NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1013 of 2024

[Arising out of the Order dated 11.03.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV), IA 3965(MB)2023 IN C.P. (IB)/860(MB)2021]

IN THE MATTER OF:

KOTAK MAHINDRA BANK LTD.
7th FLOOR, AMBADEEP BUILDING,
14, K.G. MARG,
NEW DELHI-110001
EMAIL: ANUPAMJSINGH@GMAIL.COM **...Appellant**

Versus

MR. ANIL TAYAL,
INTERIM RESOLUTION PROFESSIONAL FOR M/S INFINIA SOLUTIONS AND SERVICES PVT.LTD.
201, SAGAR PLAZA,
DISTRICT CENTRE,
LAXMI NAGAR,
New Delhi-110092
EMAIL:cirp.infinia@gmail.com;
caaniltayal@gmail.com **..Respondent**

Present:

For Appellant	:	Mr. Karan Gandhi, Mr. A. Sharma, Mr. Anupam Singh, Advocates.
For Respondent	:	Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Ms. Vanshika Agrawal, Advocates.

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

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellant- Kotak Mahindra Bank Ltd. under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (Code) assailing order dated 11.03.2024, passed by the Ld. National Company Law Tribunal, Mumbai (Adjudicating Authority) in IA No. 3965 of 2023 by the Interim Resolution Professional (IRP) in CP IB 860 (MB) 2021 titled *'Radhika Chatterjee vs. Infinia Solutions and Services Pvt. Ltd.'* whereby the application moved by the IRP for issuance of appropriate directions has been dismissed by Ld. Tribunal with the observation that there is no provision in the Code to direct/ permit a claimant to withdraw its claim.

2. The necessary facts required for disposal of instant appeal are that petition CP IB 860 (MB) 2021 titled *'Radhika Chatterji vs. Infinia Solutions and Services Pvt. Ltd.'* was filed against the aforesaid CD and vide order dated 28.04.2023, the Insolvency Process was initiated against the aforesaid CD and consequently moratorium was declared and the public announcement was made by the IRP on 06.05.2023, in pursuance of which the appellant being the financial creditor filed claim vide email dated 26.05.2023, for an amount of Rs. 4,35,46,467/- and after receiving the claim the IRP verified and admitted the claim to the tune of Rs. 4,28,73,231/-.

3. It is further reflected from the record that in terms of Section 21 of the Code the IRP constituted Committee of Creditors and convened its first

meeting on 29.05.2023 which was also attended by the representatives of the appellant.

4. It is further reflected that Appellant on 29.05.2023 sent an email seeking withdrawal of its claim. The relevant extract of email dated 29.05.2023 send by appellant to the IRP is reproduced as under:

> *"**Ref: Withdrawal of Claim filed on behalf of Kotak Mahindra Bank Ltd.***
> *Dear Mr. Tayal,*
> *In furtherance to our discussion during the CoC Meeting held today i.e. 29.05.2023, on behalf of Kotak Mahindra Bank Ltd., we would like to mention that we formally are withdrawing from the CIRP process and accordingly, we state that, without prejudice to the rights available to us under law against the Borrower and other obligors, the claim filed by Kotak Mahindra Bank Ltd. may be rejected or considered as withdrawn.*
> *Furthermore, Kotak Mahindra Bank Ltd. shall independently be undertaking the process for recovering its dues from the Borrower/ Guarantors/ Mortgagors and other obligors as per the rights and remedy available to it under law.*
>
> *Regards,*
>
> *SS Rathore*
> *9828148410"*

5. It is further reflected that during the first meeting of the CoC the authorized representative of the appellant informed that the appellant wish and desire to withdraw the claim from the CIRP of the CD and also requested to defer all the agendas to be considered in the next meeting of the CoC and on 31.05.2023, IRP apprise the appellant regarding the setting up of e-voting window for the Resolution discussed in the first meeting of the CoC, however the appellant vide email dated 31.05.2023 informed that they wish to formally withdraw their claim as financial creditor and do not wish

to participate in the CoC process. The relevant extract of the email dated 31.05.2023 sent by the IRP to the appellant and also by the appellant to the IRP on 31.05.2023, are reproduced as under:

> *“**From:** INFINIA SOLUTIONS & SERVICES PRIVATE LIMITED <cirp.infinia@gmail.com>*
> ***Sent:** Wednesday, May 31, 2023 1:07 AM*
> ***To:** Sudhir Kumar (Consumer Bank, KMBL) <Sudhir.Kumar1@kotak.com>; Sagar Diwan (Consumer Bank, KMBL) <sagar.diwan@kotak.com>; Sarwan Singh (Consumer Bank, KMBL) <sarwan.singh@kotak.com>*
> ***Cc:** caaniltayal@gmail.com; INFINIA SOLUTIONS & SERVICES PRIVATE LIMITED <cirp.infinia@gmail.com>*
> ***Subject:** E-VOTING WINDOW SETUP FOR THE RESOLUTIONS PROPOSED IN FIRST MEETING OF COMMITTEE OF CREDITORS OF M/S INFINIA SOLUTIONS & SERVICES PRIVATE LIMITED HELD ON MONDAY 29TH MAY, 2023 AT 03:30 P.M. VIA*
>
> *""**The Sender of this email is from non Kotak domain**""*
> *Dear Member of COC,*
>
> *This is to inform you that the e-voting window has been set up by the undersigned for the Resolutions discussed in the First meeting of COC held on Monday 29th day of May, 2023 at 03:30 P.M. via Zoom Platform. It may further be noted that the e-voting window shall remain open from Wednesday 31.05.2023 at 10:00 A.M. till Thursday 01.06.2023 at 10:00 A.M.*
> *Further, the link to cast the votes has been sent at the e-mail id i.e. sarwan.singh@kotak.com as provided to the undersigned and the same is mentioned below:*
>
> *E-Voting will be done at the following url: https://infiniasolutions.evotes.in*
>
> *This is for your kind information.*
>
> *Thanks and Regards*
> *For and on behalf of*
> *Anil Tayal*
> *Interim Resolution Professional*
> *In the matter of M/s. Infinia Solutions & Services Private Limited*
> *IBBI Reg No.:IBBI/IPA-001/IP-P01118/2018-19/11818*
> *AFA Validity: 10.03.2023- 09.03.2024*
> *Address: 201, Sagar Plaza, District Centre Laxmi Nagar, Delhi-110092*
> *Email: cirp.infinia@gmail.com, caaniltayal@gmail.com”*

*"**Sarwan.singh@kotak.com** sarwan.singh@kotak.com* *31 May 2023 at 13.47*
To: caaniltayal@gmail.com, cirp.infinia@gmail.com
Cc: Sudhir.Kumar1@kotak.com, sagar.diwan@kotak.com

Dear Mr. Tayal,

We have formally informed you during the CoC as well as our email dated 29.05.2023 that we have formally withdrawn our claim as financial creditor and do not wish to participate in the CoC process. Reason for the same is that as a financial institution we have analyzed the information available and after applying our commercial wisdom, we are convinced that nothing fruitful will be achieved from the present CIRP process. Even you have admitted and are convinced that the company has nothing substantial and even the filings/ information available is of no benefit for the CIRP process at this stage. We have further informed that we shall be independently taking measures qua the facilities granted to the Borrower.

Accordingly, we had also requested not to share the agendas for voting with us as we are not authorized to vote on the same, having no role in the present process. We reiterate our request and humbly request you to return our claim as withdrawn and proceed with the remaining creditors, as permissible under law,

Regards,

Sarwan Singh"

6. It is also reflected that in pursuance of the aforesaid development Respondent/IRP filed the aforesaid IA being no. 2216 of 2023 under Section 21 (1) of the Code read with Regulation 16 and 17 (1) of CIRP Regulations, 2016 for placing on record the constitution of CoC which was certified by the Ld. Tribunal vide order dated 01.06.2023.

7. It is further reflected that another application being IA No. 2312 of 2023 was filed by the IRP to place on record the report certifying the

reconstitution of the CoC and vide order dated 06.06.2023, the same was also taken on record by Ld. Adjudicating Authority.

8. It is further reflected that on the agendas put forth by the IRP for the voting of the members of the CoC the appellant did not cast its vote which was held on 01.06.2023 and on 02.06.2023, the IRP apprise the appellant that there is no expressed provision in the Code which allows a creditor to withdraw its claim during the CIRP of the CD and in this regard reliance was placed on the judgment of this Appellate Tribunal passed in ***Mr. K.N. Rajakumar vs. V Nagarajan and Ors, CA (AT) (Ins) No. 48 of 2021.***

9. It is also reflected that vide email dated 05.06.2023, Respondent Bank informed the IRP that they have taken a commercial call to stay out of the insolvency process and stating that the IRP may proceed with the other creditors or may refer the matter to Ld. Adjudicating Authority. The relevant excerpt of the email sent by the appellant to the IRP is also reproduced as under:

> *Dear Sir,*
>
> *Thank you for your email.*
>
> *We have examined the contents of your email and would like to reiterate that engaging in the CIRP process is not a cost-effective exercise for the organization and as such, we have already taken a commercial call to stay out of the process. Said factum has been duly communicated during the 1st meeting itself and as such no prejudice will be caused to anyone if we opt out from the process. The law and the code permits you to engage with the other creditors and proceed further. As such there is no party which shall be effected by this decision. The Hon'ble Apex Court of India have time and again given weightage to commercial wisdom of CoC and it is trite that commercial wisdom of a financial creditor will have to be respected.*

With utmost respect we would like to point out that there is no express provision in the IBC which prohibits withdrawal from the CoC in the very first meeting of the CoC i.e. at its very inception. Importantly, the judgment referred by your good self is not applicable in the present factual scenario as the factual matrix and the issues raised in the matter are absolutely different. The judgment specifically states that the CIRP process was more than three years old and that 'Resolution Professional' has no 'Adjudicatory Power' under the IBC. Owing to the same, we would like to mention that as such you have no authority to even reject the decision of a financial creditor in these facts and circumstances. However, you have gone ahead and rejected the decision which in itself is contrary to the provisions of the code.

Without prejudice to our rights, we would like to mention that we do not wish to engage in pointing out the fallacies of the process being followed herein but we fail to understand the insistence herein. As such you yourself have acknowledged during the 01st CoC meeting that there is nothing in this company and even the balance sheet for the last 05 years is not available for any further evaluation.

We would like to further elaborate that the Code envisages the supremacy of the commercial wisdom of the CoC. It has been duly informed to you that as a financial institution, we have already examined the credentials of the corporate debtor and are certain that this CIRP process would not be a fruitful exercise but in fact burden as further. Any further involvement on our part in the process would not only cause further losses to us but also affect our resources. As custodian of public money, we have taken a commercial decision not to engage in the process and waste public money in this process.

Most importantly, the claim filed on behalf of Kotak Mahindra Bank Ltd, was itself belated and ought not to have been admitted without following due process of law. However, showing regard to the process, we felt it would be appropriate to formally inform you about our withdrawal from the process in the first meeting of the CoC.

At the end, we would like to mention and reiterate that you may proceed with the other creditors or may refer to the matter to the adjudicating authority. As such, as a financial institution and custodian of public money, we *cannot be forced and burdened with this process and bear its costs.*

Regards,

Sarwan Singh"

10. It is also reflected that the IRP vide email dated 08.06.2023, replied to the appellant and clarified that he is not insisting the Respondent to be a part of the CoC, however, in absence of any expressed provision and in absence of adjudicatory power he cannot allow Respondent to withdraw the claim. The relevant excerpt of the email sent by the IRP to the appellant on 08.06.2023 is also reproduced herein below:

"Dear Sir,
In reference to the trailing mail, undersigned wants to clarify that he is not insisting Kotak Mahindra Bank for continuing in the Committee of Creditors of the Corporate Debtor namely Infinia Solutions & Services Private Limited. The undersigned has only brought to your notice that in the absence of any express provisions and furthermore, in the absence of any adjudicatory power, the RP cannot allow Kotak Mahindra Bank to withdraw the claim from the CIRP of the Corporate Debtor.

Kindly note that in order to withdraw your claim from the CIRP of the Corporate Debtor, you will have to approach the Hon'ble Adjudicating Authority i.e. NCLT. It is only with the permissions of the Hon'ble Adjudicating Authority i.e. NCLT, any creditor can be allowed to withdraw their claim in the CIRP of the Corporate Debtor.

Thanks and Regards
For and on behalf of
Anil Tayal
Interim Resolution Professional
In the matter of M/s. Infinia Solutions & Services Private Limited
IBBI Reg No.:IBBI/IPA-001/IP-P01118/2018-19/11818
AFA Validity: 10.03.2023- 09.03.2024
Address: 201, Sagar Plaza, District Centre Laxmi Nagar, Delhi-110092
Email: cirp.infinia@gmail.com, caaniltayal@gmail.com"

11. It is further reflected that thereafter despite notice and reminder send by the IRP with regard to convening second meeting of the CoC on 02.06.2023 no one appeared on behalf of the appellant and in view of the same the meeting scheduled was adjourned for want of Coram as provided under Regulation 22 (2) of the CIRP Regulations, 2016 and an information of such adjournment was sent by the IRP to the appellant, however, no one appeared for the appellant in the meeting which held on 23.06.2023 after adjournment. However, the same was concluded for want of coram the information of which was also sent to the appellant by the IRP vide email dated 23.06.2023.

12. In view of the above factual background the IRP moved the application being IA No. 3965 MB of 2023 requesting for the following reliefs:

> *"In the promise, it is most respectfully prayed that this Hon'ble Adjudicating Authority may graciously be pleased to:*
>
> *a) Allow the present Application;*
>
> *b) Direct the Respondent to act in conformity with the provisions of Code and CIRP Regulations 2016 being a member of the Committee of Creditors, or*
>
> *c) In the alternative, allow the IRP/Applicant herein to reconstitute Committee of Creditors thereby permitting the Respondent to withdraw its claim from the CIRP of the Corporate Debtor,*

d) Pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the instant case".

13. The aforesaid IA moved by the appellant was dismissed by the Ld. Adjudicating Authority by passing the following order:

> *"1. Ld. Counsel for the Applicant present, however, not marked the attendance sheet.*
> *2. **IA-3965(MB)2023**: This is an application filed under section 60(5) for issuance of appropriate directions of this Hon'ble Tribunal to permit the respondent to withdraw its claim as secured creditors from the CIRP of the Corporate Debtor and to reconstitute the CoC.*
> *3. This bench is of the view that there is no provision m the code to direct/permit a claimant to withdraw its claim. Hence, this application is not maintainable.*
> *Accordingly, IA-3965(MB)2023 is **dismissed**".*

14. The instant appeal has been preferred by the Appellant-Bank feeling aggrieved by the impugned order.

15. Ld. Counsel for the Appellant submits that it is not in dispute that the CD had ceased operations in or around 2016 and on 22.05.2023 the IRP constituted the CoC with two operational creditors only and it was on 26.05.2023 the appellant had filed the claim. However, the IRP accepted the claim in haste on the very next day of its submission and reconstituted the CoC and followed up with the appellant to attend the CoC meeting which was rescheduled to 29.05.2023.

16. It is further submitted that the claim of the appellant was settled in full through a settlement accorded during the pendency of SARFAESI Proceedings executed on 01.08.2023 and the appellant had communicated its decision to withdraw from the CIRP at the very first CoC meeting held on 29.05.2023.

17. It is further submitted that satisfaction of the claim of secured creditor from 3rd parties (mortgagers, guarantors etc.) is not alien to the provisions of the IBC and therefore the Adjudicating Authority has acted illegally in not passing an appropriate order.

18. It is further submitted that even after the withdrawal of claim by the appellant the CoC would be survived with the remaining creditors and the decision of the appellant to exit the CIRP was a conscious exercise of commercial wisdom which may not be interfered with by the Adjudicating Authority as there is no provision under the Code which can compel a creditor to continue with its claim if the same has been fully satisfied.

19. It is further submitted that the Ld. Adjudicating Authority has also not considered this aspect of the matter that in absence of any claim of the appellant his presence in the CIRP will not be required and a creditor may very well withdraw its claim. Reliance in this regard has been laid on ***M/s Sumiran Foods Pvt. Ltd. vs. Pankaj Events and Celebrations Pvt. Ltd.*** as well as on ***Om logistics Ltd. and Anr. Vs. M/s Rider India Pvt. Ltd.***

20. Ld. Counsel for the Respondent however submits that under the Code the IRP is only a facilitator and administrator of the CIRP and is not possessing any adjudicatory or quasi-judicial powers. It is urged that the constitution of the CoC is governed strictly by the provisions contained under Section 18, 21 and 24 of the Code read with relevant CIRP Regulations and the only authority IRP is having to collate the claims and constitute the CoC on the basis of such admitted claims and there is no power in the Code or in the Regulations, empowering the IRP to reconstitute

or dissolve the CoC on its own violation particularly on the basis of the request made by any financial creditor to withdraw from the process. Reliance in this regard has been placed on ***Mr. K.N. Rajakumar (Supra) and Byju Raveendran, Suspended Director and Promoter of Think and Learn Pvt. Ltd. vs. Aditya Birla Finance Ltd. & Ors., 2025 SCC Online NCLAT 1269.***

21. It is further submitted that the Regulation 12A of Regulation 2016 merely enables updation of a claim and does not permit withdrawal of an admitted claim and in the instant case the limited applicability of Regulation 12 A is not relevant as the events relied on by the appellant are subsequent in point of time. Elaborating further it is submitted that the CIRP of the CD has commenced on 28.04.2023, Form A has been issued on 06.05.2023, and thereafter appellant filed its claim and participated as a sole member of the CoC. The constitution of the CoC was placed before the Ld. Adjudicating Authority by the IRP and thus the Appellants reliance on the alleged satisfaction of its claim arises only from events which had taken place much after the filing of the application being IA No. 2216 of 2023 informing Ld. Adjudicating Authority of the constitution of the CoC and therefore the IRP could not act under Regulation 12A of the CIRP Regulations.

22. It is further submitted that the appellants claim may also not be termed as “satisfied” within the meaning of Regulation 12A of the CIRP Regulations, as making unilateral adjustment during the course of moratorium declared under Section 14 of the Code the same could not be adjusted from the account of the Corporate Debtor and any act done in

violation of Section 14 of the Code may not be termed as the satisfaction contained under Regulation 12A of the CIRP Regulations.

23. It is further submitted that in alternate the Respondent also submits that after filing its claim and assuming the position of the sole CoC member and by taking so called "commercial decision" to stay out of the process and also in failing to attend CoC meetings resulted in adjournments the appellant is liable to pay the CIRP cost.

24. We have heard Ld. Counsel for the parties. Before proceeding further, it is fruitful to have a glance on the relevant provisions of the IBC and relevant Regulations. **Section 3. Definitions.** — In this Code, unless the context otherwise requires,

> ***(6)*** *"claim" means—*
> *(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
> *(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*
> ***(11)*** *"debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*
> ***(12****) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1 [Paid] by the debtor or the corporate debtor, as the case may be;*
>
> ***Section 5. Definitions. —*** *In this Part, unless the context otherwise requires, —*
> ***(7)*** *"financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*
> ***(8)*** *"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*

Section 13. Declaration of moratorium and public announcement. — *(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order—*
(a) declare a moratorium for the purposes referred to in section 14;
(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
(c) appoint an interim resolution professional in the manner as laid down in section 16.
(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

Section 14. Moratorium. — *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —*
(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]
(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be

terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to—

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of 1 [claims, as may be specified];

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

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

(2) The public announcement under this section shall be made in such manner as may be specified.

Section 18. Duties of interim resolution professional.* — *The interim resolution professional shall perform the following duties, namely: —

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

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

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. —For the purposes of this 1 [section], the term "assets" shall not include the following, namely: —

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. —For the purposes of this 1 [section], the term "assets" shall not include the following, namely: —

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Section 21. Committee of creditors. — *(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.*

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor: Provided that a [financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the

corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

[Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares [or completion of such transactions as may be prescribed,] prior to the insolvency commencement date.];

(3) [Subject to sub-sections (6) and (6A), where] the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

(4) Where any person is a financial creditor as well as an operational creditor, —

(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

(b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

*(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility *** provide for a single trustee or agent to act for all financial creditors, each financial creditor may—*

a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

[(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the

financial creditors, such trustee or agent shall act on behalf of such financial creditors;
(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;
(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,
and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.
(6B) The remuneration payable to the authorised representative—
(i). under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
(ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs];
[(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).
(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:
Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.]
(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.
(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition.

Section 25. Duties of resolution professional. — *(1) It shall be the duty of the resolution professional to preserve*

and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

[(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.].

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

Section 28. Approval of committee of creditors for certain actions. — *(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: —*
(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
(b) create any security interest over the assets of the corporate debtor;
(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or

redemption of issued securities in case the corporate debtor is a company;

(d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

(f) undertake any related party transaction;

(g) amend any constitutional documents of the corporate debtor;

(h) delegate its authority to any other person;

(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or

(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of 1 [sixty-six] per cent. of the voting shares.

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.

Section 29. Preparation of information memorandum. - *(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulation a resolution plan.*

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

(a)to comply with provisions of law for the time being in force relating to confidentiality and insider trading;
(b) to protect any intellectual property of the corporate debtor it may have access to; and
(c)not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.
Explanation. - For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified".

25. There are certain Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which are relevant for our discussion and these are also reproduced as under:

CHAPTER III
PUBLIC ANNOUNCEMENT

6. Public announcement.
(1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.
Explanation: 'Immediately' means not later than three days from the date of his appointment. (2) The public announcement referred to in sub-regulation (1) shall:
(a) be in Form A of the [Schedule-I];
(b) be published-
(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;
(ii) on the website, if any, of the corporate debtor; and
(iii) on the website, if any, designated by the Board for the purpose
[(ba) state where claim forms can be downloaded or obtained from, as the case may be;

(bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class; and]
(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

(3) The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

6A. Communication to creditors. *The interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available.*

Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.]

CHAPTER IV
PROOF OF CLAIMS

7. Claims by operational creditors.
(1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall 33[submit claim with proof] to the interim resolution professional in person, by post or by electronic means in Form B of the34[Schedule-I]:
Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.
(2) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-
(a) the records available with an information utility, if any; or
(b) other relevant documents, including -
(i) a contract for the supply of goods and services with corporate debtor;
(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
(iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or

(iv) financial accounts.
35[(v) copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:
Provided that provisions of this sub-clause shall not apply to those creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.]

8. Claims by financial creditors.
(1) A person claiming to be a 36[financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof] to the interim resolution professional in electronic form in Form C of the [Schedule-I]:
Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.
(2) The existence of debt due to the financial creditor may be proved on the basis of -
(a) the records available with an information utility, if any; or
(b) other relevant documents, including -
(i) a financial contract supported by financial statements as evidence of the debt;
(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
(iii) financial statements showing that the debt has not been 37[paid]; or
(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

10. Substantiation of claims.
The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

11. Cost of proof.
A creditor shall bear the cost of proving the debt due to such creditor.

12. Submission of proof of claims.
[(1) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

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

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

*[(2) ****]*

(3) Where the creditor in 50[sub-regulation (1)] is 51[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.

[12A. Updation of claim.

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.]

13. Verification of claims.

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

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

(1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.

(1C) The interim resolution professional or resolution professional, as the case may be, shall: -
(a) intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; and
(b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to: -
(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and
(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.]
(2) The list of creditors shall be –
(a) available for inspection by the persons who submitted proofs of claim;
(b) available for inspection by members, partners, directors and guarantors of the corporate debtor 54[or their authorised representatives];
(c) displayed on the website, if any, of the corporate debtor;

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

Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;]

(d) filed with the Adjudicating Authority; and
(e) presented at the first meeting of the committee.

14. Determination of amount of claim.
(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.
(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

CHAPTER VI
MEETINGS OF THE COMMITTEE

18. Meetings of the committee.
(1) A resolution professional shall convene a meeting of the committee before lapse of thirty days from the last meeting:
Provided that the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter.]
(2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.
[Explanation: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.]
(3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.]
[(4) Where the corporate debtor has any real estate project, the committee may direct the resolution professional to invite the 'competent authority' as defined in clause (p) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) related to such project to attend such meeting(s) of the committee, as the committee may decide, without voting rights, for providing inputs on matters associated with the development of such project.]
[(5) The committee may direct the resolution professional to invite the providers of interim finance to attend as observers without voting rights, such meeting(s) of the committee, as the committee may decide.]

26. Perusal of the above provisions would reveal that in the Code, so far as the scheme pertaining to the authority of the IRP or the RP with regard to dealing with the claims submitted by creditors is concerned, is in terms that

after being appointed as the IRP of the CD, in pursuance of the acceptance of petition either under Section 7 or 9 or any other provision of the Code, a moratorium under Section 14 of the Code is declared and thereafter a public announcement of Corporate Insolvency Resolution Process is made and thereafter it becomes the duty of the Interim Resolution Professional, under Section 18 (1) (b) to receive and collate all the claims submitted by the creditors to him and to constitute committee of creditors (CoC) under Section 21 of the Code.

27. Section 21 of the Code provides that the Interim Resolution Professional shall after collation of all claims received against the Corporate Debtor and determination of the financial position of the CD would constitute a committee of creditors. Section 25 of the Code deals with the duties of the Resolution Professional and provides inter alia that it shall be the duty of the Resolution Professional, amongst others to maintain an updated list of Creditors.

28. Chapter-IV of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 herein after called as (CIRP Regulations of 2016) provides for the procedure pertaining to the submissions of claims by the creditors. Under Regulation 7, 8, 8 (A), 9, and 9 (A) of these Regulations, the claims which may be filed by various creditors and the forms in which these claims may be filed, has been provided.

29. Section 10 of the aforesaid CIRP Regulations, 2016 also provides for the substantiation of the claims and cast a duty on the Interim Resolution Professional or the Resolution Professional, as the case may be, to call for

such evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim and under Regulation 12 he may also ask for any proof of such claims. Regulation 12 also provides that a creditor who fails to submit a claim with proof within the time stipulated in the public announcement may submit his claim with proof to the IRP or RP as the case may be up to the date of issue of request for Resolution Plan under Section 36 (B) or 90 days from the Insolvency commencement date, whichever is later and it is further provided in sub-Regulation 3 of Regulation 12 that where the creditor in sub-Regulation 2 is a financial creditor it shall be included in the committee from the date of admission of such claim.

30. Regulation 12 A significantly provides for updation of claim in terms that a creditor shall update its claim as and when the claim is satisfied partly or fully, from any source in any manner after the insolvency commencement date.

31. Regulation 13 provides for verification of claims by the IRP or RP as on the Insolvency Commencement date within 7 days from the last date of the receipt of claims and cast a duty on the IRP or the RP to maintain a list of creditors along with the amount claimed by them and the amount of the admitted claims along with the security interest, if any, in respect of such claims and update it. Sub-Regulation (1) (B) provides that in the event any claim is received after the period specified under sub-Regulation (1) of 12 and up to 7 days before the date of meeting of creditors for the purpose of voting on the Resolution plan or initiation of liquidation as the case may be, the IRP or the RP shall verify all such claims and categorise them as

acceptable or non-acceptable for collation and would further put up the claims so categorised as acceptable before the committee of creditors.

32. As it could be noticed from the CIRP Regulations, 2016, on submission of a claim with proof, the IRP or the RP, as the case may be, has to verify the claim and prepare a list of creditors containing names of creditors along with the amount claimed by them and security interest, if any. On collation of claims received against the CD, the IRP has to constitute the CoC. As per Section 21 (2) of the Code, subject to other provisions of Section 21, the COC must comprise all financial creditors of a CD. Under Section 22 of the IBC, the COC appoints an RP in its first meeting. It may, however, resolve to appoint the IRP as the RP, subject to confirmation by the Board.

33. After going through the Regulations 10 to 14 of the CIRP Regulations, it is also clear that IRP/RP may, under Regulation 10, call clarifications from a creditor for substantiating the whole or part of its claim. Furthermore, under Regulation 12A, the IRP/RP is entitled to updation of the creditor's claim based on the satisfaction of the claim. Finally, Regulation 13 provides to verify every claim as on the insolvency commencement date within seven days from the last date of the receipt of the claims. Under Regulation 14, IRP/RP is further entitled to determine the amount of claim in a case where the amount claimed by the creditor is not precise due to any contingency or other reasons. In such circumstances, IRP is authorised to make the best assessment of the amount of the claim based on the information available with him. However, under regulation 14(2), IRP/RP is further obliged to revise the amount of claim admitted, including

the estimates of the claims made under sub-regulation (1) whenever he come across additional information warranting such revision.

34. Thus, it is evident that a continuous obligation has been entrusted by the Code on the IRP or the RP, as the case may be, to keep on modifying the claims as and when the necessity arises and to constitute the CoC in accordance with the same. However, as has been held by the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. vs. Union of India (2019) 4 SCC 17*** the IRP or the RP may not be having any adjudicatory power to change the character of the creditor or of the claim as the resolution professional is given administrative as opposed to quasi-judicial powers and the resolution professional cannot act in a number of matters without the approval of the committee of creditors under Section 28 of the Code. It is further held that the resolution professional is only a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority. Thus under the CIRP Regulations, the resolution professional has only to vet and verify claims made, and ultimately, determine the amount of each claim.

35. This Appellate Tribunal in ***Mr. K.N. Rajkumar vs V. Nagarajan and ors., Company Appeal (AT) (INS) No.48 of 2021 Decided on 30.04.2021,*** relied on by Ld counsel for the Respondent wherein the Adjudicating Authority among other things had directed the 'Resolution Professional to convene the meeting of the 'CoC' of the Members, who constituted the 'CoC' originally i.e. in the year 2017, soon after the order of admission was passed by the Tribunal' initiating the CIRP and place the draft of Application prepared under 12A of IBC, if any, along with Form FA or at the least Form

FA as lodged with the IRP/RP, before the 'CoC' to be called and convened and report about the decision of the Members of the 'CoC' as constituted in the year 2017, the 'CoC' was held to be constituted by the IRP/RP in derogation of the Order passed by the Tribunal and directed to be suspended with a further direction that it shall not exercise any of the Powers as provided under the Provisions of IBC, 2016. This order was challenged by filing an appeal before this Appellate Tribunal.

36. This Appellate tribunal upheld the NCLT's Order on the basis that the resolution professional does not have any 'adjudicatory powers' under the IBC and no change can be made in the CoC when it was already formed and relying on the law laid down in ***Company Appeal (AT)(Ins) No.519 of 2020 in Rajinish Jain V. Manoj Kumar Singh,*** the appeal was dismissed.

37. In **Rajinish Jain V. Manoj Kumar Singh, Company Appeal (AT)(Ins)No.519 of 2020, decided on 18th December, 2020,** this Appellate Tribunal held as under: -

> *"59. Based on the above discussion, we clarify and hold that during CIRP, the IRP is authorised to collate the claims, and based on that he is empowered to constitute the Committee of Creditors. We hold that the Resolution Professional may add to existing claims of claimants already received, or admit or reject further Claims and update list of Creditors. But after categorisation of a claim by the IRP/Resolution Professional we hold that they cannot change the status of a Creditor. For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he cannot review or change that position in the name of updation of Claim. It is also to be clarified that while updating list of Claims the Resolution Professional, can accept or reject claims which are further received and update list".*

38. Evidently this case was decided by this Tribunal on 18.12.2020, while Regulation 12A was brought in the CIRP Regulations 2016 by an amendment with effect from15.03.2021. Thus there was no occasion for this Tribunal to have considered the effect of newly incorporated Regulation 12A which specifically provides for updation of claims. Thus this case has no precedential value so far as the issue with regard to the withdrawal of claim by a creditor is concerned.

39. We are of the considered view that when a creditor, who has not submitted the claim within the permissible time provided in the public announcement, may submit its claim at any time before the deadline which has been provided in Regulation 13 sub Regulation (1) (B) (up to 7 days before the date of meeting of creditors for voting on the Resolution Plan or the initiation of liquidation) why the same creditors may not update their claims up to that time and why the RP or the IRP, as the case may be, in its duty could not update the claim on the basis of its withdrawal by the creditor. We are also of the view that Regulation 12 A of CIRP Regulations, 2016 specifically provides for updation of claim and it has been specified therein that a creditor shall 'update' its claim as and when the claim is satisfied 'partly' or 'fully', after the Insolvency commencement date. Though the word "updation" has been used in Regulation 12 A but it conspicuously provides that the claim may be updated by the Creditor if the same has been satisfied "partly" or "fully". The literal meaning of the phrase (A creditor shall update its claim as and when the claim is satisfied, partly or fully) used in Regulation 12A of the Regulations of 2016 would convey that if the claim of a creditor has been satisfied in 'part' or 'full' he will update his claim. In

such a situation where a claim of the Creditor has been 'fully satisfied' then he would be left with no claim at all and in our understanding the term 'update its claim' provided under Regulation 12 A of the CIRP Regulations,2016, would also include 'withdrawal of the claim' by such Creditor.

40. It is also to be recalled that all major decisions with regard to the Resolution of the CD are taken by the CoC wherein the financial creditors have been empowered with voting rights, however, how a financial creditor whose claim has been fully satisfied would be compelled to be the part of the CoC when his claim has been fully satisfied and he may not be having any voting percentage at all and in that scenario why he should be permitted to take decisions with regard to the Resolutions of the CD, when no interest of it has been left in the resolution of the CD.

41. In our considered opinion, a creditor who has filed a claim is duty bound to update its claim, if the same has been satisfied either fully or partly, as provided under Regulation 12A of the CIRP Regulations of 2016 and this updation would also include 'withdrawal' of the claim by such Creditor. However, as no such power of adjudication is available with IRP or the RP, as the case may be, a decision in this regard has to be taken by the Adjudicating Authority.

42. In view of above we are not in agreement with the conclusions drawn by the Ld. Adjudicating Authority in observing that there is no provision in the Code for withdrawal of the claim as a creditor may very well update his claim even by withdrawing it, as provided under Regulation 12 A of the CIRP Regulations of 2016 and in the instant case on the withdrawal intimation

given by the Appellant to the IRP, it was the IRP who has moved an application before the Adjudicating Authority whereon the impugned order has been passed. The IRP, in our considered opinion was justified in moving the application before Ld. Adjudicating Authority, as he was not having any adjudicatory power. In view of above, the impugned order passed by the Ld. Adjudicating Authority is liable to be set aside and is accordingly set aside by us. Resultantly the appeal preferred by the appellant is hereby **allowed**.

43. The matter is remanded back to the Ld. Adjudicating Authority to dispose of the application filed by the appellant afresh after providing an opportunity of being heard to the parties and for this purpose the aforesaid IA No. 3965 of 2023 is revived on the board of the Ld. Adjudicating authority.

44. We clarify at this stage that we have not made any observation with regard to the applicability of Section 14 of the Code vis a vis the manner in which the claim of the appellant appears to have been satisfied and also the issue of payment of CIRP cost and it would be open for the Ld. Adjudicating Authority to see the applicability of Section 14 of the Code and payment of CIRP cost, in the facts and circumstances of the case.

45. There is no order as to costs. Pending IAs' if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
25.02.2026.
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