

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 328 of 2021

(Arising out of Order dated 10th March, 2021 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, Court 2, in IA 747 of 2020 in C.P.(IB) No.-98/NCLT/AHM/2020).

IN THE MATTER OF:

**The Deputy Commissioner
Division-VII, Central GST,
Ahmedabad South,
O/o of the Deputy Commissioner,
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite,
Ahmedabad, Gujarat – 380015**

...Appellant

Versus

**Mr. Kiran Shah,
Resolution Professional
Chartered Accountant,
608, Sakar – I,
Near Gandhigram Railway Station,
Opp. Nehru Bridge, Ashram Road,
Ahmedabad – 380009.**

...Respondent

**Appellant: Mr. Nitya Sharma, Standing Counsel (CBIC).
Respondent: Mr. Kiran Shah, (RP).**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Aggrieved by the Order dated 10.03.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in IA 747 of 2020 in C.P.(IB) No.- 98/NCLT/AHM/2020, the Deputy Commissioner, Central GST, Ahmedabad South, preferred this Appeal under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**'). While dismissing the Application preferred by the Appellant herein, the Adjudicating Authority has observed as follows:-

“7. Heard learned lawyer for the Applicant as well as the RP, also seen the record. It is a matter of record that the main petition, i.e. CP (IB) 98 of 2020, was admitted on 12.03.2020 and IRP was appointed, who invited claim(s) by making public announcement in Form-A and the last date for submission of claims were mentioned as 31.03.2020. However, considering the spread of Covid-19 and situation of national lockdown, the claims of the creditors were being accepted up to 12.06.2020. Even if the lockdown period as well as 90 days is excluded, it will come to 16.08.2020. However, the Applicant has submitted its claim on 04.09.2020, much beyond the stipulated time as well as extended period of 90 days and 68 days of lockdown period.

8. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC on or before 08.03.2021 (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the basis of Information Utility (IU). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. There is every likelihood that if the claims of the different creditors are being accepted in a phase manner, that too after the stipulated time so provided for submitting claims, in that event, the Resolution Plans can never get materialized, more so, when CIRP is to be completed in a time bound manner. If such claim is accepted that too without any supporting documents, then the Resolution Applicants have to make corrections in their plans, that apart, RP has to make corrections in the IU and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Further, if the Resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan / infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over.”

2. Learned Counsel appearing for the Appellant strenuously argued that the Appellant was intimated about the CIRP Proceedings vide email dated 28.07.2020; intimation regarding change in the Resolution Professional was intimated by email dated 11.08.2020; the Appellant filed their claim in Form-B on 04.09.2020 and thereafter received an email dated 05.09.2020 from the Respondent/Resolution Professional that the claim of Rs. 13,34,44,050/- was rejected on the ground that it was belatedly filed after the last date of submission which was 27.08.2020. It is the case of the Appellant that they were neither intimated nor were they aware about the fact that the last date of submission of claim has expired. The departmental claims being statutory levies were reflected by the 'Corporate Debtor' in their books of accounts for the Financial Years 2019-2020 and 2020-2021.

3. The Learned Counsel placed reliance on Section 21(1) of the Code which provides the following:-

“21. Committee of creditors.—(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.”

4. It is the case of the Appellant that the RP has to prepare the list in accordance with the books of accounts and then invite claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless and that the Resolution Professional did not perform his duties under law and is aiding the 'Corporate Debtor' in not paying the mandatory Government dues.

5. It is the case of the Respondent/Resolution Professional that the Appellant did not file their claim in time despite public announcement dated

18.03.2020 as well as the intimation through email dated 28.07.2020, a Resolution Professional placed reliance on the Facilitation Letter No. Facilitation/004/2020 dated 12.09.2020 issued by the Insolvency and Bankruptcy Board of India (IBBI) regarding the role of the Government and its agency and the Corporate Insolvency Resolution and Liquidation Process whereby the Government and its agencies were suggested to submit the claim alongwith the proof of claim within the specified time period to the Insolvency Professional in response to the public announcement made under Section 15 of the Code. A Resolution Professional has duly incorporated the details of the claim of the Appellant in the information memorandum for consideration of the Prospective Resolution Applicant in the Resolution Plan. The allegation that the Resolution Professional has aided the 'Corporate Debtor' in deliberately evading the payment of Government dues, is strongly denied.

6. In compliance of the Order of this Tribunal dated 22.06.2021, the Resolution Professional filed a Status Report. The Report states that the Resolution Professional has preferred an Application before the Adjudicating Authority for exclusion of the CIRP beyond 270 days for consideration of the Resolution Plan and the same was granted till 31.03.2021. Thereafter, the time was extended again to 19.04.2021. The Resolution Plan was kept for e-voting on 23.03.2021. A fresh addendum dated 30.03.2021 to the revised/modified Resolution Plan was submitted by the Prospective Resolution Applicant after considering all the modifications suggested by the Members of the CoC. Subsequently, the Plan was approved with 91.02% by the Members of the CoC.

7. It is seen from the record that the Resolution Applicant preferred an Application for the approval of the Resolution Plan before the Adjudicating Authority and the matter was listed for hearing on 16.06.2021. Presently, the Resolution Plan of the Prospective Resolution Applicant is under consideration by the Adjudicating Authority.

Assessment:

8. The CIRP has admittedly commenced from 12.03.2020 and the period of 90 days from the Insolvency Commencement Date had concluded on 10.06.2020. Considering the period of lockdown of 68 days, the last date of receipt of claims was considered upto 16.08.2020. Admittedly, the Appellant filed their claim on 04.09.2020 with a delay of 19 days. Section 15 pertaining to Public Announcement of CIRP reads as follows:-

15. Public announcement of corporate insolvency resolution process.—(1) *The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:—*

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of 1[claims, as may be specified];

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(2) The public announcement under this section shall be made in such manner as may be specified.

(Emphasis Supplied)

9. The aforementioned Section 15 is to be read with Regulation 6(2)(c) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is reproduced as hereunder:-

“6. Public announcement.

.....

(2) The public announcement referred to in sub-regulation (1) shall:

.....

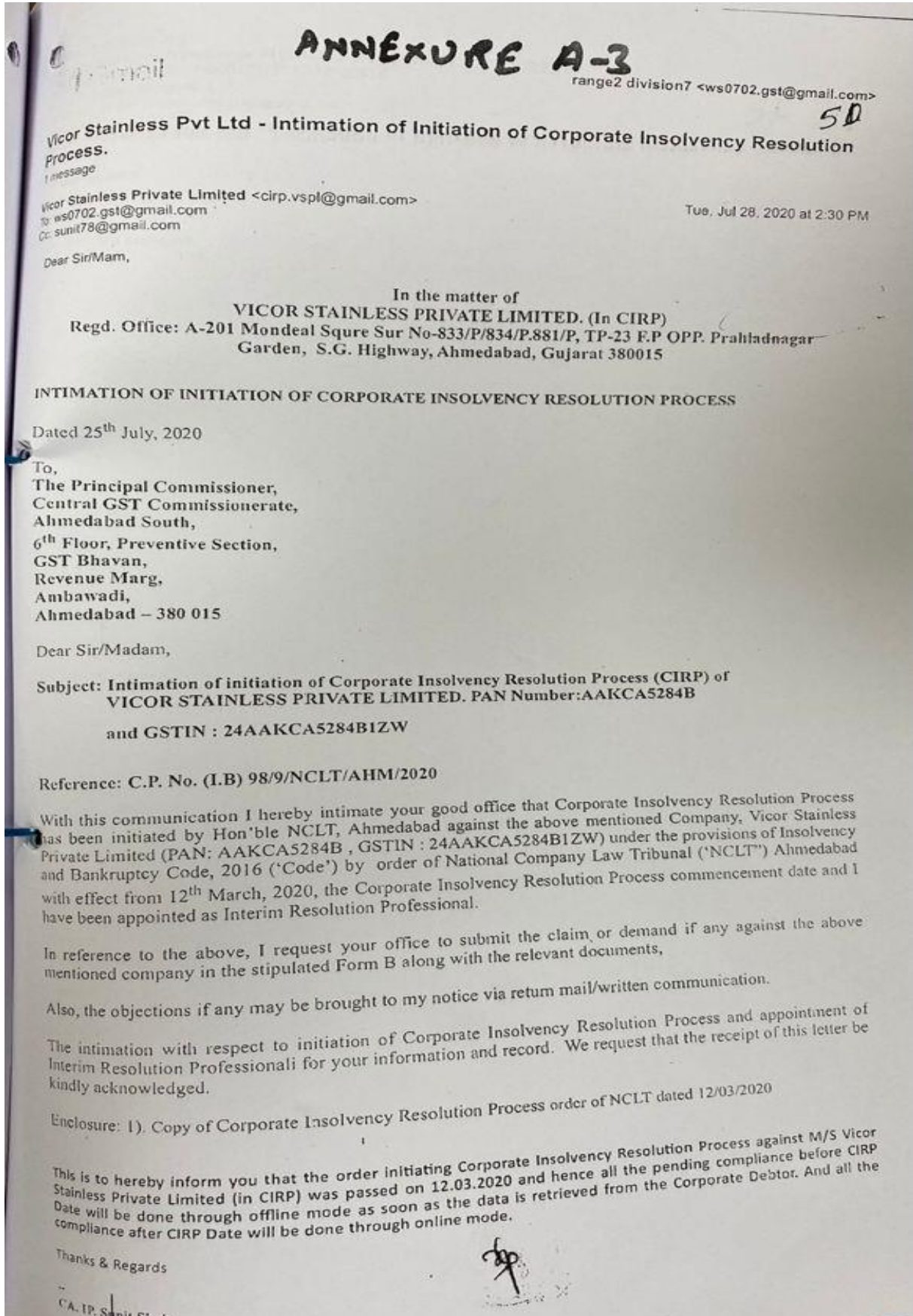
(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.”

(Emphasis Supplied)

10. It is not in dispute that the last date of submission of claim in the public announcement was given as 31.03.2020. The date was extended after following due procedure under Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. It is the contention of the Learned Counsel for the Appellant that the Department came to know about the Insolvency Proceedings only on 28.07.2020 and that they are unaware that a public announcement was made by the erstwhile IRP regarding the intimation of the commencement of the CIRP on 18.03.2020, mentioning the last date of receipt of claims in the public announcement as 31.03.2020. The extended period of 90 days as provided for under Regulation 12(2) of the CIRP Regulations coupled with the lockdown period of 68 days further extended the final date of submitting

claims upto 16.08.2020. At this juncture, it is relevant to reproduce the email dated 28.07.2020 addressed by the IRP to the Department:-



12. It is clear from the aforesaid email that the intimation with respect to initiation of CIRP and appointment of IRP was duly informed enclosing the copy of the Order of the Adjudication Authority dated 12.03.2020. The claim was made with a 19 days delay on 04.09.2020. It is relevant to note the duties of Interim Resolution Professional as provided for under Section 18 of the Code:-

“18. Duties of interim resolution professional.—

The interim resolution professional shall perform the following duties, namely:—

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

(i) business operations for the previous two years;

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

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

(iv) such other matters as may be specified;

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

(c) constitute a committee of creditors;

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

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

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

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

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

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

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

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

(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this 1[section], the term “assets” shall not include the following, namely:—

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

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

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

(Emphasis Supplied)

13. The Section 21(1) envisages the collation of claims which are received against the ‘Corporate Debtor’. It cannot be interpreted that the IRP/RP should collate the claims even if they are received outside the prescribed time limit. Had the Appellant submitted the claim within the time frame and the IRP had not chosen to collate this claim as provided for in the Code, only

then can it be stated that there is some material irregularity. In the instant case, the facts on record do not in any manner show that the Resolution Professional was not diligent in performing his duty as envisaged under the Code.

14. The Hon'ble Supreme Court in '**Ghanashyam Mishra and Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Co. Ltd.'**' has observed as follows:-

"95. ... (i) Once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued."

15. It has been clarified by the Hon'ble Supreme Court that with respect to statutory dues owed/claims raised in relation to the period prior to amendment, the Resolution Plan shall still be binding on the statutory Creditors concerned, and the statutory dues owed to them, which are not

included in the Resolution Plan, and such claims shall stand extinguished. In **'Director General of Income Tax' Vs. Synergies Dooray Automotive Ltd.'**, this Tribunal has observed that once the Resolution Plan is approved, it shall be final and not subject to modification *even if the statutory claims are not included in the Plan.*

16. It is a matter of public record that in the public announcement dated 18.03.2020, the last date for submission of claims was mentioned as 31.03.2020. Additionally, the email dated 28.07.2020, kept the Appellant informed about the CIRP. *The material before us does not show any response to this email.* Hence, the delay of 19 days in filing the claim cannot be attributed to lack of knowledge. As regards administrative delays, the Hon'ble Supreme Court in a catena of Judgements has laid down that the entire time frame within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. In **'Ebix Singapore Private Limited' Vs. 'Committee of Creditors of Educomp Solutions Limited & Anr.'** reported in **Civil Appeal No. 3224 of 2020**, the Hon'ble Apex Court while dealing with the issue of withdrawals or modifications of the Resolution Plan, *once submitted to Adjudicating Authority*, after due compliance with procedural requirements *stressed on the importance of adhering to the prescribed timelines*, keeping in view the scope and objective of the Code. For the sake of brevity only paras 126, 127 & 143 are being reproduced as hereunder:-

“I Statutory framework governing the CIRP

126. The CIRP is a time bound process with a specific aim of maximizing the value of assets. IBC and the regulations made under it lay down strict timelines

which need to be adhered to by all the parties, at all stages of the CIRP. The CIRP is expected to be completed within 180 days under Section 12(1) of the IBC. In terms of sub-Section (2) and (3) of Section 12, an extension can be sought from the Adjudicating Authority for extending this period up to 90 days. The first proviso to Section 12(3) clarifies that such an extension can only be granted once. In **Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta**⁹³, this Court had held that the time taken in legal proceedings in relation to the CIRP must be excluded from the timeline mentioned in Section 12. Since this could extend the CIRP indefinitely, the Insolvency and Bankruptcy Code (Amendment) Act 2019, inserted a second proviso to Section 12(3) with effect from 16 August 2019 to state that the CIRP in its entirety must be mandatorily completed within 330 days from the insolvency commencement date, including the time taken in legal proceedings. A legislative amendment that takes away the basis of a judicial finding is indicative of the strong emphasis of the IBC on its timelines and its attempt to thwart the prospect of stakeholders engaging in multiple litigations, solely with the intent of causing undue delay. Delays are also a cause of concern because the liquidation value depletes rapidly, irrespective of the imposition of a moratorium, and a delayed liquidation is harmful to the value of the Corporate Debtor, the recovery rate of the CoC and consequentially, the economy at large. In **Essar Steel** (supra) a three judge Bench of this Court, emphasized the rationale of the Insolvency and Bankruptcy Code (Amendment) Act 2019, which introduced the second proviso to Section 12(3). The court adverted to the BLRC report which underscored delays in legal proceedings as the cause of the failure of the previous insolvency regime under the SICA and the recovery mechanism in SARFAESI. It also extracted a Speech of the Union Minister in the Rajya Sabha to explain the proposal for the amendment in 2019, which was to avoid the same pitfalls in the IBC. The Court, speaking through Justice R F Nariman, noted:

“119. The speech of the Hon'ble Minister on the floor of the House of the Rajya Sabha also reflected the fact that with the passage of time the original intent of quick resolution of stressed assets is getting diluted. It is therefore essential to have time-bound decisions to reinstate this legislative intent.

It was also pointed out on the floor of the House that the experience in the working of the Code has not been encouraging. The Minister in her speech to the Rajya Sabha gives the following facts and figures:

“Now, regarding the Corporate Insolvency Resolution Process (CIRP), under the Code, I want to give you data again as of 30-6-2019. First, I will talk about the status of CIRPs. Number of admitted cases is 2162; number of cases closed on appeal, which I read out about, is 174; number of cases closed by withdrawal under Section 12-A, is 101, I have given you a slightly later data; number of cases closed by resolution is 120; closed by liquidation, 475; and ongoing CIRPs are 1292. So, now, I would like to mention the number of days of waiting. I would like to mention here the details of the ongoing CIRPs, along with the timelines. Ongoing CIRPs are 1292, the figure just now I gave you. Over 330 days, 335 cases; over 270 days, 445 cases; over 180 days and less than 270 days, 221 cases; over 90 days but less than 180 days, 349 cases; less than 90 days, 277 cases. The number of days pending includes time, if any, excluded by the tribunals. So, that gives you a picture on what is the kind of wait and, therefore, why we want to bring the amendments for this speeding up.”
[...]

123. As the speech of the Hon'ble Minister on the floor of the House only indicates the object for which the amendment was made and as it contains certain data which it is useful to advert to, we take aid from the speech not in order to construe the amended Section 12, but only in order to explain why the Amending Act of 2019 was brought about.”

*127. The decision in **Essar Steel** (supra) while reiterating the rationale of the IBC for ensuring timely resolution of stressed assets as a key factor, had to defer to the principles of *actus curiae neminem gravabit*, i.e., no person should suffer because of the fault of the court or the delay in the procedure. In*

spite of this Court's precedents which otherwise strike down provisions which interfere with a litigant's fundamental right to non-arbitrary treatment under Article 14 by mandatory conclusion of proceedings without providing for any exceptions, this Court refused to strike down the second proviso to Section 12(3) in its entirety. It noted that the previous statutory experiments for insolvency had failed because of delay as a result of extended legal proceedings and chose to only strike down the word 'mandatorily', keeping the rest of the provision intact. Therefore, the law as it stands, mandates the conclusion of the CIRP – including time taken in legal proceedings, within 330 days with a short extension to be granted only in exceptional cases”.....

.....

“143. The statutory framework governing the CIRP seeks to create a mechanism for resolving insolvency in an efficient, comprehensive and timely manner. The IBC provides a detailed linear process for undertaking CIRP of the Corporate Debtor to minimize any delays, uncertainty in procedure and disputes. The roles and responsibilities of the important actors in the CIRP are clearly defined under the IBC and its regulations. In **Innovative Industries Ltd v. ICICI Bank**⁹⁶ a three judge Bench of this Court observed that “one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process”. Recently, in **Gujarat Urja**⁹⁷ (supra) a three judge Bench of this Court observed that a “delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner”. The stipulation of timelines and a detailed procedure under the IBC ensures a timely completion of CIRP and introduces transparency, certainty and predictability in the insolvency resolution process”.....

17. In the instant case the Resolution Plan was approved by 91.02% of the Members of CoC and is pending approval before the Adjudicating Authority and was last listed for hearing on 16.06.2021. The literal language of Section

12 mandates strict adherence to the time frame it lays down. Time and again, the Hon'ble Supreme Court has noted that the model timelines provided in Regulation 40A of the CIRP Regulations should be followed *as closely as possible*. In this case, on account of lockdown and pandemic the last date was extended from 31.03.2020 to 16.08.2020 to facilitate all creditors to file their claims. In the background of this factual matrix, we hold that the delay/latches are on behalf of the Appellant and there is no dereliction of duty on behalf of the IRP/PR.

18. At the cost of repetition, we hold that the Resolution Professional was not duty bound to collate claims which are belatedly received after the last date thereby delaying the entire CIRP which is a time bound process and further having regard to the fact that the claim of the Appellant was incorporated in the Information Memorandum which was circulated to the Prospective Resolution Applicant and the Members of the Committee of Creditors for their consideration, there is no dereliction of duty on behalf of the IRP/RP as provided for under Sections 18 and 21(1) of the Code.

19. For all the aforementioned reasons, this Appeal fails and is accordingly dismissed. No Order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
16th September, 2021

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