

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

INTERLOCUTORY APPLICATION. No. 3118/2022

AND

INTERLOCUTORY APPLICATION NO. 524/2021

In

CP(IBC)No. 1138/MB/C-II/2017

*Application filed under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016.*

In the matter of

I.A. No. 3118 of 2022

M/s. Akshay Rice Trading Co.,

Through its Sole Proprietor Mr. Ajay Kumar

...Applicant

V/s

Mr. Anil Kohli & Ors.

...Respondents

AND

In the matter of

I.A. No. 524 of 2021

Anil Kohli,

Monitoring Professional for Dunar Foods Ltd

...Applicant

V/s

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

I. A. No. 3118/2022 & I.A. 524/2021

In

CP No. 1138/MB/C-II/2017

Mr. Amit Gupta,

Successful Resolution Applicant **...Respondent**

In the matter between:

State Bank of India **.... Financial Creditor**

v/s

Dunar Foods Limited **...Corporate Debtor**

Order Pronounced on: - 22.12.2023.

Coram:

Shri. Anil Raj Chellan : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances in I.A. No. 3118 of 2022 (in Physical mode) :

For the Applicant : Adv. Anurag Abhishek.

**For the Respondent : Adv. Rahul Gaikwad for Respondent No.01
and Counsel Ryan D'Souza a/w Virgil
Braganza for Respondent No.02.**

Appearances in I.A. No. 524 of 2021 (in Physical mode) :

For the Applicant : Adv. Rahul Gaikwad a/w Nikita Abhyankar.

For the Respondent : Adv. Vijaya Singh a/w Shruti.

ORDER

Per: Shri. Kuldip Kumar Kareer (Judicial Member)

1. There are two applications filed by the two applicants. I.A. No. 3118/2022 is an Application filed by the Applicant, M/s. Akshay Rice Trading Co. through its sole proprietor Mr. Ajay Kumar, u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking the payment of the CIRP costs incurred during the Corporate Insolvency Resolution Process ('CIRP') of M/s. Dunar Foods Limited (hereinafter referred to as "the Corporate Debtor"). The CIRP costs claimed by the Applicant against the Respondent is arising out of the goods supplied by the Applicant to the Corporate Debtor during its CIRP. The other application viz. I.A. No. 524/2021 has been filed by the Applicant named Mr. Anil Kohli, a monitoring professional of the Corporate Debtor seeking directions against Mr. Amit Gupta, who is a Successful Resolution Applicant ('SRA') of the Corporate Debtor, for payment of the amount due to M/s. Akshay Rice Trading Co. in respect of the goods supplied to the Corporate Debtor during the CIRP.
2. Since the matter in controversy in both the applications referred-to-above are same arising out of common question of law and facts in both the matters and since both the applications have been heard together and reserved for orders on the same date, they are being decided and disposed of by this common order.

Case of the Applicant in brief (I.A. No. 3118/2022):

3. The Corporate Debtor was engaged in the business of processing, trading and exports of rice. The State Bank of India (hereinafter referred to as “the Financial Creditor”) had filed an application u/s 7 of the Code against the Corporate Debtor, which came to be admitted by this Tribunal vide Order dated 22.12.2017. The Respondent No.01 was appointed as an Interim Resolution Professional (‘IRP’) and then as a Resolution Professional (‘RP’) of the Corporate Debtor.
4. It was an obligation on the RP to keep the Corporate Debtor as a going concern in terms of section 20(e) of the Code. Based upon the assurances of the Respondent No.01, the Applicant supplied rice to the Corporate Debtor against the purchase orders issued by the Corporate Debtor under the instructions of Respondent No.01 for the period between February, 2018 and November, 2019. The last invoice raised by the Applicant is on 23.11.2019.
5. The Hon’ble Tribunal had approved the resolution plan vide its Order dated 26.11.2019. Resolution plan clearly provides for the payment of CIRP costs in the manner stipulated below (refer page 234 of the Resolution Plan):

"4. CIRP Costs

- The CIRP costs shall be met out of the operations of the CD first.*
- Any CIRP costs which are not met from the operations and have been borne by the financial creditors. It can however be met out of amount lying in bank accounts in the name of CD which are attached by authorities.*
- If, however, such CIRP costs as borne by financial creditors could not be met from the amount lying in the bank accounts/FDRs attached, till the time of full*

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implementation of plan (by whatever reasons), the same shall be apportioned from the amount of Rs. 87 Cr proposed for financial creditors.

- If such scenario, such costs as has been apportioned from 87 Crores, shall be made good from the balances lying in bank account / FDRs when the attachment is vacated post implementation of the plan.”

6. However, the dues of the Applicant have not been cleared till date. The Applicant is aggrieved of the fact that despite approval of the resolution plan of one Mr. Amit Kumar Gupta, who is the Successful Resolution Applicant ('SRA'), by this Hon'ble Tribunal vide Order dated 26.11.2019 and even after the receipt of entire amount under the resolution plan, the Respondent No.01 has failed to disburse the admitted outstanding CIRP costs due to the Applicant. According to the Applicant, the principal amount outstanding in respect of the goods supplied by the Applicant to the Corporate Debtor is INR 2,88,97,939/- (Rupees Two Crores, Eighty-Eight Lakhs, Ninety-Seven Thousand, Nine Hundred and Thirty Nine Only) and the interest outstanding thereon from 01st April, 2019 to 31st July, 2022 is INR 2,33,91,510/- and therefore, the total outstanding dues in respect of the supply of goods recoverable by the Applicant from the Respondent/Corporate Debtor is INR 5,22,89,449/- (Rupees Five Crores, Twenty-Two Lakhs, Eighty-Nine Thousand, Four Hundred and Fourty Nine Only). Since these dues are outstanding and still remain unpaid, the Applicant herein is constrained to file this application against the Respondent No.01 seeking recovery of his dues as the CIRP costs.

Reply of the Respondent No.01 (I.A. 3118/2022):

7. The Respondent No.01 is a monitoring professional. The Respondent No.01 has objected to the reliefs sought by the Applicant in the instant application on the ground that since the Corporate Debtor was sold as a going concern, all the current assets and current liabilities of the Corporate Debtor now belong to the Successful Resolution Applicant ('SRA') as per the terms of the approved resolution plan. The current liabilities transferred to the SRA on 04.12.2019 includes the amount due to the Applicant to the extent of Rs. 3,18,75,160/-. The SRA had agreed in the 12th CoC meeting that all the current assets and liabilities of the Corporate Debtor shall devolve/pass on the SRA as on the date of approval of resolution plan by Hon'ble NCLT and thereafter, it will be dealt by him. Therefore, the SRA is bound by the terms of sanctioned resolution plan and cannot now wriggle out of his obligation to pay the Applicant. The Respondent No.01 has filed an I.A. No. 524 of 2021 before the Hon'ble NCLT on 02.03.2021 praying for directions to SRA for dealing with all current assets and current liabilities as agreed by SRA in the 12th CoC meeting and thereby, praying for directions to the SRA to clear the amount due and payable to Akshay Trading Company.

8. After handover of the operations, the SRA has realised some of the current assets. However, he has refused to clear off the current liabilities which includes the amount due to the Applicant. Therefore, the remedy of the Applicant herein lies against the SRA, who is not a party to the present application and hence, the present application should be dismissed. The

present application should also be dismissed for non-joinder of necessary party.

9. The SRA was aware about the operations of the Corporate Debtor and its ongoing business during the CIRP period. The SRA was also aware about the law and procedure that if the Corporate Debtor is acquired as a going concern, then upon such acquisition, all the current assets and current liabilities will be shifted on the SRA who shall be solely responsible to manage the commercial affairs of the Corporate Debtor. If the SRA is now allowed to wriggle out of his obligation to pay the Applicant, it would effectively mean that only current assets have been transferred to the SRA and not the current liabilities. It would unfairly benefit the SRA in gross violation of the terms of the resolution plan and the same would also tantamount to modification of approved resolution plan and questioning the commercial wisdom of the CoC, which are not permissible in law.

Reply of Respondent No.02 (I.A. 3118/2022):

10. The Application is infructuous as the reliefs sought by the Applicant have already been addressed by the CoC in its meetings. The resolution plan of the SRA was approved by the COC in its 12th COC meeting dated June 4, 2019 wherein the SRA had undertaken to deal with all the current assets and current liabilities of the Corporate Debtor as on the date of approval of the resolution plan, including the future current liabilities which would be incurred upon transfer of operations to the SRA. The relevant excerpts of the said minutes are reproduced for the ready reference:

" ... The RA further agreed that all current assets and liabilities of the CD shall devolve/pass on the RA as on the date of approval of Resolution Plan by the Hon'ble NCLT and thereafter will be dealt by him. "

It is pertinent to note that the minutes of 12th COC meeting have been duly signed by the representative of the SRA, thereby evidencing that the SRA was aware and in conformity with the assets and liabilities of the Corporate Debtor passing upon the SRA.

11. The claim of the Applicant was never intended to be the part of CIRP costs when the resolution plan was proposed to be approved. Since the business, management, affairs and operations of the Corporate Debtor were sold as a going concern to the SRA, all the current assets and current liabilities which includes the claim of the Applicant stood transferred to the SRA. The resolution plan was approved unanimously and therefore in view of the approved resolution plan, the claim of the Applicant became an unconditional liability of the SRA.
12. On approval of the resolution plan by this Hon'ble Tribunal, the entire business risk of the Corporate Debtor is passed on to the SRA. The SRA is duty bound to implement the approved plan in toto and the SRA cannot choose and decide unto itself as to which part of the approved resolution plan it will implement and which part of the resolution plan it will not implement.
13. The CoC having approved the CIRP costs to be paid upfront in the resolution plan has acted in accordance with the provisions of applicable law. However, the present claim of the Applicant was specifically categorised to be a liability which was agreed to be taken up by the SRA

(and was not included in the list of CIRP Costs). The CoC despite approving the resolution plan and handing over the operations of the Corporate Debtor to the Resolution Applicant on December 4, 2019 received the resolution amount only on November 15, 2021. The Resolution Applicant despite procuring the assets of the Corporate Debtor and appropriating the same, failed to clear its liabilities. The same cannot prejudice the rights of the financial creditors who have recovered a meagre sum after substantial haircut and delay.

14. In the present matter, the SRA is not a party to the proceedings. Therefore, the Application should be dismissed for non-joinder of necessary party.

Rejoinder of the Applicant (I.A. 3118/2022):

15. The Successful Resolution Applicant ('SRA') has made all his payments with interest to the Respondent No.01. The Applicant has no privity of contract with the SRA. The Applicant supplied goods to the Corporate Debtor on the assurance of Respondent No.01. The value of supply of goods, being the part of CIRP costs, has to be paid by the Respondent No.01/CoC. The Respondent No.01 is complicating the issue with ulterior motive to delay the rightful claim of the Applicant.

Facts of the case in I.A. No. 524/2021

16. I.A. No. 524/2021 has been filed by the Applicant named Mr. Anil Kohli, a monitoring professional of the Corporate Debtor seeking directions against Mr. Amit Gupta, who is a Successful Resolution Applicant ('SRA') of the Corporate Debtor, for payment of the amount due to M/s. Akshay

Rice Trading Co. in respect of the goods supplied to the Corporate Debtor during the CIRP.

17. The Successful Resolution Applicant ('SRA') had agreed in the 12th CoC meeting convened on 04.06.2019 that all the assets and liabilities of the Corporate Debtor as on the date of approval of resolution plan shall vest with him. Thus, the SRA cannot be allowed to wriggle out of his admitted liability.

18. The Respondent informed the Applicant vide email dated 07.01.2021 that there is no surplus, but rather there is a deficit of Rs. 3.53 crore as the current liabilities are more than current assets of the Corporate Debtor. However, the Respondent has realised the current assets for the period pertaining to CIRP and utilised the amount so realised as per his wishes without informing the Applicant. The Respondent cannot be allowed to take only the benefits of realising current assets alone and ignore or deny his obligations towards meeting the current liabilities.

19. The Successful Resolution Applicant/the Respondent as well as the Operational Creditor Akshay Rice are hands in glove with one another. It is also pertinent to note that the SRA and the Operational Creditor named hereinabove are represented by the same law firm and therefore, the strictures ought to be passed against them.

Reply of the Respondent (I.A. 524/2021)

20. The present application is an arm-twisting tactics to pressurize the Respondent.

21. The Respondent has already paid his consideration of Rs. 87.10 crores in terms of resolution plan. Therefore, no further money is due by the

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Respondent. The Monitoring Professional has unnecessarily withheld the payment of Rs. 3,18,73,513.94/- (excluding interest) to be made to Akshay Rice Trading Company.

22. The resolution plan can achieve the extinguishment of past liabilities to enable the Respondent to start with a clean slate which is the objective of the Insolvency and Bankruptcy Code, 2016. The Applicant is trying to frustrate the very objective of the Code by way of this application.
23. The amount payable to M/s. Akshay Rice Trading Co. in respect of goods supplied to the Corporate Debtor during the CIRP is nothing but a part of CIRP costs incurred to keep the business entity of the Corporate Debtor running as a going concern. Therefore, as per the terms of resolution plan, the CIRP costs shall be met out of the operations of the Corporate Debtor first. Any CIRP costs which are not met from the operations and have been borne by the financial creditors, it can be met out of the amount lying in the bank accounts in the name of Corporate Debtor which are attached by the authorities. The plan further provides that if such CIRP costs as borne by the financial creditors could not be met from the amount lying in the bank accounts/FDRs attached, till the time of full implementation of plan (by whatever reasons), the same shall be apportioned from the amount of Rs. 87 crores proposed for financial creditor. The Respondent submits that therefore, in no case, the CIRP costs can be burdened upon the Respondent.
24. The resolution plan will typically provide for the extinguishment of past liabilities and once it is approved by the Hon'ble NCLT, it is always binding on all the stakeholders. Therefore, imposing CIRP costs upon the

Respondent/SRA will be in gross violation of the resolution plan which has been approved by the Adjudicating Authority.

Rejoinder of the Applicant in IA No. 524/2021:

25. The Applicant had handed over the operations and management of the affairs of the Corporate Debtor on 04.12.2019 in terms of the approved resolution plan dated 26.11.2019 to the SRA. Since the operations of the Corporate Debtor was running on a going concern basis, the current assets and current liabilities which included the amount due to M/s. Akshay Rice Trading Company worth Rs. 3,18,75,160/-, stood transferred to the SRA as agreed upon between the Applicant and the Respondent in 12th CoC meeting. It was never intended in the resolution plan that the amount due to M/s. Akshay Rice Trading Company shall be treated as CIRP costs. On the contrary, the amount due to M/s. Akshay Rice Trading Company was always treated as a current liability/operational debt of the Corporate Debtor which was handed over to the Respondent, as aforesaid. Therefore, now the Respondent after having agreed to take over the current assets and current liabilities of the Corporate Debtor cannot wriggle out of his admitted liability.

ANALYSIS AND FINDINGS

26. We have heard the Counsel for the parties and have gone through the records.

27. It has been argued by the Counsel for the Applicant that there is no dispute about the fact that the goods were supplied by the Applicant to the Corporate Debtor during the CIRP period on the asking of the RP who was running the company as a going concern and, therefore, as per law the supplies made by the Applicant are to be treated as a CIRP cost which was to be paid in priority to all other creditors either financial or operational. The Counsel for the Applicant has further contended that Respondent No. 1 is wrongly claiming that the SRA had undertaken the liability to pay the outstanding towards the Applicant in the 12th CoC meeting held on 04.06.2019 which is factually incorrect. Moreover, the Applicant never had any access nor was the Applicant privy to the meetings of the CoC and the Monitoring Committee. The Counsel for the Applicant has further contended that the non-payment of the CIRP cost has violated the very scheme of the Resolution Plan approved by this Tribunal. The Counsel for the Applicant has further contended that he is also entitled to claim interest at the rate of 18% throughout till the date of actual payment.

28. Per contra, Counsel for the Respondent No. 1/Resolution Professional has argued that the Resolution Applicant had agreed to take over all assets and liabilities of the Corporate Debtor including the payment to be made to the Applicant against supply of goods in the 12th CoC meeting and, therefore, this liability cannot be treated as CIRP cost nor the same can be fastened upon the CoC. Having consented to takeover the current assets and liabilities of the Corporate Debtor, the SRA cannot now wriggle out of its legal liability. Counsel for the Respondent no. 1 has further prayed for the dismissal of the present Application.

29. On the other hand, the Counsel for the Respondent No. 2 (State Bank of India) has argued that in the 12th CoC meeting dated 04.06.2019 the SRA had undertaken to deal with all the current assets and liabilities of the Corporate Debtor. The Counsel for the Respondent No. 2 has further contended that in the same meeting Respondent No. 1 had clarified that no deficit amount will be reduce from the financial consideration of Rs. 87.10 crores as proposed by the SRA. The current assets and liabilities as on 04.12.2019 were transferred to SRA which included the outstanding payment of the Applicant i.e. Akshay Rice Trading Company. It has further been pointed out by the Counsel for the Respondent No. 2 that the present claim of the Applicant was specifically categorized as a 'liability' which was agreed to be taken up by the SRA and was not included in the list of CIRP cost. Therefore, SRA cannot eschew its liability to pay the Applicant after having taken over the assets of the Corporate Debtor. The Counsel for Respondent No. 2 has further argued that the Application is liable to be dismissed on the ground that the Applicant had intentionally not impleaded the SRA as party.

30. On behalf of the SRA, it has been argued that the terms of the Resolution Plan are binding upon all the creditors and the stakeholders and as per Clause 4 of the Resolution Plan, which deals with CIRP cost, the CIRP cost is to be met out of the operations of the CD and if any CIRP cost if not met from the operations and have been borne by the financial creditors, it can however, be met out of the amount lying in the bank account in the name of the CD which are attached by the authorities and if such cost is not met in that fashion, the same shall be apportioned from the amount of Rs. 87

crores proposed to be paid to the financial creditors. According to the Counsel for the SRA that the table of current assets and liabilities is not mentioned in the order dated 26.11.2019 passed by the Adjudicating Authority approving the plan, and therefore, it cannot be argued that the current assets and liabilities as on 04.12.2019 were agreed to be taken over by the SRA nor the Monitoring Committee can shift the burden of payment of CIRP cost due to the supplier i.e. Akshay Trading Company on to the SRA. The Counsel for the SRA has further contended that the SRA is entitled for encumbrance, lien, attachment free properties of the Corporate Debtor, therefore, the Application deserves to be dismissed.

31. We have weighed the contentions raised by the Counsel for the Parties and carefully gone through the records.

32. The applicant herein is seeking payment of Rs.3.18 Crore along with interest on account of supply of goods to the Corporate Debtor when it was in CIRP and therefore it is being claimed as CIRP cost and going by this the applicant is not impleaded the SRA in its IA. However, the perusal of the records reveals that in the 12th CoC meeting held on 04.06.2019 minutes of which have been placed on record as Annexure R4 in the reply filed by Respondent No.1 reveals that in the said meeting the RA had agreed that all current assets and liabilities of the CD shall devolve/pass on to the RA on the date of the Resolution Plan approval by the NCLT and thereafter dealt with him. It is further noteworthy that in the same meeting, the detail of CIRP cost was given which did not include the money payable to the applicant on account of supply of goods during the CIRP period though it included all other expenses which are normally treated as CIRP costs. This

meeting was attended by the SRA and his signature are thereon the attendance sheet which is part of the minutes.

33. From a perusal of the records and especially the minutes of the CoC meeting held on 04.06.2019, it emerges that the amount of supply of goods to be paid to the applicant was never intended to be included in the CIRP costs. Rather, this amount was included in the outstanding liabilities of the Corporate Debtor which the SRA unequivocally undertook to take over. Since it was a conscious decision not to include the dues of the applicant in the CIRP costs, the applicant cannot be allowed to recover the same from the CoC or the Monitoring Committee even though as per law normally any money spend to keep the Corporate Debtor is going concern is required to be treated as CIRP cost. The applicant has claimed no privity of contract with the SRA, therefore, he has not impleaded him as a party. Even if that has not been done, in our considered view it cannot be held against the applicant that application is not maintainable to scuttle his claim. In this regard, it is worth pointing out that the Monitoring Professional has already filed an application, which is also being dealt with in this very order, seeking directions against the SRA to pay the outstanding dues of the applicant which were especially included in the list of liabilities and assets taken over by the SRA.

34. It is further noticeable that in the 12th CoC meeting held on 04.06.2019 SRA agreed that all current assets and liabilities of the CD shall devolve upon him as on the date of approval of the Resolution Plan by the Adjudicating Authority and thereafter. The Plan was approved on 26.11.2019. The SRA was conscious and aware throughout that the

amount payable to Akshay Trading against supply of goods during CIRP period was not consciously and deliberately included in CIRP costs which was given in detail in two parts i.e. CIRP costs incurred till date (04.06.2019) amounting to Rs. 3,19,78,658/- and estimated CIRP cost arrived at Rs. 34,67,634/-. Since SRA Mr. Amit Gupta was present in the said meeting and signed the minutes also, he cannot claim to be oblivious of the fact that the payment of the applicant was not consciously made part of the CIRP cost meaning thereby it was intended to be kept as part of current assets and liabilities of the CD which were undertaken to be taken over by him in the same very 12th CoC meeting held on 04.06.2019. Therefore, the SRA cannot wriggle out of his liability to pay the outstanding dues of the applicant against supply of goods which was acknowledged by him in the aforesaid meeting.

35. It is further worth mentioning here that since the SRA was aware of all these developments which culminated when the Resolution Plan was approved by the Adjudicating Authority on 26.11.2019 and if he was aggrieved or had any such grievance in this regard, he should have raised objection before the CoC at any time prior to the approval of the Plan by the CoC and now at this belated stage the SRA is estopped from claiming that he is not liable to pay the outstanding dues of the applicant which were considered part of current liabilities of the Corporate Debtor which have been taken over along with the assets.

36. It is further pertinent to note that the goods were purchased from the applicant by the RP during the CIRP period to sustain the Corporate Debtor as a going concern. The goods were which were purchased from

the applicant to the tune of more than Rs. 3 Crore were infused/inducted into the business of the Corporate Debtor which must have enhanced the value of the business which was ultimately taken over by the SRA along with the current liabilities. Therefore, the SRA cannot be allowed to eschew its liability to pay the applicant.

37. On perusal of records, we find that in the 12th CoC meeting convened on 04th June 2019, which was also attended by the Successful Resolution Applicant ('SRA') Mr. Amit Gupta, wherein the SRA had agreed that all the current assets and current liabilities of the Corporate Debtor shall devolve/pass upon the SRA as on the date of approval of the Resolution Plan by the Hon'ble NCLT and thereafter, it will be dealt by him. Extract of the said resolution is reproduced hereinbelow:

" ... The RA further agreed that all current assets and liabilities of the CD shall devolve/pass on the RA as on the date of approval of Resolution Plan by the Hon'ble NCLT and thereafter will be dealt by him. " (Emphasis Supplied).

However, later on, the SRA refused to takeover the current assets and liabilities and the same has been recorded in the minutes of meeting of lenders held on 04.12.2019 as under (refer page 44 of the Application in IA 3118/2022): *"The SRA submitted that he will not be interested to take over the current assets or liabilities, in fact the assets shall be realised by Monitoring Professional, and in the meantime liabilities shall be paid off immediately out of amount received under plan so that operational creditors shall not create issues for them."*

Thus, we observe that the SRA committed somersault and turned around to abdicate from his commitment in what was agreed by him in respect of

the Current Assets and Current Liabilities of the Corporate Debtor in 12th CoC meeting. The SRA cannot be allowed to approbate and reprobate in this manner. This prompted the Monitoring Professional to file I.A. No. 524/2021 seeking directions from the Adjudicating Authority to the SRA to clear all the liabilities as agreed by the SRA in the 12th CoC meeting.

38. It is further discernible that the resolution plan has not been challenged by Akshay Rice. Further, the Applicant/Akshay Rice did not choose to object to the resolution plan for having failed to classify its dues arising out of supply of rice to the Corporate Debtor as CIRP costs at any point of time. It is only when the SRA failed to make the payment to Akshay Rice, its proprietor is now litigating against the Monitoring Professional on the ground of non-payment of CIRP costs. Thus, the plea or averment of Akshay Rice to treat its dues as CIRP costs appears to be an afterthought. If we at this stage treat the dues of Akshay Rice as CIRP costs and direct the payments accordingly, then it would tantamount to modifying or changing the approved resolution plan, which is not permissible in law. Further, it would also tantamount to recalling the Order dated 26.11.2019 in M.A. No. 2166 of 2019 passed by the Adjudicating Authority approving the resolution plan u/s 31 of the Code. Resolution Plan once approved by the Adjudicating Authority u/s 31 of the Code is binding on the Corporate Debtor, its members, creditors and all other stakeholders. There is no provision in law which empowers the Adjudicating Authority to modify or change the resolution plan. The Resolution Plan can be

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challenged/appealed by the aggrieved person u/s 32 read with Section 61 of the Code on the limited and narrow grounds stated therein, which has not been done by Akshay Trading. Therefore, for the reasons stated above, we are not inclined to allow I.A. No. 3118/2022.

39. Since the SRA had agreed to take over the current assets as well as the current liabilities of the Corporate Debtor as on the date of resolution plan, which also includes the outstanding amount payable to Akshay Rice, he cannot be now permitted to wriggle out of his admitted liability. Hence, we are inclined to allow I.A. No. 524/2021.

40. Accordingly, we pass the following Orders:

ORDER

- a. **I.A. No. 3118 of 2022** is hereby **dismissed** with no order as to costs.
- b. **I.A. No. 524 of 2021** is allowed. The Successful Resolution Applicant is directed to clear all the outstanding liabilities including that of the Applicant /Akshay Rice Trading Company forthwith as per the list of current liabilities referred to in Para 34 of this (IA.No.524/2021).
- c. Both the I.A.s stand disposed off on above terms.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)