are wasted in disposal of such appeal, particularly when there is a huge pressure of cases. We would like to bring this to the notice of Chairperson, Central Board of Direct Taxes for appropriate policy action so that valuable public resources are not frittered away on petty litigation.

24. In view of the findings above, we do not find any infirmity in the impugned order. The appeal is dismissed. Pending I.As, if any, are closed. There would be no order as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Mr. Arun Baroka]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

SA