



by the Appellant, who is aggrieved by the order dated 4.9.2020 (hereinafter called 'Impugned Order') in Company Petition No. (IB)-189 of 2018 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad), whereby the application of the then Resolution Professional under Section 30(6) of the IBC has been allowed without considering the claim of the Appellant.

2. The facts of the case are that the Corporate Insolvency Resolution Process (in short 'CIRP') was initiated against the Corporate Debtor (Technovaa Plastic Industries Pvt. Ltd.) on 12.11.2018, whereafter the Resolution Professional made a public announcement inviting claims. The ninety-day period that is permitted under Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations ended on 19.2.2019, during which the creditors can file proof of their claims. The Appellant filed his claim for Rs. 81,50,13,952 on 1.1.2020 which was rejected by the Resolution Professional (in short 'RP') vide letter dated 3.1.2020. The resolution plan was approved with 100% votes by the Committee of Creditors (in short 'CoC') and submitted by the RP for approval of the Adjudicating Authority on 4.10.2019. After due consideration, the Adjudicating Authority approved the Resolution Plan vide order dated 4.9.2020.

3. The Appellant has claimed that his total claim for Rs.82,50,32,950 included six claims out of which one claim of Rs.6,12,68,709 was compromised under “Sabka Vishwas” scheme and therefore, the remaining debt of Rs.76,37,63,343 remains to be paid by the Respondents. The Appellant has claimed that the Adjudicating Authority, in para 7 of the Impugned Order, has allowed his claim to be considered while distributing the amount to the Operational Creditors in the same proportion as applicable to the other Operational Creditors.

4. During the pendency of appeal, the erstwhile RP as head of the Steering Committee was allowed to be arrayed as Respondent No. 2 in the appeal. The erstwhile RP was also directed to place on record documents to show when the claim of the Appellant was rejected and conveyed to him and to also clarify if the claim of the Appellant was part of the Resolution Plan. Thereafter the Respondent No. 2 Mr. Vijay P. Lulla, the erstwhile RP, submitted an affidavit vide diary No. 30107 dated 28.9.2021 to provide facts relating to the date of submission of claim by the Appellant, the date of rejection of said claim and whether the claim of the Appellant was part of the Resolution Plan.

5. We heard the oral arguments of the Learned Counsel of the Appellant and Respondents No. 1 and 2. The pleadings

submitted by the parties as well as Written Submissions have been duly considered by us.

6. The Learned Counsel for Appellant has claimed that the Adjudicating Authority has directed that the RP should consider the claims made in IA No. 88 of 2020, 89 of 2020 and 61 of 2020 while distributing the amount to the Operational Creditors in the same proportion as applicable to other operational creditors. He has further claimed that the amount relating to pending dues of GST for five years amounting to Rs. 76,37,63,342 ought to have been considered out of his total claim of Rs.82,50,32,952 made as being part of statutory dues. He has clarified that out of the total claim made on 1.1.2020, a claim of Rs.6,12,68,709 was compromised under 'Subka Viswas' Scheme for that year and discharge certificate was issued to the erstwhile Corporate Debtor. He has, further argued that he submitted his claim while the Resolution Plan was pending for approval before the Adjudicating Authority and hence it should have been considered for payment upto an extent of 2.17%, as was allowed under the Resolution Plan to the statutory creditors.

7. The Learned Counsel for Respondent No. 1 i.e. Successful Resolution Applicant has argued that 90-day period, which is allowed under Regulation 12 of Insolvency and Bankruptcy Board

of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for submission of proof of claims expired on 9.2.2019. After due process of calling for resolution plans by prospective applicants, the Resolution Plan cleared by the CoC was submitted for approval of the Adjudicating Authority on 4.10.2019. The claim filed by the Appellant was much after this date, on 1.1.2020. He has adverted to the judgments of Hon'ble Supreme Court in the **Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531** case and **Ghanashyam Mishra & Sons (P) Ltd. v Edelweiss Asset Reconstruction Co. Ltd. 2021 SCC Online 313** case to strongly argue that once the Resolution Plan has been finalized and has been approved by the CoC as well as the Adjudicating Authority it cannot be reopened so that the resolution process achieve finality in a time bound fashion. He has also stated that the Successful Resolution Applicant has implemented the approved Resolution Plan. As a further clarification, he has stated that the proposal under "Sab ka Vishwas' Scheme was filed by the erstwhile management of the Corporate Debtor and not by the Resolution Professional or Successful Resolution Applicant and the discharge given in one case was to the erstwhile management of the Corporate Debtor. Therefore any pending dues are to be paid by the erstwhile Company Appeal (AT) (Ins.) No. 474 of 2021

management of the corporate debtor. He has strongly urged that in the circumstances stated by him, the appeal may be rejected.

8. The Learned Counsel for erstwhile Resolution Professional and head of the Steering Committee has also argued that 90 days' time period available to the creditors to file their claims along with proof ended on 9.2.2019, whereas the claim was received by the erstwhile Resolution Professional on 1.1.2019, which was rejected by the Resolution Professional vide letter dated 3.1.2020. He has also clarified that the claim of the Appellant is not part of the Resolution Plan as same was filed belatedly and rejected by the Resolution Professional. The affidavit filed by Respondent No. 2 upon direction by this Tribunal on 16.7.2021 is at diary No. 30107 dated 28.9.2020 which explains the complete situation.

9. The issue in this appeal is whether the claim filed by the Appellant is within the time period specified in the public announcement and the extended time period of 90 days included in Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and whether a claim, if filed after the specified time period, could be considered at this belated stage.

10. It is admitted by the Appellant that he filed the claim on 1.1.2020. The affidavit submitted by erstwhile RP Respondent Company Appeal (AT) (Ins.) No. 474 of 2021

No. 2 (diary no. 30107 dated 20.8.2021) makes it clear that the 90 days' period after the public announcement as allowed in the CIRP Regulations (supra) for filing proof of claims expired on 9.2.2019. Moreover the RP vide letter dated 3.1.2020 communicated to the Appellant the fact of rejection of his claim and also that the Resolution Plan is already under consideration of the Adjudicating Authority. Therefore, the fact of rejection of his claim was within the knowledge of Appellant from 3.1.2020. It is noted that the Resolution Plan was submitted for approval to the Adjudicating Authority on 4.9.2020, which was much before the claim was filed by the Appellant. The erstwhile RP has stated in his additional affidavit (supra) that the claim of the Appellant did not form part of the Resolution Plan as it was filed belatedly and rejected by the Resolution Professional.

11. It has also come to our knowledge during oral arguments that Successful Resolution Professional has implemented the Resolution Plan. The Learned Counsel for Appellant has referred to the judgment of Hon'ble Apex Court in the matter of **Ghanashyam Mishra and Sons (Pvt) Limited** (supra). Relevant portion of this judgment is reproduced below:-

*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 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 of 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.”

12. In the case of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra)**, relevant portion of this judgment is reproduced below:-

“107. ....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.”*

13. In the situation as discussed above, we are of the very clear view that the Resolution Plan as approved by the Adjudicating Authority, and which does not include the claim of Appellant since it was filed much belatedly, does not need any interference. We, therefore, reject the appeal. No order as to costs.

**(Justice Ashok Bhushan)**  
**Chairperson**

**(Justice Jarat Kumar Jain)**  
**Member (Judicial)**

**(Dr. Alok Srivastava)**  
**Member (Technical)**

**New Delhi**

**6<sup>th</sup> December, 2021**

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