

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

**Company Appeal (AT) (Insolvency) No. 584 of 2021**  
**& Interlocutory Application No.2720 of 2021**

(Arising out of Order dated 22.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.-I in IA No.2081 of 2020 in CP(IB) No.2205/MB/2019)

**IN THE MATTER OF:**

Punjab National bank  
Zonal Sastra Centre  
Mumbai, Maharashtra-400099.

.... Appellant

Vs

1. Mr. Ashish Chhawchharia  
Resolution Professional (Erstwhile)  
Jet Airways (India) Limited,  
Siroya Centre, Sahar Airport Road,  
Andheri (East), Mumbai – 400099.

2. Jalan Kalrock Consortium  
C/o Murari Lal Jain  
Lead Partner  
Villa HT-21, Emirates Hilla,  
Dubai, United Arab Emirates.

3. Committee of Creditors of  
Jet Airways (India) Limited  
Through State Bank of India,  
Sarg, 21<sup>st</sup> Floor, Maker tower,  
E-Wing, Cuffee Parade,  
Mumbai – 400005.

.... Respondents

**Present:**

**For Appellant:**

**Mr. R. Venkatramani, Sr. Advocate with Mr. Piyush Beriwal, Mr. Ankit Raj, Chitvan Singhal, Ms. Divya Srivastava, Mr. Praveen Vignesh, Advocates for PNB.**

**Mr. Sunil Aggarwal, Sr. Standing Counsel Mr. Tushar Gupta, Jr. Standing Counsel Mr. Parinay Gupta, Advocate (for Applicants in I.A. 2720/21)**

**For Respondents: Mr. Malhar Zatakia, Mr. Dhiraj Kumar Totala, Ms. Aditi Bhansali, Ms. Tanya Chib and Mr. Parimal Kashyap, Advocates for RP (AZB & Partners)  
Mr. Raghav Chadha, Advocate.**

**Mr. Abhinav Vashisht, Sr. Advocate with Ms. Vishrutyi Sahni, Ms. Aishna Jain, Advocates for R-3.**

**Mr. Krishnendu Datta, Sr. Advocate with Mr. Rajat Sinha, Mr. Burjis Shabir, Ms. Srishty Kaul, Mr. Anant Singh, Mr. Aashish Vats, Advocates for SRA.**

**Mr. Raunak Dhillon, Ms. Isha Malik and Ms. Niharika Shukla, Advocates for Respondent No.2.**

**Mr. Sunil Aggarwal, Mr. Tushar Gupta, Mr. Sumit Kr. Advocates**

## **J U D G M E N T**

### **ASHOK BHUSHAN, J.**

This Appeal by Financial Creditor of the Corporate Debtor, i.e., Jet Airways (India) Limited has been filed against the order dated 22.06.2021 passed by the National Company Law Tribunal, Mumbai Bench Court No.I allowing I.A. No.2081 of 2020 filed by Resolution Professional for approval of the Resolution Plan.

2. The brief facts of the case giving rise to this Appeal are:

- (i) In the year 2016-17, the Appellant has extended various loans credit to Jet Airways (India) Limited. The Corporate Debtor committed default in making the repayment of the loan. On

30.03.2019, the Promoter of the Corporate Debtor executed a Share Pledge Agreement in favour of the Appellant to secure their outstanding dues and 2,95,46,679 equity Shares were Pledged in favour of the Appellant.

- (ii) On 20.06.2019, the Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor commenced on Section 7 [Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”)] Application filed by State Bank of India, another Financial Creditor.
- (iii) In pursuance of the publication made by the Interim Resolution Professional (“**IRP**”), the Appellant filed its claim for Rs.963.47 crores with the Resolution Professional (“**RP**”). The Appellant submitted revised claim for a sum of Rs.956.11 crores and again revised the claim to Rs.956.21 crores. The Resolution Professional admitted the claim of the Appellant for a sum of Rs.9,562,165,500/-, which was reflected on the List of Creditors published by the RP as on 15.01.2020. In the List of Creditors as on 15.01.2020, Note 2 mentions:

<b>Notes:</b>	
2	The claim of Punjab National Bank has been provisionally admitted and remains subject to the outcome of the Civil Appeal No(s) 5443/2019 in the matter of PTC India Financial Services Ltd. versus Mr. Venkateshwarlu Kari & Anr. in the Supreme Court of India.

- (iii) The RP issued an email dated 19.09.2020 stating that claim of the Appellant would be reduced by the Fair Market Value of the Pledged Shares. The RP updated the List of Creditors as on 25.09.2020.
- (iv) On 22.09.2020, the Appellant has filed a claim of Rs.994.16 crores. The Respondent No.1 has reduced the claim of the Appellant on the ground that on invocation of the Pledged Shares, the Appellant had become beneficiary owner of the Pledged Shares and accordingly, the Appellant's claim must be reduced with the total value of the Shares of the Corporate Debtor as transferred to the Appellant pursuant to the invocation of the pledged. In the list of creditors published on 25.09.2020, the admitted claim of the Appellant stood reduced by approx. Rs.202 crores. Note-2 of the List of Creditors mentions the following:

<b>Notes:</b>	
2	The claim of Punjab National Bank was provisionally admitted and remains subject to the outcome of the Civil Appeal No(s) 5443/2019 in the matter of PTC India Financial Services Ltd. versus Mr. Venkateshwarlu Kari & Anr. in the Supreme Court of India. Now the admitted claim is reduced by INR 2,020,992,844 in terms of the order passed by the Hon'ble National Company Law Appellate Tribunal in the matter of India Power Corporation Ltd. vs. Meenakshi Energy Ltd. and Other (in Company Appeal (AT) (Insolvency) No.1220 of 2019) pronounced on September 10, 2020.

- (v) In the meantime, two Resolution Plans were submitted by the prospective Resolution Applicants. On 28.09.2020 in 16<sup>th</sup> Committee of Creditors (“**CoC**”) Meeting more than one Resolution Applicants submitted their revised Plan, which were discussed and deliberated on 03.10.2022 in 17<sup>th</sup> CoC Meeting. In the 17<sup>th</sup> CoC Meeting, the Resolution Plan submitted by Jalan Fritesch Consortium was approved. In 18<sup>th</sup> CoC Meeting also, the representative of the Appellant put forth their contention that their claim of approximately Rs.200 crores has been rejected on the ground that they being equity shareholders.
- (vi) The Appellant filed an I.A. No. 2480 of 2020 on 04.12.2020, where following prayers were made:
- “(I) Allow the present application and direct the respondent to reverse its decision of reducing the claim of the applicant by the value of invoked shares pledged and transferred by the applicant bank.*
- “(II) Pass any other order/ direction that the Hon’ble Adjudicating Authority may deem fit in the interest of justice and equity.”*
- (vii) The RP filed an IA No.2081 of 2020 praying for approval of the Resolution Plan. The I.A. No.2480 of 2020 filed by the Appellant came up for hearing before the Adjudicating Authority on 18.03.2021 and the Adjudicating Authority directed the IA to be listed for final hearing on 13.05.2021. IA

No.2081 of 2020 was listed on 14.06.2021 when an order was reserved and vide order dated 22.06.2021, IA No.2081 of 2020 was allowed and Resolution Plan was approved. IA No.2480 of 2020 filed by the Appellant was not adjudicated by the Adjudicating Authority, while approving the Resolution Plan submitted by Resolution Applicant.

(viii) The Appellant aggrieved by the order dated 22.06.2021 has filed this Appeal.

(ix) In the appeal the Appellant has prayed for following reliefs:

- “a) Allow the present Appeal and set aside the order impugned dated 22.06.2021 in I.A. No.2081 of 2020 in CP (IB) No.2205/MB/2019 passed by Hon’ble National Company Law Tribunal, Mumbai Bench – I; and/ or*
- b) To reinstate the erroneously reduced ‘admitted Claim’ of the Appellant by the Respondent No. 1/ RP amounting to Rs.202.09 Cr. (Approx. Two Hundred and Two Crore and Nine Lac); AND/ OR*
- c) Grant ad-interim stay on the order impugned dated 22.06.2021 in I.A. No.2081 of 2020 in CP (IB) No.2205/MB/2019 passed by Hon’ble National Company Law Tribunal, Mumbai Bench – I;*
- d) Direct the Hon’ble National Company Law Tribunal, Mumbai bench – I to decide the I.A. No.2480 of 2020 in CP (IB) No.2205/MB/2019 expeditiously and direct the successful resolution application/ respondents to maintain status quo*

*as on date in regards to the implementation of the resolution plan; and/ or*

- e) Award costs of and incidental to the appeal to the appellant; and/ or*
- f) Pass any other order/ orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”*

3. We have heard learned Senior Counsel for the Appellant and learned Counsel for Resolution Professional, learned Counsel for Resolution Applicant as well as learned Counsel appearing for Successful Resolution Applicant.

4. The learned Senior Counsel appearing for the Appellant submits that the RP after having admitted the claim of Rs.956 crores as on 20.08.2019, could not have reduced the same to Rs.754 crores on 25.09.2020, which was after submission of the final Resolution Plan by both prospective Resolution Applicants. The RP had no jurisdiction to review and revise an admitted claim of the Appellant. I.A. No.2480 of 2020 filed by the Appellant for restoring its admitted claim was never adjudicated by the Adjudicating Authority, causing great prejudice to the Appellant. The RP reduced the claim of Appellant relying on judgment of this Tribunal in **India Power Corporation Ltd. vs. Meenakshi Energy Ltd. and Other in Company Appeal (AT) (Insolvency) No.1220 of 2019**, which judgment, in turn, relied on judgment of this Tribunal in **PTC India Financial Services Ltd. Vs. Mr. Venkateshwaralu Kari and Mandava Holdings Pvt. Ltd.**

**Company Appeal (AT) (Ins) No. 450 of 2018** decided on 20.06.2019. The judgment of **Meenakshi Energy Ltd.** delivered on 10.09.2020, which was relied by RP for reduction of the claim. The judgment of the Hon'ble Supreme Court in **Civil Appeal No.5443 of 2019 titled PTC India Financial Services Ltd. v. Mr. Venkateshwarlu Kari and Anr.** having delivered by Hon'ble Supreme Court on 12.05.2022 setting aside the judgment of this Tribunal in **PTC India Financial Services Ltd. Vs. Mr. Venkateshwaralu Kari and Mandava Holdings Pvt. Ltd.**, the very basis of reduction of the claim by RP stands knocked out and full claim of the Appellant deserves to be revised, which was earlier admitted by the RP. The Appellant, which is a Public Sector Bank suffered great prejudice by reduction of the claim, which shall obviously affect their entitlement as per the Resolution Plan. It is submitted that the Appellant before the CoC has consistently raised the objection regarding reduction of their claim, which was noted in the Minutes of the Meeting. In the 17<sup>th</sup> Meeting of CoC held on 03.10.2020, when the Resolution Plan was discussed, the objection of Appellant was noticed regarding reduction of the claim. The Appellant being Assenting Financial Creditor to the Resolution Plan, cannot have any objection regarding the approval of the Resolution Plan, however, the Appellant is aggrieved by reduction of its admitted claim and Appellant is entitled for payment of its full debt as per the Resolution Plan.

5. The learned Senior Counsel for the Appellant submits that in view of the judgment of the Hon'ble Supreme Court delivered on 12.05.2022 in **PTC India Financial Services Ltd. Vs. Mr. Venkateshwaralu Kari and**

**Mandava Holdings Pvt. Ltd.**, the law shall be treated to be the same as declared by the Hon'ble Supreme Court even on the day when amount of claim of the Appellant was reduced by Resolution Professional. The reduction of the claim being contrary to the law as declared by the Hon'ble Supreme Court is untenable and full claim amount deserve to be restored.

6. The learned Counsel for the RP, refuting the submission of learned Counsel for the Appellant submits that the Appellant is not entitled for any relief in this Appeal. It is submitted that Appellant being Assenting Financial Creditor to the Resolution Plan cannot be allowed to challenge the approval of the Resolution Plan. The Appellant voted for Resolution Plan, wherein Rs.747.94 crores have been admitted as Appellant's claim and Appellant having exercised its commercial wisdom in approving the Plan, the Appellant is estopped from questioning the approved Resolution Plan. The Appellant is also guilty of suppressing several material facts in the Appeal. The Appellant has filed four different claims and the allegation of the Appellant that RP has unilaterally reduced the Appellant's claim is not correct. The RP vide email dated 03.10.2019 had informed the Appellant that its claim would be treated in accordance with the question of law, specially the judgment of this Tribunal in **PTC India Financial Services Ltd.** (supra). It is submitted that reduction of the claimed amount was in accordance with existent law as was applicable at the relevant time. The Appellant has invoked the Pledged Shares on 17.06.2019 and perfected its title to the Pledged Shares by registering itself as beneficial owner in respect of the Pledged Shares in the record of the

depository. Even on 10.09.2020, this Tribunal in **India Power Corporation Ltd. v Meenakshi Energy Limited & Ors.** once again affirmed the decision of PTC India on 19.09.2020. The Respondent No.1 informed the Appellant that the aggregate claim filed by the Appellant would be reduced to the extent Fair Market Value of the Shares of the Corporate Debtor acquired by the Appellant as on the date of invocation of the Pledge. Accordingly, Respondent No.1 reduced the claim of the Appellant by Rs.202.09 crores as per the Market Value of the Pledged Shares and the RP has acted in accordance with the Code. The Appellant having voted in favour of the Resolution Plan, is now estopped from challenging the approval of the Resolution Plan.

7. The learned Counsel for the Successful Resolution Applicant also supported the submission of learned Counsel for the RP, submitting that the Appellant having voted in favour of the Resolution Plan, is now estopped from challenging the Resolution Plan or the impugned order approving the Resolution Plan. The Resolution Plan provided for fixed payout to the Financial Creditors and having participated in the CoC Meeting and approving the Resolution Plan, it was in the commercial wisdom of the CoC, no objection can be raised by the Appellant at this stage.

8. The learned Counsel appearing for CoC submits that Resolution Plan having been approved by the Appellant itself, the Appellant cannot be allowed to challenge the same. The Appellant claim was provisionally admitted. The CoC as per the Code could have voted on admitted claim,

the Resolution Applicant have directed for distribution of assets in its Resolution Plan based on admitted claim. The Resolution Plan having been approved by majority of 99.22% of the CoC, the same is binding. Even the Dissenting Financial Creditors cannot challenge the approved Resolution Plan, hence, there is no occasion for Assenting Financial Creditor to challenge the Plan. The Resolution Plan is being presently implemented.

**Interlocutory Application No.2720 of 2021**

9. We also need to consider I.A. No.2720 of 2021 filed in this Appeal by Principal Commissioner of Income Tax Central-3 Mumbai.

10. The Principal Commissioner in this IA prayed for intervention in the appeal and has also prayed for further reliefs. The Applicant in paragraph 11 of the IA has made the following prayer:

- “A) The Applicant be permitted to intervene in Appeal No 584/ 2021 filed by Punjab National Bank*
- B) That the Applicant be permitted to bring on record the tax claims in the form of dues where appeals filed by the department are pending, both before the High Court and Apex Court as also the demands which have arisen/likely to arise from the completion of the proceedings for period prior to the date of admission of resolution application.*
- C) That the Applicant be permitted to seek a clarification regarding its entitlement to carry out proceedings, other than recovery proceedings, that have and may lead to detection of and bring on record various other criminal and other liabilities against the erstwhile company and its Directors.*

*Management, Third parties, and to seek a direction to the respondent to cooperate in the proceedings.”*

11. We have heard learned Counsel for the Applicant in IA No.2720 of 2021, learned Counsel for Resolution Professional, learned Counsel for Successful Resolution Applicant and learned Counsel for CoC and have perused the records.

12. In I.A. No.2720 of 2020, learned Counsel for the Applicant has brought on record the order of the Hon’ble Supreme Court dated 15.09.2021 passed by the Hon’ble Supreme Court in **Civil Appeal No.3290 of 2017 – Commissioner of Income Tax-5 vs. Jet Airways (India) Ltd.** In the order dated 15.09.2021, the approval of Resolution Plan by Adjudicating Authority has been noticed by the Hon’ble Supreme Court. The Hon’ble Supreme Court directed that a copy of Resolution Plan be handed over to learned ASG and mater was listed for further directions. Subsequently, Hon’ble Supreme Court passed an order dated 16.11.2021 in the above Civil Appeal. It is useful to extract the entire order, which is to the following effect:

*“Learned Additional Solicitor General on the basis of the “Resolution Plan” handed over has placed before us some part of the relevant extract. The significant aspect as contained in para V of the “Resolution Plan” (General Clauses) is Clause 12 dealing with legal proceedings which reads as under :*

*“12. LEGAL PROCEEDINGS*

*12.1 If any legal, taxation or other proceedings of whatever nature, whether civil or criminal (including, before any statutory or quasi-judicial authority or tribunal (except all litigations relating to or arising out of non-implementation of Resolution Plan in any manner or priority of Financial Creditors/avoidance transaction application) (the “Proceedings”) by or against the Corporate Debtor is pending/ arising at any time, if any, the same shall stand transferred to the Resultant company.*

*12.2 All legal proceedings of whatsoever nature by or against the Corporate Debtor pending and/or arising at the Appointed Date in relation to the Demerged Undertaking shall be continued and enforced by or against the Resulting Company, and the Resulting Company will bear the liabilities of such proceedings at its own cost. The Corporate Debtor shall extend all its assistance to defend such proceedings at the cost of the Resulting Company.*

*12.3 Subsequent to the Appointed Date, if any proceedings are initiated by any third party (including regulatory authorities) by or against the Demerged Company under any statute, such proceedings shall be continued and enforced only against the Resulting Company and the Resulting Company shall bear the liabilities of such proceedings at its own cost. The Corporate Debtor shall extend all its assistance to defend the liabilities of such proceeding at the cost of the Resulting Company.”*

*As to what is the “Resulting Company” has been defined in Part II definition Clause 4.12 as under:*

*“4.12 - “Resulting Company” means Airjet Ground Services Limited, a company incorporated under the provisions of the Companies Act, 2013 with an authorised share capital of Rs. 1,00,00,000/- and paid up share capital of Rs. 50,00,000/-”*

*In view of the aforesaid, the submission of the learned Additional Solicitor General is that the “Resolution plan” itself protects the rights of the appellant-department to recover as though there was no outstanding liability on that date, the assessee having succeeded, the claim of the revenue department had been entertained through the present appeals and thus if the appellant succeeds on merits in the appeals, it would be entitled to make appropriate recovery against the “Resulting company”.*

*He further submits that in any case, he has advised the department to approach the NCLAT as the objections to the “Resolution Plan” by one of the creditors is still pending consideration.*

*In view of the aforesaid, we consider it appropriate to await the decision of the NCLAT before we bestow our consideration in appeals itself.*

*List after the NCLAT decides that matter and liberty to the parties to mention for listing of the matters after the said decision.*

*The “Resolution Plan” placed before us today in Court be kept in a sealed cover.”*

13. It is after order of the Hon'ble Supreme Court the I.A. No.2720 of 2021 has been filed on 02.12.2021. The learned Counsel for the Applicant has relied on paragraph 5 of the Resolution Plan, Clause 12 of which has been quoted by the Hon'ble Supreme Court in its order dated 16.11.2021. It is submitted that since the Resolution Plan itself contemplates and takes care of the any liability arising out of taxation proceedings against the Corporate Debtor, the Applicant is entitled to raise a claim in the proceedings, which has been tabulated in Exhibit-C to the Application. It is submitted that all proceedings relate to the period of assessment year 2012 to 2017-18. The learned Counsel for the Applicant has referred to prayer (b) and (c) as noted above.

14. The learned Counsel appearing for RP refuting the submission of learned Counsel for the Applicant submits that Applicant did not file any claim in the CIRP of Jet Airways. Even till the date of approval of the Resolution Plan, no such claim was filed or raised. The Resolution Plan was approved without considering dues of the Applicant. The learned Counsel for the RP, referring to the judgment of the Hon'ble Supreme Court in **Ghanshyam Mishra & Sons (P) Ltd. vs. Elelweiss Asset Reconstruction Co. Ltd. - (2021) 9 SCC 657** submits that all such claims/ dues owed to the State/ Central Government or any legal authorities including tax charges, which are not part of the Resolution Plan, shall stand extinguished. Applicant's claim being grossly belated, cannot now be admitted. The mere fact that proceedings are pending

before the Hon'ble Supreme Court, does not help the Applicant, when it has not filed any claim with the RP.

15. The learned Counsel for the Resolution Applicant opposing the submission of the learned Counsel for the Applicant contends that Applicant has sought only intervention and intervenor cannot claim any relief for itself. Reliance is placed on judgment in **(1999) 3 SCC 141 – Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax Haryana Rohtak**. Learned Counsel for the Successful Resolution Applicant further submits that Clause-12 of the Resolution Plan, which has been relied by Applicant is part of Scheme of Arrangement between Jet Airways (India) Ltd., Demerged Company of Corporate Debtor and Airjet Ground Services Limited (Resulting Company). He submits that Clause-12 cannot fasten any liability on Resolution Applicant, nor the liability has been taken care in the Resolution Plan.

16. We have considered the submission of learned Counsel for the parties in Appeal as well as in IA and have perused the record.

17. From the facts brought on record in the Application and replies filed thereto, it is clear that Applicant did not file any claim in the CIRP of Corporate Debtor till the approval of Resolution Plan. It is submitted that neither any claim nor proof of filing in the proceedings has been filed and hence, at this stage there is no occasion to admit the claim, which is brought on record as Exhibit-C to the Application, in the CIRP of the Corporate Debtor. Now coming to Clause-12 of Part-V, on much reliance has been placed by learned Counsel for the Applicant, it is clear from the

Resolution Plan brought on record that Clause-12 is part of Part-V of Scheme of Arrangement. The Scheme of Arrangement containing details of Part-VI of the Scheme as detailed in the Scheme of Arrangement is as follows:

*“SCHEME OF ARRANGEMENT  
BETWEEN  
JET AIRWAYS (INDIA) LIMITED  
(DEMERGED COMPANY OR CORPORATE DEBTOR)  
AND  
AIRJET GROUND SERVICES LIMITED  
(RESULTING COMPANY)*

*The Scheme (more particularly defined below) is divided into the following parts:*

- 1. Part I deals with Introduction, Rationale and Operation of the Scheme;*
- 2. Part II deals with the Definitions and Share Capita;*
- 3. Part III deals with demerger of the Demerged Undertaking of the Corporate Debtor into Resulting Company;*
- 4. Part IV deals with the Accounting Treatment;*
- 5. Part V deals with the General Clauses; and*
- 6. Part VI deals with the General Terms and Conditions.”*

18. Now when we come to Clause-12, it does contemplate all proceedings including taxation against the Corporate Debtor, which is pending. The Clause contemplate that **“the same shall stand transferred to the Resultant Company”**. The Resultant Company is Airjet Ground Services

Limited. The Scheme of Arrangement was entered with regard to various objects as noted in the Scheme. There are other Clauses of the Scheme, reference to Clause 6.10 and 6.11 of Part-III is also made, which are in line of the Clause 12 of Part-V.

19. Now we come to the submission of the learned Counsel for the Resolution Applicant that Intervenor cannot pray for any relief in the present Application. In **Saraswati Industrial Syndicate Ltd.** (supra) Hon'ble Supreme Court while considering the submission of Counsel for the Intervenor has observed that only purpose of granting an intervention application is to entitle the Intervener to address arguments in support of one or the other side. In paragraph 12 of the judgment, following has been observed:

*“12. Learned counsel for the interveners submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The interveners may take advantage of that order.”*

20. We have permitted the Applicant (Intervenor) in the matter and heard the argument of all the parties. We, however, are of the view that apart from permitting the intervention by the Applicant in this Appeal, none of the reliefs in Relief (b) and (c) of the Intervention Application can be granted by this Tribunal. The Clauses of Scheme of Arrangement as relied by

parties are self-explanatory and no clarification is required by this Tribunal in these proceedings.

Interlocutory Application No.2720 of 2021 is disposed of accordingly.

### **Appeal**

21. There is no dispute between the parties regarding facts and sequence of the events. The Appellant has filed its claim before the RP firstly on 04.07.2019. In paragraph 14 of the reply filed by the RP in this Appeal, details of the claims submitted by Appellant, the claimed amount and the claim admitted have been tabulated, which is to the following effect:

*“14. Pursuant to the initiation of the CIRP of the Corporate Debtor, the Appellant submitted the following claims with Respondent No.1.*

<i>S.No.</i>	<i>Date</i>	<i>Claim amount</i>	<i>Claim admitted</i>
<i>Claim No.1</i>	<i>July 04, 2019</i>	<i>Rs.963.47 Crores</i>	<i>Rs.963.47 Crores</i>
<i>Claim No.2</i>	<i>August 02, 2019</i>	<i>Rs.956.11 Crores</i>	<i>Rs.956.10 Crores</i>
<i>Claim No.3</i>	<i>January 07, 2020</i>	<i>Rs.956.21 Crores</i>	<i>Rs.956.21 Crores</i>
<i>Claim No.4</i>	<i>September 22, 2020</i>	<i>Rs.994.16 Crores</i>	<i>Rs.747.94 Crores (Note: Crores)</i>

22. By email dated 23.08.2019, the Appellant has informed the RP that Appellant had only invoked the Pledged Shares and the said Shares had not been sold by the Appellant and no proceeds had been appropriated by the Appellant towards the debt due from the Corporate Debtor. The RP in its reply affidavit filed in this Appeal has categorically stated that reduction

of the claim of the Appellant was on the basis of the judgment of this Tribunal in **India Power Corporation Ltd. vs. Meenakshi Energy Ltd.** (supra), in paragraphs 21 and 22 of the affidavit, the following has been stated:

“21. On September 20, 2020 this Hon’ble Tribunal in *India Power Corporate Ltd. v. Meenakshi Energy Limited & Ors.* (“*India Power Corporation Ltd.*”) once again affirmed the decision of PTC India. Annexed hereto and marked Exhibit E is a copy of the above judgment in *India Power Corporation Ltd.*

22. Accordingly, on September 19, 2020, Respondent No.1, through his legal counsel, informed the Appellant that the aggregate claim filed by the Appellant would be reduced to the extent of the fair market value of the shares of the Corporate Debtor acquired by the Appellant as on the date of invocation of the pledge. Accordingly, Respondent No.1 reduced the claim of the Appellant by Rs.202.09 crores (as per the market value of the Pledged Shares (based on the closing rate of INR 68.4 as on June 17,2019)) as on the date of invocation of the pledge i.e., June 17, 2019, in line with the decision of the NCLAT in *India Power Corporation Ltd.*”

23. The List of Creditors updated as on 25.09.2020 contains Note-2, which is to the following effect:

	<b>Notes:</b>
2	The claim of Punjab National Bank was provisionally admitted and remains subject to the outcome of the

	Civil Appeal No(s) 5443/2019 in the matter of PTC India Financial Services Ltd. versus Mr. Venkateshwarlu Kari & Anr. in the Supreme Court of India. Now the admitted claim is reduced by INR 2,020,992,844 in terms of the order passed by the Hon'ble National Company Law Appellate Tribunal in the matter of India Power Corporation Ltd. vs. Meenakshi Energy Ltd. and Other (in Company Appeal (AT) (Insolvency) No.1220 of 2019) pronounced on September 10, 2020.
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24. The claim of the Appellant, which was lastly admitted by the RP was for an amount of Rs.956.21 crores admitted on January 7, 2020, which stood reduced to Rs.747.94 crores submitted by Appellant on 22.09.2020. The reduction was affected by Resolution Professional on the ground of invocation of Shares of the Corporate Debtor Pledged to the Appellant as noticed above. As noted, the reduction of the claimed amount was affected by the RP on the basis of judgment of this Tribunal **India Power Corporation Ltd. vs. Meenakshi Energy Ltd** (supra) and judgment of **PTC India Financial Services Ltd.** Against the judgment **PTC India Financial Services Ltd.**, a Civil Appeal No.5443 of 2019 was filed, which has now been decided by Hon'ble Supreme Court on 12.05.2022. After considering the entire law on the subject, the Hon'ble Supreme Court has allowed the appeal and set aside the judgment of this Tribunal in **PTC India Financial Services Ltd.** In paragraph 105 of the judgment of the Hon'ble Supreme Court following law has been laid down:

**“105.** *In view of the aforesaid findings, it has to be held that registration of the pawn, that is the dematerialised shares, in favour of PIFSL as the ‘beneficial owner’ does not have the effect of sale of shares by the pawnee. The*

*pledge has not been discharged or satisfied either in full or in part. PIFSL is not required to account for any sale proceeds which are to be applied to the debt on the 'actual sale'. The two options available to PIFSL as the pawnee under Section 176 of the Contract Act remain and are not exhausted."*

25. In view of the law laid down by Hon'ble Supreme Court in ***PTC India Financial Services Ltd.***, the reason for reduction of the claim of the Appellant by RP is knocked out. The declaration of law by the Hon'ble Supreme Court has to be treated as law of the land at all relevant times including the date when claim was reduced by the RP. The law declared by the SC has to be given effect specially when Note-2 admitting the claim of the Appellant was subject to the decision of the Civil Appeal no.5443 of 2019, which was pending in the Hon'ble Supreme Court at the relevant time. Note-2 clearly indicate that reduction of the claim by the RP was to abide by the judgment of the Hon'ble Supreme Court in Civil Appeal No.5443 of 2019 and judgment of the Hon'ble Supreme Court having been delivered on 12.05.2022, which has to be given effect to with regard to the claim of the Appellant.

26. The learned Counsel for the RP has strenuously submitted that the Appellant is now estopped from raising the question with regard to approval of the Plan, it having voted in favour of the Resolution Plan. We need to notice two facts in the above context. The claim of the Appellant was reduced by the Resolution Professional on 25<sup>th</sup> September 2020, the Plan

came to be discussed in the 17<sup>th</sup> Meeting of CoC held on 03.10.2020. The Representative of the Appellant in the CoC Meeting held on 03.10.2020 had raised the issue of reduction in their claimed amount, relevant extract of the Minute noticing the aforesaid is follows:

*“The representative from PNB enquired on the reason for the reduction in their claim amount to which the RP explained that the said reduction is to the extent of the fair market value of the shares held by PNB as on the date of invocation of the pledge and the communication in this regard was sent to the PNB on September 19, 2020. The RP further clarified that based on the prevailing case laws, a decision was taken on the matter the change was also reflected in the List of Creditors version 9.”*

27. The next CoC Meeting was held on 20.10.2020, where the record of e-voting was noticed where also issue of reduction of claim of Appellant was raised and noted. Following was notice in the Minute:

*“The representative of PNB was not agreeable to the proposal and requested the RP to minutise its dissent as PNB’s claim of approx. INR 200 crores was rejected and they would suffer twice if such distribution methodology is allowed.”*

28. Secondly, the Appellant had filed an Application being IA No.2480 of 2020 objecting the reduction of their claim by Rs.202.90 crores. The Application was pressed and was listed for hearing, but unfortunately,

could not be adjudicated when Adjudicating Authority passed the order on 22.06.2021 approving the Resolution Plan.

29. We, thus, are satisfied that Appellant never acquiesced to the reduction of their claim and they were throughout agitating the same even before the CoC and has even filed a separate Application, which remained pending. In view of the aforesaid, no estoppel can be pressed against the Appellant in so far as reduction of claim of Rs.202.90 crores is concerned. As noted above, apart from the aforesaid factum of reduction of their claim, no other part of Resolution Plan has been objected by the Appellant, who has already voted in favour of the Plan. The Appellant is not praying for setting aside the impugned order on any other ground and their prayer in essence is only to accept the entire admitted claim and direct for distribution of assets under the Plan accordingly.

30. In the facts of the present case, we are of the view that the Appellant is entitled to the relief as prayed, it is not necessary to issue any direction for modifying the Resolution Plan or modifying the order of Adjudicating Authority approving the Resolution Plan. The interest of justice will be served in issuing direction to the Resolution Applicant to make distribution to the Appellant as per its admitted claim of Rs.956.21 crores as noted above, which however, shall be without affecting distribution of amounts to other Financial Creditors both Assenting and Dissenting Financial Creditors and other stake holders. In result, we allow this Appeal with following directions:

- (I) It is held that Appellant is entitled to their accepted admitted claim of Rs.956.21 crores. Reduction of their claim by Resolution Professional is set aside.
- (II) The Appellant shall be entitled for distribution under the Resolution Plan as per their admitted claim of Rs.956.21 crores, however, without affecting in any manner the payments to other Financial Creditors both Assenting and Dissenting Financial Creditors and other stake holders.
- (III) The liability of payment of additional amount to the Appellant in consequence of directions as above, shall be borne by Resolution Applicant from amount reserved under the Resolution Plan.

The Appeal is disposed of in view of above terms. No costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**21<sup>st</sup> October, 2022**

*Ashwani*