



**Respondent No. 3/ Successful Resolution Applicant.**

**J U D G M E N T**  
**(Virtual Mode)**  
**(29.09.2022)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

The Present `Appeal' is filed against the `Impugned Order' dated 10.06.2022, passed in IA/IB/920/2020 in CP/280/IB/2018 by the `Adjudicating Authority' (National Company Law Tribunal, Chennai Bench-II), whereby, the `Adjudicating Authority' dismissed the `Application', filed under the Insolvency & Bankruptcy Code, 2016 (in short '**I & B Code, 2016**').

**Brief Facts:**

2. The Appellant had filed an `Application', before the `Adjudicating Authority' under Section 60(5) of the I & B Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking reliefs including and mainly for issuance of direction to the Respondents, to make payment of a sum of Rs. 62,31,242/- towards the Applicant's Claim from the `Contingency Fund'.

3. It is seen that the `Resolution Plan' was approved by the `Adjudicating Authority' on 20.01.2020. From the `Impugned Order' it is evident that one `Contingency Fund' of Rs. 7 Crore was kept in the `Resolution Plan' `for a period of 6 months' `from the Date of Approval of the `Resolution Plan' which

expired, on 20.07.2020 and dismissed the `Application`, which was filed before the `Adjudicating Authority`, only on 05.08.2020.

4. It is further ascertained from the `Impugned Order` that the `Resolution Professional` vide email dated 29.07.2019 had requested the `Appellant` to submit supporting documents to establish the `Claims` and had also listed out the `Documents` required. However, the `Appellant` had failed to furnish those documents and therefore the `Resolution Professional` vide email dated 17.08.2019 stated that he was not able to `Admit the Claim of the Appellant`.

5. The `Adjudicating Authority` held that, in these circumstances, the relief(s), as sought by the `Appellant` cannot be granted, especially keeping in view of the Judgment of the Hon`ble Supreme Court of India, `in the matter of **Ghanashyam Mishra`.**

6. Aggrieved by the `Impugned Order`, passed in IA/IB/920/2020 in CP/280/IB/2018 by the `Adjudicating Authority` (National Company Law Tribunal, Chennai Bench-II), the `Appellant` has preferred the present `Appeal`, before this Tribunal.

**Appellant's Submissions:**

7. The Learned Counsel for the Appellant pointed out that `Mr. S. Gopi, Proprietor, Goutham Roadways` is an `Operational Creditor` of the `Corporate Debtor`, `M/s Empee Distilleries Limited`. The `Appellant` is in Business of Transportation of Goods of the `Corporate Debtor`, since the year 2005.

8. The Learned Counsel for the Appellant is assailing the 'impugned order' of the 'Adjudicating Authority' in dismissing the 'Application' filed seeking direction to the 'Respondents' to make payment of Rs. 62,31,242/- towards the 'Appellant's' claim from the 'Contingency Fund'.

9. The Learned Counsel for the Appellant emphasised that Section 23 of the I & B Code, 2016 clearly stipulates that the 'Resolution Professional' is required to remain involved at all stages of 'Corporate Insolvency Resolution Process' to ensure 'smooth and timely completion of the process'. The 'Resolution Professional' remains responsible for the 'Going Concern' of the operations, until the execution of the 'Resolution Plan'.

10. The 'Adjudicating Authority' vide order dated 26.07.2019 made in M.A. 693 of 2019 had directed the 'Resolution Professional' to consider the 'Claim' of the 'Appellant'. The 'Resolution Professional' had expressed inability, to verify the 'Claim' contending 'non-availability of the records' and 'access to SAP systems' of the 'Corporate Debtor'.

11. The Learned Counsel for the Appellant alleged that when the Contingency Fund was available, the 'Adjudicating Authority' had erred in rejecting the 'Claim', in view of the decision of the Hon'ble Supreme Court of India in the matter of **Ghanshyam Mishra and Sons Private Limited vs. Edelwiess Asset Reconstruction Company Limited & Ors.** reported in 2021 SCC OnLine SCC 313. Further, it is pointed out that Regulation 36 of the 'Insolvency and Bankruptcy Board of India' (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates preparation of

Information Memorandum. Such an Information Memorandum having been preferred, the reasoning of the 'Resolution Professional' that records were not available and access to SAP denied, therefore expressing inability to verify the 'Claim' cannot be cited as 'valid reasons' for 'denying the legitimate dues of the Appellant'.

12. The Learned Counsel for the Appellant has assailed the 'Impugned Order' dated 10.06.2022 stating that when Contingency Fund was available, the 'Adjudicating Authority' ought to have directed the 'Resolution Professional' to accept the 'Claims' of the 'Appellant'.

13. Hence, this 'Appeal'.

**Respondent's Submissions:**

14. The Learned Counsel for the Respondent No. 2 stated that the 'Resolution Professional' of the 'Corporate Debtor' was appointed vide order dated 13.12.2018. The 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' had commenced on 01.11.2018 and completed on 20.01.2020 with the 'Resolution Plan', submitted by the 'Respondent No. 3' getting approved by the 'Adjudicating Authority'. The 'Monitoring Committee' was formed for ensuring the successful implementation of the 'Resolution Plan' with the 'Respondent No. 2' as its 'Head'.

15. The Learned Counsel for the Respondent No. 2 further pointed out that the 'Appellant' had filed 'Claims' much beyond the period of

90 days prescribed in the IBBI (Resolution Process for Corporate Persons) Regulations, 2016' (90 days ended on 29.01.2019) and therefore, the Claims were not accepted initially as there was a delay of 130 days.

16. Pursuant to the orders of the 'Adjudicating Authority' dated 26.07.2019 passed in MA/693/2019 requiring the 'Resolution Professional' to look into the matter and decide on the 'Claims' received by him in accordance with 'Law' and accordingly, the Respondent No. 1 'received the Claims' and started the process of verification. During the verification of the claims, the 'Resolution Professional' noted that the claims submitted by the 'Appellant' had insufficient supporting documents to substantiate the claims. Therefore, an e-mail dated 29.07.2019 was sent requesting the 'Appellant' to submit the supporting documents and the list of the said documents were specifically advised to the 'Appellant'. The 'Appellant' through an email dated 30.08.2019 had replied to the 'Resolution Professional' stating that all the documents available with the 'Appellant' were already submitted, implying that the documents requested by the 'Resolution Professional' to verify the 'Claims', which were not available with the 'Appellant'. In the absence of the documents, the 'Claims' of the 'Appellant' could not be admitted by the 'Resolution Professional' through an email dated 17.08.2019, the same was reiterated.

17. The Learned Counsel for the Respondent No. 2 mentioned

that all the claims related to the details which were updated in the website of the 'Corporate Debtor' periodically during the 'Corporate Insolvency Resolution Process'. However, the 'Appellant' had not come forward in respect of his 'Claims' along with the 'Documentary Evidence', till the 'Resolution Plan' was approved by the 'Adjudicating Authority' and the implementation process commenced.

18. The Learned Counsel for the Respondent No. 2 mentioned that the following documents were sought from the 'Appellant':

- a. Agreement between the 'Appellant' and the 'Corporate Debtor' to charge interest at the rate of 18% per annum under the default period was not provided by the 'Appellant'.
- b. The 'Claims of the Appellant' included amounts for the period during 'Corporate Insolvency Resolution Process'. Rs.3,78,150/- was paid during 'Corporate Insolvency Resolution Process' on 05.12.2018 however the 'Appellant' did not adjust the 'Claims' and the 'Inflated Claims' were continued.
- c. Agreement between the 'Appellant' and the 'Corporate Debtor' relating to the nature of proposed services, payment terms, confirmation of the rate for the proposed services was not provided by the 'Appellant'.
- d. Proof of the 'Goods' transported to the 'Corporate Debtor' like

E-way Bills, Lorry Receipts, etc., and its corresponding acknowledgments by the 'Corporate Debtor' in those Receipts were also not provided by the 'Appellant'.

- e. Invoices raised on the 'Corporate Debtor' by the 'Appellant' with an acknowledgment by the 'Corporate Debtor' or the Authorized Representative or 'any acknowledgment' of the 'Debt', by the 'Corporate Debtor' or the Authorized Representative were not made available by the 'Appellant'.
- f. Copy of the Due Certificate or outstanding balance payable statement issued by the 'Corporate Debtor' was not supplied by the 'Appellant'.
- g. No record of communication between the 'Appellant' and the 'Corporate Debtor' prior to the 'Corporate Insolvency Resolution Process' regarding the transactions that establish the claims of the 'Appellant' were provided by the 'Appellant'.
- h. Any other document to establish that the claims were genuine were not too provided by the 'Appellant'.

19. The Learned Counsel for the Respondent No. 2 mentioned that no endeavours were made by the 'Corporate Debtor' in furnishing any document regarding claims of the 'Appellant' raising doubt in at all any transport services of the 'Appellant' were availed by the 'Corporate Debtor'.

20. The Learned Counsel for the 2<sup>nd</sup> Respondent further briefed

that the 'Appellant' claiming to be in the Business of providing Transportation Services via lorry could not produce the lorry Receipt. Similarly, no entry in the 'Logbooks' maintained with the Factories/plants of the 'Corporate Debtor' were available to establish claims.

21. The Learned Counsel for the 2<sup>nd</sup> Respondent also stated that the 'Appellant' in the 'Petition', before the 'Adjudicating Authority' had sought payment from the 'Contingency Funds' allocated under the 'Resolution Plan. Contingency Fund was maintained for a period of 6 months from the date of the 'Adjudicating Authority' approving the Resolution Plan and all the amounts in the 'Contingency Provision' had been exhausted. There remains no amount to be paid under the 'Resolution Plan'.

22. The Learned Counsel for the 2<sup>nd</sup> Respondent pointed out that the 'Monitoring Committee' had completed the implementation of the 'Resolution Plan' in full and has handed over the 'Corporate Debtor's' Account alongwith the 'Resolution Plan' Account to the 3<sup>rd</sup> Respondent on 03.01.2022. The 2<sup>nd</sup> Respondent is absolved of all responsibilities associated with the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' as early as on 20.01.2020. As Head of the 'Monitoring Committee', the 2<sup>nd</sup> Respondent, was required only to distribute the 'Resolution Plan' amount to all Creditors and Stakeholders' and facilitate

in the smooth transition of the Management of the 'Corporate Debtor' from the 'Erstwhile Promoters' to the new management of the '3<sup>rd</sup> Respondent'. Once the 'Resolution Plan' get implemented and new management takes over the role of the 'Resolution Professional' gets over.

23. The Learned Counsel for the 2<sup>nd</sup> Respondent pointed out that in terms of the Judgment of Hon'ble Supreme Court passed in **Ghanashyam Mishra and Sons vs Edelweiss Asset Reconstruction Company Limited and Ors.** in Civil Appeal Nos. 8129 of 2019 dated 13.04.2021, on the date of approval of the 'Resolution Plan' by the 'Adjudicating Authority', all 'Claims', which are not a part of the 'Resolution Plan', shall stand extinguished and no person shall be entitled to initiate proceedings in respect of a claim which is not a part of the 'Resolution Plan'.

Relevant portion of the Judgment is extracted hereinbelow:

*"58. Bare reading of Section 31 of the I & B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by the CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I & B Code is, revival of the Corporate Debtor and to make it a running concern.*

**61.....***The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by the CoC meets the requirements as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.*

**86.....***The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a cleans late 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 hay wire and the plan would be unworkable.*

**95.....** *That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claim as provided in the resolution plan stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, and State Government or any local authority, guarantors and other stakeholders. On the date of approval of the 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 of a claim, which is not part of the resolution plan.”*

24. The Learned Counsel for the 2<sup>nd</sup> Respondent emphasised that after hearing the extensive arguments, the ‘Adjudicating Authority’

had rightly dismissed the `Application' and therefore there is no merit in the `Appeal' and need to be set aside.

25. The Learned Counsel for the 3<sup>rd</sup> Respondent stated that the '3<sup>rd</sup> Respondent' is the 'Successful Resolution Applicant', who had submitted a 'Resolution Plan' to revive the 'Corporate Debtor', which was approved by the 'Adjudicating Authority' in MA/780/IB/2019. Also, this was affirmed by this `Tribunal' and the said `Order' of this `Tribunal' was affirmed by the Hon'ble Supreme Court of India. In that view, the 'Resolution Plan' as approved by the 'Adjudicating Authority' had attained finality and the same was implemented in full.

26. The Learned Counsel for the 3<sup>rd</sup> Respondent stated that the 'Successful Resolution Applicant' i.e. 'SNJ Distilleries Pvt Ltd', is in a various Businesses, including the Brewery and Sugar business, as is that of the 'Corporate Debtor'. The Successful Resolution Applicant had taken over the 'Corporate Debtor' by offering a sum of Rs. 475.04 crores as the 'Resolution Plan' amount, which constituted 100% of the monies owed and due by the 'Corporate Debtor', to its Financial Creditors, VAT (Government) Tax Authorities and Operational Creditors, as on the date of submission of its 'Resolution Plan'. All monies payable to all the Creditors were paid and 'no monies due' under the 'Resolution Plan' are pending. In other words, there is no money available or due to be paid by the 'Successful Resolution Applicant', under the 'Resolution Plan', which can be utilised to entertain the belated unverified claims of the 'Appellant'. For this reason alone, the

appeal is infructuous, *ex facie*, and deserves to be dismissed. Also, the 'Appellant' has been very late in filing the claims as well as this 'Appeal' is also badly delayed.

27. Learned Counsel for the Respondent No. 3 submitted that the 'Corporate Insolvency Resolution Process' had commenced on 01.11.2018. As per 'Regulation 12 of the CIRP Regulations', the outer limit for filing of 'claims' with the 'Resolution Professional' is 90-days from the 'Corporate Insolvency Resolution Process' commencement date, i.e. till 31.01.2019. The claim was filed before the 'Resolution Professional' only on 10.06.2019, i.e. with a delay of 129 days, with no Application for Condonation of Delay. It is the settled law that the 'Resolution Professional', is only an Administrative Authority, having no jurisdiction to condone the delay. It is admitted by the 'Appellant' that there is no order condoning the delay in his favour, for his 'Claim' to have been considered favourably, by the 'Resolution Professional'. It is also admitted by the 'Appellant' that the order passed by the 'Adjudicating Authority' in MA/693/2019, only, had directed the 'Resolution Professional' to decide in respect of the 'Claims' and it was for the 'Resolution Professional' to 'decide on merit' and 'facts of the case' and was competent to reject on the ground, being filed beyond the 'Statutory period of 90-days', in addition to the absence of documents to establish 'Claims'.

28. Learned Counsel for Respondent No. 3 brought out that this Tribunal in ***Mukul Kumar vs M/s RPS Infrastructure Ltd*** passed in Company Appeal (AT) (Insolvency) No. 1050 of 2020, has held that claims

filed beyond 90-days cannot be entertained by the Resolution Professional and deserves to be rejected on that score alone.

29. The Learned Counsel for Respondent No. 3 clarified that the relevant of provision of Contingency Fund which was only for a period of 6 months. Moreover, the contingency fund only enables the payment of first-come-first-serve basis within the 6 months period and as per the 'Implementation Report' filed by the 'Resolution Professional', 'no funds are due and payable' under the Contingency Funds to anyone at the later stage, including that of the 'Appellant'. Therefore, the reliance placed upon the 'unavailable Contingent Fund', to escape the delay in filing the claims and the challenge to its rejection is baseless and deserves to be rejected.

### **Findings**

30. This 'Tribunal' has heard the Learned Counsels appearing for the respective parties and also perused the documents made available on record. Following two issues arise out of the present 'Appeal', which are required to be deliberated upon before coming to final conclusion.

(I) Whether the 'Resolution Professional' was right in rejecting claims of 'Appellants' with reasoning that the documents were not enough to establish their claim?

(II) Whether the relief sought by the 'Appellants' for payment of Rs. 62,31,242/- towards claim from contingency fund admissible?

**Issue No.(I)            Whether the ‘Resolution Professional’ was right in rejecting claims of ‘Appellants’ with reasoning that the documents were not enough to establish their claim?**

(a) The ‘Appellant’, raised an objection regarding the ‘reasoning’ followed by ‘Resolution Professional’ in rejecting Claims, i.e., the unavailability of proper documents necessary to prove an ‘Operational Debt’, claimed by the ‘Appellant’, as per Section 9(3) of I & B Code, 2016.

Section 9(3) of I & B Code, 2016 reads as under:

*“9 (3) The operational creditor shall, along with the application furnish—*

*(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*

*(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*

*(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt 1[by the corporate debtor, if available;]*

*2[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and*

*(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.”*

(b) This 'Tribunal' has noted that during the 'pleadings and averments' made by the '2<sup>nd</sup> Respondent' that he had no access to the 'Corporate Debtor's books of accounts and records, and he had no access to the 'SAP portal' to verify the Appellant's claim. This proved to be a 'handicap' for the 'Resolution Professional' for 'verifying the Claims', especially, when the 'Appellant' had failed to furnish / supply the required documents, to establish his claims, as requested by the '2<sup>nd</sup> Respondent' through email. The approval of a 'Resolution Plan' gives the 'Corporate Debtor' a fresh start and resolves, once and for all, the financial position of the 'Corporate Debtor' as it stood on the day of approval of the 'Resolution Plan', in order to allow it to have a clean slate for the future.

(c) Section 31 of I & B Code, 2016, as it stands after 2019 amendment, is as follows-

Section 31 I & B Code 2016: Approval of Resolution Plan.

*"31. (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, 1[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]*

(d) This Tribunal also takes into consideration the decision of the Hon’ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited** –(2021) 9 SCC 657

*“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.*

*60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by*

Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.”

“107...A successful resolution applicant cannot suddenly be faced with “unde- cided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncer- tainty amounts payable by a prospective resolution applicant who would success- fully 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 rea- sons, NCLAT judgment must also be set aside on this count.”

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*).

94. Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold, that the 2019 amendment is declaratory and clarificatory in nature. We also hold, that even if 2019 amendment

*was not affected, still in light of the view taken by us, the Central Government, any State Government or any local authority 35 2018 SCC On Line Cal. 142 would be bound by the resolution plan, once it is approved by the Adjudicating Authority (i.e. NCLT). CONCLUSION.*

*95. In the result, we answer the questions framed by us as under:*

- i. 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;*
- ii. 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;*
- iii. Consequently, all the dues including the statutory dues owed to the Central*

*Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”*

(e) After the direction of the ‘Adjudicating Authority’ vide order dated 26.07.2019 in MA/693/2019, the Claims were Admitted. During verification, it came to attention of the ‘Resolution Professional’ that the claims are not supported by necessary documents. An email dated 29.07.2019 was sent to the ‘Appellants’, to furnish proper documents, to which the ‘Appellants’, had caused a ‘Reply’ through email dated 30.08.2019 that all the documents were submitted and the documents requested by the ‘Resolution Professional’ are not available with the ‘Appellants’. Hence, it is noted, that the ‘Appellant’, could not furnish required documents with reference to his ‘Claims’ before ‘Resolution Professional’ which was also observed in the ‘Impugned Order’.

(f) This Tribunal also would like to consider its own earlier Judgment in case of **Santanu T. Ray vs Tata Capital Financial Services** in CA(AT)No. 951 of 2021 on the same issue:

*“**Para 12(vii)** The Regulation 12(2) contemplates a scenario where claim is not filed within the time stipulated in the public announcement. It is in this scenario this regulation permits filing of the claim on or before 90<sup>th</sup> day of insolvency commencement date. Prior*

to amendment, the extended term to file claim was till the approval or resolution plan by the committee of creditors. The said time limit was curtailed and restricted to 90 days from the insolvency commencement date, vide the said amendment of 2018. Therefore, regulation fixes the outer limit for filing of the claim if it is filed after delay. This in fact curtails the power to further condone the delay or to further extend the time. If the delay in the present case is condoned then the same will nullify the amendment made to Regulation 12(2)."

(g) In present `Appeal`, before this Tribunal, the `Adjudicating Authority` approved the `Resolution Plan` on 20.01.2020, and has taken umbrage of the ratio laid down by the Hon`ble Supreme Court of India in "**Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited** – (2021) 9 SCC 657". The Hon`ble Supreme Court of India had made the observations on the "Clean Slate Theory" and stated that "if additional liabilities are allowed to be imposed on the Successful Resolution Applicant after the approval of the plan, the entire plan would become unworkable". The Hon`ble Supreme Court had mentioned that such surprise `Debts` cannot be put upon the `Resolution Applicant`, which were not laid down in its `Resolution Plan`. If that is allowed, the very calculations on which the Resolution Applicants rely to submit their Resolution Plans would go awry.

(h) The Hon`ble Supreme Court of India had laid emphasize that the `Successful Resolution Applicant` should start with a `clean slate`, on the basis of its `Approved Plan`

(i) This 'Tribunal' also notices that amended provision as contained in Section 31 of I & B Code, 2016 makes the 'Successful Resolution Plan' 'binding on all concerned including the Government'. It is held in the judicial pronouncement that this particular Amendment to be 'clarificatory in nature' and hence, retroactive / retrospective in operation. Therefore, any Claim, even if it pertains to a date, prior to the effective date of this Amendment, would not be entertained after the 'Resolution Plan' is so approved.

(j) In view of facts of the case as discussed above, the provisions in the I & B Code, 2016 and cited Judgments of the Hon'ble Supreme Court of India, this 'Tribunal' upholds the decision of the 'Resolution Professional' adjudicated by the 'Adjudicating Authority' to reject the 'Claims' of the 'Appellant' on the basis that claims are 'unsupported' and 'documentary evidence' furnished by the 'Appellant' were not proper.

**Issue No. (II) Whether the relief sought by the 'Appellant' for payment of Rs. 62,31,242/- towards claim from contingency fund admissible?**

(a) Contingency Fund means a provision created in a 'Resolution Plan' to avoid 'inevitable losses of creditors'. It is made to include 'Liabilities' arising which are 'uncertain' and 'inevitable in nature' or pending under 'verification'.

(b) The I& B Code 2016, provides for collective Resolution Mechanism and is a Time Bound 'Corporate Insolvency Resolution Process'. No wonder, 'Speed' is the essence of I & B Code 2016. The Code 2016 is enacted for the

sole purpose of reviving the 'Corporate Debtor' and help it, to get back on its Feet, and was not meant for recovery enforcement purpose/procedure. Maintaining a 'Claim' does not necessitate or carry any nexus between the commission of a 'Default' and the submission of a 'Claim'. A Creditor can exercise his right to payment or to remedy for the matured, unmatured, secured, unsecured, Disputed or Undisputed Debts.

(c) When the 'Corporate Insolvency Resolution Process' is initiated, the claims of 'multiple Creditors of different nature are invited, assessed and verified by 'Resolution Professional' and then, are included in the 'Resolution Plan'. In I & B Code, 2016 to recover 'Debt' from the 'Corporate Debtor', it is necessary for a 'Claimant' to be a 'Creditor'. While definite, identified or ascertained Claims can be easily accounted for, the problem lies when Claims which are either inevitable or contingent ones.

(d) Regulation 14 of 'Insolvency and Bankruptcy Board of India' (Insolvency Resolution Process for the 'Corporate Person') *Regulations (IBBI) 2016 Chapter-IV- Proof of Claims*, provides for determination of claim which are not precise and contingent and it is evident from the language of the code that it mandates the 'Resolution Professional' to make best possible estimate and create a provision for the abovesaid contingency fund in the 'Resolution Plan'.

***“Regulation 14- Determination of amount of claim.***

*14. (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 sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”*

*[emphasis supplied]*

(e) The ‘Resolution Plan’ is a ‘Rehabilitation Plan’ for the ‘Corporate Debtor’ going in ‘Insolvency’. It is prepared, based on the ‘Information Memorandum’, provided by the ‘Resolution Professional’, targeting – ‘Legal, Financial, Management and Technical strategies’, in order to bring the ‘Corporate Debtor’ back on its feet at the earliest point of time. As per Regulation 37 (mentioned hereunder), it empowers the ‘Resolution Professional’ to be ‘Flexible’ in ascertaining and including ‘Claims of Creditors’ and it is not limited only to the Clauses contained therein

**Regulation 37 of CIRP Regulations** No. IBBI/2017 18/GN/REG024 dated 06-02-2018 provides for ‘Resolution Plan’

“A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

(a) *transfer of all or part of the assets of the corporate debtor to one or more persons;*

*(b) sale of all or part of the assets whether subject to any security interest or not;*

*(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;*

*(d) satisfaction or modification of any security interest;*

*(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*

*(f) reduction in the amount payable to the creditors;*

*(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*

*(h) amendment of the constitutional documents of the corporate debtor;*

*(i) issuance of securities of the corporate debtor, for cash, property, securities, or in*

*exchange for claims or interests, or other appropriate purpose;*

*(j) change in portfolio of goods or services produced or rendered by the corporate debtor;*

*(k) change in technology used by the corporate debtor; and*

*(l) obtaining necessary approvals from the Central and State Governments and other authorities.]”*

*[emphasis supplied]*

(f) This `Tribunal’ has noticed the averments that the `Contingency Fund’ was maintained for a period of `6 months’ from the Date of Approval of the `Resolution Plan’. It is further observed that during the `Implementation Process’, under the `Monitoring Committee’, the `Appellant’ had approached

the '1<sup>st</sup> Respondent'. However, the 'Appellant' could not substantiate his 'Claims', by furnishing necessary supporting documents in respect of the Claims, so made.

(g) This Tribunal notices that:-

- The 'Resolution Plan' as approved by the 'Adjudicating Authority' was successfully implemented;
- The 'Successful Resolution Applicant' had taken over the management;
- The 'Monitoring Committee' had ceased to 'Exist'.

(h) This 'Tribunal' pertinently points out that the Contingency Fund is for the specific purpose to cater for 'Claims' which 'were not Determined and settled finally', at the time of the 'Resolution Plan'. There is a stipulated time frame as provided in the 'Resolution Plan' and the 'Fund' after meeting out the requirements of the 'Claims', ceased to exist. By no stretch of imagination, it can be inferred that any 'Claim can be entertained' after the 'Resolution Plan', was fully implemented and the new management of the 'Successful Resolution Applicant' had taken over.

(i) This 'Tribunal' upholds the decision of the 'Adjudicating Authority' to be a correct and proper one, on this issue.

31. Therefore, on a qualitative and quantitative rumination of the entire conspectus of the instant 'Appeal', this 'Tribunal' is in agreement with the decision arrived at by the 'Adjudicating Authority', (National Company Law Tribunal, Chennai Bench-II), and the 'Impugned Order', passed in

IA/IB/920/2020 in CP/280/IB/2018 is sustained. Consequently, the `Appeal' is devoid of merits and it fails.

Accordingly, the instant Comp. App (AT) (CH) (Ins) No. 306 of 2022 is dismissed. No costs. Connected pending `Interlocutory Applications', if any, are Closed.

[Justice M. Venugopal]  
Member (Judicial)

[Naresh Salecha]  
Member (Technical)

Simran