NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 816 of 2019

(Arising out of the Order dated 24th June, 2019 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, in I.A. No. 236/2019 in C.P. (IB) No.-190/NCLT/AHM/2018)

IN THE MATTER OF:

Shapporji Pallonji and Co. Pvt. Ltd.
Regd Office: P.S Srijan Corporate Park
Tower – 1, 7th Floor, Unit No. – 701 & 702,
Plot No. – G-2, Block – EP & GP,
Sector – V, Salt Lake City,
Kolkata – 700091. **...Appellant.**

Versus

1. Kobra West Power Company Limited
First Floor, E – 122, Patel Nagar,
City Centre, Site No. 2,
Gwalior,
Madhya Pradesh – 474011. **...Respondent No. 1 /Corporate Debtor**

2. Mr. Abhijit Guhathakurta
IBBI/IPA – 003/IP-N000103/2017-2018/11158
Deloitte Touche Tohmatsy India LLP
Indiabulls Finance Centre, Tower 3,
27th – 32nd Floor,
Senapati Bapat Marg,
Elphinstone Road (W),
Mumbai – 400013. **...Respondent No. 2 /Resolution Professional**

3. Adani Power Limited
Corporate Office: Adani Corporate House
Shantigram, SG Highway, Ahmedabad,
Gujarat – 382421

Also at:
Registered Address: Shikhar NR, Adani House,
Mithakhali Six Roads, Navrangpura, Ahmedabad,
Gujarat – 380009 – India. **...Respondent No. 3 /Successful Resolution Applicant**

4. Committee of Creditors
Through its leading Financial Creditor

Adani Power Limited
Corporate Office: Adani Corporate House
Shantigram, SG Highway, Ahmedabad,
Gujarat – 382421

Also at:
Registered Address: Shikhar NR, Adani House,
Mithakhali Six Roads, Navrangpura, Ahmedabad,
Gujarat – 380009 – India. **...Respondent No. 4 /Committee of Creditors**

Present

For Appellant:	**Mr. Abhijeet Sinha, Mrs. Sonali Jaitley Bakshi, Mr. Jaiyesh Bakshi, Mr. Chirag Sharma, Mr. Siddharth Dey, Ms. Rashmi Gogoi, Ms. Sakshi Tibrewal, Ms. Mayuri Shukla and Mr. Saikat Sarkar, Advocates.**
For Respondent No. 1 & 3:	**Mr. P. Nagesh, Sr. Advocate with Mr. Himanshu Satija, Mr. Mahesh Agarwal, Mr. Shivam Shukla and Mr. Arshit Anand, Advocates for R-1 & R-3.**
For Respondent No.2 /RP:	**Mr. Manmeet Singh and Mr. Anurah Robin Frey, Advocates for R-2/RP.**
For Intervenor:	**Ms. Pallavi Pratap & Mr. Akshay Singh, Advocates for Intervenor.**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Appeal is to the Impugned Order dated 24.06.2019, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad) in I.A. No. 236/2019 in C.P. (IB) No.190/NCLT/AHM/2018, whereunder the Adjudicating Authority has allowed IA 236/2019 filed by the Applicant/Resolution Professional of the 'Corporate Debtor'/M/s. Korba West Power Company Limited seeking approval of the 'Resolution Plan'.

2. Learned Counsel for the Appellant Mr. Abhijeet Sinha submitted that the first Respondent (hereinafter referred to as the 'Corporate Debtor') had itself triggered the Corporate Insolvency Resolution Process ('CIRP') by invoking Section 10 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'); that prior to the initiation of the CIRP, there were three Arbitration Proceedings pending between the Appellant and the 'Corporate Debtor' and the Adjudicating Authority vide Order dated 26.07.2018 had imposed Memorandum and the said Arbitration Proceedings could not proceed further and were stayed; that the Appellant submitted its collated 'Claim' of the ongoing Arbitrations amounting to Rs.45,22,52,428/- in 'Form-B' vide email dated 17.11.2018 before the second Respondent (hereinafter referred to as the Resolution Professional ('RP'); that there was no written communication to the Appellant intimating the status of its 'Claim'; that the RP did not inform the Appellant regarding the rejection of the 'Claim' but instead simply put it in the Website of the 'Corporate Debtor' and that there is no provision in the Code or in the Regulations which requires a person who had made a 'Claim' to continuously check the Website, that the RP had orally communicated to the Appellant on 26.07.2019 after the approval of the Resolution Plan vide Order dated 24.06.2019; that the RP had sent an email to the other 'Operational Creditor' namely M/s. Premco Rail Engineers, who seeks to intervene in this Appeal, deeming their 'Claims' as 'not verifiable' in the light of the pending Arbitration Proceedings; that the RP had never rejected their 'Claims' in writing, that the RP does not have Adjudicatory Powers regarding rejection of the 'Claims' and that the Appellant was treated in an unfair and unjust manner.

3. Learned Counsel for the Appellant submitted that the collated 'Claims' of the ongoing Arbitration Proceedings amounts to Rs.45,22,52,428/- and out of the total 'Claims' of all 'Operational Creditors' amounting to Rs.2,91,32,49,223/-, an amount of Rs.104.28Crs./- i.e., 35.79% of the amounts claimed was provided for the 'Operational Creditors' under the Plan. But the 'Claim' made by the Appellant was paid 'NIL' only on the basis of the rejection by the RP which has no basis in law. Learned Counsel in support of his submission that an Arbitration Proceeding cannot be 'extinguished', placed reliance on the Judgement of this Tribunal in ***'M/s. Prasad Gempex' Vs. 'Star Agro Marin Exports Pvt. Ltd.'[1],*** and in ***'Standard Chartered Bank' Vs. 'Satish Kr. Gupta RP of Essar Steel & Ors.'[2].***

4. Learned Counsel for the Appellant drew our attention to the Judgement of the Hon'ble Apex Court in ***'Fourth Dimension Solutions' Vs. 'Ricoh India Limited & Ors.'[3]*** dated 21.01.2022 wherein the Hon'ble Apex Court has held that *'Operational Creditor will have the liberty to pursue Arbitration Proceedings which are pending at the time of CIRP, even after the Resolution Plan is approved and all contentions would be decided on its own merits'.*

5. Learned Counsel for the second Respondent/the former RP of the 'Corporate Debtor' submitted that the Appeal does not make out any grounds under Section 61(3) of the Code; that the proper remedy in such a purported grievance ought to be an Application under Section 60(5) of the Code; that the Appellant had never challenged the rejection of the 'Claim' by the RP, prior to the approval of the Resolution Plan; the Appellant was fully aware of the

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[1] 2019 SCC OnLine NCLAT 368
[2] 2019 SCC OnLine NCLAT 388
[3] Civil Appeal No.5908/2021

status of its 'Claims' as the RP had uploaded the information on the Website from time to time; despite being aware of the status of its 'Claim', the Appellant had filed this Appeal at a belated stage; that under Regulation 13(2)(c) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, (hereinafter referred to as the 'CIRP Regulations') does not require any ''Individual Notice' to be served on the Creditors regarding Admission or non-Admission of their Claims; that the reliance of the Appellant that it was unaware about the status of its 'Claim' when the same was uploaded on the Website of the 'Corporate Debtor', is completely frivolous and is evident from a plain reading of the list of 'Claims' filed by the Appellant.

6. The status of the 'Claim' of the Appellant was first updated by the RP on 01.11.2018 and subsequently the RP uploaded the list of admitted Claims on 07.03.2019. The Resolution Plan was approved vide Order dated 24.06.2019 and the Appellant despite being aware of the Claims not admitted by the RP on 07.03.2019, eventually filed this Appeal on 06.08.2019 after a period of 152 days of the rejection. It is submitted that the Liquidation Value of the 'Corporate Debtor' was Rs.1,454.93Crs./- whereas the 'debt' of the 'Financial Creditors' was Rs.3,346.81Crs./- and therefore the minimum amount that the 'Operational Creditors' are entitled to in this case is 'NIL' as per Section 30(2)(b) read with Section 53 of the Code. Despite having no entitlement to any amount the Resolution Plan provides for ex-gratia payment of Rs.104.28Crs./- towards admitted dues of 'Operational Creditors'. The approved Resolution Plan is binding all the Stakeholders including the

Appellant and the same has been reiterated by the Hon'ble Supreme Court in a catena of Judgements namely the following:

- *'Ghanshyam Mishra' and 'Sons Private Limited' Vs. Edelweiss Asset Reconstruction Company Limited'*[4].
- *'Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors.'*[5].
- *'The Dy. Commissioner of Customs DEEC (Monitoring Cell)' Vs. 'Vandana Garg'*[6].
- *'Harish Polymer Product' Vs. 'George Samuel, RP for Jason Décor Pvt. Ltd.'*[7].

7. It is submitted by the Learned Counsel for the RP that the 'Claim' of the Appellant was rejected only after due verification. The 'Claim' of the Appellant is admittedly the subject matter of a dispute and is pending determination in an Arbitration. It is submitted that the Appellant had erroneously relied on ***'Vijay Kumar Jain' Vs. 'Standard Chartered Bank & Ors.'***[8]**,** to contend that the Appellant is entitled to a copy of the Resolution Plan. It is submitted that as per Section 24(3)(c) of the Code, the RP is required to give Notice to the 'Operational Creditors' only in case the aggregate dues is not less than 10% of the 'debt' of the 'Corporate Debtor'. In the instant case, the aggregate amount of the 'Operational Debt' was merely 6% of the admitted 'Claims' of the 'Corporate Debtor'.

8. Learned Sr. Counsel Mr. Nagesh appearing on behalf of Respondent No. 3/Successful Resolution Applicant ('SRA') submitted that the CIRP was conducted in a fair manner and the Resolution Plan was approved by an

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[4] Civil Appeal No.8129/2019
[5] Civil Appeal No.8766-67/2019
[6] Comp. App. (AT) (Ins.) No.964/2020
[7] Comp. App. (AT) (Ins.) No.420/2021
[8] Civil Appeal No.8430/2018

overwhelming majority of 69%; a perusal of the list of the 'Claims' by the 'Operational Creditors' dated 01.11.2018 clearly shows that the alleged 'Claim' by the Appellant is under the heading 'amount claimed' and 'amount under verification' and not 'amount verified'. Subsequently in the list dated 01.11.2019; the entire alleged 'Claim' of the Appellant was rejected. It is submitted that on 08.04.2019, the list of the 'Operational Creditors' was uploaded but the Appellant did not choose to approach the Adjudicating Authority under Section 60(5) of the Code and having failed to challenge the rejection, the Appellants cannot now at this belated stage challenge the Resolution Plan. Learned Counsel vehemently contended that the ratio of ***'Fourth Dimensions Solution' (Supra)*** cannot be made applicable to the facts of this case, as the Resolution Plan explicitly deals with the treatment of the 'Claims' of the 'Operational Creditors' and drew our attention to the Additional Affidavit filed by the SRA on 02.09.2022, which reads as hereunder:

> ***"Section 3: Treatment of Stakeholders***
>
> *2.8 Further, any and all rights and entitlements of any actual or potential Operational Creditors (including any person who may claim to be such a creditor by way of exercise of rights under Applicable Laws or equity) of the Corporate Debtor, whether such claims rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been submitted to the Resolution Professional or not, whether admitted by the Resolution Professional or not, and whether or not set our in the Investor On-boarding Deck, the Virtual Data Room, the balance Sheets of the corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, till the CIRP*

Commencement Date shall be deemed to be permanently extinguished with effect from the NCLT Approval Date, by virtue of the order of the NCLT approving this Resolution Plan. The Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. For the removal of doubt, it is clarified that any Claim (as determined and verified in accordance the Code) in respect of any debt that is in the nature of Operational Debt (as defined under Section 5(21) of the Code), whether claimed or unclaimed, whether admitted or unadmitted, whether crystallized or uncrystallized, on the NCLT Approval Date shall be deemed to constitute Admitted Operational Creditor Debt for the purposes of this Resolution Plan, and shall be accorded such treatment as is proposed under this sub-section 3.2 (Treatment of Operational Creditors) of the Resolution Plan."

"Treatment of Security Interest and on-going Liquidation

3.7.1 Under this Resolution Plan, all financial liabilities in the nature of Claims arising out of all adverse inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Corporate Debtor or the affairs of the Corporate Debtor, in relation to any matter whatsoever including economic matters, whether pending or threatened, (including without limitation, any investigation by any Governmental Authority) that have been initiated or are threatened ("Dispute") to be initiated against the Corporate Debtor (including those proceedings that relate to the Corporate Debtor) at any time till the CIRP Commencement Date";

…

"7.3 Any invocation or other enforcement action already undertaken against the Corporate Debtor in respect of any Encumbrance, guarantee or collateral or any other debt or obligation of the Corporate Debtor, at the Effective Date shall stand automatically revoked and cancelled and withdrawn and deemed null and void and all financial liabilities and obligations in relation to such Encumbrance or collateral shall be deemed to have been permanently extinguished by the NCLT order approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at

> *no point of time be, directly or indirectly, held responsible or liable in relation thereto."*

9. Learned Sr. Counsel Mr. P. Nagesh argued that by virtue of the approval of the Resolution Plan by the Adjudicating Authority, the claims of the Appellant in the Arbitral Proceedings clearly stand extinguished, regardless of the fact whether the Plan has treated as 'Operational Creditor' or other 'Creditor'. The Appellant has no right in respect of the claims for which the Arbitral Proceedings were instituted, nor would such 'Claim' survive pursuant to the approval of the Resolution Plan and hence the Appellant cannot seek continuation of the referred Arbitral Proceedings. Learned Counsel placed reliance on the Judgement of the Hon'ble Supreme Court in ***'Committee of Creditors of Essar Steel India Ltd.' Vs. 'Satish Kumar Gupta & Ors.'[9],*** in paragraph 107, wherein it was expressly held that claims that existed apart from those decided on merits by the RP and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code:

> ***"107.*** *For the same reason, the impugned NCAT judgment Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388 in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by*

[9] (2020) 8 SCC 531

> *the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."*

10. Learned Counsel also placed reliance on the ratio of the Hon'ble Apex Court in ***'Ghanshyam Mishra & Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Ltd.'***[10]**,** has observed as follows:

> **"102.1.** *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."*

11. It is brought to the notice of this Tribunal that the Resolution Plan has been duly implemented in 2019 and the SRA cannot now be faced with 'Claims' which were not part of the Resolution Plan.

Assessment:

12. It is an admitted fact that the CIRP was initiated by the 'Corporate Debtors' themselves by invoking Section 10 of the Code and that there were three Arbitration Proceedings pending between the Appellant and the 'Corporate Debtor' prior to the initiation of the CIRP. It is also not in dispute that the RP did not communicate in writing regarding the rejection of the

[10] (2021) 9 SCC 657

claims of the Appellant but instead, as per Regulation 13(2)(c) of the CIRP Regulations, 2016, which did not provide for any 'Individual Notice' to be served on the 'Creditors' regarding Admission or non-Admission all the claims, has uploaded the status of the claims on the website of the 'Corporate Debtor' first on 07.03.2019 and then on 08.04.2019. It is the case of the Appellant that the RP had orally communicated to them that the claim was rejected on account of the pending Arbitration Proceeding between the Appellant and the 'Corporate Debtor'. It is seen from the record that the list of 'Operational Creditors' dated 08.04.2019 was uploaded on the website of the 'Corporate Debtor' and thereafter the Plan was approved on 24.08.2019 by the Adjudicating Authority. It is the case of the Appellant that they have no knowledge of the list of 'Operational Creditors' which was uploaded on website as there was no communication to them regarding the same. It was only on 26.07.2019 after the approval of the Resolution Plan that the Appellant had come to know regarding the rejection of the claims. The Hon'ble Supreme Court in ***'Swiss Ribbons Private Limited & Anr.' Vs. 'Union of India & Ors.'***[11]**,** has observed as follows:

> ***77.****NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the Committee of Creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 5-10-2018, Regulation 38 has been amended. Prior to the amendment, Regulation 38 read as follows:*

[11] (2019) 4 SCC 17

> *"**38. Mandatory contents of the resolution plan**.—(1) A resolution plan shall identify specific sources of funds that will be used to pay the—*
>
> *(a) insolvency resolution process costs and provide that the insolvency resolution process costs, to the extent unpaid, will be paid in priority to any other creditor;*
>
> *(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the adjudicating authority; and*
>
> *(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan."*

Post amendment, Regulation 38 reads as follows:

> *"**38. Mandatory contents of the resolution plan**.—(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*
>
> *(1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."*

The aforesaid Regulation further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors."

13. It is the case of the Appellant only because the Arbitration Proceedings were pending, the RP though did not have any Adjudicatory Powers, rejected their claims. It is the case of the RP that there is no provision in the Code to give any communication in writing regarding the rejection and that the Appellant has never challenged the rejection of the 'Claim' and have filed this

Appeal belatedly on 06.08.2019, after a lapse of a period of 152 days and that too against the Order approving the Resolution Plan. It is also brought to our Notice by the Counsel for the Resolution Professional that the Liquidation value of the 'Corporate Debtor' was Rs.1,454.93Crs./- and as the admitted 'debt' of the 'Secured Financial Creditor' was about this value, the minimum amount that the 'Operational Creditors' are entitled to in this case is 'NIL' as per Section 30(2)(c) read with Section 53 of the Code. Despite this, the Resolution Plan provides for Rs.104.28Crs./- towards the admitted dues of the 'Operational Creditors' in the manner provided for in the Plan.

14. In this factual matrix, the main point which arises for consideration in this Appeal is whether the Appellant/'Operational Creditor' can be allowed to pursue the Arbitration Proceedings in the light of the ratio laid down by the Hon'ble Apex Court in ***'Fourth Dimension Solutions' (Supra).*** It is the case of the Learned Sr. Counsel Mr. P. Nagesh appearing for the SRA that once the Resolution Plan is approved as per the precedents laid down by the Hon'ble Apex Court in ***'Ghanshyam Mishra and Sons Private Limited' (Supra), 'K. Shashidhar' Vs. 'Indian Overseas Bank & Anr.'[12], 'Maharashtra Seamless Ltd.' Vs. 'Padamanabhan Venkatesh & Ors.'[13]*** and in ***'Kalpraj Dharamshi & Anr.' Vs. 'Kotak Investment Advisors Ltd. & Anr.'[14],*** that any 'Claims' which are not part of the Resolution Plan shall stand extinguished and no person would be entitled to continue any Proceedings in respect of a 'Claim', which is not part of Resolution Plan.

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[12] (2019) 12 SCC 150
[13] (2020) 11 SCC 467
[14] 2021 SCC OnLine SC 204

15. I.A. No.3670/2019 is preferred by M/s. Premco Rail Engineers Ltd. seeking intervention in this Appeal. Without going into merits of the Application, we observed from the record that *Company Appeal (AT) (Ins.) No.1105 & 1106/2019* was preferred by the Applicant/Appellant and was dismissed by this Tribunal on account of Limitation. Vide Order dated 22.10.2019, a three-Member Bench of this Tribunal while dismissing the Appeal preferred by the Applicant has given a liberty to the Appellant to intervene in the instant Appeal i.e., *Company Appeal (AT) (Ins.) No.816/2019.* Vide Order dated 09.01.2023, this Tribunal has dismissed IA3076/2019 based on the submissions of the Learned Counsel for the proposed Intervener that he does not want to press the said IA.

16. At this juncture, we find it relevant to reproduce the Judgement of the Hon'ble Apex Court in ***'Fourth Dimension Solutions' (Supra)*** which is detailed as hereunder:

> *"Heard learned counsel for the parties.*
>
> *It is indisputable that the Resolution Plan approved by the Committee of Creditors has been finally upheld by this Court vide judgment dated 10.03.2021 in Civil Appeal Nos. 2943-2944 of 2020 titled as "Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr." and connected cases, reported in 2021 (10) SCC 401.*
>
> *During the hearing of the stated appeal, it was brought to the notice of the Court that the appellant had preferred some appeal before the National Company Law Appellate Tribunal (in short "NCLAT") and it was still pending at the relevant time. This Court, in paragraph 160 of the judgment, therefore, directed that the said appeal shall proceed on merits. Pursuant to that liberty, the concerned appeal has now been decided by the NCLAT vide impugned judgment.*
>
> *In our opinion, it was sufficient for the NCLAT to dispose of the appeal before it by restating the factual*

> *position noted while considering the Plan submitted for approval before the Committee of Creditors. In paragraph 48 of the impugned judgment, the NCLAT has noted thus:*
>
> > *"... The name of the Appellant was mentioned in the list of Operational Creditors. On 29.11.2018 the RP published updated list of Creditors of the Corporate Debtor, wherein the admitted claims of the Appellant was indicated as 'Nil' with an appended note:*
> >
> > *"2. The claims pertaining to FDSL have been disputed and are proceedings before the Arbitrators/Appellate Authorities. The liability is subjected to outcome of these proceedings".*
>
> <u>*In light of this factual position, in our opinion, the appeal needs to be disposed of by restating the said fact with liberty to the parties to pursue all contentions available to them in the proceedings pending at the relevant time, if any.*</u>
>
> *It is stated that some arbitration proceedings were pending between the parties. If so, all contentions available to both sides be decided in the said proceedings on its own merits in accordance with law.*
>
> *The civil appeal is disposed of accordingly.*
>
> *Pending applications, if any, stand disposed of."*
>
> *(Emphasis Supplied)*

17. In the aforenoted Judgement in ***Civil Appeal No.5908/2021,*** the Resolution Plan was approved by the Committee of Creditors and also upheld by the Hon'ble Apex Court vide Judgement dated 10.03.2021 in ***'Kalparaj Dharamshi & Ors.' Vs. 'Kotak Investment Advisors Ltd. & Anr.'***[15]***,*** the same Judgement which the Respondents are relying on with specific reference to the 'Approval of the Resolution Plan'. ***'Kalpraj Dharamshi' (Supra)*** while approving the Resolution Plan, placed reliance on the earlier Judgements of

[15] Civil Appeal Nos.2943-2944/2020

'Ghanshyam Mishra and Sons Private Limited' (Supra), K. Sashidhar' (Supra), 'Maharashtra Seamless Ltd.' (Supra). This Civil Appeal is dated 21.03.2022 and is the later decision whereby and whereunder in the light of the factual position that the name of the Appellant was mentioned in the list of the 'Operational Creditors', and the claims pertaining to the 'Operational Creditors' have been disputed and the Proceedings are pending before the Arbitration Authorities, the Hon'ble Apex Court had disposed of the Appeal with a liberty to the parties to pursue all contentions available to them in the Proceedings at the relevant period of time.

18. The ratio of this Judgement is applicable to the facts of this case, keeping in view that the CIRP Proceedings were invoked under Section 10 of the Code, that the name of the Appellant was mentioned in the list of 'Operational Creditors', that the RP had posted on the website that the 'Claims' of the 'Operational Creditors' are 'under verification', and that admittedly Pre-Arbitration Proceedings were pending *'prior to the invocation of the Section 10 Proceedings'*, and there was no 'Contingent Liability' or any other provision made in the Resolution Plan, subject of course, to the result of the Arbitration Proceedings.

19. For all the foregoing reasons, we are of the considered view that there is no illegality in the Order of the *'Approval of the Resolution Plan'* by the Adjudicating Authority and we do not see any reason to set aside the Resolution Plan *per se* except for observing that the RP ought not to have made a 'Contingent Provision' with respect to the Appellant herein having regard to the specific facts of this case, which would be subject to the result of the Arbitration Proceedings.

20. Having observed so, liberty is being given to the Appellant herein to pursue all contentions available to them in the pending Arbitration Proceedings and the same be decided in the said proceedings on its own merits in accordance with law. This Appeal is disposed of with the aforenoted observations. No Order as to costs. It is to be noted that keeping in view the peculiar facts of the attendant case on hand, this Order is being passed.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

Principal Bench,
New Delhi
23rd February, 2023

himanshu