

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**“CHANDIGARH BENCH, CHANDIGARH”**  
**(Exercising powers of Adjudicating Authority**  
**under the Insolvency and Bankruptcy Code, 2016)**  
**(through web-based video conferencing platform)**

**CA Nos.89/2019, 273/2019,  
729/2019, 511/2021, 865/2019,  
866/2019, 553/2019, 728/2019,  
IA Nos.179/2021, 352/2021, CA  
No.557/2019, IA Nos.132/2021,  
& 86/2022**

**In  
CP (IB) No. 35/Chd/HP/2018  
(Admitted Matter)**

**In the matter of:**

|                       |                                    |
|-----------------------|------------------------------------|
| Phoenix Arc Pvt. Ltd. | ...Petitioner-Operational Creditor |
| Versus                |                                    |
| GPI Textiles Ltd.     | ...Respondent-Corporate Debtor     |

And in the matter of:-

1. **CA No.89/2019** **Under Section 18(1)(f), 20(2)(e), 25(2)(a),  
60(5) of the IBC, 2016 and read with Rule 11  
of the NCLT Rules, 2016**

|                                                                                         |                |
|-----------------------------------------------------------------------------------------|----------------|
| Jalesh Kumar Grover, Resolution Professional<br>of GPI Textiles Limited                 | ....Applicant  |
| Vs.                                                                                     |                |
| The Hongkong and Shanghai<br>Banking Corporation Ltd. (HSBC) &<br>Reserve Bank of India | ...Respondents |

And in the matter of:-

2. **CA No.273/2019**
- |                                                                         |                  |
|-------------------------------------------------------------------------|------------------|
| The Hongkong and Shanghai Banking<br>Corporation Ltd. (HSBC)            | ....Applicant    |
| Vs.                                                                     |                  |
| Jalesh Kumar Grover, Resolution Professional<br>of GPI Textiles Limited | ...Respondent/RP |

And in the matter of:-

3. **CA No.729/2019**
- |                                                                              |                  |
|------------------------------------------------------------------------------|------------------|
| State Bank of India                                                          | ....Applicant    |
| Vs.                                                                          |                  |
| GPI Textiles Limited through<br>Jalesh Kumar Grover, Resolution Professional | ...Respondent/RP |

And in the matter of:-

**4. IA No.511/2021 Under Section 60(5) of the IBC, 2016**

IDBI Bank Ltd. ....Applicant  
Vs.  
Jalesh Kumar Grover, Resolution Professional  
of GPI Textiles Limited ...Respondent/RP

And in the matter of:-

**5. CA No.865/2019 ....Applicant**  
M/s Shreeji Cotfab Limited  
Vs.  
GPI Textiles Limited through  
Jalesh Kumar Grover, Resolution Professional ...Respondent/RP

And in the matter of:-

**6. CA No.866/2019 Under Section 60(5) read with Section 31 of  
the IBC, 2016**  
M/s Shreeji Cotfab Limited ....Applicant  
Vs.  
GPI Textiles Limited through  
Jalesh Kumar Grover, Resolution Professional ...Respondent/RP

And in the matter of:-

**7. CA No.553/2019 Under Section 60(5) read with Section 31 of  
the IBC, 2016**  
M/s Longowalia Yarns Limited ....Applicant  
Vs.  
GPI Textiles Limited through  
Jalesh Kumar Grover, Resolution Professional ...Respondent/RP

**8. CA No.728/2019 Under Section 60(5) of the IBC, 2016**

Gurudatta Ginning and Pressing Pvt. Ltd. ....Applicant  
Vs.  
GPI Textiles Limited through  
Jalesh Kumar Grover, Resolution Professional ...Respondent/RP

And in the matter of:-

**9. IA No.179/2021 Under Section 60(5) of the IBC, 2016 and  
read with Rule 11 of the NCLT Rules, 2016**

Indo Rama Synthetics (I) Ltd. ....Applicant  
Vs.  
GPI Textiles Limited through  
Jalesh Kumar Grover, Resolution Professional ...Respondent/RP

And in the matter of:-

**10. IA No.352/2021**

**Under Section 60(5) of the IBC, 2016**

M/s Aayat Processors

....Applicant

Vs.

GPI Textiles Limited through

Jalesh Kumar Grover, Resolution Professional

...Respondent/RP

And in the matter of:-

**11. CA No.557/2019**

**Under Section 60(5) of the IBC, 2016**

Lalan Kumar Singh, Member of Suspended

Board of Corporate Debtor

....Applicant

Vs.

Jalesh Kumar Grover, Resolution Professional  
of GPI Textiles Limited

...Respondent/RP

And in the matter of:-

**12. IA No.132/2021**

**Under Section 60(5) of the IBC, 2016**

Central Goods & Services Tax,

Commissionerate, Shimla through its Commissioner

....Applicant

Vs.

Jalesh Kumar Grover, Resolution Professional  
of GPI Textiles Limited

...Respondent/RP

And in the matter of:-

**13. IA No.86/2022**

**Under Section 60(5) of the IBC, 2016**

Consortium of Proma Industries Limited &

Shivam Syncotex Private Limited

....Applicants

Vs.

1. Jalesh Kumar Grover, Resolution Professional  
of GPI Textiles Limited

2. State Bank of India

3. Phoenix Arc Private Limited

...Respondents

**Order delivered on 24.05.2022**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing: -**

**CA No.89/2019**

For the Applicant/RP : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

For the Respondent No.1(HSBC) : Mr. Sanjay Gupta, Advocate  
Mr. Ajay Monga, Advocate

For the Respondent No.3 : Mr. Sajeve Deora, Practising Chartered Accountant

**CA No.273/2019**

For the Applicant : Mr. Sanjay Gupta, Advocate  
Mr. Ajay Monga, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.729/2019**

For the Applicant : Mr. Rakesh Gupta, Advocate  
Mr. Rakshit Gupta, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**IA No.511/2021**

For the Applicant : Mr. Harsh Garg, Advocate  
Mr. Pulkit Goyal, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.865/2019**

For the Applicant : Ms. Pallavi Singh, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.866/2019**

For the Applicant : Ms. Pallavi Singh, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.553/2019**

For the Applicant : Ms. Pallavi Singh, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.728/2019**

For the Applicant : Mr. Rishabh Gupta, Advocate

For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**IA No.179/2021**

For the Applicant : Mr. Amit Sharma, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**IA No.352/2021**

For the Applicant : Mr. Alok Jagga, Advocate  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**CA No.557/2019**

For the Applicant (for L.K. Singh,  
Suspended Director) : Mr. Sajeve Deora, Practising Chartered Accountant

For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**IA No.132/2021**

For the Applicant : Mr. Sourabh Goel, Advocate  
Senior Standing Counsel for CBIC  
(on 16.06.2021)  
For the Respondent : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate

**IA No.86/2022**

For the Applicant : Mr. Hemant Sharma, Advocate  
For the Respondent No.1 : Mr. Abhishek Anand, Advocate  
Mr. Viren Sharma, Advocate  
For the Respondent No.2 : Mr. Rakesh Gupta, Advocate  
Mr. Rakshit Gupta, Advocate  
For the Respondent No.3 : Mr. Manish Jain, Advocate  
Ms. Divya Sharma, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**Factual Background:** The IAs taken up for consideration and discussion in this common order relate to the CIR Process in the case of M/s GPI Textiles Limited

(Corporate Debtor). In this case, the CIRP was initiated by order of this Tribunal dated 06.07.2018 and the CoC of the Corporate Debtor comprised Phoenix Arc Private Limited and State Bank of India having voting share of 92.55% and 7.45% respectively. The Committee of Creditors (CoC) in its 12th meeting held on 27.03.2019 approved M/s Aggarsain Spinners Limited as the Successful Resolution Applicant. and the Resolution Plan was submitted before this Adjudicating Authority for approval by CA No.287/2019 filed on 11.04.2019.

The below-mentioned IAs are all linked to the aforementioned Resolution Plan approved by the COC and have been filed mainly by, (i) the Financial Creditors - State Bank of India, and other banks including The Hongkong and Shanghai Banking Corporation Ltd. (HSBC), IDBI Bank Ltd; (ii) the Operational Creditors - M/s Shreeji Cofab Limited, Gurudatta Ginning and Pressing Pvt. Ltd., M/s Aayat Processors, Indo Rama Synthetics (I) Ltd.; (iii) and Others including employees of the corporate debtor. The facts mentioned and the prayers made in these IAs are interlinked and many times repetitive. In most of these IAs there is a common prayer that the resolution plan submitted before this Adjudicating Authority should not be approved until their respective prayers are considered/accepted by the CoC. By our order of even date in CA No.287/2019, the Resolution plan submitted before this Authority for approval has been rejected and the matter is referred back to the Committee of Creditors (CoC). Accordingly, In view of this, no further finding is required to be recorded in respect of the same prayer made, inter alia, in the IAs taken up hereunder. The other prayers are, however, taken up for discussion as below:-

**1. CA 89/2019**

This is an application filed under Section 18(1)(f) read with Section 20(2)(e), 25(2)(a), 60(5) of the Insolvency & Bankruptcy Code, 2016 and read with Rule 11 of the NCLT Rules, 2016. In the present application, **Jalesh Kumar Grover, Resolution Professional of GPI Textiles Limited** is the applicant, and **The Hongkong and Shanghai Banking Corporation Ltd. (HSBC) and Reserve Bank of India** are the respondents.

2. In the present application, the applicant-Resolution Professional prays for a direction to the Respondent to deposit an amount of Rs.81.67 crores along with interest @12% per annum from 22.03.2012 till the last date of final payment from HSBC with the Corporate; (2) During the pendency of the present application, the Reserve Bank of India should be directed to withhold an amount of Rs.81.67 crores along with interest at 12% per annum for the period from 22.03.2012 till the date of final payment from HSBC.

3. The brief facts of the case as stated in the application are as under:  
The Corporate Insolvency Resolution Process was initiated against the corporate debtor i.e. GPI Textiles Limited on 06.07.2018 and the RP had collated the claims submitted by the creditors and formed the CoC. The applicant RP received a claim from one of the financial creditors of the corporate debtor i.e. Phoenix ARC Pvt. Ltd. for an amount of Rs.286,48,31,235/-. It is further submitted that originally the corporate debtor has approached the respondent bank i.e. The Hongkong and Shanghai Banking Corporation Ltd.(HSBC) for the financial assistance and vide sanction

letter dated 24.03.2009, an amount of Rs.1,29,02,00,000/- was granted. The aforesaid loan was backed by SBLC denominated in USD from HSBC Mauritius. Accordingly, a Corporate Rupee Loan Facility agreement dated 08.04.2009 was instituted between the corporate debtor and respondent bank and a deed of hypothecation and Memorandum of Entry in favour of HSBC was executed to secure the loan granted to the corporate debtor. It is added by the applicant that the primary security was HSBC SBLC against the credit facility and whenever the corporate debtor did not pay interest/processing fee, HSBC used to draw down on SBLC. The last payment of the interest was made by HSBC by way of drawdown from HSBC SBLC on 15.02.2012. On 26.03.2012, the corporate debtor received a letter dated 23.02.2012 from HSBC stating that HSBC has assigned the loan along with underlying financial documents and the security interest (other than SBLC) to Phoenix Arc. Pvt. Ltd. by way of a deed of assignment dated 21.03.2012. In order to substantiate its claim, the corporate debtor has filed an Assignment Agreement dated 21.03.2012 executed between HSBC Bank Ltd and Phoenix ARC Pvt. Ltd. and Statement of Accounts are attached as Annexure A-7 of the application. As per the statement of account of HSBC, HSBC evidences a receipt of Rs. 816,777,186.41 by HSBC towards the loan facilities.

3.1 It is submitted by the applicant that the said issue was contended by the corporate debtor during the pendency of Section 7 application filed before this Tribunal. This contention was rejected as would be seen from the order of this authority dated 06.07.2018. The applicant has verified the claim submitted by Phoenix Arc. Pvt. Ltd. and vide email dated 02.08.2018 sought clarifications

and supporting documents for considering the claim. The claimant provided a copy of the statement of account of the corporate debtor maintained with HSBC and sought further time to clarify the issue of the receipt of Rs. 81.67 crores by HSBC on behalf of the corporate debtor. The claimant has clarified vide email dated 07.08.2018 that Phoenix Arc. Pvt. Ltd. has not received any credit for the said amount of Rs. 81.25 Crores. Hence, there was no need for the treatment/accounting in the books of Phoenix Arc. Pvt. Ltd. Thereafter, the applicant-Resolution Professional has admitted the claim of Phoenix Arc. Pvt. Ltd. to the extent of Rs.286,48,31,235/-. The applicant-Resolution Professional vide email dated 17.08.2018 requested the respondent to provide clarification on the aforesaid amount of Rs.816,777,816.41. Respondent No.1 by e-mail dated 21.09.2018 stated that it did not receive any payment from the corporate debtor post assignment of debt to Phoenix Arc. Pvt. Ltd. and the entry of aforesaid amount was part of closing internal entry which the respondent bank had passed on 22.03.2012. After the reply from respondent No.1, the applicant vide e-mail dated 24.09.2018 sought clarifications with regard to the amount of debt assigned to Phoenix Arc. Pvt. Ltd. and the amount of SBLC held as security to HSBC. The respondent bank has replied that SBLC was partially called in two trenches i.e. on 16.11.2011 for USD 526,160 and 15.02.2012 for USD 772,009. The applicant has convened a meeting on 22.10.2018 with the respondent bank for clarification. The resolution professional has also sought the intervention of the Reserve Bank of India vide email dated 27.10.2018 to verify the claim submitted by the Phoenix Arc. Pvt. Ltd. as the respondent Bank neither provided the documents nor replied to the questionnaire raised by the

applicant. The respondent Bank vide letter dated 29.10.2018 has stated that the SBLC was not assigned to Phoenix Arc. Pvt. Ltd. The applicant/Resolution Professional has averred that it is also an admitted fact that Rs.81.67/- Crores have been received by HSBC and the amount of Rs.81.67/- Crores is an asset of the corporate debtor and it is the duty of the applicant to take the custody and control of the said amount lying with the respondent Bank as once the debt was assigned on 21.03.2012 to Phoenix Arc. Pvt. Ltd. by respondent No. 1, any amount lying with HSBC was towards the credit of the corporate debtor.

4. Notice of this application was issued to the respondents on 12.02.2019 and the respondent Bank has filed reply by Dairy No.00197/13 dated 13.04.2021. It is pertinent to mention here that Mr. Lalan Kumar Singh, Suspended Director of Corporate Debtor is added as Respondent No.3 after this Tribunal allowed application bearing CA No.658/2019 seeking impleadment of Respondent No.3 in the present application and by its order dated 21.08.2019.

5. Respondent No.1, i.e, Hongkong and Shanghai Banking Corporation Ltd. (HSBC) has filed Reply vide Dairy No.00197/13 dated 13.04.2021 wherein it has been stated that in the letter dated 16.08.2019 of the RP, it is mentioned that *“an amount of Rs.81,67,77,186/- has been paid by GPITL (GPI Textile Limited) a day post assignment to HSBC on 22.03.2012”*. Thus, the basis of the claim was the presumption of the RP that the amount has been paid by the Corporate Debtor. It is also contended that no amount has been received by Respondent Bank from GPI post assignment.

5.1 It is further submitted that the amount of Rs.81.67 crores is shown as a liability in the Balance Sheet of the year 2016 (total liability being Rs.130 crores) of the Corporate Debtor. As per Section 20 of the code, RP is authorised to take control of and custody of 'Property', which is defined in Section 3(27) but the said amount has been shown as liability in the Balance Sheet of Corporate Debtor. Therefore, Section 20 is clearly not applicable. It is also added that since GPI has stated during the course of arguments while contesting petition for admission that they have filed a counterclaim with respect to Rs.81.67 crores and, therefore, the matter must be pending before some Authority.

5.2 It is averred by Respondent Bank that even if it is assumed to be a Debt, even then it becomes time-barred as the transaction is of year 2012, which admittedly was in the knowledge of GPI. No recovery action would be maintainable for a debt, which was allegedly due and payable in the year 2012. In view of the submissions, the present application is liable to be dismissed with exemplary cost.

6. The applicant has filed rejoinder vide Diary No.00970/2 dated 28.04.2021 and has reiterated that this court has jurisdiction to entertain the present application. The applicant has received a claim from Phoenix ARC Pvt. Limited from an amount of Rs.286,48,31,235/- and a Standby Letter of Credit (SBLC) denominated in USD has been created to secure the aforesaid loan and whenever the corporate debtor does not pay interest, the HSBC used to draw down on SBLC on the said amount. It is stated that as per the statement of bank accounts of HSBC, just after the assignment, a receipt of Rs. 816,777,186.41/- is evidenced towards the loan facilities.

6.1 The applicant has denied the submission of Respondent No.1 with regard to the question of limitation. It is stated that the Respondent bank has failed to transfer the sum of Rs. 81.67 Crores to the Phoenix ARC Pvt. Limited in terms of Assignment Agreement, therefore the Respondent bank is in possession of the corporate debtor's assets and the applicant is duty-bound to take into the custody of all the assets of the corporate debtor under Section 18 and 25 of the IBC. Accordingly, as per the applicant, the question of limitation does not arise at all.

7. Respondent No.3 (Suspended Board of Directors) Mr. Lalan Kumar Singh has filed a written submission vide dairy No. 00970/5 Dated 16.02.2022 wherein it has been stated that a loan was taken by the CD from HSBC Bank and the same was secured by the assets of CD and SBLC. It is stated by Respondent No.3 that the counsel of HSBC in a hearing held on 08.02.2022 stated that Rs.81,25,08,408/- was received in the Loan Account of the Corporate Debtor with HSBC from GLAM-II towards the loss of HSBC India. The facts as stated by the applicant are reiterated here and it is pointed out that the SBLC guarantee was secured by the term deposit of an amount equal to 105% of SBLC held by HSBC Mauritius. GLAM is a 44% shareholder of the corporate debtor and it had provided the Term Deposit of Rs. 131 Crore (then Indian Rupee value of US Dollar) to secure the SBLC Guarantee issued by HSBC Mauritius. No security could be released by HSBC without the consent of the corporate debtor and the credit of Rs. 81.25 Crores on 22.03.2012 in the bank statement of Loan Account of the corporate debtor as availed from HSBC is read as ***“Transfer Partial Claim Proceeds Under GTY (Guarantee) FM***

***(FROM) HSBC MAR (MAURITIUS) Appointed to GPI Textile Ltd. (Para XVI of IA, Page 11 of IA)”***

7.1 The statement of the Counsel of HSBC that GLAM paid Rs. 81.25 Cr. to HSBC to meet the loss of HSBC can only be seen in the light of the fact that the Term Deposit Rs. 131 Crore was available for utilisation and was in fact utilised to the extent of Rs. 81.25 Crore and that not utilising the remaining amount of Rs. 50 Crore was the choosing of HSBC. Therefore, Rs.81.25 Cr. received by HSBC in the Loan Account of the corporate debtor rightly belongs to the corporate debtor and is recoverable by the corporate debtor with the interest from 22.03.2012. It is also mentioned that the matter of the claim is pending before the Hon'ble Debt Recovery Tribunal (DRT).

8. Before considering the merits in the prayer for directing the HSBC Bank to deposit an amount of Rs.81.67/- crores along with interest to the Corporate Debtor, this Bench notes that this issue has been a subject matter of litigation since 2012 before different Judicial Authorities. The proceedings before the Hon'ble Debt Recovery Tribunal (DRT) were stayed on the commencement of CIRP in the case of the corporate debtor. The proceedings before ***Hon'ble Board of Industrial and Financial Reconstruction in the matter of State Bank of India No.SCB/RM-1/39 dated 24.04.2012 (BIFR)***, could not be completed because of the abatement of Sick Industrial Companies (Special Provisions) Act, 1985. This issue was also referred by the applicant-RP to the Reserve Bank of India, which in turn has carried out an investigation into the matter after obtaining a response of the respondent Bank to the complaint of

the applicant-RP. There was an application filed by Shri. LK Singh, the Suspended Director, *before Hon'ble Himachal Pradesh High Court in Civil Writ Petition No. 648 of 2018* and vide the order dated 13.06.2018, the petitioner was permitted to withdraw the writ. In a connected proceedings, the Hon'ble Supreme Court of India in *Civil Appeal No.1927 of 2019 dated 08.03.2019* by its order dated 02.03.2021, "permitted the reasoning of any matter other than in relation to the insolvency of a corporate debtor before the NCLT".

8.2 This issue also came up for consideration at the time of consideration of the Section 7 application by this Adjudicating Authority. The observation on this issue in this Adjudicating Authority's order dated 06.07.2018 is quoted below for the sake of clarity:

*"XVI. That the said issue was also contended by the Corporate Debtor during the pendency of Section 7 Application before this Hon'ble Adjudicating Authority, which is recorded in the admission order dated 06.07.2018 as under:-*

*(vii) The learned counsel for the respondent has submitted that a fraud was committed on the respondent and that there was also settlement of loan. The major ground taken in that HSBC and the petitioner have failed to explain the drawdown of more than Rs. 81 crores which was made on SBLC (reflecting in the bank account statement of the respondent on 22.03. 2012 i.e. one day after assignment. It is stated at page 16 of the reply filed by diary No.757 dated 15.03.2018 that the "Demand Deposit Transaction History" of the respondent showed a receipt of Rs. 81,25,08, 408 as "PROCEEDS UNDER GTY FROM HSBC MAR". The copy of the Demand Deposit Transaction History dated 05.04.2012 has been enclosed as Annexure R-8 of the reply. This Demand Deposit Transaction History related to the respondent 's account with HSBC and the relevant entry of 22.03.2012 reads as follows:-*

*Page 106 of reply*

| Date                | Transaction Details                                                                                                                                                                                                               | Deposit                                                           | Balance                                                                |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------|
| 22<br>March<br>2012 | TRANSFER HSBC -<br>PHOENIX ARC -<br>ESCROW FT TO GPI<br>TEXTILES LTD WRLR<br>-000069 11:13:52<br>TRANSFER PARTIAL<br>CLAIM PROCEEDS<br>UNDER GTY FM HSBC<br>MAR APP ROPRTINOD<br>TRF TO GPI TEXTILE<br>LTD<br>WRLP-00112 17:46:03 | 500,000,000.00<br><br><br><br><br><br><br><br><br><br>812,508,408 | 478,088,070.50<br><br><br><br><br><br><br><br><br><br>1,290,596,478.50 |

The respondent has only taken an extract of the narration in its reply at page 16. **The contents of the noting of the transaction do not appear to justify the claim of the respondents that this was a draw down which was made on SBLC.** The amount involved is substantial. However, with regard to clarification regarding the entry the respondent has mainly referred to communications in March 2012. (Annexure R-7 (colly) of reply). It has been also stated that by e-mail dated 30.03.2012 (page 109 of reply) when the respondent enquired from HSBC regarding the entry, it was told that since the account has been assigned to the petitioner with effect from 21.03.2012, all balance confirmations and outstanding details from 21.03.2012 onwards needs to be obtained from the petitioner only and when the respondent asked the petitioner by letter dated 06.07.2012, it was told by letter dated 20.07.2012 (Annexure-V (h) of the application) that the matter may be taken up separately with HSBC for seeking the details. It appears that no further action has been taken by the respondent to find out the complete details of the amount of about Rs.81.25 crores. We may add that in the letter dated 20.07.2012, the petitioner has stated that they have not received any money as part of repayment towards the loan due and payable after the execution of deed of assignment and that the allegation regarding appropriation of amount received from encashment of SBLC is incorrect and unjustified.” (Emphasis supplied)

8.3 It is also relevant to refer to the observation of the Hon’ble NCLAT by its judgement dated 20.12.2018 while dismissing the appeal filed by the Suspended Director challenging the CIRP order as under:-

“19. In the present case we find that the appellant has sought declaration that the assignment made by HSBC to Phoenix as illegal, which can be raised only in a Civil Suit. The appellant is trying to convert the proceedings under the I&B Code as civil proceedings akin to a trial which is not the legislative intent.

21. .... The assignment cannot be challenged in the petition under Section 7 and that too by a party who had the knowledge of "Assignment Deed" as back as in the year 2012, as noted above, the DRT Chandigarh, when it requested and never challenged the same before a court of competent jurisdiction." (emphasis supplied)

8.4 In the course of the present proceedings, the applicant-Resolution Professional has vehemently argued that this issue squarely falls within the jurisdiction of this Tribunal as the same is in relation to the insolvency resolution process, and thus falls under Section 60(5) of the Code.

8.5 Now, advertent to the facts as submitted by parties to this application, an amount of Rs.81.67/- Crores was transferred into the account of the corporate debtor by HSBC Bank as reflected in the Bank statement. The controversy arises from the claims and counter claims made regarding the nature of this entry of Rs.81.68 Crores by the two opposing parties. While the applicant-RP claims that the HSBC Bank has not settled this amount against the loan facility availed by the corporate debtor, the respondent Bank on the other hand has vehemently argued that this amount represents an intra-branch adjustments of the HSBC Bank.

8.6 It is also noted that though this issue has been taken up in different judicial forums, no decision in this regard has so far materialised. This Bench has carefully perused the communications between the applicant-RP and the respondent Bank on this issue. In the course of the present proceedings, the applicant-RP was given an opportunity to substantiate his claim by referring to the relevant entries on this transaction in the books of the corporate debtor. We

also note that the treatment given to this transaction in the books of the corporate debtor and the respondent Bank differ diametrically. In its written submission filed by Diary No.00970/6 dated 16.02.2022, the Resolution Professional states that in its audited financial statements under the Long Term Borrowings, it has shown the amount of Rs.129 Crores (Principal) and has also added a note in the audited financial statements stating that for the said financial assistance a security was provided in the form of SBLC. Prima facie, the amount of Rs.81.67 Crores, representing the claim of the applicant RP, does not appear directly in the Books of the corporate debtor, though it is argued that this claim can be inferred from the related entries.

8.7 The respondent Bank in its submissions filed by Diary No.00976/4 dated 10/02/2022 has denied the allegation regarding HSBC India drawing down on the SBLC to make good the interest/processing fee payment and also denied that HSBC India had drawn down from the SBLC on 15.02.2012 and purportedly cleared then outstanding interest. It has also denied the allegation that information about the assessment of loan was withheld from GPI. It has further stated that the objection to the assessment by GPI and the underlined allegation are an afterthought because GPI had made a declaration that it had no objection to the substitution of Phoenix in place of HSBC India before the BIFR. In a hearing before BIFR in MA No.142/BC/2012, the Respondent Bank had further reiterated its earlier explanation that the entries relating to Rs.81.67 Crores are internal entries which HSBC India had passed through GPI's current account after assessment. The Bank further asserted that there was no

wrongful assessment of the loan as GPI was declared as NPA as per RBI guidelines and therefore could well have been sold to an ARC.

9. We have heard the learned counsel on behalf of the applicant and also on behalf of the respondent Nos.1 and 3 and gone through the relevant records. As there is no response from the Respondent No.2, The Reserve Bank of India, it is presumed that it has nothing to say in the matter.

9.1 The only issue for the consideration of this Bench is whether the disputed amount of Rs.81.67 Crores is the asset owned by the corporate debtor and therefore should be brought under the custody of the RP. As is clear from the foregoing discussions, the dispute over the amount of Rs.81.67 Crores goes back to 2012, i.e. much before the initiation of the CIRP proceedings. This dispute has been taken before various judicial authorities as mentioned in the foregoing paragraphs, though no decision in the matter by any authority has been produced before this Bench. This issue is closely related to the assignment of SBLC by HSBC. As noted, the Hon'ble NCLAT has held in its judgment dated 20.12.2018 that this issue can be raised only in a civil suit and the appellant is 'trying to convert the proceedings under the I&B Code as civil proceedings akin to a trial which is not the legislative intent'. It is also further noted that there is no clear evidence in the books of accounts of the corporate debtor regarding this entry of Rs.81.67 Crores even though it is claimed that this amount can be inferred from the Note 5 in the audited financial statements. In short, it is not recorded in the Balance Sheet of the Corporate Debtor - one of the requirements of Section 18(f) of the IBC.

9.2 In this context, the decision of the Hon'ble Supreme Court in the case of ***Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. Civil Appeal No. 9241 of 2019*** has been brought to the notices of this Bench. The following paragraphs, relevant to the present discussion are extracted below:-

*“Considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. ....The nexus with the insolvency of the Corporate Debtor must exist.[Para-67]*

*...The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the Corporate Debtor.[Para-69]*

*.....RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. [Para-72]”*

9.3 In the present case, the issue of assignment of SBLC, which took place much prior to the initiation of the CIRP proceedings, is not related to the insolvency of the corporate debtor. As narrated in the foregoing paragraphs, this issue has been agitated before different judicial authorities since 2013 onwards and is not in any way pivotal to the resolution process. To prove the claim additional evidence has to be brought on record during the current proceedings. The requirement for leading evidence suggests that the instant matter is out of the scope of summary proceedings under the Insolvency and Bankruptcy Code, 2016, and will be better dealt with in a civil Court. Also, by its very nature, it appears like a recovery suit. It is trite law that the Code is a beneficial legislation to put the corporate debtor on its feet, and not a mere recovery legislation for the parties.

9.4 We are also conscious of the observation of the Hon/ble Apex Court in the case of M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd Vs. M/s Girnar Fibres Ltd (2022) ibclaw.in 26 SC

*“Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant.”*

10. Considering the facts and the legal issues discussed above, we are of the view that this issue cannot be a subject matter of the proceedings under Section 60(5)(c) of the IBC, 2016. The RP is, however, at liberty to take up this issue before competent judicial authority for relief, if any. It is also made clear that this Bench has not expressed any opinion on the merits of this claim of an amount of Rs.81.67 Crores by the corporate debtor.

11. In view of the discussion above, application bearing CA No.89/2019 is rejected and accordingly stands disposed of.

## **2. CA No.273/2019**

In the present application, **The Hongkong and Shanghai Banking Corporation Ltd. (HSBC)** is the applicant, and Jalesh Kumar Grover, **Resolution Professional of GPI Textiles Limited**, is the respondent.

2. In the present application, the applicant prayed that the present application be allowed and the CA filed by the RP being CA No.89/2019 be dismissed at this stage itself being not maintainable and any other order this Hon'ble Tribunal/ Adjudicating Authority may deem fit & proper in the facts and circumstances of the case be also.

3. As the CA No. 89/2019 is already dismissed, this CA 273/2019 becomes infructuous and accordingly stands disposed of.

### **3. CA No.729/2019**

The present application is filed by **State Bank of India** through its Assistant General Manager against **the Resolution Professional of GPI Textiles Limited**

2. It is prayed in the present application that the resolution plan of M/s Aggarsain Spinners Pvt. Ltd. be rejected by dismissing CA No.287/2019. It is further prayed that the exclusively held secured asset of the applicant/objector i.e, land measuring 45.10 acres located at Bharatgarh Road, Naraingarh, Distt. Solan be kept out of the resolution plan/liquidation as the Applicant is exercising its right under Section 52(1)(b) IBC,2016.

3. It is stated in the application that the Resolution Professional has constituted CoC as per the norms of IBC and the share of the applicant was determined at Rs. 23.05 crores and that of the Phoenix Arc (Another Financial

Creditor) was determined at Rs. 286.48 crores. The Applicant has 7.45% voting share and the voting share of Phoenix ARC Pvt. Ltd. was decided at 92.55%. In this case, financial facilities were granted to corporate debtors by a consortium of banks in which State Bank of India was one of the members. The applicant Bank has granted overall facilities of Rs. 16 Crores and an equitable mortgage of land measuring 45.10 acres located at Bharatgarh Road, Nalagarh, Dist Solan was exclusively made in its favour.

3.1 It is further submitted that when the financial facilities were sanctioned to the corporate debtor, the valuation of the property was roughly around Rs. 27.00 Crore as mentioned in the Sanction letter dated 17.05.2013 and as per valuation report dated 03.01.2015, the property was valued at Rs.30.64 Crores. The total amount payable by the corporate debtor to the applicant is Rs.23,05,02,680/- and this claim was duly admitted by RP. The Resolution Professional has also prepared a liquidation valuation chart , which is as follows:-

| <b>Sr. No.</b> | <b>Property</b>    | <b>Liquidation value (Rs.)</b> | <b>SBI</b>   | <b>Phoenix</b> |
|----------------|--------------------|--------------------------------|--------------|----------------|
| 1.             | Immovable property | 74,40,67,297                   | 23,05,02,680 | 51,35,64,617   |
| 2.             | Plant & machinery  | 28,92,83,000                   | —            | 28,92,83,000   |
|                | Total              | 1,03,33,50,297                 | 23,05,02,680 | 80,28,47,617   |

3.2 It is further submitted that the Resolution Professional invited Expression of Interest in which various interested applicants participated and finally the

resolution plan of M/s Aggarsain Spinners was found to be highest. The resolution plan was put to vote in 12th Meeting of COC held on 27.03.2019. As per resolution plan of M/s Aggarsain Spinners, the total amount which was payable by the successful resolution applicant was Rs.82.57 Crore, out of which the amount payable to the Phoenix was Rs. 72.21 Crore and Rs.5.81 Crore was payable to the State Bank of India.

3.3 It is averred by the applicant/objector i.e. State Bank of India that it can recover the outstanding amount from the liquidation value of the assets held as a security by the State Bank of India. The Resolution Plan of M/s Aggarsain Spinners Limited was put to vote in the 12th meeting of CoC. Since, the liquidation value of the assets held by the objector/applicant i.e. State Bank of India was sufficient to recover the entire admitted claim of the Objector State Bank of India, the objector was the dissenting financial creditor. As M/s Phoenix ARC Pvt. Ltd. had 92.55% voting rights, in spite of dissent by the objector State Bank of India, the plan was approved.

3.4 It is also submitted that as the CoC has accepted the Resolution Plan offered by resolution applicant i.e. M/s Aggarsain Spinners Pvt. Ltd., the total amount available for appropriation by the secured creditors, employees and the statutory dues is Rs. 83.75 Crores. In this manner, the total amount which comes to the share of the applicant is Rs. 5.81 Crore as against the claim amounting to Rs. 23.05 Crores. The liquidation value of the assets held by the applicant are sufficient to recover the entire dues of Rs.23.05/- Crores.

4. In response to a notice, the Resolution Professional has filed written submissions by Diary No. 00984/01 dated 19.03.2021.

4.1 The respondent has stated in its reply that after the initiation of CIRP the respondent/resolution professional has made a public announcement for inviting the claims and after collating and verification of the claims CoC was constituted. The RP invited Expression of Interest and subsequently, resolution plans were put before CoC for approval. In the 12th Meeting of CoC, the resolution plan of M/s Aggarsain Spinners Pvt. Ltd. was approved by CoC members having voting shares of 92.55% and the applicant was a dissenting financial creditor objecting to the resolution plan. The CoC approved the resolution plan with 92.55% voting share as against the required threshold of only 66%.

5. In addition to the averments made in the pleadings, the learned counsel for the respondents in written submissions filed vide Diary No.00984/6 dated 16.02.2022 has placed reliance on the following decisions of the Hon'ble Supreme Court in support of its contention that distribution under Section 30(4) of the Code is within the domain & commercial wisdom of Committee of Creditors, the relevant paras from these decisions are also extracted below:

**1. Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 531:**

*"7.It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposed for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. xx xx xx xx*

*xx xx xx xx xx xx xx xx*

*However, such business decision taken in exercise of commercial wisdom of Committee of Creditors would not warrant judicial intervention*

*unless creditors belonging to a class being similarly situated are not given a fair and equitable treatment.”*

**2. *India Resurgence ARC Pvt. Ltd. Vs. M/s Amit Metaliks Ltd. & Anr, Civil Appeal No.1700 of 2021 judgement dated 13.05.2021:***

*“12.The provisions of amended Sub-Section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the appellant, in our view, do not make out any case for interference with the resolution plan at the instance of the appellant. The purport and effect of the amendment to sub-section (4) of Section 30 of the Code, by way of sub-clause (b) of Section 6 of the Amending Act of 2019, was also explained by this Court in Essar Steel (supra), as duly taken note of by the Appellate Authority (vide the extraction hereinbefore). The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.*

*12.1.In regard to the question of fair and equitable treatment, though the Adjudicating Authority as also the Appellate Authority have returned concurrent findings in favour of the resolution plan yet, to satisfy ourselves, we have gone through the financial proposal in the resolution plan. What we find is that the proposal for payment to all the secured financial creditors (all of them ought to be carrying security interest with them) is equitable and the proposal for payment to the appellant is at par with the percentage of payment proposed for other secured financial creditors. No case of denial of fair and equitable treatment or disregard of priority is made out.*

*13.1.Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.*

*15.The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further expounded in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by*

receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.” (emphasis supplied)

5.2 Furthermore, he has placed reliance on the following decisions of the Hon'ble Supreme Court in support of his contention that the commercial wisdom of the Committee of Creditors is paramount:

**1. K.Shashidhar vs. India Overseas Bank & Ors., Civil Appeal No.10673 of 2018:-**

*“33. xx xx xx The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.”*

**2. Committee of Creditor of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., Civil Appeal No.8766-67/2019:-**

*“31. Since it is the commercial wisdom of the Committee of Creditors that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting up of such Committee, and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion.....*

*42. ...Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Shashidhar (supra).”*

6. In his written arguments filed by Diary No.00984/4 dated 02.02.2022, the learned counsel for the applicant states that the issue which requires adjudication by this Bench is as to whether the plan is in violation of Section 30(2)(b) of IBC for not providing the liquidation value to the dissenting financial creditor.

7. He has placed reliance on the decision of the Hon'ble NCLAT, Principal Bench, New Delhi vide judgement dated 05.01.2022 in the matter of **Bank of Maharashtra Versus Videocon Industries Limited and Others cited as Company Appeal (AT) (Ins.) No.503 of 2021**. In this case, one of the issues considered was whether a resolution plan which provides the dissenting Bank less than the liquidation value which the bank would have received otherwise, is violative of the provisions of the Code specifically Section 30 of the same. After going through voluminous pleadings by both the sides the Hon'ble NCLAT held as under:-

*“Concerns were raised by the lenders regarding the distribution mechanism provided to the Dissenting Financial Creditors in the resolution plan and the contentious issue of distribution amount. All these are not complied with in accordance with Section 31(1) which is a requirement for satisfaction of the Adjudicating Authority. Section 30(2) of the Code has also not been complied with.”*

8. In this connection, the Learned counsel for M/s Phoenix ARC Pvt. Ltd. (Other member of CoC) has also filed written submissions vide Diary No.00984/05 dated 03.02.2022 referring to the following decisions:

(i) The Hon'ble Supreme Court of India in the case of **K.Shashidhar vs. India Overseas Bank & Ors.; 2019 SCC Online SC 257 (decided on 05.02.2019 in Civil Appeal No.10673 of 2018 with Nos.10719, 10971 of 2018 and SLP (C) No.29181 of 2018)**

(ii) The Hon'ble Supreme Court of India in the case of **India Resurgence ARC Pvt. Ltd. Vs. Amit Metaliks Ltd. & Anr.; 2021 SCC Online SC 409 (decided on 13.05.2021 in Civil Appeal No.1700 of 2021)**

(iii) The Hon'ble Supreme Court of India in the case of **Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh; (2020) 11 SCC 467 (decided on 22.01.2020 in Civil Appeal No.4242 of 2019)**

(iv) The Hon'ble Supreme Court of India in the case of **Bank of Baroda Vs. MBL Infrastructure Ltd. & Ors. 2022 SCC Online SC 48 (decided on 18.01.2022 in Civil Appeal No.8411 of 2019)**

9. The learned counsel on behalf of the respondent has put great reliance on the provisions of Section 30(2)(b) of the IBC, 2013 amended as on 16.08.2018 for the sake of the clarity, the Section 30(2)(b) is extracted below:-

“30. Submission of resolution plan -

1) .....

2) *The Resolution Professional shall examine each resolution plan received by him to confirm that is resolution plan -*

(a) .....

(b) *Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

(i) *The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53;*

*Or*

(ii) *the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1. – For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2. – For the purposes of this clause, it is hereby declared that on and from the date of commencement of the insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

(i) *where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

(ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;’*  
(c).....”

10. We have heard the learned counsel for the applicant and respondent and also perused the submissions and records before us.

11. In this case, the issue before this Bench is whether the objector can exercise its rights under Section 30(2)(b) read with Section 52(1)(b) of the Code as against the commercial decision of the Committee of Creditors. The Hon’ble Supreme Court has already clarified in the case of **India Resurgence ARC Pvt. Ltd. (Supra)** that where *“It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.”*

12. In this connection, we have also come across the decision of the Hon’ble NCLAT, Principal Bench, New Delhi on the same issue in the case of **Canara Bank Vs. Ms. Mamta Binani, Resolution Professional & Ors. in Company Appeal(AT)(Insolvency) No. 1117 of 2019 dated 03.01.2022.**

13.1 In its decision, the Hon’ble NCLAT has noted the fact that the Resolution plan was approved by an overwhelming majority of the members of the CoC, and the ‘the resolution fund’ was equally distributed. The relevant extracts from the said order are as under:

*“44. Although, the Appellant/Canara Bank gave a dissenting Vote for the approval of the Plan, based on the reason that ‘Distribution of Resolution Fund’ was discriminatory as against them and despite its plea that it was entitled to the equal and share in regard to the distribution of the Resolution Fund on the footing that the Bank held more than 80% of the assents of the ‘Corporate Debtor’ as security, the fact of the matter is that the ‘Committee of Creditors’ had approved the Resolution Plan of Jagannth Financial Advisory Pvt. Ltd by 75.70% of votes.*

*It cannot be gainsaid that the ‘Resolution Fund’ was equally distributed among all the ‘Financial Creditors’ showing them equal share i.e., 23.43% and that the 1st Respondent/Resolution Professional had certified the plan and the compliance certificate was furnished. There is no illegality in the Resolution Plan as opined by this Tribunal, it comes to be known that the Successful Resolution Applicant/Respondent No. 4 had implemented the Resolution Plan in part and made payments quite in tune with the ‘Approved Resolution Plan’.”*

13. The Hon’ble NCLAT in this order cites the decision in the case of **Amit Metaliks**, extracting the following para from the said order for the sake of clarity as below:

“This ‘Tribunal’ aptly points out the decision of Hon’ble Supreme Court in **India Resurgence ARC Pvt. Ltd. V. Amit Metaliks & Anr. 2021 SCC online SC 409** wherein paragraph 21 it is mentioned as under:

*“21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposted in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bringing about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.”*

In the final paragraphs of this decision, the Hon'ble NCLAT summarised its findings as below:

*“47. To be noted, in the present case, the distribution of the amount was made by the ‘Committee of Creditors’ resting on the total dues of individual Creditors and the same is not either whimsical or arbitrary in any manner. To put it differently, the ‘distribution of the amount’ between the Creditors provides equal treatment to all of them. Also that the Appellant was provided with a fair value as per the decision of the ‘Committee of Creditors’ and the value proportionate to the dues was allotted the same as that of other Financial Creditors.”*

14. On the basis of *doctrine of precedent*, we follow the law laid down in *Mamta Binani’s case (supra)* instead of *Videocon Industries case (supra)* relied upon by the learned counsel for the applicant, as *Mamta Binani’s case (supra)* is a three Member Bench judgement passed by the Hon’ble NCLAT, as against *Videocon Industries case (supra)*, which is a two Member Bench judgement, passed by the Hon’ble NCLAT. We also observe that in the case at hand, no case of denial of fair and equitable treatment or disregard or priority among the same class of creditors has been made out. If the applicant is allowed to enforce its claim of receiving the entire amount of security interest, it will end up receiving more than the receivable liquidation value proposed for the same class of creditors.

15. In view of the above stated facts and judicial decisions, the CA No.729/2019 stands rejected and accordingly stands disposed of.

#### **4. IA No.511/2021**

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016. In the present application, **IDBI Bank Ltd.** is the applicant, and **Jalesh Kumar Grover, Resolution Professional of GPI Textiles Limited** is the respondent.

2. In the present application, the applicant has prayed to consider the claim and IDBI Bank as one of the financial creditor of the corporate debtor and to set aside the order of the RP rejecting the claim of the applicant in this regard.

3. The brief facts, as mentioned in the application, are that the CIRP Process was initiated against the corporate debtor vide order dated 06.07.2018 and IRP had published Form A in the newspaper on 14.07.2018 and the last date for submitting the claims was fixed as 26.07.2018. The applicant is one of the financial creditors of the corporate debtor who is the holder of Cumulative Redeemable Preference Shares which is the investment made by the bank as One Time Settlement package in the corporate debtor. The applicant has filed a claim in Form C dated 14.11.2019 as prescribed under the CIRP Regulations to the respondent/RP. The RP vide e-mail dated 30.11.2019 rejected the claim of the applicant by stating that the claim was filed after the approval of the resolution plan.

4. It is further submitted that the RP has wrongly rejected the claim of the applicant as Regulation 12(2) of CIRP Regulations is merely directive in nature as there is no such limitation in the IBC which stipulates that after the period of 90 days the claim of the creditor become time-barred. It is further prayed that the claim of the applicant may be accepted as the CIRP Process has not been completed and the resolution plan is still pending for the approval/adjudication. The applicant has referred to the judgment of the Hon'ble NCLT, New Delhi Principal Bench in ***Edelweiss Asset Reconstruction Company Pvt. Ltd. vs. Adel Landmark Limited in (IB)-1083(PB)/2018 dated 06.06.2019.***

5. In his reply Reply filed by Diary No. 01172/01 dated 20.12.2021 wherein it has been stated by the respondent that the CoC was constituted on 01.08.2018 and in the 12th Meeting of CoC dated 27.03.2019, the resolution plan submitted by M/s Aggarsain Spinners Limited has been approved by the CoC with 92.55% voting shares and the RP has filed an application before this Adjudicating Authority bearing CA 287/2019 on 11.04.2019 seeking approval of resolution plan. The applicant has filed its claim vide e-mail dated 20.11.2019 i.e. with a delay of 502 days from the initiation of CIRP. The present application has been filed on 27.09.2021 after a lapse of almost two years since the date of rejection of the claim which shows that the application suffers from consideration delays and latches.

6. The applicant in its written submissions filed by Diary No.01172/2 dated 07.02.2022 has repeated its earlier allegations that the RP has failed to perform his duties is not including the appellant Bank's claims even after being in possession of the account books of the corporate debtor from which he could determine all the financial creditors of the corporate debtor including the IDBI Bank. Reliance has been placed on the decision of the Hon'ble NCLT, New Delhi, Principal Bench passed in **(IB)-531(PB)/2019 titled State Bank of India Vs. ARGL Ltd. decided on 12.03.2019** in which it has been observed that *"It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and the invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. (Annexure A-6 Pg. no.62-63)".* It

has also placed reliance on the decision of the Hon'ble NCLT, New Delhi in the matter of ***Edelweiss Asset Reconstruction Co. Pvt. Ltd. V. Adel Landmarks Ltd.*** has held that *"The rejection of claim on the ground of delay is not sustainable because the provisions have been held to be directory. We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that the claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory."*

7. The respondent is its written submissions filed by Diary No.01172/3 dated 09.02.2022 has placed reliance on the following judgments:

(i) The Hon'ble Apex Court in ***Ghanshyam Mishra and Sons Private Limited through the authorised signatory V. Edelweiss Asset Reconstruction Company Limited through the director & Ors. Civil Appeal No.8129 of 2019;***

(ii) The Hon'ble Supreme Court of India in ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory V. Satish Kumar Gupta & Ors. Civil Appeal No.8766-67 of 2019;***

(iii) The Hon'ble NCLAT in ***Harish Polymer Product Vs. Mr. George Samuel & Anr. Company Appeal (AT) (Ins.) No.420 of 2021.***

(iv) The Hon'ble NCLAT in ***ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu, Insolvency Professional of Subburaj Spinning Mills Pvt. Ltd Company Appeal (AT) (Insolvency) No.655 of 2019.***

(v) The Hon'ble NCLAT in ***Deputy Commissioner Division - VII, Central GST, Ahmedabad South Vs. Mr. Kiran Shah Company Appeal (AT) (Ins.) No.328 of 2021***

8. We have heard the learned counsel for the applicant as well as the respondent and perused the records carefully.

9. It is a trite law that the Code envisages strict compliance with its provisions to achieve the objectives of maximising the value of assets of the corporate debtor. Any deviation from the timelines laid down will cause inordinate delays leading to commercial uncertainty, degradation in the value of the corporate debtor and makes the insolvency process inefficient and expensive. As noted in this common order, there are several observations in the judgments by the Hon'ble Supreme Court that time is of the essence of the Code and that the delay in filing the claim by the Applicant is against the basic objective of the Code. In this regard, the Hon'ble Supreme Court in its judgment ***dated 13.04.2021 rendered in Civil Appeal No. 8129 of 2019*** in the matter of ***Ghanshyam Mishra And Sons Vs. Edelweiss Asset Reconstruction Company*** observed that,

*"27. ... once a Resolution Plan is accepted, if any additional liability is thrust upon the Resolution Plan, the entire plan would become unworkable, resulting into the frustration of the very purpose of the enactment i.e. revival of the Corporate Debtor."*

*44. Insofar as the second ground of the High Court is concerned, he submitted, that if such a view is accepted, it will frustrate the entire object of I&B Code and the revival of the Debtor Companies would be impossible if the successful resolution applicants are sprung with the surprise debts, which are not part of the Resolution Plan."*

*86. ... The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any*

*surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."*

*10. This decision of the Hon'ble Supreme court has been followed in many cases by different coordinate Benches including the NCLT, Hyderabad in the case of Kalyan Toll Infrastructure Limited vs. Raghu Babu Gunturu, RP of Lanco Hoskote Highway Limited and Ors. (06.10.2021 - NCLT - Hyderabad) : MANU/NC/2453/2021*

11. A reference is made to the decision of the Hon'ble NCLAT upholding the following observation of the authority below in the case of **Harish Polymer Product vs. George Samuel RP for Jason Dekor Pvt. Ltd. and Ors. (18.06.2021 - NCLAT) : MANU/NL/0220/**

*"7. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Memorandum (IM). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that, if the claims of the different creditors are being accepted in a phase manner and/or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make corrections in the IM and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Moreover, CIRP cannot be allowed/extended beyond the upper limit of 330 days, in that event the corporate debtor would be compelled to go for liquidation. Further, if the resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan/infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over, not to speak about further amendment of the Resolution Plan and re-voting thereon by the CoC with requisite percentage. That apart, the asset of the corporate debtor may get deteriorated, which will affect the maximization of the value of the asset of the corporate debtor.*

8. Further, if such a practice is allowed, keeping abeyance the stipulated period, that too after extended time period of 90 days, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting a Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s). However, in the instant matter, prospective Resolution Applicants may withdraw themselves.

9. It is also pertinent to mention herein that this is not an isolated claim, there is one more application pending for adjudication, who filed its claim before the RP in much belated stage and now approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. If this application is allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plan, as it will be a burden with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IM. Thus, under such situation, the Corporate Debtor may be pushed for liquidation.

xxx xxx xxx

11. The Hon'ble Supreme Court in the matter of Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors, unequivocally held that "the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible".

12. Moreover, the RP acted in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) regulations, 2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*13. In the above backdrop, we found that there is no merit in the instant application, hence, the same is dismissed."*

12. It is also relevant to refer to the Judgment dated 16.09.2021 passed by the ***Hon'ble Appellate Authority in the matter of Deputy Commissioner of CGST V. Kiran Shah in Company Appeal (AT) (Ins) No.328 of 2021***, wherein it has been held as under:

*"17. In the instant case the Resolution Plan was approved by 91.02% of the Members of CoC and is pending approval before the Adjudicating Authority and was last listed for hearing on 16.06.2021. The literal language of Section mandates strict adherence to the time frame it lays down. Time and again, the Hon'ble Supreme Court has noted that the model timelines provided in Regulation 40A of the CIRP Regulations should be followed as closely as possible. In this case, on account of lockdown and pandemic the last date was extended from 31.03.2020 to 16.08.2020 to facilitate all creditors to file their claims. In the background of this factual matrix, we hold that the delay/latches are on behalf of the Appellant and there is no dereliction of duty on behalf of the IRP/RP.*

*18. At the cost of repetition, we hold that the Resolution Professional was not duty bound to collate claims which are belatedly received after the last date thereby delaying the entire CIRP which is a time bound process and further having regard to the fact that the claim of the Appellant was incorporated in the Information memorandum which was circulated to the Prospective Resolution Applicant and the Members of the Committee of Creditors for their consideration, there is no dereliction of duty on behalf of the IRP/RP as provided for under Sections 18 and 21(1) of the Code.*  
*(emphasis supplied)*

13. In the present case, it is surprising that a well-established Bank like the applicant filed its claim more than fifteen months from the date fixed for submission of claims. Furthermore, the claim was submitted nearly seven months after the approval of the resolution plan by the CoC and filing of applications for approval of the same before this authority. The law on this issue is already laid down in the various judicial decisions mentioned in the foregoing

paragraphs. It is further observed that the Books of Accounts of the corporate debtor is an indicator of the existence of a liability but can't be entirely relied upon in the absence of supporting documents as proof and necessary clarifications from the claimant. Regulation 12 of the Insolvency Resolution Process for Corporate Persons Regulation 2016 mandates the creditor to submit the proof of claim by the date mentioned in the public announcement. There is no justification to exempt any party to bypass such compliance as the same would vitiate the verification of claims process.

14. Keeping in view the above discussion, IA No.511/2021 stands dismissed and disposed of accordingly.

## **5. CA No. 865/2019**

In the present application, **M/s Shreeji Cotfab Limited** is the applicant, and **GPI Textiles Limited through Jalesh Kumar Grover, Resolution Professional** is the respondent.

2. In the present application, the applicant prays that the advance job work amount as on CIRP date, be treated as a part of CIRP cost and also for the rejection of Resolution Plan of Aggarsain Spinners Limited.

2.1. It is contended that the applicant is associated with Corporate Debtor in various capacities such as supply of raw material on sale/purchase basis and job work basis. The applicant was getting the job work on contract from the corporate debtor and has an outstanding advance of Rs.301.46/- lakhs as on CIRP date.

2.2 It is submitted by the applicant that faced with severe liquidity crunch, Mr. L.K. Singh, Whole-time Director (Powers Suspended) approached the applicant for the supply of raw material as well as advance payment towards the job work charges so as to enable the corporate debtor as a going concern. The applicant entered into a job-work agreement on 20.02.2018 (Copy is attached as Annexure-4 of the application). Further, in continuation of the agreement dated 20.02.2018, the applicant and the corporate debtor entered into a registered agreement on 06.06.2018, which was in continuation of various earlier agreements relating to job work by the corporate debtor for the applicant (Copy is attached as Annexure-5 to the application).

2.3 It is pointed out that as per clause 18 of the said agreement dated 06.06.2018, it was agreed by the parties that the Merchant (Applicant herein) will pay the advanced job charges and shall have the right to adjust the advance money given to the Manufacturer (Corporate Debtor herein) and the manufacturer shall have no objection to the said adjustment. It is submitted that the applicant had the following transactions during the CIRP from 07.07.2018 till 31.03.2019.

| Particulars                                      | Quantity (Kgs) | Amount (Lacs) |
|--------------------------------------------------|----------------|---------------|
| Opening advance balance                          |                | (-) 301.46    |
| Add: Job charges                                 | 2971842        | 1089.85       |
| Less: Payments made/TDS and miscellaneous debits |                | (-) 1042.23   |
| Closing balance                                  |                | (-) 253.85    |

And the following transactions during 01.04.2019 till 16.08.2019

| Particulars                                                     | Quantity (Kgs) | Amount (Lacs) |
|-----------------------------------------------------------------|----------------|---------------|
| Opening balance                                                 |                | (-) 253.85    |
| Add: Job charges                                                | 573122         | 196.21        |
| Less: Payments made/TDS and miscellaneous debits                |                | (-) 243.82    |
| Closing balance (advance) equivalent to balance as on CIRP date |                | (-) 301.46    |

2.4 It is submitted by the applicant that the respondent did not allow adjustment of Rs.301.46/- Lakhs as advance job charges from the job charges accrued during the period. The advance of Rs.301.46/- Lakhs was not reflected in the Information Memorandum as CIRP cost nor has been even presented before the CoC for approval.

2.5 It is averred by the applicant that the respondent wrote an e-mail dated 04.05.2019 without any prior discussion advising the applicant to stop the further dispatch of material with immediate effect thereby causing huge financial loss to the applicant.

2.6 The applicant relied on Section 5(13) of the IBC, 2016 which defines insolvency resolution process cost and Regulation 2(3) read with Regulation 31 and 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in support of its claim that the amounts involved should be included in the CIRP cost.

2.7 It is alleged that Resolution Professional that without deliberation upon the representation of the applicant which was handed over on 05.03.2019, vide e-mail dated 04.05.2019, rejected the claim and asked the applicant to pay the amount of Rs.35.47/- Lakhs instead.

3. The Respondent-Resolution Professional in its reply filed vide Diary No.00983/3 dated 02.08.2021 denied the averments/submissions made by the applicant. It is submitted that the respondent made a public announcement in Form-A on 14.07.2018 and invited claims with proof on or before 26.07.2018 in terms of Section 21 of the Code read with Regulation 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. As per Regulation 12 of CIRP Regulations, the Creditors have to submit their claims on or before the last date mentioned in public announcement. The respondent constituted the CoC on 01.08.2018.

3.1 It is submitted that the resolution plan submitted by M/s Aggarsain Spinners Limited was put for voting in 12th meeting of CoC held on 27.03.2019 and was approved by the Members of the CoC with 92.58% voting share pending approval of this Tribunal.

3.2 It is further submitted by the respondent that the applicant has filed his claim in the capacity of Operational Creditor of the corporate debtor in prescribed Form B with the respondent on 11.08.2018 for advance given to the corporate debtor to the tune of Rs.3,01,46,724/- prior to initiation of CIRP along with interest and other charges. The respondent in accordance with the provisions of the Code admitted the principal amount of Rs.3,01,46,721/- as claimed by the applicant, as an operational debt of the corporate debtor and

rejected the other charges in terms of provisions of the Code since there was no agreement to that effect. The same forms a part of the Information Memorandum prepared by the respondent in terms of Section 29 of the Code read with Regulation 36 of the CIRP Regulations.

3.3 It is averred by the respondent that the said claim by the applicant was due prior to initiation of the CIRP against the corporate debtor and pertains to pre-CIRP period. The respondent in response to the order of this Tribunal dated 21.02.2019 in IA No.112 of 2019 asked the applicant to file written representation in accordance with the liberty granted by this Adjudicating Authority. Instead, the respondent states that the applicant made verbal representations. Copy of e-mail dated 04.05.2019 sent by the applicant and e-mail dated 07.05.2019 sent by the respondent on this subject are annexed with the reply as Annexure R-7.

3.4 It is submitted by the respondent that the applicant by its present application before this Adjudicating Authority seeks to treat its claim as a part of CIRP cost with the intention to jump the rank provided under Section 53 of the Code and gain priority over secured creditors under the Resolution Plan. It is further submitted by the respondent that the amount claimed by the applicant does not fall within the purview of Section 5(13) of the Code and the claim of the applicant being pre-CIRP dues cannot be treated as CIRP cost.

4. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

5. The issue before this Bench in this IA is whether the amount of Rs.301.46/- Lakhs should be allowed to be included in the CIRP cost or not. In

their arguments, the respondent has stated that the amount claimed to be included in the CIRP cost pertains to the period prior to the initiation of CIRP while in its averments the applicant has strenuously argued that this amount pertains to the period subsequent to the date of initiation of CIRP. In support of its contentions, the applicant has only submitted a tabular statement which is extracted in Para 2.3 above. It is noted that no other supporting evidence regarding this claim has been submitted either along with applications or during the pleadings by the applicant. It is also a fact admitted by both the parties that the corporate debtor has done job work in pursuance to the Agreement dated 06.06.2018 and the terms and conditions of payments have been clearly mentioned in the said agreement.

5.1 It is further noted that the dispute relating to payments was brought before this Tribunal earlier through IA No.112 of 2019, and by its order dated 21.02.2019, this Tribunal had given an opportunity to the applicant to file written representation before the respondent regarding its claim. The relevant part of the aforesaid order is extracted as under:-

*“Having heard learned counsel for the applicant at considerable length, we dispose of this application with liberty to the applicant to file a detailed representation before the Resolution Professional with necessary documents within a period of one week of the receipt of this order and the Resolution Professional shall dispose of the representation expeditiously and preferably within two weeks therefrom.”*

5.2 In compliance with the above direction, a meeting was held between the parties, and we find references to this meeting in the emails dated 04.05.2019, and 07.05.2019, which is to the following effect:

***E-mail dated 04.05.2019 (From applicant to the respondent)***

*"3. Moreover through e-mail dated 04.05.2019 @6.11 PM you have issued following illegal directions*

*"This is with reference to the outstanding recoverable amount of Rs.35.47 Lacs as on 4.5.2019*

*In this context, we would like to request you to:*

- 1. Stop further dispatch of raw material with immediate effect. We intend to give all mills on job work to Aggarsain Spinners, the successful bidder/Resolution Applicant in the Corporate Insolvency Resolution Process of GPI Textiles Limited.*
- 2. Give your concrete plan for the payment of outstanding amount so that we can give you the dispatch schedule of the material converted/to be converted.*

*Our operations are seriously hampered due to non/delayed payment of job charges by you. Kindly release the payment immediately without any delay".*

***E-mail dated 07.05.2019 (From respondent to the applicant)***

*"Please find below our reply, para wise:*

*XX XX XX XX*

*2. That you have not obeyed directions of the Hon'ble NCLT Chandigarh till date i.e. 04.05.2019.*

*In response to the above directions of Hon'ble NCLT, you along with your counsel attended the office of the undersigned. The matter was discussed in detail and you presented written submissions. Based on the written submissions, the undersigned categorically informed you that your submissions do not have any merit so the same is being rejected. You and your counsel requested to take back the written submission and sought time to file revised submissions. The same written submissions have been again submitted after few days. Since the contents of the submission were similar and had no merit, the undersigned again communicated to you during the meeting that the same is rejected."*

5.3 At this stage, we must notice that there is no clarity in the aforementioned emails as to whether supporting documents like ledger account copy, bills, vouchers and relevant correspondence etc. were produced by the applicant in the course of the aforementioned meeting in support of its claim. We also

observe that no such document has been produced before this Tribunal to facilitate a decision on this issue.

5.4 The appellant's claim that the alleged amounts outstanding should be considered as a part of the CIRP cost as these amounts are spent in pursuance to a contract made to enable the corporate debtor to survive as a going concern is not supported by any evidence on record. From the very nature of the contract and the subsequent action by the parties, it is clear that this was a commercial transaction for the mutual benefit of both the parties which was subsequently cancelled by the respondent unilaterally.

5.5 The correspondences between the parties also indicate that there is a dispute on the issue at hand and the respondent has made a counterclaim of Rs.35.47/- lacs in its email dated 04.05.2019 as against the claim of Rs.301.46 Crore by the applicant. Furthermore, whether an expense can be included in the CIRP cost is clearly defined in Section 5(13) of The Insolvency And Bankruptcy Code, 2016 read with Regulation 31 of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, which is to the following effect:

**Section 5(13) of The Insolvency And Bankruptcy Code, 2016**

*“5(13) insolvency resolution process costs” means –*

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board;*

**Regulation 31 of the Insolvency And Bankruptcy Board of India  
(Insolvency Resolution Process For Corporate Persons)  
Regulations, 2016**

**31. Insolvency resolution process costs.**

*“Insolvency resolution process costs” under Section 5(13)(e) shall mean-*

*(a) amounts due to suppliers of essential goods and services under Regulation 32; 51[(aa) fee payable to authorised representative under 52[sub-regulation (8)] of regulation 16A; (ab) out of pocket expenses of authorised representative for discharge of his functions under 53[section 25A];]*

*(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*

*(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*

*(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*

*(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.*

6. In view of the facts narrated in the foregoing paragraphs, we observe that no evidence has been brought on record by the applicant to suggest that the impugned amount of Rs.301.46 Crore can be included in the CIRP cost as defined in Section 5(13) of The Insolvency And Bankruptcy Code, 2016 read with Regulation 31 of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. This Tribunal has already given one opportunity to the applicant to present its case before the respondent but no result has emerged from the ensuing meetings. No compelling evidence has been produced by the applicant in the previous opportunity given by this Bench in support of its claim. In the circumstances, we hold that this is prima facie a trade dispute and as held in several judicial decisions, the provisions of this Code can not be allowed to be used to settle

disputes or as a recovery mechanism. There is no bar, however, for the applicant to take appropriate legal remedy as permissible under the law. We make it clear that we have not expressed any opinion on the merits of the claim.

7. In view of the above discussions, IA No.865/2019 stands dismissed and disposed of accordingly.

## **6. CA No.866/2019**

This is an application filed under Section 60(5) read with Section 31 of the Insolvency & Bankruptcy Code, 2016. In the present application, **M/s Shreeji Cotfab Limited** is the applicant, and **GPI Textiles Limited through Jalesh Kumar Grover, Resolution Professional** is the respondent.

2. In the present application, the applicant prays for raising objections against the Resolution Plan of M/s Aggarsain Spinners Limited and requests for its rejection.

2.1 The directions prayed to be issued to the respondent, in this case, relate to (1) admission of the pending claims of the applicant including the liabilities towards rent, interest, and statutory forms; (2) to reconstitute of the COC and setting aside the COC's decision to approve the resolution plan submitted by M/s Aggarsain Spinners Limited and to consider/accept the resolution plan submitted by other applicants; (3) distribution of funds equally amongst the secured creditors and operational creditors (including the applicant); (4) to correctly calculate the liquidation value after taking into consideration the possible recovery from HSBC, and (5) to include the profit generated by the successful

resolution applicant during CIRP for distribution to financial and operational creditors and to direct the successful resolution applicant to keep the Corporate Debtor as a going concern for at least five years;

2.2 The applicant has also sought interim relief in terms of disposal of the application filed by Mr. L.K. Singh, Suspended Director of the Board in priority over the resolution plan of M/s Aggarsain Spinners Limited; priority disposal of the application filed by the respondent against HSBC Bank for recovery of Rs.81 Crores before deciding the resolution plan; and making available Rs.81 crores recovered from HSBC along with interest to the CD and and not to allow the same to be taken by Secured Creditors.

2.3 As the issues relating to the possible recovery from HSBC have already been considered in this order in connection with IA No.89/2019 no separate finding is warranted here. The prayers subject to the approval of the Resolution Plan by this Adjudicating Authority, which is separately taken up in the order relating to the IA 348/2021 are also not required to be taken up here. This order, therefore, considers only the issues raised in the first three points of the para 2.1.

3. In the present application, it is submitted by the applicant, i.e., M/s Shreeji Cotfab Limited, that it is one of the bidders/participants in the resolution plan of the Corporate Debtor and that it is associated with the corporate debtor for some years in different capacities as a supplier of raw material, purchaser of yarn, job work etc. At the time of initiation of CIRP, the applicant was getting job work done from the corporate debtor under a job work agreement. In terms of the job agreement, the applicant used to supply raw material to the corporate debtor for

conversion into yarn. The Corporate Debtor in turn is entitled to job charges for conversion under the said agreement.

3.1 It is further submitted by the applicant that at the insistence of Resolution Professional, the applicant continued with the job work under an existing agreement even after initiation of CIRP on 06.07.2018.

3.2 It is averred by the applicant that it had submitted a claim of Rs.641.89 Lacs which included the principal advance amount of Rs.301.46 Lacs, interest of Rs.19.17 lacs, and liability for pending statutory forms Rs.321.26 Lacs (for C form and E1 forms) before the respondent. The liability linked to the non-issue of the statutory forms arose on account of the failure of the corporate debtor to deposit sales tax dues with the sales tax department as a consequence of which, the corporate debtor did not issue requisite forms to the applicant.

3.3 It is submitted by the applicant that the respondent approved the claim ignoring the interest component, and the same was not approved by the respondent. Moreover, the claim of pending statutory forms was not approved and the required statutory forms have not been issued by the respondent till date.

3.4 It is alleged by the applicant that the respondent has not rightly constituted the Committee of Creditors. The respondent has constituted the CoC comprising Phoenix Arc Private Limited and State Bank of India having vote shares of 92.55% and 7.45% respectively. It is submitted that notices of CoC meeting should have been issued to other creditors including the unsecured creditors.

3.5 It is further submitted by the applicant that CoC has made certain changes in the resolution plan wherein payouts to financial creditors have been improved from 14.30% to 25.21%. Despite the increase in total payout from Rs.56 crores to Rs.83.75 Crores, payment to the operational creditors is reduced significantly from 5% to 1.16% which translates to a reduction from Rs.2.20 Crores and to Rs.0.51 Crores. Thus, by forcing a lesser percentage of claims to operational creditors, the resolution plan so approved by CoC and recommended by the respondent for approval of this Tribunal is discriminatory and against the interests of the operational creditors. Reliance has been placed on the decision of the Hon'ble NCLAT in the Binani Cement Case in support of this claim on the ground that CoC has failed to safeguard the interest of all stakeholders.

4. In his replies dated 28.04.2021 and 09.08.2021, the respondent RP has stated as below:

4.1 The corporate debtor is entitled to conversion charges for the conversion of raw materials supplied by the applicant into finished goods as per the Job Work Contract dated 20.02.2018. It is further pointed out that the applicant as an Operational Creditor of the Corporate Debtor on 11.08.2018 has mentioned in the prescribed Form B an amount of Rs.3,01,46,724/- as advance given prior to the initiation of CIRP along with interest and other charges. This amount is mentioned as principal. The applicant has further claimed the interest of Rs.19,16,709/- and liability arising out of C Form amounting to Rs.3,21,26,086/-. The principal amount of Rs.3,01,46,721/- as claimed by the applicant has been accepted as an operational debt.

4.2 It is submitted by the respondent that on one hand the applicant itself has claimed an amount of Rs.3,04,46,721/- as outstanding prior to the insolvency commencement date and on the other hand by virtue of the present application, the applicant is seeking to treat the same as CIRP cost with the sole intention to gain priority over the other stakeholders of the Corporate Debtor. It is submitted that such claim has been filed by the applicant as part of CIRP cost with the sole intention to jump the rank as provided under Section 53 of the Code and given priority over secured creditors under resolution plan. Reliance has been placed on the provisions of Section 5(13) of the Code and Regulation 31 of the CIRP Regulations. In view of the above, it is further stated that the prayer of the applicant to treat the claim in the class of the operational debt of the Corporate Debtor pertaining to the pre-CIRP period as CIRP cost is beyond the provisions of the Code.

4.3 As regards the prayer to set aside the approval of the resolution plan approved by the CoC on the ground that the CoC was not constituted as per provisions in the Code, the Respondent has submitted that the applicant has no locus standi to challenge the constitution of the CoC as in terms of Section 21 of the Code, the Committee of Creditors shall comprise all financial creditors of the Corporate Debtor with voting share determined on the basis of the financial debts owed by him. It is further stated that in terms of the provisions of the Code, it is the financial creditors who are given the right to vote in the CoC whereas, the Operational Creditors have no right of audience. In support of this contention, reliance has been placed on the decision of the Hon'ble Rajasthan High Court in the matter of **Ultra Tech Nathdwara Cement Limited Vs. Union**

**of India & Ors in Civil Writ Petition No.9480/2019.** The respondent has also placed reliance on the decision of the Hon'ble NCLAT in the matter of **IMR Metallurgical Resources AG Vs. Ferro Alloys Corporation Limited & Ors, Company Appeal (AT) (Insolvency) No.272 of 2020 dated 08.06.2020, which holds that** an un-successful Resolution Applicant has no vested right in the Corporate Insolvency Resolution Process of the Corporate Debtor and to insist that his resolution plan must be considered. It is also pointed out that the decision in **IMR Metallurgical Resources AG.** (supra) has subsequently been upheld by the Hon'ble Supreme Court by their order dated 20.07.2020 in Civil Appeal No.2720 of 2020. In support of their contention that the commercial wisdom of the CoC is paramount and the scope of judicial review is limited, the respondents have placed reliance on the decisions of the Hon'ble Supreme Court in the matter of **Kalprij Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr. Civil Appeal No.2943-2944 of 2020 dated 10.03.2021** and in the matter of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta and Ors. 2019 SCC Online SC 1478.**

4.4 Regarding the claim of the applicant that the funds are to be equally distributed amounts secured financial and operational creditors, the respondent have submitted that in terms of the provisions of Section 30(2)(b) of the Code, the Operational Creditors are required to be provided with at least the liquidation value they would recover in the event of the Corporate Debtor goes under liquidation. According to the respondent, in the present case, the liquidation value owed to the Operational Creditor is NIL and that the amount offered to the

Operational Creditor under the resolution plan is much higher than what they would fetch in the event the Corporate Debtor is pushed to liquidation in compliance with the provisions of the Code. In this context, the respondents placed reliance on the decision of the Hon'ble Supreme Court in the matter of **India Resurgence ARC Private Limited Vs. M/s Amit Metaliks Limited & Anr. in Civil Appeal No.1700 of 2021 dated 13.01.2021**. The relevant part of the decision is extracted below:-

*"Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.*

*The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment."*

4.5 Furthermore, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta and Others, 2019 SCC Online SC 1478**. The relevant part of the decision is extracted below:-

*"54. Indeed, if an "equality for all" approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured Financial creditors will, in many cases, be incentivized to vote for liquidation rather than resolution, as they would have better rights to the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code*

*which is to First ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow.*

*Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the some recovery percentage as financial creditors. So long as the provisions of the code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.*

*57. Indeed, by vesting the Committee of Creditors with the discretion of accepting resolution plans only with financial creditors, operational creditors having no vote, the Code itself differentiates between the two types of creditors for the reasons given above."*

*(emphasis supplied)*

4.6 It is further submitted that even FORM H itself categories the classes of Operational Creditors in three classes in terms of the CIRP Regulations, 2016.

4.7 As regards the claim of interest, it is stated that there has been no provision for such claim of interest and other charges in the agreement dated between the applicant and the respondent-Corporate Debtor. In this context, reliance is placed on the decision of the Hon'ble NCLAT in the matter of ***Krishna Enterprises Vs. Gammon India Limited in company Appeal (AT) (Insolvency) 144 of 2018 dated 27.07.2018***, which is to the following effect: *it is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise,*

*the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.*

4.8 Regarding the claim relating to pending statutory forms, it is stated by the respondent that the non-payment of statutory dues pertains to a period before the commencement of CIRP against the Corporate Debtor and the respondent is making due efforts and requested the department to unlock the TIN Number. The application bearing CA No.243/2019 filed in this regard before this Tribunal is being separately taken up.

5. By their rejoinder by Diary No.00982/3 dated 09.08.2021 the applicant mostly repeated the submissions in its application.

5.1 Reliance has been placed by the applicant on the decisions of the Hon'ble NCLAT in the matter of ***Binani Industries Limited Vs. Bank of Baroda & Anr. Company Appeal (AT) (Insolvency) No.82 of 2018 dated 14.11.2018*** and of the Hon'ble Supreme Court in the matter of ***Essar Steel Vs. Satish Kumar Gupta & Ors., 2020 (8) SCC 531***, in support of its contention that the resolution plan is prejudicial to the rights of all Creditors and should be rejected.

5.2 It is further submitted that in the absence of a decision of CA No.89/2019 against HSBC, the liquidation value of the Corporate Debtor has not been correctly assessed.

6. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

7. The issues coming up for adjudication in the present IA are as under.

1. Whether the claim regarding the interest and the liability for any statutory dues should have been considered by the RP;

2. Whether only financial creditors should form part of the CoC;
3. Whether the payouts recommended for the financial creditors by the CoC in the present case is as per the procedure laid down:
4. Whether any applicant other than the successful resolution applicant recommended by the CoC be considered by the adjudicating authority in the present case.

7.1 The issue of the claim at Rs.301.46 Lakhs has already been considered in IA No.865/2019 above and the same has been rejected on the grounds mentioned in the said order.

7.2 As regards the maintainability of the claim of Interest, this Bench holds that the same is allowable only when there is a specific mention to that effect in the job contract. We have closely perused the job contract dated 20.02.2018. This contract has made provisions for charges for the conversion of raw material supplied by the applicant into finished goods but has not made any specific provision for interest. No payment of any interest could be shown to have been made by the corporate debtor to the applicant in their earlier dealings. In the absence of a specific agreement qua interest, we hold that the claim with regard to interest in the present case is not maintainable.

7.3 As regards the liability arising out of the non-issuance of the statutory form C, this bench is conscious of the decision of the Hon'ble NCLAT in the matter of ***Transit Geo System Integrators Pvt. Ltd. Vs. Stahl Techniks Pvt. Ltd., Comp. App. (AT) (Ins.) No. 106 of 2022 dated 03.02.2022*** which is to the following effect:

*“..... The Application under Section 9 by the Appellant was nothing but a claim of recovery of difference between concessional payment and payment of Sales Tax which has been made under the assessment order.”*

7.1. *We are of the view that Section 9 proceedings are not envisaged for such kinds of claims. It is well settled and time and again repeated by the Hon'ble Supreme Court in “Swiss Ribbons Pvt. Ltd. Vs. Union of India- (2019) 4 SCC 17” and other cases that IBC is not a recovery proceeding. In event, if the Appellant has any claim against the Corporate Debtor regarding sales tax dues, it is open for them to take such proceedings as may be permissible but present was not a case where Section 9 proceedings ought to have been initiated. This Bench therefore holds that the alleged liability arising out of non issuance of C Form has been correctly ignored by the Resolution Professional.”*

7.3.1 This Bench, therefore, holds that the RP has correctly rejected the claim regarding the liability arising out of non-issuance of Form-C.

8.1 Regarding the formation of the CoC, The applicant's Submission that all unsecured creditors should have been included in the CoC is not in accordance with the provisions of Section 21 of IBC, which is to the following effect:

*“21. (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 1[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:*

*2[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 3[or*

*completion of such transactions as may be prescribed], prior to the insolvency commencement date.]” xxxxx xxxxxx xxxxxxxxx  
(emphasis supplied)*

8.1.2 The applicant’s prayer in this regard is, therefore, rejected.

8.2 The applicant has vehemently argued that the distribution of funds approved by the CoC is unfairly negotiated in favour of the members holding dominant position and is prejudicial to the rights of all creditors of the corporate debtor.

8.3 The Hon’ble Supreme Court has in a catena of judgements held that the opinions expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that decision of the CoC’s commercial wisdom is non-justiciable, except on limited grounds as are available for challenge under Section 30(2) or Section 61(3) of the IBC. This position of law, laid down in the case of ***Pratap Technocrats (P) Ltd. & Ors. Vs. Monitoring Committee of Reliance Infratel Ltd. & Anr., Civil Appeal No. 676 of 2021 dated 10.08.2021*** of the Hon’ble Supreme Court has been consistently reiterated in a several judgements of the Hon’ble Supreme Court, Including; ***K. Sashidhar vs. Indian Overseas Bank & Ors., Civil Appeal No.10673 of 2018 decided on 05.02.2019; Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta and Ors. 2019 SCC Online SC 1478 decided on 15.11.2019; Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Ors., Civil Appeal No.4242 of 2019 decided on 22.01.2020; Kalpraj Dharamshi & Anr. Vs.***

***Kotak Investment Advisors Ltd. & Anr. Civil Appeal No.2943-2944 of 2020 dated 10.03.2021.*** In the present case, the applicant has failed to bring any instance of material irregularity in the decision of the CoC. In view of the above discussions, it is held that the applicant's claims that the CoC is wrongly constituted and that its decisions were prejudicial to the rights of all creditors are misconceived. It is further held that the CoC in its wisdom has approved the selection of the successful resolution applicant, and such commercial wisdom of the CoC is paramount.

8. In the result subject to the foregoing discussions, CA No.866/2019 stands rejected and disposed of accordingly.

#### **7. CA No.553/2019**

This is an application filed under Section 60(5) read with Section 31 of the Insolvency & Bankruptcy Code, 2016. In the present application, **M/s Longowalia Yarns Limited** is the applicant, and **GPI Textiles Limited through Jalesh Kumar Grover, Resolution Professional** is the respondent.

2. In the present application, the applicant has prayed inter alia to admit the pending claims of the applicant and to quash and set aside the decision of CoC to approve the Plan. It is further prayed to distribute the funds equally between secured creditors and operational creditors and to correctly calculate the Liquidation Value of the corporate debtor along with consideration of resolution plans submitted by other RAs.

3. In this application, the applicant states that it has been associated in different capacities as a supplier of raw material, purchaser of yarn, job work etc. with the Corporate Debtor from 2009. The applicant made a claim of ₹159.68 lakhs, which included principal amount, interest and liability for pending statutory forms. The respondent has approved the claim of Rs.89.70 Lakhs as principal only and this liability is still unpaid by the corporate debtor. The Resolution Professional has invited expression of interest on 21.12.2018 and 02.01.2019. The resolution plan of M/s Aggarsain Spinners Limited was put for voting in the 12th meeting of CoC held on 27.03.2019 and was approved by the Members of the CoC with 92.58% voting share. It is alleged that the resolution plan was passed in which the payment to the operational creditors is made at 1.16%. The respondent has also filed an application for the recovery of Rs.81 crores plus interest from HSBC Bank.

4. The other allegations include the failure on the part of the CoC to protect the interest of operational creditors, non-recovery of Rs.81 Crores from HSBC Bank due to wrongful assignment.

5. In his response filed by Diary No.55836 dated 14.10.2019, the learned counsel for the respondent has pointed out that the applicant is espousing the cause of the Suspended Board and it is only a part of a proxy litigation. Firstly, the application is bad for non-joinder of parties. The CoC and RA have not been made a party to this application.

6.1 As regards the claim of interest, the learned counsel has pointed out that there is no such provision in the agreement regarding the payment of interest to be made to the applicant and therefore the RP has rightly rejected such claims.

He has placed reliance on the decision of the Hon'ble NCLAT in the case of ***Krishan Vs. Gammon India dated 27 July 2018***. He has made a reference to Regulation 13(1), to emphasise that RP is to “verify every claim as on the insolvency commencement date” and “thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, and the amount of their claims admitted, security interest, if any, in respect of such claim”. It has been pointed out that nowhere is the RP required under the IBC to inform any applicant regarding the status of his claim. As such the information regarding the admittance of claims are given in the notes to the list of creditors.

6.2 Regarding the alleged debt arising out of the outstanding amount of Form C, the learned counsel for the respondent has referred to the proof of the existence of debt as prescribed in Regulation 7(2) of the CIRP Regulations, 2016. He has further referred to the definition of “claim” in Section 3(6) and also the definition of “debt” in Section 3(11) of the IBC and stated that non submission of FORM C can't be termed as a 'claim' or 'debt'.

6.3 It is further stated that outstanding Form C cannot be part of a “debt” as no case has been made out for identifying the liability. No document has been placed by the applicant to demonstrate that there is any actual demand made by the Sales Tax Department on account of non-furnishing of Form C or any such term which has been a part of the agreement between the parties. It is thus a claim that the RP has rightly rejected the claim. The RP has, however, discharged his duties by filing a claim regarding the Form C before the concerned Government Department.

6.4 As regards the alleged discrimination between the financial creditors and operational creditors, it has been stated by the learned counsel for the respondent that as per the decision of the Hon'ble Supreme Court in the case of **ESSAR steel (para 88/89)** has held that equitable treatment is only for similarly situated creditors. He has also stated that the IBC itself provides under Section 30(2)(b)(1) that the payment of debts of operational creditors shall not be less than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53.

6.5 It is further stated that in the present case, the outstanding amount of debt of creditors is Rs.309.53 Crores as against a liquidation value of only ₹103.34 crores and that if a liquidation taken place in the present case, the operational creditors would not have got anything towards the outstanding debt. In such an event the present distribution made by the Resolution Professional is valid and meets the end of justice.

6.6 The learned counsel for the respondent has also submitted that the applicant has no locus standi to challenge the resolution plan as it is not even a member of the CoC. In this connection, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **Maharashtra Seamless (para 26), limited judicial review in Essar steel and the Supreme Court decision in Duncan industries.**

6. In her arguments, further to the submissions made in the application, the learned counsel for the applicant has pointed out that there is Clause 15 in the job work agreement, it is stated that the supplier is responsible for statutory claims. It has also been pointed out that the concerned department has blocked

the TIN number because of the lack of compliance by the corporate debtor and the resulting damage out of this action can be claimed as the debt against the corporate debtor.

7. The applicant has relied upon the following judicial decisions:

***Binani Industries Ltd. Versus Bank of Baroda and Another, Company Appeal(AT) (insolvency) No.82 of 2018 decided on November 2018***, which was subsequently upheld by the Hon'ble Supreme Court in ***Rajputana Properties Private Limited Versus Ultratech Cement Ltd. and Others. Civil Appeal No. 10998 of 2008 decided on 19 November 2018***.

8. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

9. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal.

10. In the present case three major issues have been raised; (a) non-consideration of interest and liability for pending statutory forms by the Resolution Professional, (b) non-recovery of Rs.81 Crores from HSBC Bank due to wrongful assignment, and (c) discrimination between financial creditors and operational creditors in the resolution plan. All these issues are almost identical especially in CA No.866/2019 and CA No.89/2019 which have been rejected for reasons mentioned therein. For the sake of clarity, it is repeated that the claim for interest has been rejected on the ground that no provision of such payment of interest in any agreement was produced before this Bench during the current proceedings by the applicant. The claim for non-furnishing of

Form No.C cannot be a subject matter of any dispute in the CIRP proceedings, as this issue cannot be a part of claims under CIRP proceedings, and the applicant can approach the competent authority for any relief in this matter. The issue of non-recovery of Rs.81 Crores from HSBC Bank can also be taken up by the applicant before competent authority, as the same is an old matter preceding the CIRP and the applicant can approach competent judicial authority for relief, if any. The applicant's claim regarding discrimination between financial creditors and operational creditors is misconceived because it runs counter to the provisions of Section 21 of the IBC, 2016. In view of the aforementioned discussion, this CA No.553/2019 is dismissed and is disposed of accordingly.

#### **8. CA No.728/2019**

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016. In the present application, **Gurudatta Ginning and Pressing Pvt. Ltd.** is the applicant, and **Jalesh Kumar Grover, Resolution Professional of GPI Textiles Limited** is the respondent.

2. In the present application, the applicant has prayed that the respondent should include the claim of the applicant in the list of operational creditors as per Form B annexed to his application.

3. The brief facts as stated in the application are that the applicant has sent Form B through speed post bearing tracking no.RM3A2631551IN that was delivered to the Resolution Professional. The copy of Form B sent by the applicant is attached at page Nos.6 to 8 of the application. The copy of postal

receipt along with tracking report showing the duly service of the Form B is attached at page Nos.13 and 14 of the application. It is mentioned in the Form B that the applicant has filed a claim of Rs.55,00,000/- (Rupees Fifty Five Lakhs including interest @18% per annum).

4. The respondent in its reply filed by Diary No.00961/01 dated 06.04.2021 wherein it has been stated that the CIRP was initiated on 06.07.2018 and the public announcement in Form A was made on 14.07.2018. It is specifically mentioned in the public announcement that the last date of submissions of claims is 26.07.2018. The Form A was duly published in the newspaper namely Financial Express (English) and Amar Ujala (Hindi). The CoC was duly formulated and the resolution plan was approved by the CoC with 92.55% voting share in 12th meeting held on 27.03.2019. The applicant has filed its claim at a very belated stage.

5. In his averments made, the respondents had submitted that as per Regulation 6 of the CIRP Regulations, 2016, the public announcement must provide for last date for submission of proof of claims which should be 14 days from the date of appointment of the Interim Resolution Professional which in the instant case was 26.07.2018.

6. In written submission filed by respondent vide Diary No.01396/2 dated 09.02.2022 wherein the reliance has been placed on the decisions of the Hon'ble Apex Court in ***Ghanshyam Mishra and Sons Private Limited through the authorised signatory V. Edelweiss Asset Reconstruction Company Limited through the director & Ors. Civil Appeal No.8129 of 2019;*** of the Hon'ble Supreme Court of India in ***Committee of Creditors of***

***Essar Steel India Limited through Authorised Signatory V. Satish Kumar Gupta & Ors. Civil Appeal No.8766-67 of 2019;*** of the Hon'ble NCLAT in ***Harish Polymer Product Vs. Mr. George Samuel & Anr. Company Appeal (AT) (Ins.) No.420 of 2021.***

7. Further, reliance has been placed on the decision of the Hon'ble NCLAT in ***ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu, Insolvency Professional of Subburaj Spinning Mills Pvt. Ltd Company Appeal (AT) (Insolvency) No.655 of 2019,*** where only after the approval of the resolution plan by the CoC, the appellant filed its claim before the Resolution Professional. and it was held that for the said reason, the Resolution Professional has no jurisdiction to include the claim of the appellant.

8. Reliance is also placed on the decision of the Hon'ble NCLAT in ***Deputy Commissioner Division - VII, Central GST, Ahmedabad South Vs. Mr. Kiran Shah Company Appeal (AT) (Ins.) No.328 of 2021*** which held to the following effect:

*“18. At the cost of repetition, we hold that the Resolution Professional was not duty bound to collate claims which are belatedly received after the last date thereby delaying the entire CIRP which is a time bound process and further having regard to the fact that the claim of the Appellant was incorporated in the Information Memorandum which was circulated to the Prospective Resolution Applicant and the Members of the Committee of Creditors for their consideration, there is no dereliction of duty on behalf of the IRP/RP as provided for under Sections 18 and 21(1) of the Code.”*

9. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

10. In the present case, the resolution plan was approved by the CoC on 27.03.2019 and the claim of the applicant was received in Form B on 23.07.2019, which is subsequent to the date of Amendment in Regulation 12(2) on 04.07.2018. In this context, we notice the provisions of Regulation 12(2) in the present case as under:

*“12. Submission of proof of claims.*

*(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.”*

11. As the Resolution process is a strictly time bound process, admission of such types of claims after the approval of the Resolution Plan will only defeat the objectives of the Code.

12. A reference is made to the judgement of Hon'ble Supreme Court in the matter of the Committee **of Creditors of Essar Steel Ltd. Vs. Satish Kumar Gupta and Ors.** where in it is held that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after Resolution plan is submitted by him has been accepted as this would amount to be a hydra head popping up which would throw into the uncertainty and the amounts payable by the prospective Resolution Applicant who can taken over the business of the Corporate Debtor. All the claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of Corporate Debtor.

13. This position of law has been repeated in several judgments of the Hon'ble Supreme Court which have been referred to in this common order. We would also like to specifically refer to the extract below from the decision of the Hon'ble NCLAT upholding the following observation of the authority below in the case of **Harish Polymer Product vs. George Samuel RP for Jason Dekor Pvt. Ltd. and Ors. (18.06.2021 - NCLAT) : MANU/NL/0220/**

*"7. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Memorandum (IM). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that, if the claims of the different creditors are being accepted in a phase manner and/or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make corrections in the IM and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Moreover, CIRP cannot be allowed/extended beyond the upper limit of 330 days, in that event the corporate debtor would be compelled to go for liquidation. Further, if the resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan/infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over, not to speak about further amendment of the Resolution Plan and re-voting thereon by the CoC with requisite percentage. That apart, the asset of the corporate debtor may get deteriorated, which will affect the maximization of the value of the asset of the corporate debtor.*

*8. Further, if such a practice is allowed, keeping abeyance the stipulated period, that too after an extended time period of 90 days, in that event, it would be difficult to complete the CIRP process, which has to be completed in a time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days,*

*they may approach this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting a Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s). However, in the instant matter, prospective Resolution Applicants may withdraw themselves.*

*9. It is also pertinent to mention herein that this is not an isolated claim, there is one more application pending for adjudication, who filed its claim before the RP in much belated stage and now approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. If this application is allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plan, as it will be a burden with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IM. Thus, under such a situation, the Corporate Debtor may be pushed for liquidation.*

*xxx xxx xxx*

*11. The Hon'ble Supreme Court in the matter of Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors, unequivocally held that "the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible".*

*12. Moreover, the RP acted in due compliance of the provisions of Clause (c) of the Sub Section (2) of the Section 15 of the Insolvency and Bankruptcy Code, 2016 read with Clause (c) of the Sub Regulation (2) of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 read with Sub Regulation (2) of the Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) regulations, 2016 and also after taking into account the provisions of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

*13. In the above backdrop, we found that there is no merit in the instant application, hence, the same is dismissed."*

14. Keeping in view the discussion and the judicial decisions above, the prayer of the applicant to include its claims in the list of operational creditors is rejected and the present CA No.728/2019 stands disposed of accordingly.

**9. IA No.179/2021**

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016. In the present application, **Indo Rama Synthetics (I) Ltd.** is the applicant, and **Jalesh Kumar Grover, Resolution Professional of GPI Textiles Limited** is the respondent.

2. In the present application, the applicant prays, inter alia, to admit the claim filed by the Applicant in Form B under Regulation VII of Insolvency and Bankruptcy Code, 2016.

3. It is submitted by the applicant that the CIRP process was initiated against the respondent company on 06.07.2018 and RP had invited the claims from the creditors. The applicant has filed a claim along with the proof in Form B under Regulation 7 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The total amount of claim by the applicant is Rs. 4,37,76,819/- (Rupees Four Crores Thirty-Seven Lakhs Seventy Six Thousand Eight Hundred and Nineteen Only) and to substantiate the claim the applicant has attached invoices with lorry receipts, debit notes of interest and certified copy of ledger account of the corporate debtor. The copy of Form B filed with RP is attached as Annexure A-4 with the application. This claim of the applicant

was rejected by the RP without any intimation or without assigning any reason or providing any opportunity to the applicant to be heard.

4. The Respondent No.2 through its RP i.e. respondent No. 1 has filed a reply vide Diary No.0007/2 dated 04.02.2022 taking a preliminary objection that the amount due to the applicant by the corporate debtor in terms of the books of accounts of the corporate debtor was Rs.33,59,154/- (Rupees Thirty Three Lakhs Fifty Nine Thousand One Hundred and Fifty Four Only) and RP after reconciliation with the books of accounts of the corporate debtor has admitted the aforesaid amount. It is further averred that the claim of the applicant has been correctly admitted as the applicant has concealed the material fact that the corporate debtor has raised a debit note against the applicant for a quality claim of Rs.270 lakhs as the applicant has provided defective material to the corporate debtor. The corporate debtor has duly intimated about the quality issues to the applicant vide e-mail dated 27.09.2017. The summary of claims and e-mail dated 27.09.2017 is attached as Annexure R-7 and R-8 respectively of the reply. The applicant has also duly acknowledged the quality issues after the visit of the representative of the applicant on 11.09.2017. The minutes of the meeting dated 11.09.2017 are attached as Annexure R-9 of the reply. It is further submitted that the applicant has charged interest to the tune of Rs.1,36,79,512/- (Rupees One Crore Thirty-Six Lakhs Seventy-Nine Thousand Five Hundred Twelve Only) in its claims. Since there is no agreement with regard to the charging of interest the applicant cannot file the claim to the extent of interest being charged. Moreover, the applicant has filed the present application on 30.12.2020 after a delay of 2.5 years.

5. The applicant has filed a rejoinder vide Diary No.00007/3 dated 16.02.2022 wherein it has been stated that the RP has relied on one false and fabricated debit entry in the ledger of the corporate debtor i.e. Rs.2,70,00,000/- (Rupees Two Crores and Seventy Lakhs Only) but no debit notes were ever issued with regard to the quality claim by the corporate debtor. The respondent is entitled to the interest amount claimed as all the invoices raised by the applicant have an exhaustive list of terms and conditions and as per Clause No.5, the applicant is entitled to interest @ 36% per annum on non-payment of the amount. The corporate debtor has also issued 07 cheques amounting to Rs. 3.5 Crores towards part payment of the legitimate dues of the applicant but later the cheques were not honored. It is further stated that the ledger account submitted by the RP does not show any such entry with regard to the cheque bounced and representation of the same which depicts that the books of accounts of the corporate debtor does not reflect the true, correct and fair position. The applicant has also filed three complaint cases against the corporate debtor and its Director under Section 138 of the Negotiable Instruments Act, 1881.

6. We have heard the learned counsel for the applicant and respondent and have carefully perused the records available.

7. The pleadings in this IA clearly indicates that there is a dispute between the two parties regarding the genuineness of the claim made by the applicant, especially with regard to the debit entry in the ledger of the corporate debtor amounting to Rs.2.70 Crores. It is also noted that the corporate debtor has issued seven cheques and complaints are also filed by the applicant against the

corporate debtor and its Director under Section 138 of the Negotiable Instruments Act, 1881.

8. It is also noted that there is considerable delay on the part of the applicant in filing this application. While the evidence by the applicant in support of its claim suggests existence of a dispute, it is not sufficient to give a finding on the issue in this summary proceedings.

9. In this context, it is clarified that this Tribunal does not provide a forum to settle commercial disputes between the parties nor can it be used as a recovery mechanism. A reference is made to the decision of the Hon'ble Supreme Court in the case of M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd Vs. M/s Girnar Fibres Ltd. (2022) ibclaw.in 26 SC, Civil Appeal No. 3033 of 2022, dated 25-Apr-22 , where in it is observed as under:

*“Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant”*

10. The applicant, however, is at liberty to take up the issue before the competent judicial authority for relief, if any. It is further clarified that this Bench does not express any opinion on the merits of the claims made in this application.

11. Accordingly, IA No.179/2021 stands dismissed and disposed of.

**10. IA No.352/2021**

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 in the matter of M/s Aayat Processors. In the present matter, **M/s Aayat Processors** is the applicant, and **GPI Textiles Limited through Jalesh Kumar Grover, Resolution Professional** is the respondent.

2. In the present application, the applicant prays against the admission of claim of Phoenix Arc Private Limited being to the detriment of all the creditors of the Corporate Debtor as also against the payments discrimination towards the Operational Creditors under the proposed resolution plan. This application also makes the following prayers:

(1) Direct the RP to adjust the claim of the Financial creditor namely Phoenix Arc of Rs.286.48 Crores in view of the amount of Rs.81.67 crores withdrawn by its predecessor-in-interest HSBC against the sanctioned loan of the CD alternatively,

(2) Direct the RP to distribute an equitable amount of Operational creditors after recovery from HSBC.

3. The applicant in this application has stated that due to the collusion between the HSBC and Phoenix ARC, a larger sum under the plan is proposed to be paid to Phoenix ARC and thus leaving practically a negligible sum to satisfy the claims of the operational creditors being service providers. It is also submitted that the proposed resolution plan in the absence of adjudication on the refund of Rs.81.67 Crores is illegal, arbitrary and against the provisions of Section 30 and 38 of the Code, 2016.

4. In his reply, the respondent has submitted that the applicant is espousing the cause of someone else i.e. the Suspended Board of Directors, and the Application is barred by delay and laches. It is also submitted that the application seeking a refund of Rs.81.67 Crores from HSBC filed by Resolution Professional is sub-judice before this Hon'ble Adjudicating Authority. It is further submitted that the Relief qua equitable amount to Operational Creditors is contrary to the settled position of law.

5. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

6. Regarding the amount of Rs.81.67 Crores reflected in the Corporate Debtor's account maintained with the HSBC Bank, it is held in the detailed order in the foregoing pages relating to CA No.89/2019 that this issue is a disputed issue relating to a period much prior to the initiation of the CIRP Process and may be taken up before competent judicial authority for relief, if any. This Adjudicating Authority, however, is not a forum for settling such disputes or for recovery of the said amount.

7. The issue of the equitable amount to Operational Creditors is also discussed in great detail in CA No.866/2019. It is apt to mention here that in the case of ***Swiss Ribbons Private Limited and Anr. v. Union of India and Ors. MANU/SC/0079/2019 : (2019) 4 SCC 1726***, the Hon'ble Supreme Court had the occasion to traverse through the historical background and scheme of the Code in the wake of challenge to the constitutional validity of various provisions therein. One part of such challenge had also been founded on the ground that classification between 'financial creditor' and 'operational creditor'

was discriminatory and violative of Article 14 of the Constitution of India. This ground as also several other grounds pertaining to various provisions of the Code were rejected by the Hon'ble Supreme Court after elaborate dilation on the vast range of rival contentions and the provisions so contained in the Code were upheld as valid.

8. Accordingly, the present application bearing IA No.352/2021 is hereby rejected and disposed of.

#### **11. CA No.557/2019**

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016. In the present application, **Lalan Kumar Singh** is the applicant, and **Jalesh Kumar Grover, Resolution Professional of GPI Textiles Limited** is the respondent.

2. In the present application, the applicant prays to direct the Resolution Professional to verify the claim of the applicant of Rs.65,16,874/- towards Salary, LTA, Gratuity, Leave Encashment and Medical Allowance for the period prior to commencement of CIRP and to make it a part of the payment plan forming part of the Resolution Plan and provided for payment as part of creditors of the same class and at par with such creditors; direct the inclusion of claims of the applicant towards unsecured loans and CRPS (Series-1) of Rs.98,00,000/- and Rs.8,51,73,353/- respectively, to the extent verified, as part of the payment plan forming part of the Resolution Plan and provided for payment as part of creditors of the same class and at par with such creditors;

direct that the claims of the applicant in respect of CRPS (Series-1) and CRPs (Series-2) for Rs.5,62,19,300/- and Rs.47,99,94,138/- respectively, rejected by the Resolution Professional, stand verified, and be made a part of the payment plan forming part of the Resolution Plan and provided for payment as part of creditors of the same class and at par with such creditors; and to pass any such other order as this Tribunal may deem fit in the facts and circumstances of the present case.

3. The applicant has further stated that in the CP (IB) No. 35/Chd/HP/2018 filed by Phoenix ARC Private Limited, the Financial Creditor, under Section 7 of the Code, a fraud has been practiced by the petitioner in connivance with HSBC (India), the original lender of the corporate debtor, in the matter of assignment of debt in favour of the petitioner by HSB (India) and that for the reasons as mentioned in the application, there was neither a debt owed by the corporate debtor to the petitioner nor there could be default in payment of debt and that the petition of the petitioner was not maintainable. It is also stated that the corporate debtor filed a complaint to the Reserve Bank of India on 19.03.2018 against the alleged illegal classification of the account of the corporate debtor as a Non-Performing Asset (NPA) and related matters. A reference has also been made to the application filed by the applicant before the Hon'ble High Court of Himachal Pradesh and order of Hon'ble Himachal Pradesh High Court dated 13.06.2018. The applicant has also mentioned that he had challenged the order dated 06.07.2018 and 12.07.2018 by this Adjudicating Authority in CP (IB) No. 35/Chd/HP/2018 and that appeal travelled from the Hon'ble NCLAT to the Hon'ble Supreme Court of India. The applicant further mentions that he

had filed a Form C claiming an amount of Rs.63,11,86,791/- for claims relating to unsecured loans, CRPS-1 - value of CRPS-1, premium of CRPS-1, dividend on CRPS-1, interest, CRPS-2 - value and dividend. He has further filed in Form D of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016 claiming an amount of Rs.65,16,874/- relating to claims for salary from 22.05.2017 to 31.05.2017, LTA, Gratuity, leave encashment and medical allowance. It is further stated that the reply to the clarifications sought by the RP has been provided by the applicant vide his email dated 19.11.2018. Regarding the above matters, subsequently, the applicant stated that he has come to know from the website of the corporate debtor that the claim of the applicant as financial creditor filed in Form C has been admitted partially after verification for an amount of Rs.9,49,73,353/-.

4. In his reply filed by Diary No.00988/2 dated 16.04.2021, the respondent has stated that the claim of the applicant pertaining to CRPS Series-1 along with dividend has been admitted since the same was due and payable from September 2015 as per the records of the Corporate Debtor. It is further stated that the claim regarding interest and premium has not been admitted since no such amount is due and payable on the basis of records available of the Corporate Debtor. It is also stated that there is no document to show that any such conditions as suggested by the Applicant have been accepted by the Corporate Debtor. According to the respondent, the applicant's claim regarding salary is not supported on the basis of records/documents available with the corporate debtor.

4.1 The respondent has averred that the information regarding partial admission of the claim of the applicant was given to the letter by e-mail dated 11.02.2019 and the applicant is filing the application as late as 30.07.2019 i.e. after the CoC has approved the resolution plan. It is further averred that in terms of Section 53 of the Code, the applicant being a preference shareholder is ranked at as low as 7th in the water fall provided.

5. In the rejoinder filed by Diary No.00988/3 dated 15.06.2021, the applicant has inter alia stated that the RP has erred in not taking into consideration the fact that IFCI Limited is no longer the lender of the corporate debtor and the condition of term of preference shares no longer holds good between the holder of CRPS (Series-2), the applicant herein, and the corporate debtor. He has also alleged that the documents and legal opinion obtained from advocate, who in his opinion also confirms that preference share is a debt, was e-mailed to the RP by e-mail dated 19.11.2018 and the same was not taken into consideration while rejecting his claim. It is also stated that the RP failed to consider that the amount of claim of the applicant on account of CRPS (Series-2) is a "financial debt" in terms of definition of the term in Section 5(8) of the IBC, 2016 and this claim is supported by the RBI Circular No.A.P. DIR SeriesCircular No.73 dated 08.06.2007 and also by the Indian Accounting Standard (Ind AS-32). It is also averred that the applicant was not informed about rejection of his claim on account of salary and other benefits and his claim was supported by the entries in the balance sheet of the corporate debtor and that such claim of the applicant upto 2018 cannot be rejected because the One Time Settlement of the corporate debtor with State Bank of India failed in

April 2018. In short, it was claimed that the applicant's claim was rejected without proper appreciation of the facts mentioned in the documents and other evidence submitted before the RP.

6. In the written submissions filed by Diary No.00988/06 dated 16.02.2022, the applicant has vehemently argued that the CRPS are in the nature of debt and that even CRPS-2 would fall due for repayment in 2026, and will then take the shape of debt. Even if for argument's sake CRPS-2 fall for repayment of 2026 for the shape of debt, the RP is bound by the provisions of Regulation 14 of the IBB (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which read as under:-

*"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 subregulation (1), as soon as may be practicable, when he comes across additional information warranting such revision."*

7.1 It is further argued that CRPS is in the nature of the debt of the corporate debtor and the actual dividend thereon is too in the nature of debt of the corporate debtor. Regarding the payment of interest, it has been stated that the same will be allowed Article 180 in the Articles of Association of the corporate debtor. It is also stated that as the matter of default of corporate debtor regarding bank payment took place in May 2018, the claim of the applicant for salary and wages for and upto May 2018 should have been considered by the RP.

7. The respondents in written submission filed by Diary No.00988/7 dated 17.02.2022 have furnished the following summary of claims filed by the applicant before the corporate debtor along with status is as under:-

| Sr. No. | Particulars of Claim                                                                        | Claim Amount                                        | Status                                       |
|---------|---------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------|
| 1.      | Unsecured Creditors                                                                         | 98,00,000                                           | Admitted                                     |
| 2.      | CRPS-1<br>a) Value of CRPS-1<br>b) Premium CRPS-1<br>c) Dividend CRPS-1<br>d) Interest @18% | 5,25,00,000<br>3,26,11,849<br>61,504<br>5,62,19,300 | Admitted<br>Admitted<br>Admitted<br>Rejected |
| 3.      | CRPS-2<br>a) Value of CRPS-2<br>b) Dividend CRPS-2                                          | 47,94,32,480<br>5,61,658                            | Rejected<br>Rejected                         |
| 4.      | Salary from August 2017 to May 2018 LTA, Gratuity, leave encashment and Medical allowance   | 65,16,874                                           | Rejected                                     |

7.1 Regarding claim of interest @18% on CRPS-1, it is stated that the same was rejected since there was no agreement for the same and no documents/record of the corporate debtor provided for the same. It is also stated that earlier the corporate debtor had never paid any interest to the applicant. Reliance has been placed on the decision of **Krish Enterprises Vs. Gammon India Ltd. Comp App (AT) (Ins) No.144 of 2018, 27.07.2018 - (paragraph4)**.

7.2 Regarding the claim of CRPS-2, the same was stated to be rejected on the account that it was not due until 2026. It is also stated that it is evident from the letter dated 19.04.2017 issued by IFCI Limited to the applicant that preference shares have been purchased from IFCI Limited. It is further

contended that the subsequent letter dated 09.04.2018 referred by the applicant intimating transfer of shares from IFCI to applicant seems to be an afterthought and an attempt to mislead the Tribunal. The alleged letter was never put before the Board of Directors or shareholders of the Company. It has also been pointed out that contents of the letter dated 09.04.2018 are unilateral in nature and cannot be considered as valid since there is no agreement with the corporate debtor for the same and such terms cannot be unilaterally imposed by the applicant.

7.3 Regarding the claim of salary from August 2017 to May 2018, it is stated that the same was rejected as no amount outstanding against the salary to the applicant is reflected in the books of the corporate debtor. It is also pointed out that in the Audited Balance Sheet as on 31.03.2019 duly signed by applicant in the capacity of director, auditor has given the following remarks with regards to applicant's salary. Relevant extract from the balance sheet as on 31.03.2019 (page 28 of the additional affidavit) is being reproduced here under for ready reference:

*“Application seeking remuneration approval of Mr. L K Singh from Central Government was not filed as the one-time settlement proposal of SBI failed due to non-payment by Promoters/Promoter Companies. As such, remuneration paid to Mr. L K Singh after 23.05.2017 (i.e. date of order of NCLT) was considered as paid under trust and accordingly debited to his account being recoverable.”*

8. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

9. In the present application, the applicant has prayed for the payments of alleged outstanding dues on account of interest, CRPS-2 and unpaid salary. As

evident from the discussions above, all claims by the applicant are verified and partially accepted before the disputed claims under reference were rejected by the Resolution Professional. At the outset, this Bench observes that the Applicant has filed this application on 30.07.2019 , i.e., much after the approval of the resolution proposal by the COC on 27.3.2019. Any relief at this stage will only delay the resolution process and defeat the very objective of the Code. Regarding the rejection of the claim relating to interest, the applicant has not been able to produce any evidence to suggest that payment of interest was agreed by both the parties in any agreement/document. In the absence of any evidence in this regard, payment of interest is held to be rightly rejected by the Resolution Professional. Regarding the claims for payments relating to CRPS-2, there is a dispute regarding the transfer of shares from IFCI to the applicant which forms the basis of such claims. It is also not clear whether these transactions were cleared or put before the Board of Directors or Shareholders of the Company for their approval. No evidence in this regard has also been submitted by the applicant in the course of the present proceedings. Similarly, the applicant has not brought any evidence on record to suggest that payment of salary beyond what was reflected in the balance sheet of the company was payable to him. In short, both these disputed matters cannot be decided in this forum as this Tribunal is not a forum to settle commercial disputes or to be used for the purposes of recovery of dues. The applicant, however, is at liberty to take up the issue before the competent judicial authority for relief, if any.

10. Accordingly, the present application bearing CA No.557/2019 stands dismissed and disposed of.

**12. IA No.132/2021**

The instant application is filed by Central Goods & Services Tax, Commissionerate, Shimla through its Commissioner under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 for permitting the revenue to adjust an amount of Rs.8,51,304/- as accrued to the corporate debtor on account of interest on delayed refund out of total due amount of Rs.1,60,06,758/- which is recoverable from the corporate debtor on account of arrears of tax.

2. The applicant submitted that this Adjudicating Authority admitted CP (IB) No. 35/Chd/HP/2018 vide order dated 06.07.2018 and CIRP proceedings initiated against the Corporate Debtor. On coming to know about the above order, the applicant had filed its claim for Rs.1,57,47,605/- on 08.03.2019 with the Resolution Professional. Further, the applicant filed the revised claim amounting to Rs.1,60,06,758/- on 11.09.2019 with the Resolution Professional after coming to know that an amount of Rs.2,59,153/- is also recoverable for delayed payment of Service Tax. It is also a matter of record that an amount of Rs. 8,51,304/- on account of interest claim is also due to be paid to the corporate debtor. and the adjustment of the same would not cause any prejudice to the corporate debtor.

3. It is contended by the applicant that RP has denied the request of the Department only on the ground that claim was already lodged earlier.

4. The respondent-RP in its reply vide Diary No.01291/01 dated 15.04.2021 denied the averments made by the applicant and stated that applicant seeking set off of refund claim of the corporate debtor against the Government dues of the corporate debtor will result in giving priority to the debts of an operational creditor of the corporate debtor over and above the debts of the financial creditors which in turn defeats the provisions of Section 53 and objective of the Code. The adjustment of refund claim with Government dues of the corporate debtor is also in violation of the provisions of Section 14 of the Code.

5. After careful perusal of the records available and submissions made by the learned counsels for the applicant and the respondent, we are of the considered view that the above dues are Operational Debt, as such, the applicant falls under the category of Operational Creditor. For the sake of brevity, the definition of Operational Creditor and Operational Debt reproduce hereinbelow:

*"Section 5 (20) "Operational Creditor" means a person to whom an operational debt is owned and includes any person to whom such debt has been legally assigned or transferred.*

*Section 5 (21) "Operational Debt" means a claim in respect of the provisions of goods and services including employment or a debt in respect of the payment of dues arising under any law for time being in force and payable to the Central Government, any State Government or any local authority."*

6. In view of the above, the claim of the applicant is Operational Debt, and the applicant has already put their claim before IRP/RP.

7. Further, Section 238 of the I &B Code have overriding effect over all other law which read as under:

*Section 238 "Provision of this code to override other Laws- The Provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for time being in force or any instrument having effect by virtue of any such law.*

8. The provisions of Section 53 of the Code clearly lays down the priority of payments to the creditors and the same is sacrosanct. We are, therefore, of the view that granting the set off of refund of Rs.8,51,304/- against the Government dues of Rs.1,60,06,75/- in the present case result in giving the Government Department, an operational creditor, a priority over the dues of other stakeholders including the financial creditors and the same is against the provisions of Section 53 of the Code.

9. Hence, under the facts and circumstances as narrated above, we are of the view that the Resolution Professional has rightly denied the claim of the Department to set off the refund against the Government dues. Accordingly, the present application bearing IA No.132/2021 is dismissed and stands disposed of.

### **13. IA No.86/2022**

This is an application filed by **Consortium of Proma Industries Limited and Shivam Syncotex Private Limited** seeking consideration of their joint resolution plan dated 29.01.2022 submitted before the Resolution Professional. The joint resolution applicants are Proma Industries Limited & Shivam Syncotex Private Limited. It is submitted that the applicants have due experience and expertise in the textile industries and their resolution plan dated 29.01.2022 duly includes the interest of all the creditors/stakeholders. It is also stated that a

complete financial proposal has been submitted in the said resolution plan. The respondents by their response filed by Diary No.00141/06 dated 02.03.2022 have stated that in the present case, the Committee of Creditors (CoC) have already approved the resolution plan with 92.55% voting share and an application seeking approval of the resolution plan is pending before this Adjudicating Authority. It is further stated that the applicant is a stranger to the CIRP process and has no locus standi to seek directions for placing the resolution plan before the CoC and that the much belated application by the applicant needs to be rejected as the same is not in compliance with the objectives of the IBC.

2. We have carefully perused the records available and submissions made by the learned counsel for the applicant and respondent.

3. In the present case, the application is filed much after the CoC has approved the resolution plan on 08.04.2019. In this backdrop it becomes necessary for this Bench to revisit some of the provisions of IBC and to take note of the interpretations which have been placed upon them in successive decisions of the Courts.

4. The Hon'ble Supreme Court in a catena of judgements has laid down the principle that the commercial wisdom of the CoC is paramount in the resolution process. The Code also envisages strict compliance to its provisions to achieve the objectives of maximising the value of assets of the corporate debtor and thereby for all creditors. The resolution plan is not an auction and it is also not a recovery process. The entire process is strictly time bound failing which there is drastic reduction in the value of the assets of the Corporate Debtor.

5. This Bench is also conscious of the following observation of the Hon'ble Supreme Court in ***Ebix Singapore Private Limited and Ors. vs. Committee of Creditors of Educomp Solutions Limited and Ors. (13.09.2021 - SC) : MANU/SC/0628/2021:***

*“Such inordinate delays cause commercial uncertainty, degradation in the value of the Corporate Debtor and makes the insolvency process inefficient and expensive. We urge the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate.”*

6. In this context a reference is made to the decision of the Hon'ble NCLAT in the case of ***Steel Strips Wheels Ltd Vs. Shri Avil Menezes, RP of AMW Autocomponent Ltd. & Ors. (2022)*** ibclaw.in 297 NCLAT dated 18-Apr-22 where in it is held :

*“17. Further in para 249, the Hon'ble Supreme Court noticed the cause for deviation of the original objective and timeline for CIRP. It was also noticed that “late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the plan’ is a reason for deviation of the original objective and timeline.*

*In para 249, following has been stated:-*

*“249. In its observations, the Report noted that a delay in the resolution process with more than seventy-one per cent cases pending for more than 180 days is in deviation of the original objective and timeline for CIRP that was envisaged by the IBC. The delays were attributable to: (i) the NCLT taking considerable time in admitting CIRPs; (ii) late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the Plan; and (iii) multiplicity of litigation and the appellate process to the NCLAT and the Supreme Court. Such inordinate delays cause*

*commercial uncertainty, degradation in the value of the Corporate Debtor and makes the insolvency process inefficient and expensive. We urge the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate.”*

*18. In view of the law laid down by the Hon'ble Supreme Court in the above case, we are of the considered opinion that there is no valid reason given by the Adjudicating Authority for permitting the consideration of plan of Respondent No.3. The consideration of the Resolution Plan of Respondent No.3 shall be breaching both timeline as well as the finality of the Resolution Plan of the Appellant which was approved by the CoC on 26.08.2021”.*

7. In view of the aforementioned discussions, we are of the view that the procedure for submissions and approval of resolution plans as laid down in the IBC does not permit submissions of such resolution plans long after the approval of the resolution plan by the CoC. As the Code was framed to consolidate the process of insolvency resolution of corporate persons in a time bound manner, there is no scope for filing of such a resolution plan to delay the proceedings and, thereby, defeat the very objective of the Code.

8. In view of the above, the present application bearing IA No.86/2022 stands rejected and is disposed of accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

May 24, 2022

AV