NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 522 of 2024

[Arising out of order dated 19.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench– II), in I.A. No. 2260 of 2022 in C.P. (IB) No. 1554/MB/2017]

IN THE MATTER OF:

Calyx Chemicals and Pharmaceuticals Private Limited
Having its Office Address At:
Unit No. 5, Marwah's Complex,
Saki Vihar Road, Saki Naka,
Andheri (East), Mumbai, - 400 072
(Maharashtra)
Email:vasant_jain@calyxindia.com

...Appellant

Versus

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...Respondent no.1

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...Respondent no.2

Present:

For Appellant	:	**Ms. Mahima Singh, Ms. Shreya Mahalwan and Mr. Saurabh Bacchawat, Advocates.**
For Respondents	:	**Ms. Anjali Sharma and Ms. Thanglunkim, Advocates for R1.**

WITH
Company Appeal (AT) (Insolvency) No. 523 of 2024

[Arising out of order dated 19.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench– II), in I.A. No. 2943 of 2022 in C.P. (IB) No. 1554/MB/2017]

IN THE MATTER OF:

Calyx Chemicals and Pharmaceuticals Private Limited
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Unit No. 5, Marwah's Complex,
Saki Vihar Road, Saki Naka,
Andheri (East), Mumbai, - 400 072
(Maharashtra)
Email:vasant_jain@calyxindia.com

...Appellant

Versus

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...Respondent no.2

Present:

For Appellant	:	**Ms. Mahima Singh, Ms. Shreya Mahalwan and Mr. Saurabh Bacchawat, Advocates.**
For Respondents	:	**Ms. Anjali Sharma and Ms. Thanglunkim, Advocates for R1.**

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of two appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 (‘**IBC**’ in short) by the Appellants arises out of the two orders dated 19.01.2024 (hereinafter referred to as ‘**Impugned Orders**’) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-III) in I.A. Nos. 2260 of 2022 and I.A. No. 2943 of 2022 in C.P. (IB) No. 1554 of 2017. By the impugned orders, the Adjudicating Authority has admitted both the I.A.s claiming gratuity dues to the extent of admitted claims deserves to be paid. Aggrieved by the impugned orders, two separate appeals have been filed by the new management of the Corporate Debtor which is the common Appellant in both appeals.

2. I.A. Nos. 2260 of 2022 has been filed by Mr Ravindra Athavale on behalf of himself and 17 other similarly placed ex-employees while I.A. No. 2943 of 2022 has been filed by Mr. D. Namdeo Karanda on behalf of himself and 03 other similarly placed ex-employees. The surrounding facts, grounds raised, averments and pleadings made in both the IAs are largely identical including the prayers of the Respondents which are overlapping and common, hence, for reasons of convenience, we propose to take up IA No. 2260 for our consideration in deciding both the matters.

3. The salient dates and events in respect of the present case which are relevant to be noticed for consideration of the appeal are as below:

- The Corporate Debtor was admitted into the rigours of the Corporate Insolvency Resolution Process (**“CIRP”** in short) on 06.02.2018.
- The resolution plan submitted by the Successful Resolution Applicant (**“SRA”** in short) was approved by the Adjudicating Authority with 77.8% voting share on 16.04.2019 following which the new management, Calyx Chemicals and Pharmaceuticals Private Limited-Appellant took over the management and ownership of the Corporate Debtor.
- Challenge to the resolution plan of the SRA was dismissed by the NCLAT on 30.08.2019.
- The orders of the NCLAT upholding the resolution plan was also affirmed by the Hon’ble Supreme Court on 20.02.2020.
- On 09.03.2020, one of the ex-employees of the Corporate Debtor-Mr Gangadhar Hedge enquired from the present Appellant-SRA regarding the claim filed by him before the Resolution Professional (**“RP”** in short).
- On 17.03.2020, a self-explanatory reply was sent by the Appellant informing Mr. Hedge that no claim is payable to him as per approved resolution plan as there was no provision in the plan for payment to those employees like him who were not on the payroll of the Corporate Debtor as on 06.02.2018.
- On 28.04.2022, Mr. Hedge sent a notice to the Appellant requesting for a copy of the approved resolution plan.

- IA No. 2260 of 2022 was filed by Mr Ravindra Athavale on behalf of Mr. Hegde and other ex-employees seeking payment of gratuity. IA No. 2943 of 2022 was filed by Mr D.N. Karande on behalf of 3 other ex-employees also seeking payment of gratuity.
- The Adjudicating Authority allowed IAs No. 2260 of 2022 and 2943 of 2022 on 19.01.2024.
- Aggrieved by the impugned order, the Appellants have filed the present appeals.

4. The Ld. Counsel for the Appellant, Ms. Mahima Singh, assailing the impugned order contended that the Adjudicating Authority had failed to appreciate that the resolution plan of the SRA as approved by the CoC with 77.8% vote share was approved by the Adjudicating Authority way back in April 2019. This approved resolution plan did not make provision for any payment towards gratuity for employees who were not on the payroll of the Corporate Debtor as on 06.02.2018. This plan framework had already attained finality as objections to the plan approved by the Adjudicating Authority had been rejected by this Tribunal. Furthermore, not finding sufficient grounds to interfere with the plan, the Appellate Tribunal's decision was subsequently affirmed by the Hon'ble Supreme Court.

5. It was also vehemently contended that the Adjudicating Authority had erroneously passed the impugned order on grounds of non-implementation of the resolution plan at a time when it has been nearly five years since the resolution plan of the SRA was approved and more than three years since the resolution plan stood implemented. The SRA had distributed all amounts proposed to be paid under the plan to all stakeholders, hence, all past liabilities of the Corporate Debtor stood extinguished. The Adjudicating Authority had therefore grossly erred in subscribing to the misconceived contention of the Respondent that there has been non-implementation of resolution plan. The Adjudicating Authority in the impugned order dated 19.01.2024 by directing the payment of gratuity to the Respondent had erroneously ended up reviewing its own order of 16.04.2019 which is impermissible in law. The plan approval order having once attained finality, it could not have been modified or reviewed by the Adjudicating Authority at its own level at such a belated stage.

6. It was also contended that once the plan was approved and the plan stood implemented, no new liability could be fastened upon the Appellant-SRA in view of the "clean-slate" principle laid down by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs Satish Kumar Gupta & Ors. 2019 SCC Online SC 1478*** and ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs Edelweiss Asset Reconstruction Company Limited and Ors. 2021 SCC Online SC 313.*** Reopening the plan approval order by the Respondent, at a time when the plan has attained finality and stood implemented, will lead to opening of a floodgate of litigations which would entail disruption and derailment of an already concluded resolution process of the Corporate Debtor thereby frustrating the objectives of IBC.

7. Refuting the contentions made by the Appellant, Ms. Anjali Sharma, Ld. Counsel for Respondent submitted that the claim made by the Respondent and 17 other ex-employees with respect to their gratuity dues had been made before the RP and the claims were reflected in the list of creditors as placed on record at pages 145-146 of the Appeal Paper Book (**"APB"** in short). It was also pointed out that the liability for payment of gratuity of the Respondent employees/workmen, which was due and payable, is provided for under Section 4(A) of the Payment of Gratuity Act, 1972. Submitting that pension and gratuity is an asset of the workmen/employees lying with the Corporate Debtor, reliance was placed on the judgment of this Tribunal in the matter of ***CG Vijayalakshmi vs Shri Kumar Ranjan, RP of Hindustan News Print Ltd*** in ***CA(AT)(CH)(Ins) No. 29 of 2021*** wherein it has been held that gratuity is to be paid in full as per the provisions of the Payment of Gratuity Act, 1972. Hence, payment of gratuity has to be interpreted in a liberal and purposive manner to fulfil the legislative intent. Gratuity funds must be a part of resolution plan or provided in priority over other charges of the Corporate Debtor. Such funds fall under the provision of Section 36(4)(a)(i) of the IBC and was therefore payable to the workmen and employees and could not have been appropriated in any other manner.

8. It has been pointed out by the Respondent that Clause 3.1 of the resolution plan had recorded the total liability of the company towards workmen and employees to be Rs 6.29 Cr. which sum was to also include amount payable towards gratuity. A lot of emphasis was placed on reading Clause 3.2 of the plan which provided that the total liability against gratuity was Rs 2.56 Cr. and that statutory liabilities towards workmen and employees will be paid in full. Clause 3.3 of the resolution plan recorded that gratuity would be paid as and when due, in accordance with applicable law, which will be full and final amount and one-time settlement of all workmen and employees. Argument was advanced that Respondents were to be paid in terms of Clause 3.3 of the resolution plan which had to be read alongwith with provisions of the Payment of Gratuity Act, 1972. However, the resolution plan had wrongly divided the employees and workmen into two categories viz. those who were on the payroll of the Corporate Debtor on 06.02.2018 and those who were not on payroll on that date. This discrimination could not have been made since all such workmen/employees who were eligible within the parameters specified in Section 4 of the Payment of Gratuity Act, 1972 were all entitled to the payment of gratuity dues. Hence, the clauses of the resolution plan which were not in accordance with applicable law have been correctly turned down by the Adjudicating Authority. When the claim of Respondent towards gratuity dues had been admitted by the RP and the resolution plan had stipulated full and final amount and one-time settlement of all workmen and employees, but the SRA had not paid the Respondents, the Adjudicating Authority had rightly allowed for the same vide the impugned order.

9. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

10. The short point for our consideration is whether the claims of the Respondent stood extinguished and if so whether the Adjudicating Authority, on the grounds of non-implementation of the plan, could have revived the gratuity dues claims of the Respondent and given directions to pay gratuity dues to the Respondent without consideration by the CoC.

11. It is the case of the Appellant-SRA that the resolution plan submitted by the SRA as approved by the CoC and the Adjudicating Authority on 16.04.2019 had taken into consideration the claims submitted by the former employees/workmen of the Corporate Debtor and against their admitted claim of Rs 6.29 Cr. the resolution plan had provided payment of Rs 4.83 Cr. as full and final amount and one time settlement of all dues of workmen/employees as on 06.02.2018 being the insolvency commencement date. The approved resolution plan of 16.04.2019 specifically provided for payment only to those employees who were on the payroll as on 06.02.2018 and did not provide for any payment towards gratuity for the employees who were not on the payroll of the Corporate Debtor as on 06.02.2018. The ex-employees-Respondent in their IAs have clearly admitted that they were not on the payroll of the Appellant as on 06.02.2018 and the plan as such did not contain any provision for payment of gratuity to such employees who were not on the payroll of the Corporate Debtor as on 06.02.2018. When the resolution plan did not provide for payment of gratuity for employees who were not on the payroll as on 06.02.2018, they cannot be paid now.

12. Elaborating further on the terms of the resolution plan, the Appellant submitted that while the resolution plan acknowledged that the statutory liabilities towards the workmen and employees will be paid as full and final amount and one-time settlement in terms of Clauses 3.2 and 3.3 of the resolution plan, these Clauses cannot be read in isolation of the list of workmen and employees as placed at Annexure-7 of the resolution plan which was an integral adjunct to the resolution plan. The list at Annexure-7 clarifies that the workmen and employees who were to be paid in full was in respect of only those employees and workmen who were on the payroll as on the date of commencement of CIRP of the Corporate Debtor i.e. on 06.02.2018. It was emphatically asserted that the Respondent cannot read Clauses of the plan in a selective manner in isolation of Annexure-7. Annexure-7 to the resolution plan was an integral part of the resolution plan which clearly provided that payments were to be made only to those workmen and employees specified in Annexure-7. The copy of the list of the employees of the Corporate Debtor who were on the payroll as on 06.02.2018 and had submitted their claims were reflected at Annexure-7 of the resolution plan and these employees had already been paid Rs 4.83 Cr. against their admitted claim of Rs 6.29 Cr. Thus, the resolution plan already stood implemented.

13. If any stakeholder was aggrieved by the plan approval order, it ought to have filed an objection before the Adjudicating Authority or before the Appellate Tribunal within the prescribed limitation period. When this resolution plan was not challenged within the prescribed limitation period by the Respondent, the plan approval order cannot be challenged at such a belated stage now. The Respondent cannot be permitted to indirectly seek the reopening of the resolution plan and adjudication of claims which are barred by limitation.

14. Submission was pressed by the Appellant that the resolution plan submitted by the SRA which was approved by the Adjudicating Authority did not contain any specific provision for payment of gratuity to the employees who were not on the payroll of the Corporate Debtor as on 06.02.2018. The Respondent was also not on the payroll of the Appellant as on 06.02.2018. Hence, non-payment of gratuity to Respondent did not tantamount to non-implementation of the resolution plan since payment of gratuity to Respondent was never part of the resolution plan submitted by the SRA. It was vehemently contended that the IA 2260 of 2022 filed by the Respondent before the Adjudicating Authority was in effect seeking modification/review of the plan approval order. It is submitted that once a resolution plan has attained finality and has been implemented, the Adjudicating Authority does not have any power to review its own orders and allow post-facto amendments or modifications or changes to such a plan. The Adjudicating Authority by admitting IA 2260 of 2022, which was primarily predicated on grounds of non-implementation of the resolution plan, the impugned order has ended up modifying the plan approval order which is not permissible within the statutory framework of the IBC. No valid grounds have been made out by the Respondent or even pleaded to show that there has been non-implementation of the resolution plan. The Adjudicating Authority by directing payments which was never contemplated under the resolution plan has exceeded its jurisdiction.

15. Before we proceed to analyse the weight of the rival submissions of the contesting parties, it may be useful and constructive to find out how the Adjudicating Authority has dealt with this subject in the impugned order which is as reproduced below:

> *"15. This takes us to the next contention of the Respondent No. I that the Application is belated and this Tribunal has no jurisdiction to entertain the present Application. It is observed that Regulation 39 (9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') allow a creditor, who is aggrieved by non-implementation of a Resolution Plan to seek directions of this Tribunal. The above provision read with the inherent powers of NCLT u/ s 60(5) of the Code confers jurisdiction on this Tribunal to entertain all*

applications relating to the implementation of Resolution Plan including the present Application.

17....While sub-clauses 3.1 and 3.2 state that full admitted liabilities to the employees would be paid by the Resolution Applicants, sub clauses 3.3 to 3.5 give an impression that payment to workmen and employees is limited to those whose names appear in Annexure 7 i.e., the employees and workmen who were on the rolls as on 06.02.2018. It is pertinent to observe that there is no specific provision with respect to non-payment of admitted claims to the employees and workmen including the Applicants who were on the payroll before 06.02.2018.

18. The Respondent No. I has failed to substantiate that the Applicants are not entitled for any payment under the Resolution Plan. The provisions of the Code also do not allow differential treatment of employees whose claims have been admitted on the basis of Insolvency Commencement Date. Further, we are of the considered view that the decision of the Hon'ble NCLAT in Hindustan Newsprint Limited (Supra) that gratuity is to be paid in full as per the provisions of payment of Gratuity Act, 1972 is applicable in this case. The implementation of the Resolution Plan and distribution of resolution amount to various stakeholders will not make any difference as regards the application of the above ratio laid down by the Hon'ble Supreme Court in Jet Aircraft Maintenance Engineers Welfare Association and followed by the Hon'ble NCLAT in Hindustan Newsprint Limited (Supra).”

16. At the outset we may advert our attention to Regulation 39 (9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which has been one of the principal grounds on which the impugned order is premised on. The said Regulation is as extracted below:

“A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.”

17. We now proceed to examine whether in the given factual matrix, Regulation 39(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 stood attracted and whether the Respondent had made any averment of being aggrieved by non-implementation of resolution plan in seeking the directions of the Adjudicating Authority.

18. When we look at the broad contours of the IBC, we notice that after the Corporate Debtor is admitted into CIRP, RP invites claims and after collating and updating the same in the Information Memorandum thereafter invites potential resolution applicants to submit their respective resolution plans before the CoC. The plans are deliberated and the best plan approved by the CoC in exercise of their commercial wisdom is placed before the Adjudicating Authority which then arrives at a subjective satisfaction that the plan conforms to the requirements as provided under Section 30(2) of IBC and thereafter grants its approval to the Resolution Plan. The Adjudicating Authority while approving the Resolution Plan has to see that the plan does not contravene any requirements set out under Section 30(2) of the IBC and also that the Resolution Plan can be carried out efficiently and satisfactorily as per Section 31(1) of the IBC.

19. Approval of a resolution plan by the Adjudicating Authority is statutorily recognized as a closure to all claims that creditors or other relevant entities may have against a Corporate Debtor unless it is challenged within the statutorily prescribed time-limit. It is significant to note that once the Adjudicating Authority approves the Resolution Plan, the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The plan can be challenged before the Appellate Tribunal by an aggrieved party within 30 plus 15 days and the decision of the Appellate Tribunal can thereafter be challenged before the Hon'ble Apex Court within 45 plus 15 days. In the present case, it remains an undisputed fact that the resolution plan was duly approved by the CoC with 77.8% voting share and approved by the Adjudicating Authority on 16.04.2019 and thereafter validated both by this Tribunal and the Hon'ble Apex Court on challenge.

20. The Adjudicating Authority in the impugned order of 19.01.2024 has now held after elapse of nearly five years that while Clauses 3.1 and 3.2 of the plan stated that full admitted liabilities to the employees would be paid by the SRA, Clauses 3.3 to 3.5 lends an impression that payment to workmen and employees was to be limited only to those whose names which appear in Annexure-7. Thereafter, the Adjudicating Authority has proceeded to give a conclusive finding that there is no specific provision in the plan with respect to non-payment of admitted claims to the employees and workmen including the Respondent who were on the payroll before 06.02.2018 and hence gratuity deserved to be paid to them.

21. It is the contention of the Appellant that the clauses of the plan cannot be read in a compartmentalised manner and have to be read in conjunction with Annexure-7 which was an integral to the resolution plan and when done so it clearly provided a nil treatment in the resolution framework to the Respondent in respect of their purported gratuity dues as they were not on the payroll of the Corporate Debtor on the insolvency commencement date. Facts on record show that this aspect of the plan was never challenged by the Respondent. Thus, the plan had undisputably attained finality. Further the SRA has already made payments to the stakeholders as per the approved plan. The Appellant have placed reliance on the legal precept laid down by the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited***

Vs. Edelweiss Asset Reconstruction Company Limited and Ors. to contend that belated claims cannot be taken up for inclusion in the Resolution Plan and after placing reliance thereon asserted that the SRA cannot be saddled with the liability of claims which were not part of the plan.

22. When we look at jurisprudence which has evolved in this direction, we find that the Hon'ble Supreme Court has time and again held that it an imperative need to impart finality to the resolution process by protecting an SRA from undecided claims. This "clean-slate principle" has been well established in the judgment of Hon'ble Supreme Court in ***CoC of Essar Steel India Ltd Vs Satish Kumar Gupta in C.A. No.8766-67 of 2019*** wherein it held:

> *"67. For the same reason the impugned NCLAT judgment 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. <u>A successful resolution applicant cannot suddenly be faced with "undecided" 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 uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor.</u> 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. <u>This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove…..</u>"*
>
> *(Emphasis supplied)*

This judgment clearly held that SRA cannot be left open to entertain claims which have not been factored in the resolution plan. Therefore, no such claims which are not part of the plan can be enforced against the SRA after the approval of a resolution plan. No proceeding can be initiated or continued in respect of a claim which is not part of the resolution plan.

23. This fresh slate principle was reiterated by the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657*** as hereunder:

> *"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, <u>that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders</u>. 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 <u>requires RP to prepare an information memorandum containing various details of the Corporate Debtor</u> 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. <u>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</u>.*
>
> *61. <u>All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment.</u> The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that <u>the resolution</u>*

plan approved by CoC meets the requirement 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. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

(Emphasis supplied)

24. Echoing the aforesaid ratio, the Hon'ble Supreme Court thereafter in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. (2022) 2 SCC 401***, after referring to the earlier

Essar Steel judgment supra laid down the following in Para 156.6 of the said judgment as below:

> *"156.6. In Essar Steel, a three-Judge Bench of this Court, affirmed a two-Judge Bench decision in K. Sashidhar, prohibiting the adjudicating authority from second-guessing the commercial wisdom of the parties or directing unilateral modification to the resolution plans."*

This judgment thus also categorically emphasised that resolution plan approved by CoC is binding between the SRA and the CoC and strongly disapproved any one-sided modification of the CoC approved resolution plan.

25. Yet again the Hon'ble Supreme Court in ***M/s R.P.S. Infrastructure Vs Mukul Kumar in C.A. No. 5590 of 2021*** held that in order to ensure that CIRP does not become an endless process, after the approval of the plan by the CoC, belated claims cannot be entertained. It held that after the resolution plan is approved by the CoC and is pending before the Adjudicating Authority, new claims cannot be foisted upon the resolution applicant. The relevant excerpts of the judgement read as under:

> *"21.The mere fact that the Adjudicating Authority has yet not approved the plan <u>does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue</u>, particularly as there may be other similar person who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.*
>
> *22.We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. <u>We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.</u>"*

(Emphasis supplied)

26. In the present case, the plan having been approved by the Adjudicating Authority on 16.04.2019, the stage to challenge the plan approval came to an end long time back. Therefore, the Resolution Plan as approved by the Adjudicating Authority has become binding on the Corporate Debtor, creditors, guarantors and other stakeholders involved in the Resolution Plan. Having noticed the contours of IBC and settled jurisprudence, the derivative is crystal clear that no surprise claims should be flung on the SRA in a belated manner. Allowing any such recourse would amount to re-opening of the resolution plan which would run contrary to the legislative intent and tantamount to overriding the judicial pronouncements of the Hon'ble Apex Court. This approach clearly does not commend us.

27. Each aspect of the Resolution Plan must be approved by the CoC. There is no concept present in the IBC, permitting any post facto approval of a Resolution Plan by the Adjudicating Authority which has not been considered by the CoC or allowing any modification of the plan by the Adjudicating Authority once such plan is approved by the CoC. Parliament has not introduced any express provision under the IBC permitting any amendment or modification of the Resolution Plan by the Adjudicating Authority once the approval of CoC is granted. Thus, modification of approved resolution plan without the approval of CoC is outside the scope of jurisdiction of Adjudicating Authority and the Appellate Authority.

28. In the present case, there has been a lapse of more than 5 years since approval of the resolution plan. After the Adjudicating Authority had approved the resolution plan, the same was not challenged and had therefore acquired finality thereby vesting a right in favour of the SRA to acquire the Corporate

Debtor in terms of the resolution plan. The same vested right therefore cannot be taken away except in accordance with law. Allowing any interference with the plan at this stage by introducing new claims would prejudice the SRA and put the Corporate Debtor into the throes of grave and unpredictable uncertainty at a time when the resolution plan has been implemented and the CoC not in existence anymore.

29. Considering the overall architecture of the IBC and the Court evolved jurisprudence, it is clear that the Adjudicating Authority is not empowered to modify the resolution plan approved by the Committee of Creditors. In the eventuality of the Adjudicating Authority finding that the approved resolution plan requires certain modifications, it can only make suggestions regarding the modification of plan to the CoC but cannot unilaterally modify the plan. Providing any such relief through a process of judicial interpretation without consideration by CoC is impermissible. We do not find any complaint raised by the Respondent of any stalemate in the implementation of the resolution plan. There is no material on record to demonstrate any such non-compliance or default or failure or breach attributable on the part of the SRA in the plan implementation for the Corporate Debtor to warrant interference by the Adjudicating Authority. In such circumstances, the residual or inherent powers vested with the Adjudicating Authority cannot be invoked for accommodating a belated claim thereby causing modification of the Resolution Plan as these powers cannot be directed to create any such remedy which is contrary or in contravention of the IBC framework of insolvency resolution process.

30. In view of the foregoing reasons, we find that the Adjudicating Authority has clearly exceeded its jurisdiction in allowing IAs Nos. 2260 of 2022 and I.A. No. 2943 of 2022. Both the impugned orders are set aside. The Appeals are allowed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 18.12.2024

Abdul/Harleen