

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Ins) No. 1113 of 2020

&

I.A. No. 443 of 2022

[Arising out of Order dated 05.03.2020 passed by the Adjudicating Authority/National Company Law Tribunal, Indore Bench at Ahmedabad, Court 1 in I.A. No. 181/NCLT/AHM/2019 in C.P. (I.B.) No. 131/9/NCLT/AHM/2018]

IN THE MATTER OF:

Madhya Pradesh Paschim

Kshetra Vidyut Vitaran Co. Ltd.

Through Superintending Engineer (Com)

Office of Executive Director (I.R.)

GPH Compound

Polo Ground

Indore

Madhya Pradesh-452003

...Appellant

Versus

1. Jagdish Kumar

RP for Madhya Bharat Phosphate Pvt Ltd

B-56 Wallfort City Bhatagaon

Ringroad No.1

Raipur, Chhattisgarh- 492001

...Respondent No. 1

2. Shree Pushkar Chemicals and Fertilisers Ltd

301/302, 3rd Floor

Atlanta Center

Sonawala Road

Goregaon (East)

Mumbai, Maharashtra- 400063

...Respondent No. 2

Present:

For Appellant : Mr. Manu Agarwal, Mr. Shubham Budhiraja, Advocates.

For Respondent : Mr. Palash S. Singhai, Advocate.

J U D G M E N T

(10.04.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal is being filed by the 'Appellant' under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short '**I & B Code, 2016**') and Rule 22 of the National Company Law Appellate Tribunal Rules, 2016 against the order dated 05.03.2020 (in short '**impugned order**') passed by the 'Adjudicating Authority' [National Company Law Tribunal, Indore Bench at Ahmedabad] in I.A. No. 181/NCLT/AHM/2019 in C.P. (I.B.) No. 131/9/NCLT/AHM/2018, whereby the 'Adjudicating Authority' has approved the 'Resolution Plan' submitted by Respondent No.1 – the Resolution Professional of Madhya Bharat Phosphate Pvt. Ltd. (**'Corporate Debtor'**) of Respondent No. 2- Shree Pushkar Chemicals and Fertilisers Ltd (**'Successful Resolution Applicant'**).

2. The 'Corporate Debtor' was incorporated on 06.01.1998 as a Private Limited Company and is engaged in the manufacture and sale of single super phosphates in India through two plants located at Meghnagar, Dist. Jhabua and Deewanganj. The 'Appellant' was providing electricity to the plant located at Meghnagar, Dist. Jhabua.

3. The 'Appellant' issued Notice of Permanent Disconnection to the 'Corporate Debtor' on 16.02.2018 for non-payment of dues and adjusted the security deposit of the 'Corporate Debtor' against outstanding dues of the 'Appellant' and issued a Bill after adjustment. It has been brought out that

the electricity connection of the Corporate Debtor's Plant at Meghnagar, was permanently disconnected on 23.03.2018 on account of overdue payments.

4. The 'Appellant' issued a Bill for an amount of Rs. 19,99,792/- to the Corporate Debtor after adjusting the Security Deposit of Rs. 15,66,267.99. There were outstanding dues of Rs.20,24,789/- against the premises of the 'Corporate Debtor' at Meghnagar even after Permanent disconnection of its HT Connection.

5. Vide letter dated 26.06.2018, the 'Corporate Debtor' acknowledged its liability to the extent of Rs. 19,99,792/- and expressed its inability to immediately pay the said amount.

6. The 'Corporate Insolvency Resolution Process' (in short '**CIRP**') was initiated in respect of the 'Corporate Debtor' and the 'Interim Resolution Professional' (in short '**IRP**') was appointed on 11.09.2018. The 'IRP' issued a public announcement on 14.09.2018 in daily newspaper, website and invited claims from the creditors of the 'Corporate Debtor'. Two Financial Creditors, namely PNB and SIDBI submitted their claims for an amount of Rs. 31,98,62,548/- and Rs.7,79,52,965/- respectively and the 'Committee of Creditors' (in short '**CoC**') was constituted with 80.51% voting share of PNB and 19.49% voting share of SIDBI. In the tenth meeting of 'CoC' held on 06.03.2019, the 'CoC' unanimously passed the resolution for approval of the final 'Resolution Plan' of the 'Resolution Applicant', 'Shree Pushkar Chemicals and Fertilisers Limited'. The said 'Resolution Plan' provides for Rs. 25 lakhs towards 'CIRP' cost, Rs. 62 lakhs towards government dues/ statutory liabilities (including direct and indirect taxes) and other

‘Operational Creditors’ and Settlement of ex-workmen claims and Rs. 18.15 crores towards payment to the ‘Financial Creditors’.

7. The ‘Resolution Plan’ was submitted to the ‘Adjudicating Authority’ for its approval on 08.03.2019. However, the ‘Adjudicating Authority’ on 22.11.2019, directed the ‘CoC’ to reconfirm that the ‘Resolution Plan’ is in conformity with the decisions of the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited Versus Satish Kumar Gupta & Ors.**, [2019 SCC OnLine SC 1478] and apprise the ‘Adjudicating Authority’. The ‘CoC’ filed an affidavit before the ‘Adjudicating Authority’ on 17.12.2019 confirming that the ‘Resolution Plan’ was in conformity with the decision of **Essar Steel India Limited** (*Supra*). Subsequently, the ‘Adjudicating Authority’ approved the ‘Resolution Plan’ vide ‘impugned order’ dated 05.03.2020. The ‘Resolution Plan’ did not provide for full outstanding dues of electricity of the ‘Appellant’.

Aggrieved by this, the ‘Appellant has filed the present appeal.

8. Heard the Counsel for the Parties, perused the record made available and examined the cited judgments passed by the Hon’ble Supreme Court of India as well its earlier order.

9. It is the case of ‘Appellant’ that the ‘Resolution Plan’ is not in conformity with Section 30 & 31 of the I & B Code, 2016 as interpreted by the Hon’ble Supreme Court in the case of **Swiss Ribbons (P) Ltd. v. Union of India**, [(2019) 4 SCC 17] and **Essar Steel India Limited** (*Supra*). The ‘Appellant’ has alleged that the ‘impugned order’ has failed to balance the interest of all stakeholders including operational creditors and therefore

stand vitiated. The 'Appellant' also alleged that the 'Adjudicating Authority' did not consider that the 'Resolution Plan' does not give equal treatment to the 'Operational Creditors' with the 'Financial Creditors'.

10. The 'Appellant' also assailed that the 'Adjudicating Authority' who did not consider that against the electricity dues of Rs. 20,24,789/-, no specific provision is made and merely stated that payment of claim to the operational creditors to be on a pro rata basis to all 'Operational Creditors'.

11. The 'Appellant' is aggrieved that against admitted claims of 'Operational Creditors' of Rs. 5.50 crores, the 'Resolution Plan' provide merely Rs. 40 lakhs, i.e., 7.27% whereas the 'Financial Creditors' were proposed to be paid 45.67% of the financial debt due. As per the 'Appellant', this is very inappropriate and against the intent of the I & B Code, 2016. The 'Appellant' is aggrieved that the 'Adjudicating Authority' did not consider that there should not be a substantial difference (of many times the present case) between the payment made to 'Financial Creditors' and 'Operational Creditors', in terms of percentage of their admitted dues.

12. The 'Appellant', stated that the 'Resolution Plan' did not consider that the electricity dues of the 'Corporate Debtor' cannot be waived and has to be provided in full.

13. As per the 'Appellant', the 'Adjudicating Authority' has erred in not considering that without clearing the dues of the 'Appellant', the electricity connection of the 'Corporate Debtor' cannot be restored and also the 'Appellant' could not have been directed by way of the 'Resolution Plan' to restore the deposit of 'Corporate Debtor'. The 'Appellant' submitted that the

same tantamounts to directing the 'Appellant' ('Operational Creditor') to make payment back to the 'Corporate Debtors' of electricity consumed prior to the 'CIRP', which is beyond the provisions of the I & B Code, 2016. This is more so for the reason that the entire security amount of the 'Corporate Debtor' with the 'Appellant', being Rs. 15,66,268/- already stood adjusted before the 'CIRP' commencement date.

14. The 'Appellant' mentioned that the 'Adjudicating Authority' also erred in not considering the fact that the Appellant herein being an 'Operational Creditor' of the 'Corporate Debtor' was not served any notice under Section 24(3) of the I & B Code, 2016 to the 'Appellant' by the 'Resolution Professional'.

15. The 'Appellant' highlighted the illegal action of the 'Adjudicating Authority', to order dated 22.11.2019 to the 'CoC' to examine that the 'Resolution Plan' is in conformity for judgment passed by the Hon'ble Supreme Court in the matter of ***Essar Steel India Limited (Supra)***. The 'Appellant' stated that the 'Adjudicating Authority' could not delegate its judicial functions to the 'CoC' and therefore the 'impugned order' is bad in law.

16. The 'Appellant' again reiterated that the 'impugned order' is also bad in law in the teeth of ***Essar Steel India Limited (Supra)***., in which the Hon'ble Supreme Court held that the 'Resolution Plan' which does not provide for payment of electricity dues in full ought to be modified. The 'Appellant' highlighted the Para-64 of the said judgment, which reads as under:

"64...As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on such business, namely, electricity."

(emphasis supplied)

17. The Appellant stated that in contrast to above ratio, in the present case, as against the full dues of Rs. 20,24,789/-, the 'Resolution Plan' provided only Rs. 2,03,813/- to the 'Appellant' and therefore the 'impugned order' approving the 'Resolution Plan', is against the law and need to be set aside.

18. The 'Appellant' took pains to emphasise that electricity dues takes precedence in view of Section 56 of the Electricity Act, 2003 and Regulation 4.12 of the Madhya Pradesh Electricity Supply Code, according to which, in case of any pending dues, supply of electricity to a premises, independent of change of its ownership, may be refused. The 'Appellant' submitted that therefore, a 'Resolution Plan' mandating supply of electricity to a premises despite the previous electricity dues not having been paid contravenes the law.

19. Concluding his arguments, the 'Appellant' assailed the 'impugned order' which has been approved in violation of the provisions of the I & B Code, 2016.

20. The 'Respondent No. 1' denied all the averments of the 'Appellant to be misleading, mischievous and devoid of any merit and urged that the 'Appeal' need to be dismissed.

21. The 'Respondent' reiterated the facts of the case and stated that the 'CIRP' commenced vide the 'impugned order' dated 11.09.2018 and therefore the 'IRP' published 'Form-A' on 14.08.2018 to invite claims of the creditors of the 'Corporate Debtor'. However, the 'Appellant' did not file any claim with the 'IRP' for their outstanding dues. The 'Respondent' stated that the 'Appellant' has also not raised any claim/ objection regarding their claim during the entire 'CIRP' or during the approval of resolution plan by the 'Adjudicating Authority'.

22. The 'Respondent' submitted that the 'IRP' on 24.09.2018 sent intimation letter to the 'Appellant' informing them about the initiation of 'CIRP' and invocation of moratorium but despite such specific intimation to the 'Appellant', the 'Appellant' did not take any steps for filing their claim with the 'IRP' nor contacted the IRP/RP for any of their outstanding electricity dues against the 'Corporate Debtor'.

23. The 'Respondent No. 1' stated that the 'Resolution Plan' Submitted by Shree Pushkar Chemicals and Fertilizers Limited (in short '**SPCFL**'/ Successful Resolution Applicant') was of Rs. 19.02 crores against the liquidation value of the 'Corporate Debtor' of only Rs. 11.61 crore. The 'Resolution Plan' provided for Rs. 18.15 crores to the Secured Financial creditors and Rs. 0.62 crore to the 'Operational Creditors'. The 'Respondent No. 1' stated that the 'CoC' in their commercial wisdom found the 'Resolution

Plan' to be feasible and viable, hence the 'CoC' unanimously approved the 'Resolution Plan' which was approved by the 'Adjudicating Authority' vide 'impugned order' dated 05.03.2020.

24. The 'Respondent' strongly pleaded that in a catena of judgments, it has been held that the approving or rejecting a resolution plan comes within the domain of commercial wisdom of the 'CoC' and the same cannot be subject to judicial review. It has further been held in several judgments that statutory dues/electricity dues can be waived by the 'Adjudicating Authority' while approving the 'Resolution Plan', as the object of the code is to maximize the assets of the 'Corporate Debtor'.

25. The 'Respondent No. 1' stated that the 'Resolution Applicant' on its own made a provision for payment to the 'Appellant' of their dues in pro rata manner in just and fair manner.

26. The 'Respondent No. 1' submitted that this 'Appellate Tribunal' in the matter of ***Uttarakhand Power Corporation Ltd. vs. M/s ANG Industries Ltd.*** [CA(AT) No. 298 of 2017] held that 'Uttarakhand Power Corporation Ltd' cannot recover outstanding dues for the period prior to 'CIRP'.

27. The 'Respondent No. 1' again reiterated that in several judgments, this 'Appellate Tribunal' has held that if a creditor does not file claim with the IRP/RP during the CIRP, and a 'Resolution Plan' is passed then in such case, after the approval of the 'Resolution Plan', the claim cannot be entertained and the Resolution plan approved by the 'Adjudicating Authority' shall be binding upon all the stakeholders.

28. The 'Respondent No. 1' submitted that the present appeal is not maintainable as the 'Applicant' has failed to bring the claim before the 'IRP' at the time of invitation of claims from creditors by the IRP Dated 14.09.2018 wherein the last date for submission of claims was 28.09.2018, hence the appellant has lost its right to enforce its claim.

29. The 'Respondent No. 1' concluding his pleadings, urged to dismiss the appeal.

30. In order to examine the issue raised in the appeal, it will be necessary to examine Section 18, 30 & 31 of the I & B Code, 2016, which read as under:-

"18. Duties of interim resolution professional. - The interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board. Explanation. – For the purposes of this [section], the term “assets” shall not include the following, namely: -

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

30. Submission of resolution plan. - (1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;

[(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 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 purpose 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) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board. [Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[(4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share

of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection]:

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

31. Approval of resolution plan. - *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.*

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]”

(emphasis supplied)

31. This ‘Appellate Tribunal’ takes into account that the ‘Resolution Plan’ provides for all creditors as approved by the ‘CoC’ in their Commercial Wisdom.

32. This ‘Appellate Tribunal’ also observes that the electricity was disconnected since July 1, 2019 by the ‘Appellant’ and due to the same, will not form part of essential service as they are forming part of the dues prior to the initiation of the ‘CIRP’.

33. This ‘Appellate Tribunal’ in **State of Haryana Through Excise & Taxation Vs. Uttam Strips Ltd. & Ors.** held as follows:-

“9. Based on the above case, the law laid down by Hon'ble Supreme Court; it is clear that a Successful Resolution Applicant is not to be burdened with undecided claims at the stage of implementation of the Resolution Plan. The Successful Resolution Applicant is to be provided with a company free from past liabilities. It has been rightly understood that a Successful Resolution Applicant cannot be saddled with past liabilities indefinitely. Such an act will make it impossible for the Successful Resolution Applicant to run the business of the Corporate Debtor effectively. In fact, saddling a Resolution Applicant with past claims will defeat the entire purpose and mechanism set out under the I&B Code, mainly when all claims have been appropriately dealt under the Resolution Plan itself.

***10.** The statutory dues are operational debts, and once a resolution plan is approved by the NCLT, the treatment of all stakeholders, including Operational Creditors, is to be determined as per the terms of the approved Resolution Plan.”*

(emphasis supplied)

34. This ‘Appellate Tribunal’ finds that as per Section 24(3)(c) of the code the operational creditors are not to be given notice of the meeting of CoC, unless amount of their aggregate dues is not less than ten percent of the debt. Therefore, the ‘Appellant’ who did not file any claim with the IRP/RP, could not expect a notice of ‘CoC’ the given to them.

35. This ‘Appellate Tribunal’ in its earlier order in **Office of the Asst. State Tax Commissioner State Tax Department, Government of Maharashtra v. Shri Parthiv Parikh & Anr.** [Company Appeal (AT) (Ins) No.583 of 2020] decided on 26.03.2021 held that.

“15. Thus, it is clear that much water had flown under the bridge from the date of issue of public notice (on 02.11.2018) and the extended time period of ninety days as provided under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Resolution Plan as approved by the COC was submitted to the Adjudicating Authority for necessary approval under Section 30. Any interruption in the CIR Process at this stage by including a delayed claim/s would have meant setting the clock back and sending matter back to COC & RP. It cannot be ruled out that if the claim of the Operational Creditor State Tax Department, Government of Maharashtra was accepted at such a late stage, there could have been other such applicants too, who would have demanded accommodation on the same ground allowing late submission of their claims once this window would have opened. It would be trite to emphasise the fact that this would have meant complete disruption of the CIRP and the timelines stipulated therein. Delay would defeat Resolution as this would have resulted in the CIRP and approval of successful Resolution Plan to continue for an indefinite period of time, which is certainly not the intention of IBC. A real hazard in such an event could be liquidation, and corporate death, of an otherwise functional and corporate debtor, with which Resolution Plan approved is set to come out of the Red”

(emphasis supplied)

36. This ‘Appellate Tribunal’ takes into account that the Hon'ble Supreme Court of India in **Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd** [2021 9 SCC 657]. decided on 13.04.2021 that on approval of the ‘Resolution Plan’.

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

This ‘Appellate Tribunal’ observes that the above judgment fully settled the issues raised before us in present appeal.

37. This ‘Appellate Tribunal’ also observes that the ‘Resolution Plan’ approved by the ‘Adjudicating Authority’ has taken care of the interest of all the stakeholders who have filed claim with the IRP/RP. It is noted that the ‘Appellant’ has not filed any claim with the IRP/RP nor raised any issue during the entire ‘CIRP’ period or during the approval of the ‘Resolution Plan’ by the ‘Adjudicating Authority’, therefore, the ‘Appellant’ at this stage cannot be allowed to raise such issues especially when the ‘Resolution Plan’ stand implemented.

38. This 'Appellate Tribunal' observes that the claim of the 'Appellant' is of pre-CIRP period and moreover the 'Appellant' has not even filed any claim with the IRP/RP and this 'Appellate Tribunal' has held in several judgments that pre-CIRP dues cannot be recovered unless the creditor files a claim with the IRP/RP. It may be mentioned that once the resolution plan is approved, the said plan attains finality and becomes binding on all the stakeholders and after the approval of resolution plan, no fresh claim can be entertained.

39. This 'Appellate Tribunal' has put a pointed query to the 'Respondents' as to how the 'Appellant' can be asked to pay back pre- CIRP period electricity consumption which has been recovered by way of adjustment from the Security deposit. In response, the 'Respondent No. 2' ('SRA') fairly admitted that he is willing to pay the Security deposit which was forfeited prior to the 'CIRP' and on submission of this Security deposit amount its electricity connection should be restored immediately. The Respondent argued that this will be in conformity with **Ghanshyam Mishra** (*Supra*) and in accordance with I & B Code, 2016 along with Regulation 35. This 'Appellate Tribunal' agrees with this submission of the 'Respondent No. 2' ('SRA').

40. This 'Appellate Tribunal' notes that the very intent of the I & B Code, 2016 is for the revival of the 'Corporate Debtor' and the matter has been greatly amplified by the Hon'ble Supreme Court of India in the matter of **Ghanshyam Mishra** (*Supra*) as well as catena of the other Judgments where it has been settled, loud and clear, that no claim remains/ sustains after the 'Resolution Plan' is approved. If such claims are to be entertained at later

stage then no 'Resolution Plan' will ever be successful since uncertain, unclaimed and non- admitted claims will be keep on pouring in and subsequently the implementation of the Resolution Plan would be almost impossible.

41. In light of the discussion in the preceding paragraphs, this Appellate Tribunal is of the opinion that after the implementation of the 'Resolution Plan', no subsequent claim can be entertained.

42. As regard the averments of the 'Appellant' about ratio of ***Essar Steels*** (*Supra*) it is noted that the payment of electricity dues are required to be suitably claimed in response to public announcement of the 'IRP/RP'. It is significant to note that in 2019, an amendment was carried out in Regulation of IBBI (Resolution Process for Corporate Persons) Regulation, 2016 wherein the word has been prescribed 'claim with proof' in place of earlier stipulated word 'proof of claim'. As per Regulation 12(1) of the IBBI (Resolution Process for Corporate Persons) Regulation, 2016, a creditor has to submit claims with proof on or before the last date mentioned in the public announcement and further Regulation 12(2) stipulates that a creditor, who fails to submit claim with proof within the time stipulated in public announcement, may submit claim with proof to IRP/RP on or before 90th days of the insolvency commencement date.

The 'Appellate Tribunal' notes that the 'Appellant' has failed to meet these stipulations and therefore is not entitled to seek relief as prayed.

43. As regard the claim of the 'Appellant' that he was not included in the CoC, as per the provisions of the I & B Code, 2016 and Regulations, the

‘Operational Creditor’ is to be invited to the ‘CoC’ meetings only the dues constitute more than 10% of the total claims. Undisputedly, in the present case total claim of the appellant are much lower than required threshold criteria of minimum 10% of total claims, hence this contention of the appellant cannot be accepted.

44. It is noted that the ‘Appellant’ has claimed the dues of Rs. 20,24,789/- against which the ‘Resolution Plan’ provides for payment of Rs. 2,03,813/- to the ‘Appellant’. The contention of the appellant to provide for the same in full and also at parity with the ‘Financial Creditor’ is unsustainable simply because the ‘CoC’ in their commercial wisdom provided suitable payments to all creditors including ‘Financial Creditors’, ‘Operational Creditors’, workmen and Government dues etc. as per following table :-

<i>Priority No.</i>	<i>Head</i>	<i>Amt. (INR. In crore)</i>
<i>1.</i>	<i>CIRP cost</i>	<i>0.25</i>
<i>2.1</i>	<i>Workmen Dues</i>	<i>0.00</i>
<i>2.2</i>	<i>Payments to secured Financial Creditors</i>	<i>18.15</i>
<i>3</i>	<i>Government dues/ statutory liabilities (including direct and indirect taxes) and other Operational Creditors and Settlement of ex-workmen claims</i>	<i>0.62</i>
	<i>Total</i>	<i>19.02</i>

45. It is a settled principle that all stakeholders may have to take hair cut as decided and approved by the 'CoC' while assessing the viability of the Resolution Plan and after approval of the 'Resolution Plan', it cannot be challenged alleging lesser payment.

46. The 'Appellant' has taken the plea that electricity dues stand on completely different footing based on Section 66 of the Electricity Act, 2003 and Regulation 4.12 of the Madhya Pradesh Electricity Supply Code according to which notwithstanding provisions of any act, in case of any pending dues, supply of electricity to a premises may be refused.

47. The contention of the 'Appellant' cannot be sustained in view of '*non obstante clause*' as provided in Section 238 of the I & B Code, 2016 which reads as under:

"238 The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

(emphasis supplied)

After reading the Section 238 as above, it is clear that even if any other Act is in contravention to the provisions of I & B Code, 2016, the provision of I & B Code, 2016 shall prevail, hence the appellant plea based on the electricity Act and Madhya Pradesh Electricity Supply Code stand rejected.

48. This 'Appellate Tribunal' has no hesitation in recording that the present appeal is not maintainable since the appellant has failed to submit its claim before the 'IRP' at the time of invitation of claim from creditors on

14.09.2018 wherein the last date of submission of claim was stipulated as 28.09.2018 hence, the 'Appellant' cannot claim at this late stage.

49. In fitness of the things, this Appellate Tribunal would like to observe that the Resolution Plan was approved by 'Adjudicating Authority' vide impugned order dated 05.03.2020 which has already been implemented by Respondent No.2 ('SRA') & the appeal at this stage on the issues not backed by law cannot be entertained.

50. This 'Appellate Tribunal' has held in its earlier orders that the 'Appellant' who has not filed any claim before the 'IRP' cannot be allowed to challenge the order approving the Resolution Plan by the 'Adjudicating Authority' as elaborated and held in the matter of '**M/s Akshar Plastchem Investment Private Limited vs. Shri Bijay Murmuria & Ors.**' in CA (AT) (Ins) No. 191 of 2022. The relevant paras of the Judgment are reproduced as under which are directly relevant to the present appeal.

"13. Admittedly, the claim was not filed by the Appellant before the IRP. The last date for receiving the claim was 18.05.2018 and Appellant filed its claim after 20 months from the last date of receiving the claim. The learned Counsel for Respondent No.1 has correctly relied on the judgment of Hon'ble Supreme Court in Ghanashyam Mishra and Sons Private Limited (supra), where it has been held that on the date of approval of Resolution Plan by the Adjudicating Authority, all claims, which are not part of the Resolution Plan shall stand extinguished. In paragraph 102.1 of the judgment, following has been held by the Hon'ble Supreme Court:

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

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

15. In view of the foregoing, we do not find any ground to interfere with the impugned order passed by the Adjudicating Authority approving the Resolution Plan. There

is no merit in the Appeal, the appeal is dismissed. No costs.”

(emphasis supplied)

51. Based on above detailed examination, in qualitative and quantitative manner, along with provisions of I & B Code, 2016, cited Judgments of the Hon’ble Supreme Court of India as well as this Tribunal earlier orders, we do not find any error in the ‘impugned order’ dated 05.03.2020.

52. With regard to payment back by the ‘Appellant’ relating to Security deposit (which has been asked to be paid back in the impugned order) we take into consideration the submission and the commitment given by Counsel for the Respondent No. 2/ SRA that he shall make due payment for the security deposit and this submission is, therefore, accepted and Respondent No. 2 is directed to pay the same to the ‘Appellant’.

53. With the above observations, the appeal is disposed of. No cost. Interlocutory applications, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran