

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 743 of 2018**  
**[arising out of Order dated 12<sup>th</sup> October, 2018 by NCLT, Mumbai Bench  
in MA No. 550/2018 in CP 1696/I&BC/MB/MAH/2017]**

**IN THE MATTER OF:**

**Mr. Navneet Kumar Gupta,  
Resolution Professional of  
Monnet Power Company Limited**

**...Appellant**

**Versus**

**Bharat Heavy Electricals Limited,  
BHEL House, Siri Fort,  
New Delhi – 110 049.**

**...Respondent**

**Present:**

**For Appellant :**

**Mr. Atul Sharma, Mr. Hitesh Kumar and  
Ms. Ashly Cherian, Advocates**

**For Respondent :**

**Mr. Anil Puri, Senior Advocate assisted by  
Mr. Shubham Saxena, Mr. Ravi Chandra,  
Mr. I.P.S. Oberoi, Ms. Gunjan and Ms. Aditi Sharma,  
Advocates**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

In the ‘corporate insolvency resolution process’ against ‘Monnet Power Company Limited’ (Corporate Debtor) the respondent ‘Bharat Heavy Electricals Ltd.’ (**BHEL**) (Operational Creditor) filed an application before the ‘Resolution Professional’ to admit the entire claim of Rs.977,49,97,545/- along with interest. The ‘Resolution Professional’ on consideration of the same, had not accepted part of the claim.

2. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 12<sup>th</sup> October, 2018 while determined to 'inventory cost' etc. held that the 'Resolution Professional' wrongly disallowed the substantial claim in its entirety and directed the 'Resolution Professional' to re-examine the claim on the basis of the accounts and evidence of BHEL and if the evidences corroborated the claim, the same should also be taken into account while finalising the total claim of BHEL.

3. The 'Resolution Professional' being aggrieved has preferred this appeal.

4. The only question arises for consideration in this appeal is whether the 'Resolution Professional' has jurisdiction to reject the claim of BHEL in its entirety, without going into the evidence.

5. The aforesaid issue fell for consideration before the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018**' (2019 SCC OnLine SC 73). In the said case, the Hon'ble Supreme Court by its decision dated 25<sup>th</sup> January, 2019 held :

**“RESOLUTION PROFESSIONAL HAS NO ADJUDICATORY POWERS.**

**85.** *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 an interim resolution professional as follows:*

**“18. Duties of interim resolution professional.—**

**(1)** *The interim resolution professional shall perform the following duties, namely—*

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—*
- (i) business operations for the previous two years;*
  - (ii) financial and operational payments for the previous two years;*
  - (iii) list of assets and liabilities as on the initiation date; and*
  - (iv) such other matters as may be specified;*
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15;*
- (c) constitute a committee of creditors;*
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
- (e) file information collected with the information utility, if necessary; and*
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any*

*other registry that records the ownership of assets including—*

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
  - (ii) assets that may or may not be in possession of the corporate debtor;*
  - (iii) tangible assets, whether movable or immovable;*
  - (iv) intangible assets including intellectual property;*
  - (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
  - (vi) assets subject to the determination of ownership by a court or authority;*
- (g) to perform such other duties as may be specified by the Board.*

*Explanation.—For the purposes of this section, the term “assets” shall not include the following, namely—*

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*

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

**86.** *Under the CIRP Regulations, the resolution professional has to vet and verify claims made, and ultimately, determine the amount of each claim as follows:*

**“10. Substantiation of claims.—***The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.”*

*xxx xxx xxx*

**“12. Submission of proof of claims.—**

(1) *Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*

(2) *A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) *Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:*

*Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.*

**13. Verification of claims.—**

(1) *The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

(2) *The list of creditors shall be -*  
*(a) available for inspection by the persons who submitted proofs of claim;*

*(b) available for inspection by members, partners, directors and guarantors of the corporate debtor;*

*(c) displayed on the website, if any, of the corporate debtor;*

*(d) filed with the Adjudicating Authority;*

*and*

*(e) presented at the first meeting of the committee.*

**14. Determination of amount of claim.—**

*(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.*

*(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”*

87. *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:*

**“35A. Preferential and other transactions.—(1)**

*On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*

*(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.*

*(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.*



**88.** *As opposed to this, the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. Sections 41 and 42, by way of contrast between the powers of the liquidator and that of the resolution professional, are set out hereinbelow:*

**“41. Determination of valuation of claims.—**

*The liquidator shall determine the value of claims admitted under Section 40 in such manner as may be specified by the Board.*

**42. Appeal against the decision of**

**liquidator.—***A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.”*

**89.** *It is clear from these Sections that when the liquidator “determines” the value of claims admitted under Section 40, such determination is a “decision”, which is quasi-judicial in nature, and which can be appealed against to the Adjudicating Authority under Section 42 of the Code.*

**90.** *Unlike the liquidator, the resolution professional cannot act in a number of matters without the approval of the*

*committee of creditors under Section 28 of the Code, which can, by a two-thirds majority, replace one resolution professional with another, in case they are unhappy with his performance. Thus, the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority.”*

6. The present case being covered by the decision of the Hon'ble Supreme Court in '*Swiss Ribbons Pvt. Ltd. & Anr.*' (Supra), we are not inclined to interfere with the impugned order dated 12<sup>th</sup> October, 2018 passed by the Adjudicating Authority. The 'Resolution Professional' is directed to act in accordance with the directions of the Adjudicating Authority.

7. The appeal is dismissed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

New Delhi

26<sup>th</sup> February, 2019

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