

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) Insolvency No. 90-91 of 2021

IN THE MATTER OF:

**Noida Special Economic Zone Authority,
Ministry of Commerce & Industry,
Department of Commerce, Noida Dadri Road,
Phase-II, Noida – 201305,
Distt. Gautam Budh Nagar (Uttar Pradesh)**
Vs.

....Appellant

**1. Mr. Manish Agarwal
Resolution Professional of
Shree Bhomika International Limited,
Having its office at
707, Saket, Opp. Rohtash Sweets,
Meerut – 250001, Uttar Pradesh**

**2. Shree Bhomika International Limited,
Represented by Mr. Manish Agarwal,
Resolution Professional,
Having its office at
707, Saket, Opp. Rohtash Sweets,
Meerut – 250001, Uttar Pradesh**

**3. M/s. Commodities Trading
Represented by its Partners Mr. Devendra Bansal
& Mr. Pramod Bansal,
12, 1st Floor, Bansal's Plot/25,26,27, Sector 108,
Neu GIDC, Gandhidham (Kutch) Pint – 307201,
Gujrat, India**

...Respondents

For Appellant: Mr. Anshul Rawat & Ms. Namrata Langade, Advocates

For Respondent: Mr. Abhishek Anand, for R-1
Mr. Kunal Godhwani, for R-3

J U D G E M E N T

Per: Ms. Shreesha Merla (T):

1. Challenge in these Appeals i.e. Company Appeal (AT) Ins. No. 90-91 of 2021 is to the Impugned Orders dated 27.11.2020 & 05.10.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Court-III, New Delhi) in IA-4827/2020 filed in IB-324(ND)/2019. By the Impugned

Order, the Adjudicating Authority has dismissed the Application preferred by the Applicant/Appellant challenging the approval of the Resolution Plan. The Adjudicating Authority vide Order dated 05.10.2020 has allowed CA-417/2020 preferred by the Resolution Professional (RP) under Sections 31(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code') seeking approval of the Resolution Plan approved by the Committee of Creditors (CoC).

2. The present Appeal has been filed by the Operational Creditor of the Corporate Debtor Company/M/s. Shree Bhomica International Ltd.

3. Submissions of the Learned Counsel for the Appellant:

- That the Resolution Professional never informed the Appellant regarding the Auction Proceedings whereby the Appellant lost an opportunity of participating in the Auction Proceedings.
- The entire claim of the Appellant stood admitted by the Resolution Professional, clearly indicating that the Resolution Applicant was aware of the total outstanding claim of Rs. 6,29,18,121/-.
- The Reserve Price for the land, building and machinery was valued at Rs. 918 lacs. The Appellant, being the sole Operational Creditor filed its claim under the prescribed Form amounting to Rs. 6,29,18,121/-, which was admitted by the Resolution Professional, but only an amount of Rs. 50 Lacs was paid. Hence the Resolution Plan is liable to be rejected as it is in direct contravention of Section 30(2) (e) of the Code.
- The Learned Counsel drew our attention to 10.9 of the Resolution Plan which deals with exemptions from Noida Special Economic Zone (NSEZ), in which it is detailed as follows:

“10.9 Exemptions from Noida Special Economic Zone (NSEZ):

There should be exemption of payment to NSEZ of any type of fees/penalty for renewal of sublease and/or transfer charges dues to change in 100% directorship/ shareholding or both in favour of resolution applicant irrespective of the fact that the original Allottee has obtained completion certificate or not”

- This is an in direct contradiction to the established rules and principles of the functions of NSEZ.
- Learned Counsel submitted that there are fixed charges/penalties for change in any business model and agreed fees for the transfer of units by the original allottee. The Public Notice was also advertised that the bidder ought to pay the transfer charges and therefore without responding to the same in the Resolution Plan, the Resolution Professional cannot seek to command functions of the Appellant which works under the guidance of the Ministry of Commerce and Industry.
- The Resolution Applicant is seeking to bypass the statutory fees which would lead to unjust enrichment. The Resolution Plan is in direct negation of Section 34(2) (d) of the Special Economic Zone Act, 2018 the relevant portion of which is extracted as hereunder:

“34(2). Without prejudice to the generality of the provisions of sub-section (1), the measures referred to therein may provide for-

- (a) The development of infrastructure in the Special Economic Zone;*
- (b) Promoting exports from the Special Economic Zone;*
- Functions of Authority.*
- (c) Reviewing the functioning and performance of the Special Economic Zone;*
- (d) Levy user or service charges or fees or rent for the use of properties belonging to the Authority;*

(e) Performing such other functions as may be prescribed”.

- According to the Circular, the transfer charges are charged at Rs. 1000/- per sq. mts., if the original allottee has not obtained completion certificate and charged at Rs. 550 per sq. mts. if the completion certificate for the building has been obtained, one-year advance lease rent as security money, one quarter advance lease rent and one quarter water charges in respect of plot statutorily payable by the Resolution Applicant, from which he cannot wriggle out.
- Stressed Assets Stabilisation Fund (SASF) in the year 2018 has fixed the Reserve Price for the land and building in the said plot at Rs. 902 lacs whereas the average fair value of the land and building calculated by the valuers appointed during the Corporate Insolvency Resolution Process (CIRP) comes to around Rs. 6.10 crores.
- In November, 2019, the valuation conducted by Mr. Deepak Bansal towards the fair value of plot and building was Rs. 6,21,60,000/- and liquidation value of the same was 4,31,55,000/-. The valuer fairly opined that the transaction with respect to plot can be carried out after complying with the norms of NSEZ.
- It is vehemently contended by the Learned Counsel that the valuer has not physically visited the property but only relied on documents and has recorded the same in the valuation report.
- On 03.12.2019, fair and liquidation valuation of the Corporate Debtor Company was conducted by one Mr. S.K. Singhal who opined that the fair value of the plot and building would be Rs. 5,99,05,409/- and

liquidation value of the same would be Rs. 4,19,33,786/-. It is strenuously contended that this valuer also did not take the permission of the Appellant to conduct any physical inspection of the subject property and has accepted that he was not provided with the building layout plans.

- Learned Counsel placed reliance on Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is extracted hereunder:

“35. Fair value and Liquidation value.

(1) Fair value and liquidation value shall be determined in the following manner:-

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.”

- The Learned Counsel submitted that the average valuation report of the property arrived at, is untenable as the same is undervalued, only to bring down the liquidation value. Assigning only Rs. 50 Lacs when a claim of Rs. 6,29,18,121/- was admitted, amounts to taking undue advantage and leads to unjust enrichment of the Resolution Applicant and hence prays that the Appeal may be allowed and the Impugned Order be set aside.

4. Submissions of Learned Counsel for the First & Second Respondents:

- Learned Counsel appearing for the First and Second Respondent submitted that the average fair value of the Corporate Debtor as per the Valuation Report is 6.10 crores and liquidation value is 4.25 crores, where the total amount offered by the Resolution Applicant is 4.5 crores which is more than the liquidation value and hence the Adjudicating Authority has rightly approved the Resolution Plan as it is not in contravention of the provisions under the Code.
- The Hon'ble Supreme Court in '**K. Shashidhar Vs. Indian Overseas Bank & Ors.**' (2019 12 SCC 150) in paragraph 33 held that the Adjudicating Authority does not have jurisdiction to analyse or evaluate commercial wisdom of the CoC as the Financial Creditors are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan.
- It is a well settled law that there cannot be any judicial review of the commercial decision of the CoC under the provisions of the Code.
- Valuation has been conducted in compliance of Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In support of his contention, Learned Counsel placed reliance on the Judgment of Hon'ble Supreme Court in '**Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.**', [(2020) 11 SCC 467], '**Duncan Industries Pvt Ltd. Vs. State of U.P. & Ors.**' [(2000) 1 SCC 633] and '**Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset**

Reconstruction Company Limited & Ors. [(2021) SCC OnLine SC 313].

- The approved Resolution Plan is binding on the Appellant in terms of the Section 31 of the Code.
- Learned Counsel submitted that Hon'ble Supreme Court in '*Ghanashyam Mishra & Sons Pvt. Ltd*' (*supra*) has clarified that creditors including statutory authorities who has suffered a hair cut in payment or whose claim has been rejected outrightly can continue the demands post successful resolution. Once the Resolution Plan is approved by the Adjudicating Authority under Section 31, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the creditors including statutory authorities, employees and guarantors. Consequently, all the dues including statutory dues owed to the Central Government, State Government and 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 date on which the Adjudicating Authority grant its approval under Section 31 could be continued. Learned Counsel submits that liquidation should be a matter of last resort and seeks dismissal of the Appeal.

5. Submissions of the Third Respondent/Successful Resolution

Applicant:

- Learned Counsel appearing for the Third Respondent/Successful Resolution Applicant submitted that the Resolution Plan was approved by the Adjudicating Authority on 05.10.2020 and that the Third Respondent has already paid Rs. 50 Lacs to the Appellant vide Demand

Draft dated 22.10.2020, which was received and accepted by the Appellant herein. Learned Counsel places reliance on the Judgment of the Hon'ble Supreme Court in '*Ghanashyam Mishra & Sons Pvt. Ltd*' (*Supra*) in support of his contention that once a Resolution Plan is duly approved by the Adjudicating Authority under sub-section 1 of Section 31, the claim as provided in the Resolution Plan shall stand frozen and be binding on the Corporate Debtor and its employees, members of creditors including the Central Government and the State Government. The liquidation value of the Corporate Debtor is 4.25 crores and the offer made in the Resolution Plan is 4.5 crores which is above the liquidation value and therefore there is no contravention in terms of the Section 32(b)(i) of the Code.

- As the claim of the Financial Creditor is above the liquidation value, the liquidation value due to the operational creditors is Nil and amount paid to the Appellant herein is fair and equitable. Moreover, the commercial wisdom of the Committee of Creditors is not justiciable as laid down by the Hon'ble Supreme Court in the case of '*K. Shashidhar Vs. Indian Overseas Bank & Ors.*' (*supra*).

6. Assessment:

- It is the main case of the Appellant that the approval of the Resolution Plan under Section 30 of the Code is in contravention of Section 30(2)(e) as the claim admitted is Rs. 6,29,18,121/- and the amount paid is only Rs. 50 lacs. It is the case of the Appellant that the Corporate Debtor has defaulted in paying the lease amount since 30.09.2019; that there are fixed charges and penalties for change in the pattern of the business

model; that the Reserve Price for the land, building and machinery is Rs. 918 Lacs and that at the time of valuation, the valuer did not physically inspect the site but instead has based his valuation on the documents placed before him and in fact the valuer has admitted that the building plans were not given to him at the time of valuation.

7. It is seen from the record that the Resolution Plan was approved on 05.10.2020 and the Adjudicating Authority has dismissed the Application preferred by the Appellant herein vide Order dated 27.11.2020 observing as follows:

“IA-4827/2020 filed in IB-324/ND/2019:

Counsels for both sides are present. The prayer made in the Application is to dismiss the approved Resolution Plan, which was approved on 05th October, 2020. In other words, the Resolution Plan that came to be approved on 05th October, 2020 is sought to be dismissed through this Application.

It is noted that after the approval of the Resolution Plan, this Authority has no power to dismiss the approved Resolution Plan. The only course open to the Applicant is to file an Appeal under Section 61 of the Code.

In view of the above, the Application is dismissed in limine.”

8. At the outset, we observe that this Appellate Tribunal had, vide Order dated 12.02.2021 directed that the implementation of the approved Resolution Plan would be subject to the outcome of the Appeal.

9. Learned Counsel for the Appellant strenuously argued that when the Reserve Price for land and building in the said plot was Rs. 902 Lacs in the year 2018 there are no grounds for the valuation to have depreciated to Rs. 6.10 crores within a period of one year.

10. At this juncture, we find it apt to reproduce the relevant portion of Section 35 (c) of the Code:

“Section 35: Powers and duties of liquidator.35. (1)
Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power

.....

(Emphasis Supplied)

11. It is not in dispute that the CoC has approved the Resolution Plan after appointing two registered valuers after determining the average of the two closest estimates.

VALUER	FAIR VALUE (RS.)	LIQUIDATION VALUE (RS.)
Deepak Bansal	62,160,000	43,155,000
S.K. Singhal	59,905,409	41,933,786

12. In the present case as recorded by the Adjudicating Authority, the liquidation value of the Corporate Debtor as per the valuation report is 4.25 crores and the amount proposed in the Resolution Plan is Rs. 4.50 crores which is more than the liquidation value. We address to the contention raised by the Learned Counsel for the Appellant that the valuation itself is erroneous

and therefore allotting Rs. 50 lacs when the claim is Rs. 6,29,18,121/- is unjustified. The Hon'ble Supreme Court in '*Duncan Industries Pvt Ltd. Vs. State of U.P. & Ors.*' (Supra) has held that 'the question of valuation is basically question of facts and this Court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record'. Be that as it may, the record shows that the average of two closest estimates given by the valuers was taken into consideration as a fair value and the liquidation value.

13. The present Appeal has to be analysed in the touchstone of the ratio laid down by the Hon'ble Supreme Court in '*Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.*', [(2020) 11 SCC 467], '*K. Shashidhar Vs. Indian Overseas Bank & Ors.*' (2019 12 SCC 150) and '*Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Limited & Ors.*' [(2021) SCC OnLine SC 313].

14. We find it relevant to reproduce Section 30 and 31 of the Code:

“Section 30: Submission of resolution plan.

30. (1) A resolution applicant may submit a resolution plan ¹[along with an affidavit stating that he is eligible^{1A} under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[(4) The committee of creditors may approve a resolution plan by a vote of not less than ⁵[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, ⁶[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

“Section 31: Approval of resolution plan.

31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve³ the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors,¹[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary

approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]”

(Emphasis Supplied)

15. It is an admitted fact that the Plan has successfully been implemented and all payments due under the said Resolution Plan have been paid.

16. The Hon’ble Supreme Court in **‘Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.’**, [(2020) 11 SCC 467] has observed as follows:

“27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.

28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to

Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order 35 of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.”
(Emphasis Supplied)

17. The Hon’ble Supreme Court in ‘**Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Limited & Ors.**’ [(2021) SCC OnLine SC 313] has observed as follows:

71. Perusal of the SOR would reveal, that one of the prime objects of I&B Code was to provide for implementation of insolvency resolution process in a time bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed, that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure, that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of the I&B Code. Clause (f) of para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 would amply make it clear, that the legislative intent in amending sub-section (1) of Section 31 of I&B Code was to clarify, that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.

72. In the Rajya Sabha debates, on 29.7.2019, when the Bill for amending I&B Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

“IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. [Section 238](#) provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC. [...] There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear

(emphasis supplied)”

.....

77. It is clear, that the mischief, which was noticed prior to amendment of Section 31 of I&B Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, 12 (2009) 12 SCC 209 the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

.....

CONCLUSION

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)

18. From the aforementioned observations made by the Hon'ble Supreme Court, it is clear that all the dues including statutory dues owed to the Central Government, State Government and the Local Authority if not part of the Resolution Plan, shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the Adjudicating Authority has approved the Resolution Plan, could be continued.

19. It is a well settled preposition of law by the Hon'ble Supreme Court in a catena of Judgments that the commercial wisdom of CoC is non-justiciable except on the grounds of Section 30(2). In the instant case, we do not find any material on record to substantiate that the approval of the Resolution Plan is in contravention of any law for the time being in force. Further we also address to the contention of the Learned Counsel for the Appellant that the Resolution Plan is in contravention of the Special Economic Zone Act and Rules thereof:

“10.9 Exemptions from Noida Special Economic Zone (NSEZ):

There should be exemption of payment to NSEZ of any type of fees/penalty for renewal of sublease and/or transfer charges dues to change in 100% directorship/shareholding or both in favour of resolution applicant irrespective of the fact that the original Allottee has obtained completion certificate or not”

20. Section 238: Provisions of this Code to override other laws.

238. *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in*

any other law for the time being in force or any instrument having effect by virtue of any such law.

It is well settled that Insolvency and Bankruptcy Code overrides other law and under Section 31 of the Code, the Resolution Plan approved by the CoC and meeting the requirements under Section 30(2) has to be approved by the Adjudicating Authority. Commercial Wisdom of the CoC with respect to viability and financial decision taken while evaluating the Resolution Plan has to prevail, unless the Plan approved by the CoC is in conflict with any provision of the law and the distribution mechanism suppressed the interest of the stakeholders besides taking care of the maximisation of the value of the assets of the corporate debtor, judicial intervention would not be warranted. Additionally, in the instant case, the Resolution Plan has already been implemented a year ago and we do not wish to set the clock back.

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

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi
14th February, 2022
Basant B.