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

Company Appeal (AT) (Ins) No. 854 of 2021

IN THE MATTER OF:

**The Commissioner of Central Taxes
Goods & Service Tax** ....**Appellant**

Versus

C.S. Ashish Singh & Ors. .... **Respondents**

Present

For Appellant: **Ms. Samiksha Godiyal and Mr. Govind Manoharan, Advocates**

For Respondent: **Mr. Arjun Padhiyar and Mr. Atul Sharma, Advocates for R-2 & 3.**

O R D E R
(Date: 10.11.2021)
(Virtual Mode)

The appeal was heard on admission on 26.10.2021.

2. This appeal which has been filed under Section 61(3) (i) to (iii) of the Insolvency and Bankruptcy Code, 2016 (in short IBC)

challenges the Impugned Order dated 25.09.2020 of the National Company Law Tribunal, New Delhi Bench II (hereinafter called the Adjudicating Authority) in I.A. No. 2159/ND/2020 in Company Petition No. (IB) 1232 (ND)/2019 in the matter of Fourth Dimension Solutions Limited. By the Impugned Order, the Adjudicating Authority approved a resolution plan submitted by Respondents No.2 and 3 with respect to Fourth Dimension Solutions Limited (Corporate Debtor) under Section 31 of IBC.

3. The Learned Counsel for Appellant has submitted that the pending dues relating to Goods and Service Tax appeared in the balance sheet of the Corporate Debtor (attached at page 92 of Appeal Paperbook). He has referred to Section 17 (2)(d) of IBC which authorizes the Resolution Professional 'to access all books of accounts, records and other relevant documents of Corporate Debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified.' He has further adverted to Section 18(1)(a) of the IBC, 2016 wherein the Interim Resolution Professional is enjoined with the duties to collect information relating to assets, finance and operations of the Corporate Debtor for determining the financial position of the Corporate Debtor, including information relating to business

operations, financial and operational payments, assets and liabilities and such other matter as may be specified. He has also pointed out to the provision under section 29 (1) of IBC wherein the Resolution Professional has been given the duty of preparing the Information Memorandum containing such relevant information as may be specified by the Insolvency and Bankruptcy Board of India.

4. Furthermore, the Learned Counsel for Appellant has referred to Regulation 36 (2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, wherein it is stated that "details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities" has to be included in the Information Memorandum.

5. The Learned Counsel for Successful Resolution Applicant (Respondent No. 2), who has appeared on advance notice, has argued that the Resolution Plan was approved by the Adjudicating Authority on 25.9.2020. Thereafter, the Successful Resolution Applicant has stepped into the shoes of the Corporate Debtor and the approved Resolution Plan has been implemented. He has

referred to section 31 of the IBC to claim that once the Resolution Plan is approved by the Adjudicating Authority, it is binding on all the stakeholders including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law is owned. The Learned Counsel for Successful Resolution Applicant has referred to the judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors (2021 SCC Online SC 313)** in support of his contention.

6. On perusal of the appeal memo, we do not find that the Appellant had filed any claim before the Resolution Professional regarding his dues. The Appellant, in averments in the appeal memo, has stated that his claim of GST dues arises from a Show Cause Notice issued on 19.6.2019, which was available in the record of the Corporate Debtor, which was taken over by the Interim Resolution Professional. Hence the statutory dues of the Department of Central Taxes automatically considered by the Resolution Professional in the Information Memorandum, and should have been accounted for in the Resolution Plan, which was

approved by the Adjudicating Authority vide the Impugned Order dated 25.9.2020.

7. According to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, financial and operational creditors have to file claims in accordance with Regulations 7 and 8 respectively of the aforementioned Regulations (supra) in a specified format and stipulated time period. In the records submitted by the Appellant and in the arguments presented by the Learned Counsel for Appellant, it is nowhere pointed out as to when and in what form, the claim of pending dues of GST was filed by the Appellant.

8. The Hon'ble Apex Court has held in the matter of **Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited (supra)** that once the Resolution Plan has been approved and implemented, no further claims will lie or can be considered. The relevant extract is reproduced hereunder:-

> *"62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra). "107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC Online NCLAT 388] in holding that claims that may exist apart from those decided on merits by the*

resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as 65 this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All 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 the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

9. In the light of the aforesaid discussion, we are quite clear that the claim of the Appellant cannot be considered at this stage. We do not find any reason to interfere with the Impugned Order dated 25.9.2020. The appeal is, therefore, dismissed at the stage of admission. No orders as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
10th November, 2021

/aks/