

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI BENCH**

**Company Appeal (AT)(CH) (Ins) No. 316 of 2022**

[Arising out of Order dated 30.05.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Bengaluru Bench, Bengaluru in I.A. No. 06 of 2022 in C.P. (IB) No. 144/BB/2017].

**IN THE MATTER OF:**

1. **Dr. Gopal Krishnan MS**  
477, 1 Main, B Block,  
AECS Layout, Kundalahalli,  
Bangalore- 560037. ...Appellant No. 1
  
2. **Ms. Uma Gopala Krishnan**  
477, 1 Main, B Block,  
AECS Layout, Kundalahalli,  
Bangalore- 560037. ...Appellant No. 2

**Versus**

1. **Mr. Ravindra Beleyur**  
RP of M/s/ Yashomati Hospitals Pvt. Ltd.  
Having Office at "Shreevastha", 428, 19<sup>th</sup>  
B Cross, 3<sup>rd</sup> Block,  
Jayanagar, Bangalore- 560011 ...Respondent No. 1
  
2. **Sri Kauvery Medical Care (India) Limited,**  
Successful Resolution Applicant of the  
Corporate Debtor  
Having registered office at,  
New No. 17A, Old No. 8A,  
Murray's Gate Road,  
Alwarpet, Chennai-600018 ...Respondent No. 2

**With**

**Company Appeal (AT) (CH) (Ins) No. 312 of 2022**

[Arising out of Order dated 30.05.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench in I.A. No. 166 of 2021 in C.P. (IB) No. 144/BB/2017].

**IN THE MATTER OF:**

1. **Dr. Gopala Krishnan MS**

477, 1 Main, B Block,  
AECS Layout, Kundalahalli,  
Bangalore-560037

...Appellant No. 1

2. Ms. Uma Gopala Krishnan  
477, 1, Main, B Block,  
AECS Layout, Kundalahalli,  
Bangalore-560037.

.... Appellant No. 2

**Versus**

1. Mr. Ravindra Beleyur  
RP of M/s. Yashomati Hospitals Pvt. Ltd.  
Having Office at "Shreevastha", 428, 19<sup>th</sup>  
B Cross, 3<sup>rd</sup> Block,  
Jayanagar, Bangalore- 560011

...Respondent No.1

2. M/s Sri Kauvery Medical Care (India)  
Limited,  
Having registered office at,  
New No. 17A, Old No. 8A,  
Murray's Gate Road,  
Alwarpet, Chennai

...Respondent No. 2

**Present:**

**For Appellant : Mr. E. Om Prakash, Senior Advocate  
For Mr. Raj Kumar Jhabakh, Advocate.**

**For Respondent : For Mr. T. Ravichandran, Advocate.  
For Respondent No. 1.  
Mr. Ravindra Beleyur,  
Erstwhile Resolution Professional  
Mr. A. K. Mylsamy, Advocate  
For Respondent No. 2/ Resolution Applicant.**

**J U D G M E N T**  
**(Virtual Mode)**  
**(28.09.2022)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. These two `Appeals', CA (AT) (CH) (Ins) 316 of 2022 and CA (AT) (CH) (Ins) 312 of 2022, have been projected against the `Impugned Order' dated 30.05.2022, passed by the `Adjudicating Authority' (`National Company Law

Tribunal', Bengaluru Bench, Bengaluru) in IA No. 06 of 2022 in CP (IB) No. 144/BB/2017 and IA No. 166 of 2021 in CP (IB) No. 144/BB/2017.

2. The 'Adjudicating Authority' ('National Company Law Tribunal', Bengaluru Bench, Bengaluru) while passing the 'Impugned Order' in IA No. 06 of 2022 in CP (IB) No. 144/BB/2017 dated 30.05.2022, had observed the following:

"In the circumstances and for the aforesaid reasons, the 'Revised Plan' dated 10.12.2021 ('Resolution Plan') as approved by the 'CoC' and submitted by 'M/s Sri Kauvery Medical Care (India) Limited' (annexed to the Application as Annexure-A16) is hereby approved. The 'Resolution Plan' so approved 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. Under the section 31(3) of the Code, we also direct as under:

(a) The Moratorium order passed by this Adjudicating Authority under Section 14 of the Code on 16.03.2021 in the main CP shall cease to have effect; and

(b) The Resolution Professional shall forward all records relating to the conduct of the 'Corporate Insolvency Process' and the 'Resolution Plan'

to the Board to be recorded on its database.” and disposed of the `Application`.

3. The Interlocutory Application bearing IA No. 166 of 2021 in CP (IB) No. 144/BB/2017 filed under 60 (5) of I & B Code, 2016, against the decisions and non-action of the `Interim Resolution Professional` of `Yashomati Hospital Pvt. Ltd.`, in which the `Applicants` had prayed for passing of an `Order`:

(a) In directing the `Interim Resolution Professional`/ `Resolution Professional` to stop treating applicants as related party u/s 5 (24A) of I & B Code, 2016 as mentioned in the minutes of meeting dated 28th May, 2021 as given in Exhibit "H".

(b) In directing the `Interim Resolution Professional`/ `Resolution Professional` to confirm the status of the Applicant's partnership firm as `Financial Creditor` for the amount of `Claims`, submitted by the `Partnership Firm` for

(i) Equipment Purchase with Interest of Rs.4,41,24,447/-.

(ii) Repayment of SBI Loan along with Interest Rs.7,92,73,498/-.

(iii) Settlement of Employees dues along with Interest of Rs. 1,40,48,037/-.

(iv) Expenses incurred for operational purpose along with interest of Rs. 11,05,57,251/-.

(c) Allow the 'Applicants' or their 'Partnership Firm' to participate in the meeting of 'Committee of Creditors' in their capacity as 'Financial Creditor' in the category of unrelated person.

The same was dismissed by the 'Adjudicating Authority' (vide order dated 30.05.2022).

4. The aforesaid two 'Appeals', are commonly dealt with in this Judgment.

5. During pleadings, this 'Tribunal' was also informed that there is another 'Appeal' arising out of the 'impugned order' dated 30.05.2022 in IA No. 14 of 2022 in CP (IB) No. 144/BB/2017 vide CA (AT) (CH) (Ins) No. 290 of 2022, which is listed on 14.10.2022, for 'Hearing', to be dealt with later.

**Brief Facts:**

6. The 'Appellants', who are Husband and Wife, together own a Partnership Firm 'Aayug Multi Speciality Hospitals', through which they sought to invest in to M/s Yashomati Hospitals Private Limited (in short '**Corporate Debtor**') which was undergoing 'Financial Difficulty'. The majority 'Shareholder' and the 'Chairman' are residents of Russia who met with the 'Appellants' in Germany and an 'Agreement' (in brief the '**Term Sheet**') was agreed between them. As per the 'Term Sheet', the 'Appellants'

would invest upto Rs. 25 Crore in the `Corporate Debtor` and would receive proportional `Shareholding` of Rs.1 Crore for 1% of the `Shareholding`.

7. According to the Appellants, Rs.17,74,66,098/- was invested in `Corporate Debtor` to `pay off the dues of the `Corporate Debtor`, including Bank Loans, Unpaid Employee Dues, to `install` new equipment and to clear various other Dues. The `Corporate Debtor` was `not in operation` for years, before the `Appellants`, took over and invested money, to revive the `Corporate Debtor`.

8. In `Breach of Agreement`, as per `Term Sheet`, after investment made by the `Appellant`, the `Corporate Debtor` had failed to issue `Shares` in the `Corporate Debtor`.

9. The Appellants, however took over the Day-to-Day business of the `Corporate Debtor` with anticipation to get their `Shares` soon.

10. After the COVID-19 pandemic, the `Corporate Debtor` was placed under the `Corporate Insolvency Resolution Process`, by the `Adjudicating Authority` and an `Interim Resolution Professional` (in short IRP) was appointed to whom the `Appellants` made their `Claims`, which were not accepted by the `Interim Resolution Professional` in the first `Committee of Creditors` meeting itself treating the `Appellants` as `related party`.

11. Subsequently, the `1<sup>st</sup> Respondent`, had replaced the `Interim Resolution Professional` as the `Resolution Professional` of the `Corporate Debtor` and rejected the `Financial Claims` of the `Appellants`, which was challenged vide I.A.No.166 of 2021, but the same was dismissed by the

‘Adjudicating Authority’, on 30.05.2022. Hence this ‘Appeal’.

**12. LIST OF DATES AND EVENTS:**

Date	Events
09.03.2017	The Term Sheet agreed upon ‘Appellant’ and the ‘Corporate Debtor’
10.03.2017	Appellant No. 2 appointed as the Chief Operation Officer (“COO”) of the Corporate Debtor
30.09.2017	The Appellants having brought in a significant amount of investment decided to await some allocation of shares before further investment due to the suspicious behaviour of the Promoters.
01.08.2018	Mr. S Venkatesh is appointed as the additional director of the Corporate Debtor
30.08.2018	Mr. S Venkatesh’s term lapses due to non confirmation by an Annual General Meeting of shareholders.
16.03.2021	Adjudicating Authority admitted the petition filed by Pegasus Assets Reconstruction Pvt. Ltd. to place the Corporate Debtor under CIRP.
28.05.2021	The first Committee of Creditors meeting took place where the Interim Resolution Professional rejected the claims of the Appellants
06.08.2021	Adjudicating Authority appointed the Respondent1 as the Resolution Professional of the Corporate Debtor
09.09.2021	The Respondent 1 rejected all the claims of the Appellants.
30.05.2022	Adjudicating Authority dismissed the Application filed by the Appellants and approved the Resolution Plan submitted by the Respondent 2 ignoring the claims of Appellants

### **Appellant's Submissions:**

13. The Learned Counsel for the Appellant submitted that the present 'Appeal' has been filed, challenging the 'Order' dated 30<sup>th</sup> May 2022, passed by the 'Adjudicating Authority', dismissing 'Application No. 166 of 2021', upholding the contentions of the 'Resolution Professional' that the 'Appellants' are 'Related Parties' and not 'Financial Creditors' of the 'Yashomati Hospitals Private Limited' ("**Corporate Debtor**").

14. The Learned Counsel for the Appellant submitted that the 'Appellants' had disbursed huge amounts, to the extent of Rs.17.74 Crore (excluding any interest thereof) to the 'Corporate Debtor' which was utilized for paying the debts, running the operations, etc. of the 'Corporate Debtor'.

15. The Learned Counsel for the 'Appellant' assailed action of the 'Respondent No.1' to keep away the 'Appellant' as 'Stakeholder' of the 'CIRP' and extinguish the Appellant's Claim of such huge amounts, when the 'Claim' of the 'Sole Financial Creditor' in the 'Committee of Creditors' is only around Rs.23 Crore.

16. The Learned Counsel for the Appellant pointed out that the 'Corporate Debtor' admitted disbursement of funds but claims were denial on the ground that the amounts were only for 'Equity', when admittedly, no shares were 'Transferred', 'Allotted' or the 'Appellants' were recognized as 'Equity Holders'.

17. The Learned Counsel for the Appellant stated that the 'Respondent No. 1' considered the 'Appellant' as not being the 'Financial Creditors' and consequently, had not accepted the following 'Claims':

1.	Repayment to State Bank of India	Rs.5,51,28,057
2.	Procurement of equipment	Rs.3,45,31,680
3.	Settlement of unpaid employee	Rs. 96,81,833
4.	Expenses incurred on behalf of the Corporate Debtor	Rs. 7,81,24,528
<b>Total</b>		<b>Rs. 17,74,66,098</b>

18. The Learned Counsel for the Appellant briefed that invested funds were in the context of 'Equity Participation' and if the 'Equity' is not provided, the law mandates the same to be returned with Interest. Hence there is disbursement which carries time value for money and hence a "Financial Debt".

19. The Learned Counsel for the Appellant further pleaded that, admittedly, the amounts were disbursed by the Appellants, utilised by the 'Corporate Debtor' and become repayable, with Interest. Hence the claims of the Appellants should be treated and dealt within the 'CIRP' and cannot be extinguished, to the benefit of the 'Resolution Applicant'. The 'CIRP' was concluded in violation of the 'rights' of the 'Appellants' and completely wiping of their investment having benefitted of the same.

20. The Learned Counsel for the Appellant furnished details of the 'Four Claims' which runs as under:-

- (i) The first claim of the Appellants is money was repaid on behalf of the `Corporate Debtor` to the `State Bank of India` which is effected in the `Bank Statement of Aayug Multi Specialty Hospitals`, the `Partnership Firm` of the Appellants was also acknowledged by the State Bank of India and the amount paid by the `Appellants` towards this loan is Rs. 5,51,28,057, excluding Interest.
- (ii) The second claim is with regards to equipments which were brought into the Corporate Debtor by the Appellants. It is also not out of place to state that the 1st Respondent wrote to the Appellants to take back the Equipment as the `Resolution Plan` was approved.
- (iii) The `Third Claim` is for various unpaid dues of the Employees of the `Corporate Debtor`, which was cleared.
- (iv) The fourth Claim is for the various operational expenses incurred by the Appellants on behalf of the Corporate Debtor.

21. The Learned Counsel for the Appellant emphasised that the Respondents are not disputing the amounts being spent for the `Corporate Debtor` but are only challenging the character of the investment.

22. The Learned Counsel for the Appellant submitted that the Impugned Order is ex facie contrary to the facts on record and should be set aside and the Appellants are to be declared as `Financial Creditors` of

the 'Corporate Debtor'. The 'impugned order' correctly holds that the Appellants have invested a sum of Rs.17,74,66,098/- being the amount expended for any on behalf of the 'Corporate Debtor' but wrongly held that the same cannot be classified as Financial Debt and consequently the Appellants are not 'Financial Creditors'.

23. The Learned Counsel for the Appellant stated that even having paid an amount of over Rs. 17crores, the 'Appellants' have been left out of the 'Corporate Insolvency Resolution Process'. The Learned Counsel for the Appellant submitted that in 2017 a Term Sheet was executed between the Appellants and the Promoters of the Corporate Debtor, that clearly spell out that the Corporate Debtor required funds and the Appellants were ready to fund the Company by paying debts and operational creditors etc., which in fact is nothing but a financial transaction. If the Appellants had not spent these amounts, the 'Corporate Debtor' would now be in a position of being liquidated and therefore the Appellants be recognized as the 'Financial Creditors' as amounts paid by them qualify as financial debt. If not considered as the 'Financial Creditor' they will be left without remedy for money that was brought in legitimately and are now blocked due to the bad intentions of the 'Promoters'.

24. The Learned Counsel for the Appellant also assailed the 'impugned order' passed by the 'Adjudicating Authority' in I.A. No. 06 of 2022, where the 'Resolution Plan' was approved the promoters namely 'Mr. Artur V. Nikitin' was taken as financial creditors and his claims were accepted

ignoring claims of the 'Appellant'.

25. The Learned Counsel for the Appellant mentioned that the Respondent No. 1 took wrong reasons to reject the claim i.e. on the grounds that it is not a financial debt, there were no documents to support the claim and that the term sheet has not been signed by the 'Corporate Debtor'.

26. The Learned Counsel for the Appellant informed that the term financial debt has been defined under the I & B Code, 2016 and is an all-inclusive definition. As long as the appellants are able to show that there is time value of money, the 'Appellants' would be considered as 'Financial Debtors'. The Learned Counsel for the Appellant submitted that there was no dispute that the monies were spent towards the benefit of the Corporate Debtor and as shares have not been allotted, the amounts were to be refunded with interest. Therefore, clearly there is an element of time value of money and further the provisions of the 'Companies Act, 2013' in Section 42 (6) clearly brings out the fact that if shares have not been allotted, amounts are to be refunded with interest.

27. The Learned Counsel for the Appellant also cited the case of ***Kushan Mitra vs. Amit Goel* [CA (AT) (Ins) No. 128 of 2021]** reported in 2021 SCC OnLine NCLAT 858 before the Hon'ble National Company Law Appellate Tribunal, New Delhi, where it was held that money that has been brought in to a company as "share application" money or money brought in

as an investment in lieu of promised issuance of share would fall under Section 42 (6) of the Companies Act, 2013.

*“42(6). Offer or invitation for subscription of securities on private placement*

*(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. Per annum from the expiry of the sixtieth day:*

*Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than-*

*(a) For adjustment against allotment of securities; of*

*(b) For the repayment of monies where the company is unable to allot securities.”*

**“Para 18** *To understand the nature of transaction involving a Share Application Money it is necessary to see how Section 42(6) of the Act and the Companies (Acceptance of Deposits) Rules, 2014 treat the Share Application Money. The relevant parts of the Act and the Deposit Rules have been reproduced in Paragraphs 12 to 15 above. It is clear from the reading of Section 42 of the Companies Act, 2013 and the Deposit Rules that if the Shares are not allotted within 60 days of receiving the*

*Share Application Money, and if the refund does not take place within 15 days from the expiry of 60 days time limit, then this amount will be treated as a 'Deposit', advanced to the Company, which has to be returned by the Company at the rate of 12 percent per annum from the expiry of the 60th day. Thus the concerned person would get compensation for the time value of money given by him to the Company which changes the nature and character of the money so given. Although the amount was initially paid towards Shares, since the allotment was revoked, the equity did not materialise. Thereafter, by operation of law, Section 42(6) of the Companies Act, 2013, the amount has statutorily been given the character of loan with interest. Same is the case of amounts paid as optionally convertible debentures. They may initially be seen as Debt and later, upon conversion the same amount becomes equity. Hence, when under law, the amount has been treated as a loan, we hold that refund of Share Application Money, in the event of non-allotment of shares attracts interest as provided for under Section 42(6) of the Act and therefore qualifies the essential ingredients of Section 5(8) of the Code in terms of consideration paid for time value of money and therefore falls within definition of the ambit of 'Financial Debt' as defined under Section 5(8) of the Code. Therefore, we hold that the Debt is a 'Financial Debt' and hence we are of the considered view that the ratio of "Radha Exports India Private Limited" (supra) and "Sesa Goa Limited and Ors. (Supra) is not applicable to the facts of this case. Further, a three Judge Bench of this Tribunal in Uniexcel Developers Pvt. Ltd. Vs. Uniexcel Ltd., Company Appeal (AT) Ins. No. 962 of 2019 has concurred with the finding of the Adjudicating Authority and held*

*that in case of non-refund of Share Application Money within 60 days of receipt of the money, the money will be treated as Deposit and would change its character to fall within the definition of 'Financial Debt'."*

28. Since the same attracts interest as per the provisions of the Companies Act, 2013, the same has a 'Time Value for Money', and would be 'Financial Debt', under the Insolvency and Bankruptcy Code, 2016. Accordingly, in that case a Section 7 Application was held to be maintainable.

29. The Learned Counsel for the Appellant explained the next issue on which the 'Appellants' claims has been rejected is the ground that the Appellants had not submitted the relevant documents to support the claim. The Learned Counsel for the Appellant submitted this to be contrary to the records as submitted in the 'Claim Forms' where the relevant documents had been attached.

30. The Learned Counsel for the Appellant once again submitted that whether compliance is made by the 'Corporate Debtor' or not, cannot saddle the Appellants for such non-compliance when in fact monies have been expended by the Appellants for the 'Corporate Debtor'.

31. The Learned Counsel for the Appellant also pleaded Reliance on the case of ***MRF Ltd. v. Manohar Parrikar [(2010) 11 SCC 374]*** against there cords being improperly maintained and the 'Board Resolutions' of the Corporate Debtor not being updated for which the 'Appellants' cannot be

faulted with. The doctrine of indoor management as expounded in the above-mentioned judgment protects the Appellants from the burden of ensuring whether the appropriate 'Board Resolutions' and other compliances have been carried on by the 'Corporate Debtor' when the money brought in has clearly been for the benefit of the 'Corporate Debtor'.

***“Para-110.** The doctrine of indoor management is also known as the Turquand rule after the case of Royal British Bank v. Turquand, [1856] 6 E. & B. In this case, the directors of a company had issued a bond to Turquand. They had the power under the articles to issue such bond provided they were authorized by a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed.*

***Para-111.** The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice.*

*According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed. Therefore doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.*

**Para-112.** *This exception was highlighted in the English case of J.C Houghton & Co. v. Nothard, Lowe & Wills Ltd, [1927] 1 KB 246 (CA) where the case involved an agreement between fruit brokers and fruit importing company. There was an allegation that the agreement was entered into by the company's directors without authority. It was held that the nature of transaction was found to have been such as to put the plaintiffs on inquiry. To this effect Lord Justice Sargant held:-*

*"Cases where the question has been as to the exact formalities observed when the seal of a company has been affixed, such as Royal British Bank v. Turquand, 6 E. & B. 327, or the County of Gloucester Bank v. Rudry Merthyr, &c., Co., [1895] 1 Ch 629, are quite distinguishable from the present case. In re Fireproof*

*Doors, Ltd., sup., tends rather against than in favour of the plaintiffs, since if a single director has as towards third parties the authority now contended for, the whole of the elaborate investigation of the facts in that case was entirely unnecessary. Perhaps the nearest approach to the present case is to be found in Biggerstaff v. Rowlatt's Wharf, [1896] 2 Ch. 93.*

*But there the agent whose authority was relied on had been acting to the knowledge of the company as a managing director, and the act done was one within the ordinary ambit of the powers of a managing director in the transaction of the company's affairs. It is, I think, clear that the transaction there would not have been supported had it not been in this ordinary course or had the agent been acting merely as one of the ordinary directors of the company. I know of no case in which an ordinary director, acting without authority in fact, has been held capable of binding a company by a contract with a third party, merely on the ground that that third party assumed that the director had been given authority by the Board to make the contract. A limitation of the right to make such an assumption is expressed in Buckley on the Companies Acts, 10th Edition, at p. 175, in the following concise words: -- And the principle does not apply to the case where an agent of the company has done something beyond any authority which was given to him, or which he was held out as having."*

32. The Learned Counsel for the Appellant also elaborated that another point raised is that the 'Term Sheet' was not signed by the

'Corporate Debtor' and hence the same is not binding which is wrong as the 'Corporate Debtor' itself have not made any statement to the contrary. Further, the term sheet clearly brings out the intent of the parties and for the claims of the 'Appellants', the relevant and important pages numbers are set out. The "Term Sheet" has been fully acted upon and stood for the benefit of the 'Corporate Debtor'. It is not in dispute that the "Term Sheet" is signed by the Share Holder / Director who represented 97 % of the shareholding.

33. The Learned Counsel for the Appellants also took up point made by the Respondent that the Appellants are related parties of the 'Corporate Debtor'. Whereas, the 'Appellants' are not 'Related Parties', because they do not fall within the definition of Section 5(24) of the I & B Code, 2016.

34. The Learned Counsel for the Appellants stated that the Appellants are not 'Key Managerial Personnel' of the Corporate Debtor at the relevant time period and though the 'Appellant No. 2' was appointed as the 'Chief Operation Officer' of the 'Corporate Debtor', the same was not a permanent position but rather was renewed periodically and anyway, the last renewal expired by 2020 itself. Further, the Appellants were not directors of the 'Corporate Debtor'. Admittedly, the brother of the Appellant No. 2 was an Additional Director for a short period of a few months, the same is not relevant at the date of the 'Corporate Insolvency Resolution Process'. The relevant date to test a relationship of related party as per **Phoenix Arc Pvt. Ltd. vs. Spade Financial Services**, [(2021) 3 SCC 475] is the date on which the relationship of being a related party is tested.

**“Para-103.** Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.

**Para-104.** Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a ‘related party’ before the Corporate Debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors. 96 In the present case, there is a finding that AAA and Spade were related parties within the meaning of Section 5(24) at the time when the alleged financial debt on the basis of which they assert a claim to be a part of the CoC was PART J created. This was due to the long-standing relationship between Mr Arun Anand and Mr Anil Nanda,

*and their respective corporations. Admittedly, such a relationship still existed even in 2017, since Mr Anil Nanda's JIPL held shareholding in Mr Arun Anand's Spade. Further, we have also concluded that the transactions between Spade and AAA on one hand, and the Corporate Debtor on the other hand, which gave rise to their alleged financial debts were collusive in nature. Therefore, it is evident that there existed a deeply entangled relationship between Spade, AAA and Corporate Debtor, when the alleged financial debt arose. While their status as related parties may no longer stand, we are inclined to agree with Mr Kaul that this was due to commercial contrivances through which these entities seek to now enter the CoC. The pervasive influence of Mr Anil Nanda (the promoter/director of the Corporate Debtor) over these entities is clear, and allowing them in the CoC would definitely affect the other independent financial creditors."*

35. The Learned Counsel for the Appellant, therefore, submitted that the 'Appellants' are the 'Financial Creditors' and not related parties of the 'Corporate Debtor' and even if they are treated as related party, it cannot change the fact that they are still 'Financial Creditors' of the 'Corporate Debtor' having spent more than Rs. 17 Crores for the benefit of the 'Corporate Debtor'.

36. The Learned Counsel for the Appellant concluded his arguments with a prayer that the present appeal be allowed, and the 'Appellants' be treated as 'Financial Creditors' and be paid in accordance with all the other financial creditors i.e., 100% of the amount claimed.

### **Respondent's Submissions:**

37. The Learned Counsel for the Respondents gave facts of the case and stated that the present Appeal is filed challenging the order of the 'Adjudicating Authority' upholding the action of the 1<sup>st</sup> Respondent in treating the Appellants as related parties.

38. The Learned Counsel for the Respondents brought out that the originally, the Appellants had lodged claim with the then 'Interim Resolution Professional' claiming various amounts as 'Financial Creditor', and the then 'Interim Resolution Professional' did not either admit or reject the claim of the 'Appellants' and but treated the 'Appellant' as related party. This was challenged in I.A.166/2021 and the 'Adjudicating Authority' dismissed the claims of the 'Appellant'.

39. This Respondent as 'Resolution Professional' after taking charge vide letter dated 09.09.2021 communicated the decision of not admitting the claim for the following reasons:-

- (a) Proof of claim is not establishing the financial debt;
- (b) No approval by the Board of Directors of the Corporate Debtor;
- (c) Relevant documents that adequately establish the debt was not furnished;
- (d) Admittedly, these communications dated 09.09.2021 were not challenged before the Adjudicating Authority. In other words, the communications not admitting the claim of the Appellant herein

had attained finality and hence the present appeal is liable to be dismissed on this ground itself.

40. The Learned Counsel for the Respondents pointed out that the 'Appellant' has placed reliance on term sheet dated 09.03.2017 which is unsigned by the 'Corporate Debtor', hence cannot be admitted. The Learned Counsel for the Respondent also pointed out that some of the relevant clauses of the "Term Sheet" are:-

- (i) Use of investment;
- (ii) Conditions precedent which include execution of definitive agreement.
- (iii) Governing Law
- (v) Dispute Resolution;

41. The Learned Counsel for the Respondents emphasised that even though the term Sheet is said to have been entered into among the Appellants, the 'Corporate Debtor' and the 'Promoter', there is no signature of the 'Corporate Debtor'.

42. The Learned Counsel for the Respondents also mentioned that this Respondent No. 1 while not admitting the claim had also stated about the conditions precedent and the non- approval of the 'Board of Directors' of the 'Committee of Creditors' and this communication remains unchallenged by the 'Appellant'.

43. The Learned Counsel for the Respondents emphatically pleaded that a perusal of the “Term Sheet” also would reveal that it is not for the issue of new share capital but for transfer of shares from the ‘Promoter Director’.

44. The Learned Counsel for the Respondents also highlighted that even as per the admitted by the Appellants, they did not bring the entire amount of Rs. 25 crores because of disputes between the Promoters and the Appellant which cannot be the subject matter of resolution by this Tribunal in its summary jurisdiction.

45. The Learned Counsel for the Respondents also argued that the Appellants should work on the remedies as available in the ‘Dispute Resolution Mechanism’ set out in the term sheet against the Promoter Director.

46. The Learned Counsel for the Respondents stated that the ‘Appellant’ had paid amount to the ‘State Bank of India’, only as per an agreement with the Promoter Director in the capacity of a ‘Personal Guarantor’ and not on behalf of the ‘Corporate Debtor’ and the consideration for whatever the appellants have done was the transfer of shares by the ‘Promoter Director’ as such and without any consideration from the ‘Corporate Debtor’.

47. The Learned Counsel for the Respondent said that the CIRP process commenced on 16.03.2021 and admittedly there were disputes between the ‘Appellant’ and the ‘Promoter Director’ even before the commencement of the

‘Corporate Insolvency Resolution Process’ and nothing prevented the Appellant from working out the remedies known to law .

48. The Learned Counsel for the Respondent concluded with a request that the appeal is to be dismissed on the following grounds:

- a. The non-admission of claim by this Respondent vide its letter dated 09.09.2021 has not been challenged in the manner known to law and hence attained finality.
- b. The term sheet is not signed by the Corporate Debtor
- c. Pending disputes between the Promoters and the Appellant which could only be settled by the Disputes Resolution Mechanism set out in the “Term Sheet”.
- d. Even as per the claims filed by the Appellant as a financial creditor it was only an investment and hence the question of admitting the financial debt does not arise.

### **Findings**

49. Heard Learned Counsel for both the parties and also perused record made available to this `Tribunal’ us including ‘Written Submissions’, etc., along with citations quoted therein. Several issues have been raised in the Appeal which are required to be deliberated upon before coming to final conclusion. These can be taken up as following:-

- (I) Whether the debt claimed by appellants can be considered as financial debt u/s 5(8) of the I & B Code 2016?
- (II) Whether the 'impugned order' passed by the 'Adjudicating Authority' was incorrect holding the Appellants as related parties keeping in view provisions on I & B Code 2016 and IBBI rules and regulations?
- (III) Whether the Resolution Plan was approved correctly when no provision had been made for the claims of the Appellants?

50. Since, all these issues are independent, it will be worthwhile to examine these issues one by one and we shall proceed accordingly in subsequent discussion.

**Issue No. (I) Whether the debt claimed by appellants can be considered as financial debt u/s 5(8) of the I & B Code 2016?**

(a) The crux of appeal lies in claim made by the Appellants that investment made by them of more than Rs. 17 Crores is in nature of 'Financial Debt' and therefore, the Appellant should be treated as 'Financial Creditor'. The Appellant also claimed that they should have been given seat in 'Committee of Creditors' assigning them voting percentage in accordance with money brought in by them.

(b) To understand better we must refer to the rule position regarding this issue in I & B Code 2016.

(c) The debt has been defined in Section 3 (11) of IBC which is as under:-

*“3(11). **“debt”** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”*

(d) Since, the term claim is mentioned in above definition of debt, there is a need to refer to definition of claim under Section 3(6) of IBC which is as under:-

*“3(6). **“claim”** means-*

*(a) A right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

*(b) Right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”*

(e) The ‘Financial Creditor’ and ‘Financial Debt’ is also defined under Section 5(7) & Section 5(8) of the I & B Code, 2016, which as under:-

*“(7) **“financial creditor”** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

*(8) **“financial debt”** means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; [Explanation. -For the purposes of this sub-clause,-*
- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*
- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

(f) The other relevant definition of I & B Code, 2016 with reference to this Appeal are 'Operational Debt' and 'Operational Creditor' which are as under:-

*“5(21). **operational debt**” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

*“5(20). **“operational creditors”** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;”*

(g) These definitions make the distinction between Operational Debt and Financial Debt. As seen from above, 'financial debt' is an inclusive and non-exhaustive definition given under Section 5(8) of the I & B Code to mean *“a debt alongwith interest, if any, which is disbursed against the consideration for time value of money. Financial creditors have relationship with the entity as financial contract, like loan or security etc. Whereas, an operational debt as defined under*

section 5(21) of I & B Code, 2016 signifies a claim in respect of the provisions of goods or services.

(h) At this juncture, it may be worthwhile to refer to pronounce judgment on this issue to determine whether investment made by the Appellants fall in the definition of 'debt' and if so, whether this is 'financial debt' or 'operational debt or any other debt. The Hon'ble Supreme Court of India in case **Phoenix Arc Pvt. Ltd. vs Ketulbhai Ramubhai Patel** on 3 February, 2021 reported in (2021) 2 SCC 799 gave its verdict defining in following paragraphs.

*“Para 5 - Aggrieved by the judgment of the Adjudicating Authority, the appeal was filed by the appellant before the Appellate Tribunal. The Appellate Tribunal held that pledge of shares in question do not amount to “disbursement of any amount against the consideration for the time value of money” and it do not fall within sub-clause (f) of sub-section (8) of Section 5 as suggested by the learned counsel for the appellant. The Appellate Authority finding no merit in the appeal, dismissed the appeal. Aggrieved by the judgment of the Appellate Tribunal, the appellant has filed the present appeal.”*

*“Para 21 - Whether the corporate debtor owed any financial debt to the appellant so as to treat the appellant as financial creditor is the question to be answered. The definition of 'financial debt' as contained in Section 5(8) contains the expressions*

*“means” and “includes”. The definition begins with the words “financial debt” means 'a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes'... The main part of the definition, thus, provides that financial debt means a debt “which is disbursed against the consideration for the time value of money”. The definition in the second part gives instances which also includes financial debt. Learned counsel for the appellant in his submission has relied on Section 5(8)(i) to support his claim that the appellant is the financial creditor. Learned counsel for the appellant has referred both sub-clause (b) and sub-clause (i) and submits that credit facility which was extended to the borrower is referable to Section 5(8)*

*(b) and the corporate debtor pledged his share to give indemnity for credit facility and which is in a sense of guarantee. The debt is a financial debt within the meaning of Section 5(8)(i) and the appellant is the financial creditor. There can be no dispute that credit facility given by the Assignor to borrower by Facility Agreement dated 12.05.2011 is a credit facility which can be covered under Section 5(8)(b). A bare perusal of Section 5(8)(i) indicates that it contemplates amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses(a) to (h) of clause (8). Sub-clause (i) uses two expressions “guarantee” and “indemnity” for any of the items referred to in sub-clauses (a) to (h).*

**Para 22** -Chapter VIII of the Indian Contract Act, 1872 deals with “Of Indemnity and Guarantee”. Section 124 defines “Contract of indemnity” and Section 126 defines “Contract of guarantee”. Section 126 which is relevant for the present case is as follows:

“Section 126. “Contract of guarantee”, “surety”, “principal debtor” and “creditor”. —A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.”

**Para 29** - (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal Clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.

**Para 32**-We may notice that the Appellate Tribunal has dealt with Section 5(8)(f) while rejecting the claim of the appellant as to be the financial creditor. It appears that the submission based on Section 5(8)(i) was not addressed before the Appellate Tribunal which has now been pressed before us. We, thus, uphold the decision of the Resolution Professional as approved by the NCLAT as correct. The appellant is not financial creditor of the corporate debtor. Hence, Miscellaneous Application was rightly rejected by the Adjudicating Authority. We, however, make it clear that observations made by us in this judgment are only for deciding the claim of the appellant as the financial creditor within the meaning of Section 5(7) and 5(8) of the Code and shall have no bearing on any other proceedings undertaken by the appellant to establish any of its right in accordance with law. We, thus, do not find any merit in this appeal. The appeal is dismissed. No costs.”

(i) Similarly, this Tribunal has also examined similar issue and passed judgment in the case of **Amrit Kumar Agrawal vs. Tempo Appliances Pvt. Ltd** 2020 SCC Online NCLAT 1202-where it was observed

“that a mere obligation to pay does not bring the liability within the ambit of ‘financial debt’ as defined under IBC. The debt, along with interest, if any, should be disbursed against the consideration for the time value of money. Mere breach of terms of any agreement including a Settlement

*Agreement by a party, whereby some payment was due, would not fall within the scope of Section 5(8) of IBC, so as to constitute a 'Financial Debt'. Accordingly, it was observed that mere obligation to pay under a Settlement Agreement would not amount to disbursal of amount for consideration against the time value of money, and thus, breach of such obligation would not entitle a party to invoke CIRP against the other party."*

(j) In present appeal the entire investment and money brought in was for the benefit of the 'Corporate Debtor' based on the "Term Sheet" signed between the 'Appellants' and the 'Promoters Directors' of the 'Corporate Debtor' who were based in Russia. It is seen from the term sheet signed which include the clause wherein, the 'Appellants' was supposed to bring in the amount of Rs. 25 Crores, for the benefit of the 'Corporate Debtor', to be used for the purpose of clearing debts of the State Bank of India, payment to workers for outstanding dues, bring in plant and machinery required for operation of 'Corporate Debtor' and for other expenses for 'Corporate Debtor'. In return of such investment of the Appellant the 'Promoter Director' were required to allot shares to appellants to extent of 25% of share capital. The Appellants were also entitled to nominate two directors to board of directors and the Appellant No. 2 was supposed to be nominated as the 'Chief Executive Officer' of the 'Corporate Debtor'.

(k) Considering the facts of the case, provision in I & B Code, 2016 and abovementioned cited judgements, we are not in position to treat the money brought it as 'Financial Debt'. The basic element of the 'Financial Debt' that such disbursement should be for consideration of 'Time Value of Money' is not directly evident here. Admittedly, the Appellants have brought in more than Rs. 17 Crore, however it will not automatically fall in the definition of debt and more so of 'financial debt' in relation to the 'Corporate Debtor'. Since it cannot be classified as financial debts, the Appellants cannot be treated as financial creditor.

(l) Therefore, the Resolution Professional's reason as discussed above to not include claims of the Appellants in the Resolution Plan as 'Financial Debt' and also due to the fact that the Appellant being related party which has been confirmed by the 'Adjudicating Authority' in the impugned order is found to be correct.

**Issue No. (II) Whether the 'impugned order' passed by the 'Adjudicating Authority' was incorrect holding the Appellants as related parties keeping in view provisions on I & B Code 2016 and IBBI rules and regulations?**

(a) The term Related Party is given under Section 5(24) of the I & B Code, 2016. The Code describes it as a commutative relationship between the related party and the corporate debtor. Earlier, there was no definition regarding Related Party in the Code but this was brought

by the Insolvency and bankruptcy code (Amendment) Ordinance, 2018. So, at that time the definition of Related party given under the Companies Act, 2013 was followed.

(b) According to section 2(76)(iv) of the Companies Act, if a director of the company is a member or director of the other company, that other company becomes a related party. A similar clause is reflected in section 5(24)(d) of the Code, though it is constructed solely from the perspective of the corporate debtor.

(c) If the two entities are operating under common control, the indicia as given in section 5(24)(m) of I & B Code, 2016 will apply. Thus, interchange of personnel, participation in policy-making, or provision of technical information are indicators of association of the two entities. It is not necessary that the company in question must be a supplier of technical information, or must be participating in policy-making or would cause inter-change of personnel. If there is a common source of control over both the entities, it cannot be denied that the two entities become “associated” for that reason.

As per Section 5(24) of I & B Code 2016, ‘Related Party’

*(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*(b) key managerial personnel of the corporate debtor or a relative of key managerial personnel of the corporate debtor;*

*(c) A limited liability partnership or partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;*

*(d) a private company in which a director, partner, or manager of the corporate debtor is a director and holds along with his relatives, more than two percent. of its share capital;*

*(e) a public company in which a director, partner, or manager of the corporate debtor is a director and holds along with relatives, more than two percent. of its paid-up share capital;*

*(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;*

*(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions, or instructions of a director, partner, or manager of the corporate debtor;*

*(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*

*(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*

*(j) any person who controls more than twenty percent. of voting rights in the corporate debtor on account of ownership or a voting agreement;*

*(k) any person in whom the corporate debtor controls more than twenty percent. of voting rights on account of ownership or a voting agreement;*

*(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*

*(m) any person who is associated with the corporate debtor on account of—*

*i) participation in policy-making processes of the corporate debtor; or*

*(ii) having more than two directors in common between the corporate debtor and such person; or*

*(iii) interchange of managerial personnel between the corporate debtor and such person; or*

*(iv) provision of essential technical information to, or from, the corporate debtor.*

*[emphasis supplied]*

(d) In the present `Appeal', it is clear that the Appellants have been handling day-to-day operations of the corporate debtor. The Appellant No. 2 was working as `Key Managerial Personnel' of the `Corporate Debtor', the Appellants were also relative of one of the `Director' in `Board of Directors' (albeitly for a short period and further not on the date of Corporate Insolvency Resolution Process).

(e) The Appellant also falls in provision of Section 5(24)(h), 5(24)(m)(i)&5(24)(m)(iv) as mentioned herein above due to their day to day involvement in operation of the `Corporate Debtor'. This fact has been highlighted in pleadings also.

(f) As such, the 'Interim Resolution Professional' was right in holding the 'Appellant' as 'Related party' which was upheld by the 'Adjudicating Authority'. We do not find any error in the 'impugned order'.

**Issue No. (III) Whether the Resolution Plan was approved correctly when no provision had been made for the claims of the Appellants?**

(a) A resolution plan is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. It needs to be approved by the 'Committee of Creditors' ("COC"), and comply with mandatory requirements prescribed in I & B Code, 2016. Following are the relevant definition in the I & B Code, 2016.

*"Section 5(26) of IBC, 2016 - "Resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;"*

*Section-5(25) of IBC resolution applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;]*

Section 25, provide for 'Duties of Resolution Professional':

*"(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —*

*(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*

*(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;*

*(c) raise interim finances subject to the approval of the committee of creditors under section 28;*

*(d) appoint accountants, legal or other professionals in the manner as specified by Board;*

*(e) maintain an updated list of claims;*

*(f) convene and attend all meetings of the committee of creditors*

*(g) prepare the information memorandum in accordance with section 29;*

*(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*

*(i) present all resolution plans at the meetings of the committee of creditors;*

*(j) file application for avoidance of transactions in accordance with Chapter III, if any; and*

*k) such other actions as may be specified by the Board.”*

(b) Before getting into the admissibility of claims, a clear understanding of what `Claims' are to be arrived at. The term "claim" is defined under section 3(6) of the code. A claim, according to this clause, is a right to payment as well as a right to redress. So basically, a claim only exists if there is a right to payment, and if there is no right to payment, there is no claim at all. Thus, the right to payment will emphasize the concept of a claim whether or not the right is fixed, disputed, undisputed, legal, equitable, secured, or unsecured and similarly, the right to redress falls within the claim category.

(c) To give an overview, according to the provisions of sections 18 and 25 of the I & B Code, 2016 the Interim resolution professional or the resolution professional is responsible for compiling all claims made by creditors in response to the public announcement. However, it should be noted here that neither Section 18 nor Section 25 require the interim resolution professional or the resolution professional to verify, admit, or reject allegations. Regulation 13 of the CIRP Regulations gives them the responsibility to verify the claims which will be explained subsequently.

(d) Supreme Court in case of ***Arcelor Mittal India Private vs Satish Kumar Gupta*** CA No. 9402-9405 of 2018.

**“Para 77-** A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to “decide” whether the resolution plan does or does not contravene the provisions of law”.

- (e) Hon'ble Supreme Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another***-2021 SCC OnLine SC 707-

**“Para132-** While the above observations were made in the context of a scheme that has been sanctioned by the Court, the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se the CoC and the successful Resolution Applicant. The Resolution Plan cannot be construed purely as a 'contract' governed by the Contract Act, in the period intervening its acceptance by the CoC and the

*approval of the Adjudicating Authority. Even at that stage, its binding effects are produced by the IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors". The BLRC Report also mentions that, "the RP submits a binding agreement to the Adjudicator before the default maximum date". We have further discussed the statutory scheme of the IBC in Sections I and J of this judgement to establish that a Resolution Plan is binding inter se the CoC and the successful Resolution Applicant. Thus, the ability of the Resolution Plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract."*

(f) Here in above case, this `Tribunal' can see that the main emphasis in the decision of the Hon`ble Supreme Court of India was significantly based on the "Approval by Committee of Creditors". If the Resolution plan is approved by CoC, then it stands binding for all.

(g) The Resolution Professional has been given administrative and not Quasi-judicial powers. It is also seen that only **Pegasus Assets Reconstruction Pvt. Ltd** was included in CoC holding 100% voting rights, and they rejected the claims of 'Appellants' in CoC. The 'Adjudicating Authority' was therefore, justified in approving Resolution Plan, as approved by the 'Committee of Creditors', and since the Appellant claims were not admitted and approved as to be Financial

Debt (as discussed in Issue No. I above) the rejection of claims was not wrong.

(h) Hence, this `Tribunal' does not find any error in the `impugned order' as regards the `Approval' of the `Resolution Plan'.

51. This `Tribunal' consciously notes the fact that the I & B Code, 2016 is commercial beneficial legislation with sole intent for earlier `Resolution' in `Insolvency Cases' and facilitate environment for putting back the `Corporate Debtor' on its legs. The I & B Code, 2016 is consciously not meant for recovery mechanism for Debt Enforcement Procedure which other remedies are available as per law and in the manner known to law.

52. The fact that the `Appellants' made investment of more than Rs. 17 Crore for the benefit and revival of the `Corporate Debtor' in anticipation that the `Promoter Director' of the `Corporate Debtor' will `Transfer Shares' as per the agreement as contained in signed "Term Sheet" (signed by the `Appellant' and `Promoter Director', but without any sign of the `Corporate Debtor' per se) need to be acknowledged. It is not the role of this Tribunal to go into the remedies in such cases which is domain of other judicial forum. Suffice to say that the `Appellants' are free to take action as available in `Law'.

53. In view of above discussions, this `Tribunal' is unable to allow the two `Appeals' and find that the `impugned order' dated 30.05.2022, passed in I.A. No. 06 of 2022 in C.P (IB) No. 144/BB/2017 & I.A. No. 166 of 2021 in

C.P. (IB) No. 144/BB/2017 is legally valid, tenable, just and proper. Accordingly, the instant `Appeals' are dismissed. No costs.

The connected pending `Interlocutory Applications', if any, are Closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

Simran