

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

Company Appeal (AT) (Insolvency) No. 248 of 2020

In the matter of:

State Tax Officer

...Appellant

Vs.

Ricoh India Ltd. & Ors.

...Respondents

For Appellant: Ms. Ritu Guru, Advocate.

For Respondents: Mr. Abhinav Vasisht, Sr. Advocate with Mr. Rohit Ghosh, Ms. Akshita Sachdeva, Mr. Prateek Kumar, Ms. Raveena Rai, Advocates for R-2&3.

J U D G M E N T
(18th December, 2024)

Ashok Bhushan, J.

This Appeal by State Tax Officer has been filed challenging the order dated 28.11.2019 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench in MA 691 of 2019 in CP No.156/I&BC/MB/MAH/2017 by which order Resolution Plan submitted by Respondent Nos.2 and 3 has been approved by the Adjudicating Authority. Appellant feeling aggrieved by the order approving the Resolution Plan has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor- Ricoh India Ltd. commenced by order dated 14.05.2018. Public

announcement was made by the IRP on 28.05.2018. Appellant filed a claim in Form F for an amount of Rs.510,636,046/- as liabilities arising out of CST, VAT and Sales Tax. The CoC confirmed the appointment of IRP as Resolution Professional on 17.06.2018. Apart from Appellant, other stakeholders including Financial Creditors, Operational Creditors, Workmen and employees filed their claims. The claims filed by all stakeholders including the Appellant were taken note of by Resolution Professional and updated list of creditors of Ricoh as on 24.08.2018 was published by Resolution Professional in which claim of Rs.510,636,046/- was reflected of the Appellant which claim was stated to be under verification. The RP issued three more list of creditors on 29.11.2018, 10.12.2018 and 24.01.2019. The claim of the Appellant was noticed in all the list of creditors and claim was not admitted by the RP noticing that the claims are under dispute which are pending before various authorities and/or under Appeal. In the CIRP of the Corporate Debtor in pursuance of Form G issued by the Resolution Professional, the Resolution Plan was submitted by the Respondent Nos.2 and 3 dated 12.02.2019. Resolution Plan noticed that the claim of statutory authority admitted is 'Nil'. The Resolution Plan proposed various payments to creditors. Resolution Plan came to be approved by the CoC on 13.02.2019 in 15th CoC meeting with 84.36% vote share. The Resolution Professional after approval of the plan by the CoC filed MA 691 of 2019 under Section 30(6) r/w Section 31(1) before the Adjudicating Authority for approval of the Resolution Plan. The application filed by the Resolution Professional for approval of the Resolution Plan was considered

by the Adjudicating Authority and by order dated 28.11.2019, the Resolution Plan was approved allowing MA 691 of 2019. Appellant aggrieved by the approval of the Resolution Plan has filed this Appeal.

3. We have heard Ms. Ritu Guru, Learned Counsel for the Appellant, Shri Abhinav Vasisht, Learned Senior Counsel for the SRA as well as Counsel for the Resolution Professional.

4. Counsel for the Appellant challenging the order submits that the claim was submitted by the Appellant in Form F well within time on 08.06.2018. The Resolution Professional did not send any communication to the Appellant regarding non-admission of the claim. Appellant was under impression that the claim which has been submitted shall be duly dealt in the CIRP process. It is submitted that the Appellant is a secured creditor. Adjudicating Authority failed to consider that the claim was submitted by the Appellant within time and Appellant was kept in dark. Appellant came to know that the claim of the Appellant was not admitted only after passing of the order dated 28.11.2019 by the Adjudicating Authority. The order dated 29.11.2019 notices that liability of statutory authority is 'nil' as Resolution Professional has not admitted the claims merely on the ground that the Appeals were pending. Pendency of the appeal shall not take away right of the Appellant. The assessment orders were passed by Competent Authority under the provisions of Gujarat Value Added Tax, 2003 which claims were entitled to be accepted. Counsel for the Appellant has also

relied on the judgment of the Hon'ble Supreme Court in ***“State Tax Officer vs. Rainbow Papers Ltd.”***.

5. Counsel for the SRA submitted that the list of creditors published by the Resolution Professional four times and the claim of the Appellant of the full amount which was submitted i.e. Rs.510,636,046/- is reflected in the list of creditors published. The list of creditors further mentions that the claim of the Appellant was not admitted on account of dispute/ Appeals pending. Appellant did not take any steps to challenge the non-admission of the claim. Resolution Professional having not admitted the claim of Appellant and other statutory claims, Resolution Plan was prepared by the SRA treating the statutory claims as 'nil'. Appellant have not taken any steps with regard to non-admission of the claim. It is not open for the Appellant to challenge the approval of the Resolution Plan. Resolution Plan was in compliance of provisions of Section 30(2) and has been approved. It is submitted that the Resolution Plan of Respondent Nos.2 and 3 approved by the Adjudicating Authority on 28.11.2019 was challenged upto the Hon'ble Supreme Court and Hon'ble Supreme Court vide its judgment in ***“Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Limited- Civil Appeal No. 2943-2944 of 2020”*** decided on 10.03.2021 upheld the approval of the Resolution Plan. Appellant cannot be allowed to challenge the said order. The Hon'ble Supreme Court in its judgment has upheld the approval of the plan and held that the commercial wisdom of the CoC in approving the plan cannot be made subject to challenge. It is submitted that the Resolution

Plan has been fully implemented and plan implementation was completed by March 2021. The present Appeal is liable to be dismissed.

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

7. There is no dispute between the parties that in pursuance of publication issued in Form F, the Appellant has filed its claim on 08.06.2018 for amount of Rs.510,636,046/-. The Resolution Professional has acknowledged the claim and the claim amount of the Appellant was reflected in the list of creditors which was issued on 24.08.2018. In the reply filed by the Resolution Professional as well as in IA No.764 of 2024 bringing on record additional documents, updated list of creditors has been brought on the record. The Resolution Professional has filed updated list of creditors for Ricoh India Limited as on 24.01.2019- Annexure 4 to the reply which contains the list of all claims under the heading 'claims pertaining to statutory authorities', the Appellant's claim has been noticed and list further states that the claim has not been admitted. It is useful to extract the list of creditors as uploaded by the Resolution Professional on 24.01.2019, relevant part of which is as follows:-

"Claims pertaining to Statutory Authorities"

<i>Ref No.</i>	<i>Name of Creditor</i>	<i>Claims Submitted</i>	<i>Claims Admitted</i>	<i>Claims under verification</i>	<i>Note</i>
SC01	Deputy Comm, Sales Tax, Maharashtra	3,47,33,90,103	-	-	Note 4
SC02	Commercial	1,22,12,857	-	-	Note 4

	<i>Tax Officer, Bhopal</i>				
SC03	<i>State Tax Officer, Gandhinagar</i>	51,06,36,046	-	-	Note 4
		3,99,62,39,006			

Note-

1. The amount admitted is subject to change subsequently as we receive further claims and based on additional information made available to us in respect of existing claims or additional information from books of accounts maintained by the company.

2. The claims pertaining to Fourth Dimension Solutions Ltd. (FDSL), have been disputed and are in proceeding before arbitration/appellate authorities. The liability is subject to the outcome of these proceedings

3. The claim pertaining to Connect Residuary Pvt. Ltd., has not been admitted due to the following reasons

a. Documentation proving the claim are inadequate and not satisfactory

b. Corporate debtor has already paid an amount much more than the value of the said equipment, for which claim has been filed

c. The equipment referred to in the rental agreements are physically untraceable

4. The claims pertaining to these authorities are under disputes which are pending before various authorities and/or under appeal. The liability is subject to the outcome of these proceedings.”

8. The updated list of creditors dated 24.08.2018, 29.11.2018, 10.12.2018 has also been brought on record along with the additional documents filed by Respondent Nos.2 and 3. The updated list of creditors as on 24.08.2018 has been filed as Annexure R3 to IA No.764 of 2021 in which

in Annexure D, list of claims of the creditors has been reflected. It is useful to extract following part of the said list, which is as follows:-

“Annexure D- List of Claims by creditors other than financial creditors and operational creditors

Ref No.	Name of Creditor	Claims Submitted	Claims Admitted	Claims under verification	Claims Rejected	Remarks
C001	Global Infonet Distribution Pvt. Ltd.	2,13,87,00,000	-	2,13,87,00,000		Matter is under arbitration
COO2	Addon Sales and Services Pvt. Ltd.	29,03,294	-	-	29,03,294	Equity Shareholder
C003	State Tax Officer, Unit 24, Gandhinagar	51,06,36,046	-	51,06,36,046		Subject to dispute pending before various authorities#
C004	Remote Computer Care	75,000	-	75,000	-	
	Total	2,65,23,14,340	-	2,64,94,11,046	29,03,294	

#Claim is subject to disputes pending before various authorities and/or under appeal, and the liability is subject to the outcome of ongoing proceedings

Note - The amount admitted is subject to change subsequently as we receive further claims and based on additional information made available to us in respect of existing claims or additional information from books of accounts maintained by the company.

Key Points to Note

- 1. CIRP Commencement date is May 14, 2018*
- 2. Claims received from all parties are under further verification. The same may be updated as per additional information received. Amounts admitted has been mentioned above basis available Information.”*

9. The above indicate that the entire claim was noted and it was mentioned that the claim is under verification. Subsequently, on the list issued on 29.11.2018, it was mentioned that the claim has not been admitted. Following part of the updated list of creditors as on 29.11.2018 is as follows:-

“Claims pertaining to Statutory Authorities

<i>Ref No.</i>	<i>Name of Creditor</i>	<i>Claims Submitted</i>	<i>Claims Admitted</i>	<i>Claims under verification</i>	<i>Note</i>
SC01	Deputy Comm, Sales Tax, Maharashtra	3,47,33,90,103	-	-	Note 3
SC02	Commercial Tax Officer, Bhopal	1,22,12,857	-	-	Note 3
SC03	State Tax Officer, Gandhinagar	51,06,36,046	-	-	Note 3
		3,99,62,39,006			

Note-

- 1. The amount admitted is subject to change subsequently as we receive further claims and based on additional information made available to us in respect of existing claims or additional information from books of accounts maintained by the company.*
- 2. The claims pertaining to Fourth Dimension Solutions Ltd. (FDSL), have been disputed and are in proceeding before arbitrators/appellate authorities. The ability is subject to the outcome of these proceedings.*
- 3. The claims pertaining to these authorities are under disputes which are pending before various authorities and/or under appeal. The liability is subject to the outcome of these proceedings.”*

10. The aforesaid indicate that in the list of creditors which was updated by the Resolution Professional, the claim of the Appellant was although noticed but was not admitted. The Resolution Plan was submitted by the SRA on 12.02.2019, the Adjudicating Authority in the impugned order dated 28.11.2019 has captured the entire resolution plan in paragraph 33 of the order. In the Resolution Plan under paragraph 3.5 under the heading ‘treatment of statutory authorities’ claim of the Appellant has been noticed. It is useful to extract paragraph 3.5 of the plan which is as follows:-

“3.5 Treatment of Statutory Authorities

Definition	Name of the Creditor	Submitted amount in INR
<i>“Unadmitted Statutory Creditors”</i>	<i>Deputy Commissioner, Sales Tax Maharashtra</i>	<i>3,47,33,90,103</i>
	<i>Commercial Tax Officer, Bhopal</i>	<i>1,22,12,857</i>
	<i>State Tax Officer, Gandhinagar</i>	<i>51,06,36,046</i>
	Total	3,99,62,39,006

We understand that the admitted claim amount for statutory dues admitted is NIL. The Resolution Applicant proposes to pay NIL to Statutory Authorities including Unadmitted Statutory Creditors, as a part of the Resolution Plan. As on NCLT Approval Date, the claim (whether crystallised on the NCLT Approval Date or not) shall stand permanently extinguished, and the Resolution Applicant and/or Corporate Debtor shall not be liable to make any payments, whether admitted or not in relation to these claims.”

11. Thus, the Resolution Plan notices the claim of the Appellant and mentioned that since statutory dues admitted are 'nil' no amount is proposed against the above claim. It is to be noted that apart from claim of the Appellant, there were two other claims of statutory authorities- Deputy Commissioner, Sales Tax Maharashtra and Commercial Tax Officer, Bhopal which is also stated to be nil.

12. From the facts brought on the record, it is not shown that the Appellant at any point of time raised any grievance regarding non admission of claim nor claimed to have filed any application before the Adjudicating Authority challenging non-admission of the claim. Resolution Professional has published four updated list of creditors, as noted above where the claim of Appellant was reflected and in the list, it was stated that the claim was not admitted. Regulation 13 of the CIRP Regulations provides for verification of the claims. Regulation 13(2) provides as follows:-

“13. Verification of claims.

(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 [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.”

13. The above provision indicate that the list of creditors shall be available for inspection by the person who has submitted proof of claim and shall be displayed on the website. It is not the case of the Appellant that the list of creditors was not available for inspection and it was not displayed on the website. The list of creditors which has been filed by the Respondent clearly indicate that it was placed on the website. The Resolution Professional in its reply filed in this appeal has pleaded that the list of creditors was displayed on the website and was updated periodically. In paragraph 5.4 of the reply, following has been stated:-

“5.4. That pursuant to the public announcement, claims of various financial creditors, operational creditors and other creditors of the Corporate Debtor were received, which were collated and verified by the IRP/RP in terms of the Code and the CIRP Regulations. Further, as per Regulation 13 of the CIRP Regulations, a list of creditors of the Corporate Debtor was prepared and filed with the Hon'ble Adjudicating Authority. The list of creditors of the Corporate Debtor was also displayed on the website and was updated periodically. Copy of list of creditors of the Corporate Debtor (as on 24 January

2019) is annexed herewith and marked as Annexure R-4.”

14. From the facts indicated above, it is clear that the list of creditors mentioned the claim of the Appellant as not admitted but no steps were taken by the Appellant challenging non-admission of the claim. As noted above, SRA has also prepared the Resolution Plan treating the claim of statutory authorities as ‘nil’. We, thus, do not find any error in the order of the Adjudicating Authority dated 28.11.2019 approving the Resolution Plan. Appellant having not taken any steps for agitating its claim before the Adjudicating Authority at the relevant time, it is not open for the Appellant to raise any grievance for non-allocation of any amount in the Resolution Plan.

15. It is further to be noticed that the same Resolution Plan of Respondent Nos.2 and 3 approved by the Adjudicating Authority on 28.11.2019 was subjected to challenge before this Appellate Tribunal and thereafter before the Hon’ble Supreme Court. The Hon’ble Supreme Court in **“Kalpraj Dharamshi & Anr.”** (supra) had upheld the order dated 28.11.2019 passed by the Adjudicating Authority approving the Resolution Plan of Respondent Nos.2 and 3. The Hon’ble Supreme Court in the said judgment has upheld the order of the Adjudicating Authority approving the Resolution Plan dated 28.11.2019. It is useful to extract paragraph 157 and 159 of the judgment which is as follows:-

“157. It is further to be noted, that after the resolution plan of Kalpraj was approved by NCLT on

28.11.2019, Kalpraj had begun implementing the resolution plan. NCLAT had heard the appeals on 27.2.2020 and reserved the same for orders. It is not in dispute, that there was no stay granted by NCLAT, while reserving the matters for orders. After a gap of five months and eight days, NCLAT passed the final order on 5.8.2020. It could thus be seen, that for a long period, there was no restraint on implementation of the resolution plan of Kalpraj, which was duly approved by NCLT. It is the case of Kalpraj. RP, CoC and Deutsche Bank, that during the said period, various steps have been taken by Kalpraj by spending a huge amount for implementation of the plan. No doubt, this is sought to be disputed by KIAL. However, we do not find it necessary to go into that aspect of the matter in light of our conclusion, that NCLAT acted in excess of jurisdiction in interfering with the conscious commercial decision of CoC.

159. In that view of the matter, we find, that Civil Appeal Nos. 2943-2944 of 2020 filed by Kalpraj; Civil Appeal Nos. 2949-2950 of 2020 filed by RP and Civil Appeal Nos.3138-3139 of 2020 filed by Deutsche Bank deserve to be allowed. It is ordered accordingly. The order passed by NCLAT dated 5.8.2020 is quashed and set aside and the orders passed by NCLT dated 28.11.2019 are restored and maintained.”

16. The Hon’ble Supreme Court in the aforesaid judgment has also noticed one fact that the implementation of the Resolution Plan commenced after approval of the plan. Counsel for the Respondent Nos.2 and 3 has

submitted that the Resolution Plan approved was fully implemented and information of the implementation of the Resolution Plan has already been sent to all stakeholders in March, 2021.

17. In view of the foregoing discussions and our conclusion, we are of the view that no ground has been made out to interfere with the impugned order passed by the Adjudicating Authority approving the Resolution Plan of Respondent Nos.2 and 3. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi

Anjali