

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

Company Appeal (AT) (Insolvency) No. 533 of 2025

[Arising out of Order dated 12.02.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench (Court- II) in Interlocutory Application (IBC) No. 507 of 2025 and Interlocutory Application (Plan) No. 60 of 2024 in Company Petition (IB) 764 of 2022]

IN THE MATTER OF:

T.C.A. Surveyors & Advisors Pvt. Ltd.

...Appellant

Versus

Pooja Bahry, Est. RP for United News of India & Ors.

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Raktim Gogoi, Mr. Kartikeya Singh, Mr. Shivam Pal Sharma, Mr. S. Vinod, Mr. Anuj Kr. And Mr. Auritro Mukherjee, Advocates.

For Respondents:

Mr. Sumant Batra, Mr. Sarthak Bhandari, Ms. Nidhi Yadav and Ms. Pooja Bahry, Advocates for RP.

Mr. Sanjay Kapur, Mr. Devesh Dubey, Advocates for CoC/R-2.

Mr. Bishawjit Dubey, Mr. Kaustabh Rai, Ms. Aishwarya Singh and Mr. Prakhar Dixit, Advocates for R-3.

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Mr. Sanjay Kapur, Mr. Devesh Dubey, Advocates for CoC/R-2.

J U D G M E N T
(1st May, 2025)

Ashok Bhushan, J.

These two Appeals have been filed against the same order dated 12.02.2025 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi, Special Bench (Court- II). By the impugned order, Interlocutory Application (IBC) No. 507 of 2025 filed by the Appellant has been rejected and Interlocutory Application (Plan) No. 60 of 2024 has been allowed approving the Resolution Plan of the Corporate Debtor- United News of India. These two Appeals have been filed challenging the order dated 12.02.2025

2. Brief facts necessary to be noticed for deciding the appeals are:-

2.1. The Corporate Debtor- United News of India is an aggregator of news, whose shareholders included leading newspapers like Times of India and

The Hindustan Times. United News of India is one of the India's largest news agencies. An Agreement dated 29.05.2015 was entered between United News of India and the Appellant where the Appellant was chosen to develop various properties of United News of India situated in different cities in the Country. Amount of Rs.1 Crore was deposited by another group company of Appellant Poddar Projects Limited (PPL). An amount of Rs. 4 Crore deposited by the Appellant was treated as seed money. In terms of the Definitive Agreement, a Development Agreement had to be entered separately between the parties for each property. The Corporate Debtor's shareholders opposed the signing of the Draft Development Agreement with the Appellant in its Annual General Meeting held on 23.12.2016. Corporate Debtor vide letter dated 15.03.2017 informed that stakeholders of the Corporate Debtor are opposed to the signing of the Draft Agreement, Definitive Agreement dated 29.05.2015 was terminated. Appellant issued a Demand Notice dated 21.03.2018 under Section 8 of the IBC demanding an outstanding amount from the Corporate Debtor, thereafter, Operational Creditor filed an application under Section 9 being Company Petition (IB) No. 479 of 2018 before the Adjudicating Authority, which Section 9 application came to be dismissed by the Adjudicating Authority on 31.10.2018 holding that the transaction is clearly one which does not qualify as an Operational Debt. The transaction is more by way of collaboration. After dismissal of Section 9 application filed by the Appellant, Appellant filed CS(COMM) No. 175/2019 before the Delhi High Court praying for specific performance of the Definitive Agreement dated 29.05.2015 as well as money decree to the tune of

Rs.6,66,50,000/- in favour of the Appellant. Appellant subsequently amended relief clause and withdrew relief for specific performance limiting the prayer in the suit for money decree. On an application filed by an Operational Creditor, CIRP against the Corporate Debtor commenced on 19.05.2023 and Ms. Pooja Bahry was appointed as Interim Resolution Professional. In the Commercial Suit filed by the Appellant in Delhi High Court, Delhi High Court noticed in its order dated 25.07.2024 the submission of the Appellant that Moratorium has been declared in terms of the Section 14 of the IBC vide order dated 19.05.2023 which commencement of the CIRP against the Corporate Debtor was again noticed in the order dated 03.10.2024. The Resolution Professional issued Information Memorandum on 27.07.2024 where it was mentioned that many claimants have not filed their claims before the Resolution Professional including the Appellant who have been included in the category of "other". A list of creditor was also uploaded by the Resolution Professional where it was mentioned that Appellant has not filed its claim who was treated in the category of 'other' and Resolution Applicants while submitting their plans besides other creditors as reflected in the books of account may take into consideration. In the CIRP of the Corporate Debtor, the Resolution Plans were submitted. The Respondent No.3- The Statesman Limited had also submitted its Resolution Plan. The CoC in its 25th meeting held on 03.10.2024 decided to put the Resolution Plan submitted by The Statesman Limited to vote. Voting commenced on 05.10.2024 and concluded on 23.10.2024. The Resolution Plan of 'The Statesman Limited' was approved

by the CoC on 23.10.2024 with 100% voting share. The Resolution Professional received an e-mail dated 24.10.2024 from the Appellant submitting its claim in Form C although Form C was dated 22.10.2024 but the hard copy of the Form C was received on 25.10.2024 which was dispatched on 24.10.2024. On 25.10.2024, Resolution Professional filed IA No.60 of 2024 for approval of the Resolution Plan. On 31.10.2024, Resolution Professional sent an e-mail to the Appellant informing that Appellant's claim received on 25.10.2024 by Speed Post cannot be considered. The Resolution Plan has already been approved by the CoC and at that stage, no claim can be considered. Appellant after rejection of his claim filed an IA No.507 of 2025 on 14.11.2024 before the Adjudicating Authority seeking a direction to the Resolution Professional to accept the claim of Rs.9,20,87,500/- by condoning the delay in filing the claim by the Appellant. IA No.507 of 2025 came for consideration before the Adjudicating Authority. On 27.11.2024, Adjudicating Authority heard the submissions of the Resolution Professional and reserved the orders in plan approval application in IA No.60 of 2024. Application IA No.507 of 2025 came to be listed before the Adjudicating Authority on 07.02.2025 for the first time. On 12.02.2025 by the impugned order, Adjudicating Authority allowed the plan approval application IA No.60 of 2024 and rejected IA No.507 of 2025. Aggrieved by the above orders, these two Appeals have been filed.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant, Shri Sumant Batra, Learned Counsel for the Resolution

Professional, Shri Sanjay Kapur and Shri Devesh Dubey, Learned Counsel for the CoC and Shri Bishawjit Dubey, Learned Counsel for the SRA.

4. Counsel for the Resolution Professional has filed a Convenience Compilation bringing various orders passed by the NCLT, High Court and other materials which are part of the record of the Adjudicating Authority.

5. Counsel for the Appellant in support of the Appeal submits that in the Information Memorandum which has been filed along with the convenience compilation by the Resolution Professional, the claim by the Appellant has classified as 'other creditor' which is contrary to the law. It is submitted that the debt of the Appellant was required to be treated as financial debt. It is submitted that even if the claim was filed after approval of the plan by the CoC, the claim of the Appellant being reflected in the financial statements of the Corporate Debtor which was required to be appropriately classified by the Resolution Professional. Audited financial statements clearly mentioned the debt under the head 'Other Long-Term Liabilities', hence, Appellant was Financial Creditor. It was obligation of the Resolution Professional to prepare the Information Memorandum which shall include the financial statements of the Corporate Debtor and once the amounts paid by the Corporate Debtor were duly reflecting under the head of 'Long-Term Liabilities', there was no occasion to incorrectly classify the Appellant as an 'other creditor'. The Resolution Professional itself has admitted that the claim of the Appellant was reflecting in the books of accounts of the corporate debtor. The Resolution Professional has conducted the entire CIRP

with the presence of sole Financial Creditor/ State Bank of India. Adjudicating Authority has failed to address the moot issue as to how the claim of the Appellant is getting extinguished under the provisions of the Resolution Plan. There is no decision holding that there shall be an automatic extinguishment of all rights and claims which arose prior to the CIRP. It is submitted that such extinguishment can only take place if the same has been specifically contemplated in terms of the Resolution Plan, part of which is referred in compilation referring the payment to the Appellant as 'Nil Amount being paid to the Other Creditors'. There is no rationale for the classification of the Appellant as an 'Other Creditor'.

6. Counsel appearing for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that after commencement of the CIRP on 19.05.2023, Resolution Professional has issued a public announcement in various newspapers inviting claims and an e-mail dated 28.05.2023 was also sent to the Appellant. In the Commercial Suit filed by the Appellant before the Delhi High Court, Appellant counsel itself acknowledged on 25.07.2024 that Corporate Debtor is in CIRP. Again on 03.10.2024, Counsel for the Appellant once again informed of CIRP proceedings. CoC having decided in 25th CoC meeting held on 03.10.2024 to put Resolution Plan for vote and Resolution Plan was voted and approved on 23.10.2024 with 100% voting share. Resolution Professional received the claim of the Appellant on 24.10.2024 at 1:49 PM by e-mail and by Speed Post on 25.10.2025 which Speed Post was forwarded only on 24.10.2024 which clearly indicates that the claim was sent only after approval of the

Resolution Plan which took place on 23.10.2024. Appellant had earlier filed application under Section 9 which was rejected holding that Appellant is not an Operational Creditor. The claim of the Appellant which was being reflected in the financial statement has been taken due note by the Resolution Professional and in the Information Memorandum, the claim has been referred as 'other creditor'. Resolution Professional has, thus, reflected the claim of the Appellant in Information Memorandum. It is CoC's commercial decision as to what amount is to be paid to which creditor, 'other creditor' has been proposed 'nil' amount in the plan. There is no error in the order approving the Resolution Plan. Appellant having filed its claim after approval of the Resolution Plan by the CoC it has rightly been not accepted both by the Resolution Professional and the Adjudicating Authority. Counsel for the Resolution Professional relied on judgment of the Hon'ble Supreme Court in ***"RPS Infrastructure Limited vs. Mukul Kumar and Another- (2023) 10 SCC 718"***.

7. Counsel for the CoC has also supported the submission of the Resolution Professional and submits that the claim filed after approval of the plan by the CoC cannot be considered. It is submitted that Appellant was very well aware of the commencement of the CIRP which is recorded in the proceedings before the High Court in Commercial Suit filed by the Appellant. It is the Appellant who himself has to be blamed for not filing claim within time allowed. Appellant having not submitted its claim, it is not relevant to consider as to whether his claim has been rightly categorised by the Resolution Professional or not.

8. Counsel for the SRA has also supported the impugned order and submits that the CoC after considering all aspects of the matter has approved the Resolution Plan with 100% vote share. Claim of the Appellant was not filed before approval of the plan by CoC. Adjudicating Authority rightly rejected the application filed by the Appellant. Resolution Plan amount is Rs.72 Crore and Resolution Applicant is not under any circumstance to bring any amount over and above the above amount. The claim submitted to the Resolution Professional upto 11.07.2024 as updated by the Resolution Professional has been considered by the CoC.

9. We have considered the submissions of the Counsel for the parties and perused the record.

10. Appellant has filed Section 9 application on the basis of Definitive Agreement dated 29.05.2015 before the Adjudicating Authority claiming an amount of Rs.5 Crores along with interest. CP (IB) No.479 of 2018 filed by the Appellant came to be heard and dismissed by the Adjudicating Authority on 31.10.2018. Adjudicating Authority held that the claim filed by the Appellant does not qualify as an operational debt. Last two paragraphs of the order are as follows:-

“5. The arguments advanced by the respondent merits consideration. The transaction is clearly one which does not qualify as an Operational Debt. The transaction is more by way of collaboration. The petitioner had paid the amount of Rs. 5 Crores as "seed

money" to develop the Respondent's property in return for built up space. Such a transaction having gone sour, recovery of money cannot be viewed as an "Operational Debt". On this point alone, this petition is rejected.

6. We make it clear that subject to the statutory limitations, the present proceedings shall not debar the petitioner from taking appropriate steps for recovery of its dues in any other proceedings."

11. It was after dismissal of Section 9 application that C.S. (Commercial) No.175 of 2019 was filed by the Appellant against the Corporate Debtor in Delhi High Court which remains pending. CIRP against the Appellant had commenced on 19.05.2023. Proceedings before the Delhi High Court in the Commercial Suit filed by the Appellant dated 25.07.2024 and 03.10.2024 have been noticed by the Adjudicating Authority in paragraph 5 of the order. Paragraph 5 of the order is as follows:-

"5. Having drawn our attention to the order dated 25.07.2024 & 03.10.2024 passed in CS (COMM) No. 175 of 2019 & I.A. 4940/2019, Mr. Sumant Batra contended that way back on 25.07.2024, the Applicant in the captioned IA was aware about commencement of CIRP and moratorium. The aforementioned orders read thus: -

ORDER
25.07.2024

Proceedings are being conducted through hybrid mode.

Case file has been received from the court of Dr. Jagminder Singh, Ld. Joint Registrar (Judicial) by way of transfer in terms of office order dated 28.06.2024.

CS(COMM) 175/2019

1. The present matter is at the stage of *exparte* PE.
2. As per office noting, nothing fresh has been filed.
3. Ld. Counsel for plaintiff has submitted that moratorium has been declared in terms of Section 14 of The Insolvency & Bankruptcy Code, 2016 by the NCLT vide order dated 19.05.2023 and same has been extended till 13.9.2024 vide order dated 30.4.2024.
4. Ld. Counsels for both the parties have submitted that the matter may be placed before the Hon'ble Court where they would make their further submissions.
5. In the present facts and at joint request, let the matter be placed before Hon'ble Court for further directions on 03rd October, 2024.

[***]

ORDER

03.10.2024

1. Learned Counsel for the Plaintiff states that proceedings under the Insolvency and Bankruptcy Code (IBC) have been initiated against the Defendant as an

application under Section 9 of the IBC was admitted by the NCLT vide Order dated 19.05.2023.

2. Learned Counsel for the Plaintiff states that she is not aware of the outcome of the proceedings before the NCLT. She prays for an accommodation to ascertain the status of the application pending before the NCLT.

3. List on 28.01.2025.”

12. As noted above, the CoC in its 25th CoC meeting held on 03.10.2024 resolved to put the Resolution Plan of 'The Statesman Limited' for voting which was held between 05.10.2024 to 23.10.2024 and on 23.10.2024 with 100% vote share, Resolution Plan of 'The Statesman Limited' was approved. The claim sent by the Appellant vide e-mail as well as the Speed Post to the Resolution Professional was received by the Resolution Professional vide Speed Post on 25.10.2024 and by e-mail on 24.10.2024. Form C which was forwarded by the Appellant although bears the date 22.10.2024 but it was dispatched on 24.10.2024 through Speed Post and by e-mail on 24.10.2024 i.e. subsequent to the approval of the Resolution Plan by the CoC. Resolution Professional has submitted that public announcement was made on 21.05.2023 and 22.05.2023 in the Financial Express and Jan Satta Hindi in all over India Editions and further other newspapers. The proceedings dated 25.07.2024 and 03.10.2024 before the Delhi High Court initiated by the Appellant itself as noticed above records the statement of the Appellant which states that CIRP has commenced against the Corporate Debtor by order dated 19.05.2023. When the Appellant was well aware of

the initiation of the CIRP of the Corporate Debtor, Appellant himself was to be blamed for not filing the claim within time. In any view of the matter, claim was filed subsequent to the approval of the Resolution Plan by the CoC.

13. Counsel for the Appellant has submitted that the claim of the Appellant was very much reflected in the balance sheet of the Corporate Debtor as on 31.03.2021 in the balance sheet of the Corporate Debtor ending on 31.03.2021 under the heading 'Other Long-Term Liabilities', the amount of Rs.6,50,00,000/- was mentioned as 'advance for building construction'. As noted above, the Appellant himself has initiated proceedings under Section 9 which proceeding culminated into rejection holding that claim of the Appellant cannot be treated as operational debt.

14. Counsel for the Resolution Professional has brought on record the Information Memorandum issued on 27.07.2024 which contains following note:-

“Kindly also note that many Claimants have not filed their Claim before the Resolution Professional, including "Other" Creditors (including Peerless Consultation Services Pvt Ltd and TCA SURVEYORS & Advisor Pvt. Ltd etc). Their Claims should be considered by the Resolution Applicant, while submitting their Plan, besides other Creditors as reflected in the Books of Accounts of the Corporate Debtor, who have not filed claims.”

15. Extract of the Resolution Plan dated 30.09.2024 has been included in the Convenience Compilation filed by Resolution Professional wherein paragraph 6.7.8 with regard to payment to other creditors, no payment has been proposed. Resolution Professional has treated the claim of the Appellant under 'other category' it being reflected in the financial statement. The present is, thus, a case where on the basis of financial statement, the Appellant was categorised as 'other category' by the Resolution Professional even though claim was not filed by the Appellant. Resolution Plan does not propose any payment to the other creditors whereas payment has been proposed to Financial Creditor secured, Operational Creditor, employees as well as Government dues and gratuity actuarial valuation. Appellant's submission is that the Resolution Professional committed error in categorising the Appellant's claim as 'other creditors' whereas fund infusion by Appellant qualifies as financial debt. The present is a case where Section 9 application was filed by the Appellant which was rejected holding that debt cannot constitute operational debt and thereafter Appellant had filed Commercial Suit in Delhi High Court in 2019 and the CIRP of the Corporate Debtor commenced on 19.05.2023 and after due publication although several other creditors have filed their claims, Appellant choose not to file its claim. Appellant cannot contend that he was not aware of the CIRP since in the proceedings filed by the Appellant itself in Delhi High Court the initiation of the CIRP has been noticed as has been noted by the Adjudicating Authority in its impugned order. Appellant was well aware of the initiation of the CIRP and had chosen not to file any claim. Resolution

Plan has already been approved by the CoC. When Appellant chose not to file any claim before approval of the plan by CoC, it is not open for the Appellant to claim that his claim needs to be accepted as financial debt. This Tribunal in **“Deputy Commissioner, UTGST, Daman vs. Rajeev Dhingra [Company Appeal (AT)(Ins) No. 1340 of 2022]”** decided on 14.09.2023 has dismissed the Appeal filed by an Appellant challenging the order approving the Resolution Plan on the ground that their claim was submitted and claim was required to be considered in the CIRP. It is useful to notice paragraphs 44, 45 & 55 of the judgment of this Tribunal which is as follows:-

“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.*

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.”

16. The claim submitted by the Appellant after approval of the Resolution Plan has rightly not been accepted by the Resolution Professional and we are of the view that the Adjudicating Authority also did not commit any error in rejecting IA No.507 of 2025 filed by the Appellant where direction was sought to Resolution Professional to condone the delay in filing the claim and further direction to the Resolution Professional to accept the claim. The Resolution Professional also cannot be said to have committed any breach of CIRP Regulations 2016 since he has noticed in the Information Memorandum that no claim has been filed by the Appellant although financial statement mentioned receipt of the amount from the Appellant. Note which we have already extracted in the Information Memorandum duly notices the claim has not been filed by other creditors including the Appellant whose claims should be considered by the Resolution Applicants while submitting their plans. The Resolution Applicants while submitting their plans has decided not to make any payment to other creditors which is at paragraph 6.7.8 of the plan is to the following effect:-

“6.7.8. Payment to Other Creditors

No payment has been proposed towards Other Creditors under the Plan.”

17. We, thus, do not find any error in the order of the Adjudicating Authority allowing the Resolution Plan Application being IA No.60 of 2024

and rejecting IA No.507 of 2025 filed by the Appellant. There is no merit in any of the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi
Anjali