

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 191 of 2022

(Arising out of Order dated 27.11.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench, Guwahati in I.A. No.46 of 2020 in CP(IB)/02/GB/2018)

IN THE MATTER OF:

M/s Akshar Plastchem Investment
Private Limited,
Office 201, P.J. Mewawala Chambers,
13, Kazi Sayed Street, Mumbai – 400009,
Represented by its Director,
Shri Ramesh Bakhai

.... Appellant

Vs

1. Shri Bijay Murmura,
Resolution Professional of M/s. Kitply Industries Ltd.
Sumedha Management Solutions Pvt. Ltd.
Trinity Tower, Suit No.3 G, 226/1,
AJC Bose Road, Kolkata-700020.

2. SREI Multiple Asset Investment Fund,
(Vision India Fund), Vishwakarma,
86 C, Topsia Road (South),
Kolkata – 700046.

3. IDBI Bank Ltd.
IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai-400005.

4. M/s. Kitply Industries Ltd.,
Makum Pathar, A.T. Road,
Margherita, Assam – 786181.

... Respondents

Present:

**For Appellant: Mr. Madhur Mahajan, Mr. Ranjeev Carvalho and
Mr. Prayag Joshi, Advocates.**

**For Respondents: Mr. Gaurav H. Sethi, Mr. Saumil Sharma and
Mr. Parikshit Poddar, Advocates with Mr. Bijay
Murmura, RP in person for R-1.**

**Mr. Sanjay Bhatt and Mr. Apoorva Chowdhury,
Advocates for R-4.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 27.11.2020 passed by National Company Law Tribunal, Guwahati Bench, Guwahati rejecting I.A. No.46 of 2020 filed by the Appellant.

2. Brief facts of the case are:

- (i) The Appellant is a Private Limited Company engaged in the business of solvents, dyes and chemicals for paints, plastics, resins etc. The Appellant during the period 03.02.2010 till 28.08.2010 supplied goods to the Corporate Debtor e.g. Phenol and Melamine. The Appellant Company supplied goods worth Rs.1,41,85,730, against which Corporate Debtor made payment of only Rs.19,99,104/-. The amount of Rs.1,21,86,626/- remained outstanding against the Corporate Debtor.
- (ii) The Appellant after issuing two statutory notices filed a Company Petition bearing No.11 of 2011 for winding up of the Corporate Debtor in the Gauhati High Court. Gauhati High Court issued notice on 14.11.2011 in the winding up petition. The Corporate Debtor appeared and sought time. The Corporate Debtor filed an Application being MISC Case No.1925 of 2012 stating that winding up proceedings be kept in abeyance in view of pendency of Reference Case No.223 of 2012 registered with the Board for Industrial and Financial

Reconstruction (“**BIFR**”) under Section 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985. The High Court passed an order on 20.07.2012 keeping the Company Petition in abeyance with liberty to the Appellant to press winding up proceeding after clearance is given by the BIFR.

- (iii) IDBI – Financial Creditor filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) against the Corporate Debtor in NCLT Guwahati. On 01.05.2018, NCLT Guwahati Bench admitted Section 7 Application and appointed Respondent No.1 - Shri Bijay Murmuria as Interim Resolution Professional (“**IRP**”). The IRP issued a public announcement in prescribed Form-A on 04.05.2018 in compliance of Section 15 of the code read with Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**2016 Regulations**”) in two newspapers. Notices have also been put on the website of the Corporate Debtor as well as on the website of the Board. The Adjudicating Authority also passed an order on 18.07.2018 noticing the public announcement made by the IRP.
- (iv) In pursuance of public announcement, five Financial Creditors and nine Operational Creditors filed their claim before the IRP. Invitation for Expression of Interest to submit the Resolution Plan was issued and published on 13.07.2018 and the last

date for submission of Resolution Plan was 27.07.2018. Since, no Resolution Plan was received, another publication was made on 27.07.2018 extending the last date from 27.07.2018 to 07.08.2018. The IRP received only one Resolution Plan, which was submitted by Respondent No.2 - SREI Multiple Asset Investment Fund. The Resolution Plan submitted by Respondent No.2 was considered by CoC and was approved by the CoC on 22.10.2018. The Adjudicating Authority vide order dated 07.12.2018 approved the Resolution Plan.

- (v) The Appellant filed an IA in the year 2019 before the Gauhati High Court seeking hearing of Appellant's Company Petition No.11 of 2011. Before the Gauhati High Court, a statement was made by the Counsel for the Corporate Debtor that Corporate Debtor has already been wound up pursuant to the order of NCLT Guwahati. The IA filed by the Appellant was withdrawn and liberty was granted by the High Court of Gauhati on 07.01.2020 to the Appellant to make an appropriate Application before the NCLT Guwahati.
- (vi) The Appellant filed an IA No.46 of 2020 before the Adjudicating Authority praying for setting aside the order dated 07.12.2018 approving the Resolution Plan or in alternative directing the Respondent No.2 to pay the amount due to the Appellant to the tune of Rs.1,21,86,626/- with interest.

(vii) IA No.46 of 2020 was heard by the Adjudicating Authority and vide its order dated 27.11.2020, the Adjudicating Authority rejected the Application. Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Mr. Madhur Mahajan, learned Counsel for the Appellant, Shri Gaurav H. Sethi, learned Counsel for Respondent No.1 and Shri Sanjay Bhatt, learned Counsel for Respondent No.4.

4. The learned Counsel for the Appellant submits that the Appellant had been carrying its business in the State of Maharashtra more particularly in the District Nashik, Taluka Igatpuri and Mumbai City. The Appellant could not know about the publication in the newspapers issued by IRP dated 04.05.2018. The Corporate Debtor conducted material business in the State of Maharashtra, hence, the publication ought to have also been made in the State of Maharashtra. The publication made by IRP on 04.05.2018 was not in accordance with Regulation 6(1) of 2016 Regulations, vitiating the entire Insolvency Resolution Process. Due to non-publication of public notice at the place where Appellant was carrying on its business, no claim could be filed by the Appellant before the IRP. Although, the Appellant had initiated winding up proceeding against the Corporate Debtor in the year 2011 itself, which proceeding was kept in abeyance at the instance of Corporate Debtor on the ground of registration of reference before the BIFR. It is only during winding up proceeding in the year 2019, the Appellant came to know from the statement of Counsel for the Corporate Debtor made before the High Court that Corporate Debtor

has already been wound up by order of the NCLT Guwahati and claim of all creditors have been sorted. Thereafter, I.A. No.46 of 2020 has been filed before the Adjudicating Authority by the Appellant.

5. The learned Counsel for the Appellant further submits that the Resolution Plan is not in accordance with Section 30(2)(e) of the Code. The filing of the winding up petition were certainly in the business record of the Corporate Debtor – Respondent No.4, but the Resolution Professional neither considered the claim of the Appellant nor considered the winding up proceedings pending before the High Court.

6. The learned Counsel for Respondent No.1 refuting the submissions of learned Counsel for the Appellant submits that IRP has issued public notice as per provisions of Section 15 and Regulation 6(1) of 2016 Regulations. There has been publication in two newspapers having circulation where the registered office and corporate office of the Corporate Debtor is situated. Notices were also published at other places like, Kolkata, Shilong, Itanagar and also at other places where the office and factory of the Corporate Debtor was situated. The Appellant having never filed any claim before the IRP, it has no right to file this Appeal challenging the approval of the Resolution Plan. After approval of the Resolution Plan, claim of the Appellant, if any, stand extinguished in view of the law laid down by the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** – (2021) 9 SCC 657. The Appellant has no *locus* to challenge the Plan

approval order. Further, the Appellant is also bound by the Resolution Plan approved by the CoC and Adjudicating Authority.

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

8. The submission which have been much pressed by the learned Counsel for the Appellant before us is the publication issued by IRP being not in compliance of Section 15 and Regulation 6(1) of 2016 Regulations. We may first notice the relevant statutory provision regarding publication in the newspaper by the IRP in respect of initiation of CIRP as per Section 15 of the Code. Section 15 is as follows:

“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 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.”

9. The Regulations have been framed namely the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and under Chapter-III, which deals with Public Announcement containing Regulation 6, which is relevant in the present is as follows:

“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;

(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 4-A 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.”*

10. Regulation 6, sub-regulation (2) (b) provides for public announcement ‘be published’ and in sub-clause (b)(i) the public announcement should be 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.** Whether by virtue of that

underlying provisions as noted above, the IRP was obliged to make publication at place where the Appellant is carrying on its business, in the State of Maharashtra, particularly in District Nashik, Taluka Igatpuri and Mumbai City? The learned Counsel for the Appellant has also referred to the purchase orders issued by Corporate Debtor, addressed to the Appellant at its Mumbai address. A detailed reply has been filed by Respondent No.1, erstwhile Interim Resolution Professional of Corporate Debtor along with the public announcement in Form-A as well as newspaper publications where announcement were made have been brought on the record. In paragraph 3(iii), following has been pleaded by Respondent No.1:

“3(iii) In terms of the above orders dated 01.05.2018, the Respondent No.1 being the erstwhile Interim Resolution Professional issued public announcement in prescribed Form-A dated 04.05.2018 in compliance with Section 15 of the IBC Code read with Regulation 6(1) of the CIRP Regulations in Newspaper viz. (1) Financial Express (English) at Kolkata where the Corporate Office of Kitply Industries Limited the Corporate Debtor is situated and (2) The Sentinel (English) at Guwahati, Shillong and Itanagar and Amar Asom (Regional Language) at Guwahati, Jorhat & Lakhimpur where the Registered Office & factory premises of Kitply Industries Limited, the Corporate Debtor is situated inviting claims from the creditors of the Corporate Debtor which are reproduced herein below for the convenience of this Hon’ble Tribunal.”

11. The copy of the public announcement as well as publication in the newspaper have been annexed as Annexure A-2 to the Reply. In paragraph 3(iv) and (v) of the reply, further submissions made by Respondent No.1 are as follows:

“(iv) It is pertinent herein to mention that the Respondent No.1 further uploaded the Public Announcement on the official website of Kitply Industries Limited, the Corporate Debtor on 09.05.2018 in pursuance of Regulation. Further the Respondent No.1 had put up the Order dated 01.05.2018 for initiation of the CIRP of the Corporate Debtor on the notice board of all the regional and corporate offices and the factory premises of the Corporate Debtor.

(v) Further, since the Corporate Debtor is a public limited company and its shares were traded on National Stock Exchange/ Bombay Stock Exchange, the erstwhile Interim Resolution Professional being the Respondent No.1 also informed the Exchange regarding the initiation of CIRP of the Corporate Debtor by the Hon’ble Adjudicating Authority vide order dated 01.05.2018 and the same was reflected on the website of Exchanges as well.”

12. The public announcement made in Annexure A-2, itself indicates that Claim Form can be downloaded from the website of the Board also. From the facts and pleadings as noted above, it is clear that the publication was made not only at the registered and corporate office of the Corporate Debtor, but several other places at Kolkata, Guwahati, Shilong and Itanagar etc. In regional newspaper, publication was made at Guwahati,

Jorhat and Lakhimpur where registered office and factory premises of the Corporate Debtor was situated. The publication, thus, was not only confined to registered office and corporate office of the Corporate Debtor, but publication was made at other locations also, where in the opinion of IRP, Corporate Debtor conducts material business operations. We are not persuaded to accept the submission of learned Counsel for the Appellant that under Regulation 6, sub-regulation (2) (i), the Resolution Professional was also obliged to make publication at the places where the Appellant is carrying the business. The statutory requirement cannot be stretched to mean that publication has to be made from all places where the Corporate Debtor is receiving goods and supplies. The mandatory requirement is to publish in one English and one regional newspaper with wide circulation at the location of the registered and corporate office of the Corporate Debtor and any other location, where in the opinion of the IRP the Corporate Debtor conducts material business operations. The IRP has made publication at other places as noted above, which indicates that there is compliance of requirement of Regulation 6, sub-regulation (2)(i). We thus are not persuaded with such submission of learned Counsel for the Appellant that publication ought to have also been made in the State of Maharashtra particularly District Nashik, Taluka Igatpuri and Mumbai City.

13. Admittedly, the claim was not filed by the Appellant before the IRP. The last date for receiving the claim was 18.05.2018 and Appellant filed its claim after 20 months from the last date of receiving the claim. The learned

Counsel for Respondent No.1 has correctly relied on the judgment of Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited*** (supra), where it has been held that on the date of approval of Resolution Plan by the Adjudicating Authority, all claims, which are not part of the Resolution Plan shall stand extinguished. In paragraph 102.1 of the judgment, following has been held by the Hon'ble Supreme Court:

“102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.”

14. We may further notice that there was compliance of Regulation 6(2)(ii) and (iii), since the publication was uploaded on the website of the Corporate Debtor as well on the website of the Board. We, thus, do not find any error in the publication made by the IRP under Section 15 read with Regulation 6(1) of 2016 Regulations. The Appellant, who has not filed any claim before the IRP cannot be allowed to challenge the order approving the Resolution Plan by the Adjudicating Authority. No error has been

committed by the Adjudicating Authority in approving the Resolution Plan submitted by Respondent No.2, which had received the approval of CoC by requisite majority.

15. In view of the foregoing, we do not find any ground to interfere with the impugned order passed by the Adjudicating Authority approving the Resolution Plan. There is no merit in the Appeal, the appeal is dismissed.

No costs.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

[Naresh Salecha]
Member (Technical)

NEW DELHI

26th May, 2022

Ash/NN