

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA (IBC)/203/CHE/2022 in CP/722/IB/2017

*(Filed under Sec. 60(5) the Insolvency & Bankruptcy Code, 2016 R/W Rules 32 and 11 of
NCLT Rules,2016*

IN THE MATTER OF:

1. Srinivasa Garment Private Limited,

Represented by its Director Mr.P.Ramesh,

CIN: U18101TZ1999PTC008861

No.90,Ranga Villas Mill Lane,

Avinashi Road, Peelamedu,

Coimbatore – 641 004

2. P.Ramesh

Director of Srinivasa Garment Private Limited,

Old No.18,New No.2/3,

Lawson Road, Cantonment,

Tiruchirappalli – 620 001

3. Suganthi Ramesh

w/o P.Ramesh

Old No.18,New No.2/3,

Lawson Road, Cantonment,

Tiruchirappalli – 620 001

... Applicants / Successful Joint Resolution Applicants

-Vs-

1. The Assistant Provident Fund Commissioner,

Employees Provident Fund Organisation,

Sub-Regional Office,

No.1, Lady Doak College Road,

Chokkikulam,

Madurai – 625 002

2. Enforcement Officer,

Employees Provident Fund Organisation,

Sub-Regional Office,

No.1, Lady Doak College Road,

Chokkikulam,

Madurai – 625 002

3. Central Government Industrial Tribunal Cum Labour Court,
I Floor, 'B' Wing, 26 Haddows Road,
Sastri Bhavan,
Chennai – 600 006

4. P.Eswaramoorthy

Erstwhile Resolution Professional of &
Supervisor of Resolution Plan Implementation for
Dhanalakshmi Paper Mills Pvt. Ltd.,
No.44, 5th Street, Ramalinga Jothi Nagar,
Near Corporation Office, Nanjundapuram Road,
Ramanathapuram, Coimbatore –641 045

... Respondents

Order Pronounced on 01st March 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present:

For Applicant : A.Vidya, Advocate
For Respondents : P.K.PanneerSelvam &
V.Bathri Narayan for R1&R2
None for R3
B.Dhanaraj, Advocate for R4

ORDER

(Hearing Conducted through Physical mode)

This IA/203/2022 has been filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 R/W Rules 32 and 11 of NCLT Rules, 2016 seeking reliefs as follows;

- i) *To hold that the claim of the 1st to 3rd Respondents is extinguished pursuant to the approval of the Resolution Plan by the Hon'ble NCLT dated 26.03.2019 as the claims are pertaining to the period prior to CIRP;*

- ii) *Hold that the 1st to 3rd Respondents are bound by the order of the Hon'ble NCLT dated 26.03.2019 approving the Resolution Plan hence cannot enforce the order of the 3rd Respondent dated 01.04.2021;*
- iii) *To set aside the order of the 3rd Respondent dated 01.04.2021 as invalid;*
- iv) *To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

FACTS OF THE CASE:

2. It is stated that CIRP was initiated by one Agarwal Coal Corporation Private Limited against the Corporate Debtor Viz, Dhanalakshmi Paper Mills Private Limited in CP/722/IB/2017 and this Tribunal vide Order dated 29.05.2018 ordered CIRP and one Mr.KoppoloRamarathnam was appointed as the IRP. Pursuant to that,thisTribunal received a communication on 31.05.2018 from the appointed IRP about his unwillingness to undertake the assignment due to his health issue. Thereafter, this Tribunal appointed P.Eswaramoorthy, the 4th Respondent herein as the IRP for the Corporate Debtor vide order dated 01.06.2018.

3. It is stated that in MA/170/IB/2019 vide order dated 26.03.2019, this Tribunal approved the Resolution Plan submitted by the Applicants under section 30(6) of the IBC, 2016.

4. It is stated that pursuant to the approval of the Resolution Plan, the Applicant infused the funds in the Escrow Account opened with Indian Overseas Bank by the RP. It is stated that there has never been a dispute

relating to disbursement of the amount towards payment of CIRP cost or payment to the secured financial creditors or payment to the Workmen/Employees or payment to the Operational Creditors or payment of the statutory dues or payment of Contingent Liability, at any point of time. Further the Escrow Account Register for the Corporate Debtor reflecting the funds infused by the Applicants herein and the subsequent disbursement for the period from 25.02.2019 till 25.02.2020 has been annexed in to the Application.

5. It is stated that the 4th Respondent issued the Handover Letter dated 02.09.2019 to the Applicants/ Successful Joint Resolution Applicant and the letter records the following information:

- a) The Corporate Debtor Company along with all its assets in as is where is basis was handed over to the Resolution Applicant on 31.08.2019.
- b) The Original Title Deeds of the company's properties were received from Indian Overseas Bank and the Bank has released all the Security Interest against the property of the company except Satisfaction of Charges to be filed with MCA.
- c) c) The IRP was relieved from being the supervisor of the implementation of the Resolution Plan.

6. It is stated that 2nd Respondent had filed the claim with the 4th Respondent in the appropriate form i.e. Form B - Statutory Dues under Regulation 7 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulation, 2016, belatedly on 28.02.2020.

7. It is stated that since the claim of the 2nd Respondent was filed much after the date of handover of the Corporate Debtor to the Applicants herein upon completion of CIRP the 4th Respondent vide its letter dated 13.03.2020 rejected the claim for the reasons stated therein.

8. It is stated that the Applicants were served with the order dated 01.04.2021 of the 3rd Respondent to remit a sum of Rs.3,33,767/- under Section 7Q (if not remitted) being interest on delayed payment of Provident Fund within a period of 3 months from the date of receipt of the order and further to remit the modified dues of Rs.2,18,110/- being the damages payable under Section 14B herein within a period of 3 months in 3 instalments from the date of receipt of the order failing which the 1st Respondent would recover the same under due process of law.

9. It is stated that the Applicants were once again served with Letter from the 1st Respondent dated 06.08.2021 demanding for compliance with the order of the 3rd Respondent dated 01.04.2021.

10. It is stated that the said claim amount demanded by the 1st to 3rd Respondents did not form part of the Information Memorandum prepared by the 4th Respondent herein, thus did not form part of the Resolution Plan submitted by the Applicants which was duly approved by this Tribunal and thereafter implemented.

11. It is stated that the order of the 3rd Respondent dated 01.04.2021 to remit a sum of Rs.3,33,767/- under 7Q (if not remitted) being interest on delayed payment of Provident Fund for the period 07/10, 07/11 to 04/13 within a period of 3 months from the date of receipt of the order and to remit the modified dues of Rs.2,18,110/- being the damages payable under Section 14B herein within a period of 3 months in 3 instalments from the date of receipt of the order is for the period prior to CIRP process and no claim was filed with the Resolution Professional in this regard, thus it is an additional burden to the Applicants herein.

12. It is stated that as on date of the order of the 3rd Respondent herein the Resolution Plan was approved by the NCLT and is in the process of implementation. Thus the impugned order dated 01.04.2021 and subsequent orders, if any, are invalid in the eyes of law owing to the overriding effect of IBC 2016 pursuant to Section 238 of IBC 2016 and the liability if any of the Corporate Debtor stood discharged as on date of order of this Tribunal dated

26.03.2019 approving the Resolution Plan submitted by the Applicants herein.

13. It is stated that the order of the 3rd Respondent dated 01.04.2021 as against the Corporate Debtor amounts to a fresh claim thus imposing additional financial burden on the Successful Joint Resolution Applicants herein after having completed the Resolution Plan successfully.

REPLY OF THE RESPONDENTS 1 & 2 :

14. First and Second Respondents (R1 & R2) have filed the counter vide S.R.No. 6570 dated 19.12.2022.

15. It is stated that the order dated 01.04.2021 passed by the Third respondent in EPFA. No.262 of 2018 could not have been challenged in any court of law except under the writ jurisdiction of the Hon'ble High Court as per section 7L(4) of Employees Provident Fund and Miscellaneous provisions Act 1952 is as follows:

"Any Order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law"

16. Hence, the present IA/203/IB/2022 filed by the applicant herein, before this Tribunal challenging the order of CGIT dated 01.04.2021 in EPFA No.262/2018 lacks in jurisdiction. As per the settled position of law, no party

could be left remedy-less sans Appeal, certainly writ Jurisdiction could be invoked under Article 226 of the Constitution of India, which is what the first and second respondent had done by filing writ petition No.14321 of 2021 as against the order passed by 3rd respondent. It is stated that the Applicant had not entered appearance before the Hon'ble Madurai bench of Madras High Court in the above writ petition even though Notice was issued to him.

17. Respondents 1 and 2 have relied up on the Hon'ble Supreme Court Judgement in the case of *Embassy Property Development Pvt Ltd Vs State of Karnataka and Others 2020 (13) SCC 308* wherein it is held as under:

"....29. The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore, NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.

36. From a combined reading of Sub-section (4) and Sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued there-under. The only provision which can probably throw light on this question would be Sub-section (5) of Section 60, as it speaks about the

jurisdiction of the NCLT. Clause (c) of Sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, Interim an Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal Under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" Under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)

18. It is stated that in view of the above observation, the jurisdiction of NCLT could not be stretched to be included as the Appellate authority

against orders passed by Employees' Provident Funds Appellate Tribunal-
Cum- Central Government Industrial Tribunal, Chennai.

19. It is stated that it is a settled proposition of law that once the Resolution Plan is approved, the Adjudicating authority becomes "Functus officio" and shall not question on any other aspect arising out of the Resolution Plan.

20. It is stated that Information Memorandum prepared by the 4th respondent Resolution Professional recording a sum of Rs.15,68,674/- as EPF dues was not based on the information obtained from the respondents. The 4th respondent Resolution Professional recorded the dues on the basis of the Show-cause Notices available in the Corporate Debtor Establishment M/s. Dhanalakshmi Paper Mills Ltd., Nilakkottai and the same was not confirmed or cross verified with these respondents EPFO. Based on the records produced by the Corporate Debtor establishment, the 4th Respondent Resolution Professional forwarded the Demand Draft dated 10.07.2019 for Rs. 15,68,674/- and the same was accounted towards the following realisable dues pertaining to the group of establishments related to Dhanalakshmi Paper Mills Ltd, Nilakkottai:

Sl.No.	Code No.	Nature of Dues	Period	Amount in Rs.
1.	MD/20181	14B	05/2013 to 10/2015	6,14,226/-
2.	MD/20181	7Q	05/2013 to 10/2015	3,50,182/-
3.	MD/24302	14B	08/2013 to 10/2015	2,21,673/-
4.	MD/24302	7Q	08/2013 to 10/2015	1,30,961/-
5.	MD/24302A	14B	07/2011 to 08/2016	1,58,513/-
6.	MD/24302A	7Q	07/2011 to 08/2016	93,119/-
			Total	15,68,674/-

21. It is stated that there were dues against which the Corporate Debtor had filed appeal before CGIT and recovery action was not initiated because of pending legal issues. The details of the dues outstanding in the aforesaid category are furnished below:

Sl.No.	Code No.	Nature of Dues	Period	Amount in Rs.
1.	MD/20181	14B	07/2010 to 04/2013	2,18,110/-
2.	MD/24302	14B	03/2002 to 09/2013	5,91,022/-
3.	MD/24302	7Q	03/2002 to 09/2013	3,75,273/-
			Total	11,84,405/-

22. It is stated that the 4th Respondent/ Resolution Professional who took control of the debtor's assets, company's operations and financial information of the debtor from information utilities should have got the outstanding P.F. dues verified with EPFO, considering the fact that these dues belong to workmen. The information memorandum submitted by the Resolution Applicant before the Committee of creditors lacks details regarding all material litigation and ongoing investigation or proceeding

initiated by Government and statutory authorities, as per regulation 36(2)(h) of IBBI(Corporate insolvency process) Regulations. Therefore, the first respondent withheld the information with respect to claim which are based on the orders passed by Appellant under the EPF and MP Act, 1952.

23. It is stated that the Fourth Respondent/ Resolution Professional had all along kept the applicant in the dark regarding the Approval of the Resolution Plan and had not informed the Approval of Resolution Plan by the adjudicatory authority as per Regulation 39(5) and 39(5A) of IBBI (Corporate Insolvency Process for Corporate Persons) Regulations, 2016. Therefore, non-disclosure of the resolution plan by the Fourth Respondent as per above regulation has disentitled the applicant from realising their legitimate dues.

24. It is stated that as the modification of the dues to the tune of 45% as ordered by the third respondent in EPFA No. 262/2018 is under Appeal before the Honourable Madurai Bench of the Madras High court, the demand raised is without prejudice to the rights of these Respondents agitated before the Honourable High Court. It is stated that these respondents vested with legal right to claim the balance amount of Rs.2,66,579 being 55% subject to the outcome of the Writ Petition (MD) No.14342/2021.

25. It is stated that the Applicants who have successfully taken over the affairs of the 1st Respondent, as a going concern, will be liable to pay the provident fund dues in respect of Applicant under Section 17-B of the EPF & MP Act, 1952, which is reproduced below.

17B. Liability in case of transfer of establishment. - Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or [the [Pension] Scheme or the Insurance Scheme), as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

26. It is stated that the RP vide letter dated 13.03.2020 informed that the claim of these respondents is rejected as the same was not submitted during CIRP process and the disbursement has been completed to all the stakeholders and also Resolution Implementation has been completed.

27. It is stated that the Fourth Respondent/Resolution Professional is not granted with the powers of adjudication to reject the claim of the Appellant therefore denial of claim of the first and Second respondent vide communication dated 13.03.2020 is non-est in law as per the judgment rendered by the Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt**

Ltd and others vs Union Of India and others rendered in W.P. (Civil) No.99 of 2018 on 25.01.2019 reported in Manu/0079/2019SC wherein it is as under:-

58. It is clear from a reading of the Code as well as the regulations that the Resolution professional has no adjudicatory powers. Section 18 of the code lays down the duties of the Interim Resolution Professional as follows:-

.....It is clear from a reading of these regulations that the Resolution Professional is given administrative as opposed to quasi-judicial powers. In fact, even when the resolution professional is to make a "determination" under Regulation 35A, he is only to apply to the adjudicating authority for appropriate relief based on the determination made as follows....."

28. It is stated that section 17B of the Employees' Provident Funds Act, 1952 provides that where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally liable to pay the contribution and other sums due from the employer under any provision of this Act. Therefore, letters dated 23.11.2020, 17.12.2020 were issued to the Applicant Managing Directors of M/s. Srinivasa Garments Private Ltd., Coimbatore who have taken over the establishment M/s Dhanalakshmi Paper Mills Ltd., Nilakkottai, informing them that the transferee is liable to

pay the outstanding arrear dues of these respondents since 17B provision of EPF Act was approved by the principal bench of NCLAT in *Sikander Singh Jamuwal vs Vinay Talwar and others in Company Appeal (AT)(Ins) 483 of 2019* in order dated 11.03.2022, wherein it is held as under:

"From the above stated provisions of the PF Act that the resolution Applicant is also liable to pay the contribution and other sums due from the employer under any provisions of the Act, as the case may be, in respect of period upto the date of such transfer. All this requires that the explicit provisions of the above said PF Act needs to be complied with. This aspect is justifiable as a duty has been casted on the Resolution Professional/Adjudicating Authority on this Tribunal. This is not a commercial wisdom as Compliance of Law is a must....."

29. It is stated that the above NCLAT order was upheld by the Hon'ble Supreme Court in *Civil Appeal No.6721 of 2022* vide order dated 23.09.2022.

30. It is stated that it is a settled legal position that the dues payable to PF department are on the first charge and payable in priority to all other debts including that of the secured creditors as per Sec.11(2) of the EPF and MP Act, 1952. Hence, the R1 and R2 are seeking dismissal of the present application.

SUBMISSIONS OF FOURTH RESPONDENT:

31. The Learned Counsel for the 4th Respondent filed written submissions vide S.R.No.624 dated 06.02.2024. It is stated that pursuant to the completion of CIRP and implementation of the Resolution Plan of the Corporate Debtor, the 1st Respondent/EPFO submitted a Claim in Form - B dated 28.02.2020 for a tune of Rs.4,84,689/- against the Corporate Debtor and the same was received by the 4th Respondent on 05.03.2020. In response to the same, the 4th Respondent by his Letter dated 13.03.2020 categorically informed the 1st Respondent EPFO of the approval of the Resolution Plan by this Tribunal and further, his inability to consider the claim application. Admittedly, the 1st Respondent EPFO has not filed any application before this Tribunal, challenging the Letter dated 13.03.2020 of the 4th Respondent.

32. It is stated that it is a well settled proposition of law laid down by the Hon'ble Supreme Court in the Judgment dated 15.11.2019 in the matter of *Committee of Creditors of Essar Steel India Ltd., Vs. Satish Kumar Gupta & Ors.* at Para No. 67 that the Successful Resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan is accepted.

33. Further, the Hon'ble Supreme Court has reiterated the above position of law, in its Judgment dated 13.04.2021 in the matter of *Ghanashyam Mishra*

and Sons P. Ltd., vs. Edelweiss Asset Reconstruction Company Ltd., and
observed at Para No. 130 & 131 as follows:

"130. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

131. In this view of the matter, we find, that relegating the appellant to the alternative remedy would serve no purpose. A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law."

34. Hence, the Order passed by the 2nd Respondent EPFO is not maintainable in law. The prayers as sought for by the Applicants has supported with documents having evidentiary value and the same may be allowed.

FINDINGS:

35. Heard the submissions made by the Learned Counsels of all the parties including the documents placed on record.

36. From the facts of the case, it is seen that the Resolution Plan in respect of the Corporate Debtor was approved by this Tribunal vide order dated 26.03.2019 and the Applicant No.1 herein is the successful Resolution Applicant.

37. In the present case, the Resolution Applicant has sought to set aside the order passed by the Central Government Industrial Tribunal Cum Labour Court on 01.04.2021 on the ground that the same was passed after the approval of the Resolution Plan. In this connection, we gainfully refer to the decision of the Hon'ble Supreme Court in the matter of *Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka and Ors*; (2020) 13 SCC 308, wherein it was held that the NCLT cannot sit in appeal over an order passed by another Tribunal / forum;

36. From a combined reading of Subsection (4) and Sub section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be Subsection (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Subsection (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Subsection (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT,

instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore, the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.

(emphasis supplied)

38. The Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd*** 2021 SCC OnLine SC 313 wherein it has been vociferously held that once the Resolution Plan is approved, all the claims of the Corporate Debtor, including that of its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders shall stand extinguished. The said extract is captured 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, 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. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts

claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

61. 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. 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 the resolution plan approved by CoC meets the requirement as referred to in subsection (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.

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

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

(emphasis supplied)

39. It is to be noted that IBC, 2016 is a claim driven process. One of the principal objects of IBC, 2016 is to provide for revival of the Corporate Debtor and to make it as a going concern. Under the provisions of IBC, 2016 once an Application is admitted under Section 7, 9 and 10, the IRP or the RP as the case may be, is required to cause a public announcement inviting claims from all the stakeholders of the Corporate Debtor in terms of Section 15 of IBC, 2016. Thereafter the IRP / RP is required to collate the claims and update the same in the Information Memorandum. Only based upon the details of the claim as mentioned in the Information Memorandum, the

Resolution Applicant submits the Resolution Plan before the Committee of Creditors. The Resolution Plan will undergo a deep scrutiny by the RP as well as by the Committee of Creditors and in the said negotiations held between the CoC and the Resolution Applicant, various modifications are made so as to ensure that while paying off the dues, whether in full or in part, to the Financial Creditor, Operational Creditor and other stakeholders, the Corporate Debtor is revived and is made as a going concern. After the Committee of Creditors approves the Plan, the Adjudicating Authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as provided under Section 30(2) of IBC, 2016 and only thereafter the Adjudicating Authority grants its approval to the Resolution Plan.

40. It is significant to note that when 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 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 after submission of the Resolution Plan any claim pops out in respect of the Corporate Debtor,

the very calculations on the basis of which the Resolution Applicant has submitted its plans, would go haywire and the plan would be unworkable.

41. Thus, it is clear that the object of IBC, 2016 is to envisage a clean state principle to the Resolution Applicant who takes over the Corporate Debtor under Section 31 of IBC, 2016 and the Judgment of the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra**(*supra*) has made abundantly clear that the Resolution Applicant can be made liable for the dues which are forming part of the Information Memorandum and once the Resolution Plan is approved by this Adjudicating Authority, 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.

42. Thus, this Tribunal does not have the power to set aside the order passed by the Central Government Industrial Tribunal Cum Labour Court. **The appropriate remedy for the Applicant is to approach the Appropriate Authority .**

43. Accordingly, IA/IBC/203/CHE/2022 stands **disposed of**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V