

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 906 of 2020**

[Arising out of Impugned Order dated 04 August 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in IA Nos.47 & 48 of 2019 in Company Petition (IB) No. 52/9/HDB/2017]

**IN THE MATTER OF:**

**Mr Ram Ratan Kanoongo**  
**Resolution Professional of Sirpur Paper Mills Ltd**  
**1006, 10<sup>th</sup> Floor, Raheja Towers**  
**Nariman Point, Mumbai – 400021** **...Appellant**

**Versus**

**1. Mr Veda Kumar Nimbagal**  
**S/o Veerabhadraiah Nimbagal**  
**202, Maruthi Mansion**  
**Dharma Reddy Colony, Kukatpally**  
**Hyderabad – 500085, Telangana** **...Respondent No.1**

**2. M/s J K Paper Limited**  
**Nehru House, 3<sup>rd</sup> Floor**  
**4 Bahadur Shah Zafar Marg**  
**New Delhi – 110002** **...Respondent No.2**

**Present:**

**For Appellant : Mr Rajendra Beniwal, Mr Kumar Sumit and**  
**Mr Chirag Gupta, Advocates.**

**For Respondent : Mr CH. Kameswara Rao, Advocate for R-1.**  
**Mr Vaijayant Paliwal, Mr Charu Bansal,**  
**Ms Misha and Ms Jasveen Kaur, Advocates for R-2.**

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

**[Per; V. P. Singh, Member (T)]**

1. This Appeal emanates from the impugned Order dated 04 August 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in Company Petition (IB) No. 52/9/HDB/2017, issuing a direction to the RP to make payment of the salary to the Respondent

No.1/Applicant as per amount acknowledged by the RP, in accordance with the provision of I&B Code, 2016 and Regulations thereof. The parties' original status in the Company Petition represents the parties in this Appeal for the sake of convenience.

2. The Adjudicating Authority passed the following Order;

*“The applicant in the instant applications is, inter-alia seeking for directions against the RP for release of salaries and amount due and payable to him by the corporate debtor.*

*On perusal of the counter affidavit along with the material papers, it is seen that the RP has acknowledged that certain amounts due and payable to the applicant herein. It is further observed that **the RP has agreed for releasing salaries as per a statement enclosed to the reply.***

*Considering the submissions, **this Adjudicating Authority is of the view that any payment to be made to the Appellant herein shall be made in accordance with the provisions of the IB code 2016 and Regulation thereunder.** Accordingly, this adjudicating Authority hereby directs the RP to make payment of the salary to the Appellant as per amount acknowledged by him and as per provisions of the IB code 2016 and Regulations thereunder.”*

*(verbatim copy)*

3. Brief facts of the case are as under;

The Respondent No.1 Ex-Director of the Corporate Debtor, Sirpur Paper Mills Ltd, had filed IA No 208 of 2019 seeking the release of his claim towards payment of salary to the tune of ₹ 13,50,000/-, against the Resolution Professional (Appellant herein), feeling aggrieved by his Order of partial

admittance of his claim about salary dues to the tune of ₹ 5,40,000/-. Upon submission of the claim by Respondent No1, the Resolution Professional evaluated the claim and partially admitted the claim to the tune of ₹5,40,000/-, based on the calculation of the salary dues up to the date of commencement of the Corporate Insolvency Resolution Process (in short CIRP), i.e. 18 September 2017.

4. By Order dated 19 July 2018, the Adjudicating Authority, in addition to approving the Resolution Plan for the Corporate Debtor, i.e. Sirpur Paper Mills Ltd, dismissed the Application, IA No. 208 of 2018 as filed by the Respondent No.1 and upheld the rejection of the claim by the Resolution Professional. While disposing of the Application, the Adjudicating Authority observed that;

*"83. In the absence of such documents it cannot be said that applicant is entitled for salary during his leave period even if there is a leave with the permission of the IRP.*

*84. Therefore, the applicant was on duty from 23 January 2017 to 20 October 2017. The applicant is paid salary up to 18 September 2017. That means the applicant has not been paid salary from 19 September 2017 to 20 October 2017.*

***85. In view of the fact that the applicant worked as CEO during the period from 19 September 2017 to 20 October 2017 is entitled for a salary but not by way of a claim filed during the CIRP period.***

***86. The claim has to filed by the employee only as on the date of commencement of CIRP period.***

87. *the adjudication of the claim that arose after the commencement of CIRP process period is not covered by form-B, C &D.*

88. *therefore, **it is open for the applicant to claim his salary at an appropriate time, in an appropriate forum for a period from 19 September 2017 to 20 October 2017.***

*In view of the above discussion the rejection of the claim of the applicant to the extent of ₹8.10 lakhs is sustainable.*

90. *Hence, the applicant is not entitled for any relief in this Application.”*

5. The Appellant contends that Respondent No1, Ex-Director of the Corporate Debtor, had initiated a frivolous set of litigations vide Application filed on 31 January 2019 to modify Order dated 19 December 2018 to release the salary dues by filing IA Nos. 47 and 48 of 2019. Being completely aware that his claim was squarely settled by the Adjudicating Authority vide Order dated 19 July 2018 and the said Order was never challenged and has attained finality.

6. It is further contended that the Adjudicating Authority committed a grave error in entertaining the Application IA Nos. 47 and 48 of 2019, which settles the claims of Respondent No 1 and approved the Resolution Plan as submitted by the Resolution Applicant, i.e. Respondent No 2. Thereby, the Adjudicating Authority has failed to follow the statutory provision of Section 31 (1) of the I&B Code 2016.

7. It is further contended that the Corporate Debtor's Insolvency Resolution Process completed on 15 June 2018, and the Resolution Plan was approved vide Order dated 19 July 2020. The impugned order results from the concealment of material facts of the previous round of litigation by Respondent No 1.

8. Respondent No. 1, in pursuance to the commencement of CIRP of the Corporate Debtor, submitted its claim with the Appellant by email dated 28 February 2018, i.e. after almost 143 days beyond the deadline for submission of the claim as per the public announcement that too without any supporting documents. Upon evaluating the claim as on the date of commencement of CIRP of the Corporate Debtor, i.e. 18 September 2017, the Appellant RP partially admitted the claim of Respondent No 1 to the extent of ₹5,60,000/-, i.e. salary dues from June 2017 to 18 September 2017.

9. After that, Respondent, No 1 filed IA No. 208 of 2018 before the Adjudicating Authority and sought relief to admit and consider the entire claim of ₹ 13,50,000/- as salary dues up to February 2018. The Adjudicating Authority vide Order dated 19 July 2018 dismissed the Application, IA No. 208 of 2018, filed by Respondent No 1 and upholding the rejection of the Appellant's claim to the extent of ₹ 8,10,000.

10. Appellant Resolution Professional further contends that after the approval of the Resolution Plan, working as a member of the Monitoring Agency, filed MA No's 315, 534 and 662 of 2018 in CP (IB) 52/9/HDB/2017 against the Directors of the Corporate Debtor, including the Respondent No.1

on being aggrieved by non-cooperation in smooth implementation of the Resolution Plan by the Ex-Directors in approving and signing the financial statements about the F/Y 2014-15 to 2017-18 to handover the updated financial statement to the successful Resolution Applicant, i.e. Respondent No.2.

11. The Adjudicating Authority vide Order dated 19 December 2018, while disposing of the Applications, directed Respondent No. 1 and other Ex-Directors to cooperate with the Appellant and further sign and approve the Corporate Debtor's financial statements about financial years 2014 -15 to 2017-18.

12. After that, Respondent No.1 filed an Application dated 24 December 2018 for modification of the Order dated 19 December 2018 whereby direction was given to the Directors to cooperate with the Appellant and approve and sign the financial statements and other related documents of the Corporate Debtor for the said financial years from 2014-2015 to 2017-18. Respondent No 1 sought relief to release the payment of his salary dues to the tune of ₹20,38,000/- despite completely aware of the Order dated 19 July 2018 that his total claim about outstanding salary dues is finally settled.

13. By filing IA No. 208 of 2018, the Respondent No.1 had sought relief for the highly belated and enhanced claim amount, i.e. ₹ 20,38,300/-, from the Adjudicating Authority that too without any supporting documents to substantiate its claim.

14. Following issues arise for our determination;

Whether the Adjudicating Authority can issue the directions to erstwhile Resolution Professional once the Resolution Plan under Section 31 of the I&B Code 2016 has been approved, and the Resolution Professional has been discharged of his duties?

15. We have heard the arguments of the learned counsel for the parties and perused the record.

16. Learned counsel for the Appellant submits that Respondent No .1 has approached the Adjudicating Authority by concealing material facts by which the impugned Order dated 4 August 2020 emanates. The payment of remuneration payable to Respondent No 1 was put to rest by the Adjudicating Authority by Order dated 19 July 2018 passed in IA No 208 of 2018.

17. The Adjudicating Authority by Order dated 19 July 2018 has decided the Application on merits wherein it is expressly held that Applicant/Respondent No. 1 *"is entitled from 19 September 2017 to 20 October 2017 for a salary but not by way of a claim filed during the CIRP period and further upheld that the rejection of the claim of the Applicant to the extent of ₹8.10 lakhs is sustainable.*

18. Respondent No. 1, despite awareness of the aforesaid Order dated 19 July 2018, which squarely settled the claim, for which Respondent No. 1 was entitled, in utter disregard to the settled principle of Res-Judicata, had approached the Adjudicating Authority for release of alleged outstanding salary dues of ₹ 20,38,300/-. Respondent No. 1 had never challenged the Order dated 19 July 2018 before any authority attained finality.

19. The Learned Counsel for the Appellant further placed reliance on the Hon'ble Supreme Court's judgment in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531: 2019 SCC OnLine SC 1478 at page 616**. In this case, the Hon'ble Supreme Court has held;

*"107. For the same reason, the impugned NCLAT 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 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."*

20. It is further contended that this Tribunal in case of **Standard Chartered Bank v Satish Kumar Gupta, RP of Essar Steel Ltd CA (AT) 242 of 2019** has held;



221. *" In this background, the cases in which the Adjudicating Authority or this Appellate Tribunal could not decide the claim on merit, we have allowed such Appellants to raise the issue before an appropriate forum in terms of Section 60(6) of the 'I&B Code'. The 'Financial Creditors' and the 'Operational Creditors' whose claims have been decided by the Adjudicating Authority or this Appellate Tribunal, such decision being final and is binding on all such 'Financial Creditors' and the 'Operational Creditors' in terms of Section 31 of the 'I&B Code'. Their total claims stand satisfied and, therefore, they cannot avail any remedy under Section 60(6) of the 'I&B Code'. The 'Financial Creditors' in whose favour guarantee were executed as their total claim stands satisfied to the extent of the guarantee, they cannot re-agitate such claim from the Principal Borrower."*

21. The Application filed under Section 9 of the I&B Code, 2016 was admitted by the Adjudicating Authority vide Order dated 18 September 2017. The Resolution Plan approved by the Committee of Creditors with a vote share of 80.66%, further approved by the Adjudicating Authority by Order dated 19 July 2018. Any claim that Respondent No. 1 is raising towards the provision of its services during the CIRP ought to form part of the CIRP costs, treatment of which has also been provided under the Resolution Plan. Therefore, all claims against the Corporate Debtor by any creditor for the past dues of CIRP have been duly considered and settled by the Resolution Plan.

22. Section 31 (1) of the Code in unequivocal terms provides that; the Resolution Plan shall be binding on the Corporate Debtor and its Employees, Members, Creditors, 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.

23. Respondent No.1 herein was admittedly an employee of the Corporate Debtor, and thus the Resolution Plan is binding on him also. Therefore, the claim of Respondent No. 1 having been dealt with as part of the Resolution Plan and the Resolution Plan, in turn, being binding on all stakeholders including Respondent No. 1, there arises no occasion, whatsoever, for any further payments to be made in favour of the Respondent No. 1.

24. Clause 7.6 of the Approved Resolution Plan provides that all claims or the amounts of any liabilities or obligations owed or payable to any actual or potential Operational Creditors of the Corporate Debtor or in connection with any Operational Debt of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed, undisputed, present or future, in relation to any period prior to the completion date or arising on account of the acquisition of the control by the Resolution Applicant over the Corporate Debtor pursuant to the Resolution Plan will be written off full and shall extend permanently extinguished. The Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible and liable in relation thereto.

25. Clause 7.6 (b) further provides that any claims and debts and other dues from the Corporate Debtor in relation to any person for the period prior

to the Completion Date, that is not expressly provided for in this Resolution Plan, including any claim from 3<sup>rd</sup> parties relating to any contract entered into by the Corporate Debtor shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor.

26. In case, Respondent No. 1 is treated as an Operational Creditor, then under section 30 (2) (b) of the Code payment to Operational Creditors under the Plan shall not be less than the amount payable to them in the event of liquidation of the company under Section 53 of the Code.

27. In the present case, as per Clause 7.4 (b) of the Resolution Plan, the liquidation value is payable to the employees other than workmen in the event of liquidation of the Corporate Debtor, according to section 53 of the Code is nil. However, to make the Resolution Plan equitable for employees, a total sum of ₹ 67 lakhs has proposed further for payment to the employees other than workmen, after 3 months from the commencement of the production. It is further specified that all past dues of the employees other than workers stand paid and discharged, and the Resolution Applicant shall have no liability in respect of the same.

28. Given the law laid down by the Hon'ble Supreme Court in the case of Essar steel (supra), it is clear that an approved Resolution Plan is binding on all the stakeholders. The Successful Resolution Applicant acquired the Corporate Debtor on a clean slate and cannot be burdened with undecided claims from a period prior to the CIR process's commencement.

29. It is pertinent to mention that Respondent No. 1's Application IA No 208 of 2018 seeking identical relief was earlier dismissed by Order dated 19 July 2018, which is not considered by the Adjudicating Authority while passing the impugned Order. In the above-said Application, Respondent No. 1 had inter alia sought for release of salary to the tune of ₹ 13,50,000/- against the partial admittance of claim for an amount of ₹ 5,40,000/-. While dismissing the said Application, the Adjudicating Authority upheld the rejection of Respondent No.1's partial claim by the Resolution Professional. Despite such clear adjudication on the issue, Respondent No. 1 once again filed IA No's 47 and 48 of 2019, seeking payment of outstanding salaries and other dues. Respondent No. 1 did not even disclose to the Adjudicating Authority that the 1<sup>st</sup> Application has already been decided seeking similar reliefs.

30. The common Order dated 19 July 2018 contains a rejection of the Appellants claim of salary dues and the Resolution Plan's approval. Respondent No. 1 did not prefer any appeal against the said Order. As a result, the Order attains finality. No other cause of action remains for Respondent No. 1 to raise the same issue again by filing a fresh Application and without any averment about the earlier Application and its Order dated 19.7.2018. This shows the objectionable conduct on the part of Respondent No. 1.

31. The question of remuneration payment to Respondent of 1 was put to rest by the learned Adjudicating Authority whilst common Order dated 19 July 2018 disposing of IA 208 of 2000 wherein it is specifically held that in view of the fact that "the Appellant worked as CEO from 19.9.2017 to 20.10.2017, he is entitled for salary , but not by way of claim filed during the

CIR process period.---- The **rejection of the claim of the Appellant to the extent of ₹ 8.10 lakh is sustainable."**

32. It is essential to mention that the claim of Respondent No. 1 is highly belated. The ultimate result of the impugned Order is effectively considering the claim filed by Respondent No. 1 during the CIR process period. Although CIRP process period claims have been considered and decided upon by the Resolution Professional, further such determination has been upheld by the Adjudicating Authority. It has been over two years since the Corporate Debtor's CIR process concluded by approving the Resolution Plan of Respondent No.2, which has subsequently been given full effect by Respondent No. 2.

33. The timelines prescribed under the Code aim at speedy and time-bound resolution. Thus, the impugned Order of the present nature, which allows a highly belated claim, mainly when the Claimant displays an overtly callous attitude, should be nibbed in the bud. Adjudicating such delayed claims could defeat the Code's purpose and cause unnecessary hurdle in the effective implementation of any Resolution Plan.

34. It is pertinent to mention that this Appellate Tribunal in case of the state of Haryana v Uttam Strips & others Company Appeal (AP) (Ins) No.319 of 2020 while dealing with the similar issue where the State of Haryana did not properly file its claim before the Resolution Professional up to the prescribed time limit has held that since the Appellant failed to submit its claim before the Resolution Professional and the Resolution Plan submitted

by Uttam Strips Private Limited was implemented. Therefore, given the law laid down by the Hon'ble Supreme Court in Essar steel (supra), the successful Resolution Applicant cannot be burdened with past dues after the Resolution Plan's approval and implementation.

35. The Order of the Adjudicating Authority dated 19 July 2018 regarding confirming rejection of the Appellant's claim to the tune of ₹ 8.10 lakhs was passed on merit and has attained finality. Regarding the dues of salary claim of Respondent No. 1 to the tune of ₹ 5.40 lakhs, which was admitted, the same is settled by the terms of the approved Resolution Plan.

36. It is necessary is to point out that Application IA Nos. 47 & 48 of 2019 was filed on 7 January 2019 seeking direction or modification of the Order dated 19 July 2018. Respondent No. 1 has stated that the Resolution Professional and member of the Monitoring Committee of the Sirpur Paper Mills Limited, filed an Application IA No. 662 of 2018 stating that the Respondents are not cooperating in signing the financial statements for the years 2014-15 to 2017-18 (up to 19 July 2018).

37. In reply to the above Application, Respondent No. 1 contended that erstwhile Directors are willing to cooperate with the Petitioner to sign the annual accounts if the Petitioner is ready to pay the legitimate claims of Respondent No. 1, such as salary dues to be paid to him and also to be other incidental expenses such as transport charges etc., as per law. Respondent No. 1 is not in Corporate Debtor's management. Only the Resolution Professional is competent to take any steps per law and cannot blame the

erstwhile Directors for not signing the annual accounts. The erstwhile Directors, including Respondent No. 1, are not in the Corporate Debtor company's management since the financial statements are in the Resolution Professional's custody. The Respondent claims erstwhile directors cannot be blamed for not signing the annual accounts.

38. It is further stated that" *Respondent No. 1 is not the company's executive director as on date and not legally fit to sign the annual accounts as an Executive Director under the Companies Act 2013. **If the Hon'ble Tribunal found that the Respondent No.1 is legally fit to sign the annual accounts the Respondent No.1 is ready to sign the financial statements provided his outstanding salary with full and final account and necessary incidental expenses to be paid to him to attend the meeting to sign the annual accounts and related reports.***"

39. It is also pertinent to mention that when Respondent No. 1 was asked to sign the financial statements from the Financial Year 2014-15 to 2017-18, he did not co-operate clearing of salary dues. The Respondent had earlier raised a claim of salary dues, which was finally settled by the Order dated 19 July 2018. Admitted amount of salary dues has been dealt with Adjudicating Authority in terms of the approved Resolution Plan. Any claim for the CIRP period could have been raised before approval of a Resolution Plan. After the Resolution Plan's approval and implementation, no direction can be issued to the erstwhile Resolution Professional on account of any belated and settled claim. Successful Resolution Applicant cannot be burdened with the claim/dues of the Corporate Debtor.

40. Based on the above discussion, we find that the Adjudicating Authority has erred in issuing directions to the erstwhile Resolution Professional to make payment of the salary to the Appellant.

**ORDER**

Based on the above discussion, we are of the concerned opinion that the Appeal deserves to be allowed, and the impugned Order deserves to be set aside.

The Appeal is allowed. Impugned Order is quashed and set aside. No costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[V. P. Singh]  
Member (Technical)

**NEW DELHI**  
**17<sup>th</sup> MARCH, 2021**

*pks*