

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 964 of 2020

IN THE MATTER OF:

**The Dy. Commissioner of Customs DEEC
(Monitoring Cell)**

...Appellant

Versus

Ms. Vandana Garg

...Respondent

Present:

For Appellant: Ms. Nitya Sharma and Mr. Money Jain, Advocates.

For Respondent:

**ORDER
(Through Virtual Mode)**

10.11.2020: Deputy Commissioner of Customs DEEC (Monitoring Cell) O/o the Commissioner of Customs (Export) New Custom House, Mumbai (Appellant) is aggrieved of rejection of its application for condonation of delay of 1111 days in submitting proof of claim against the Corporate Debtor – ‘M/s Jyoti Structures Ltd.’, to accept and admit the claim of Appellant and also recall the order dated 27th March, 2019 passed in M.A. No. 1129/2019 in CP (IB) 1137/MB/2017 passed by the Adjudicating Authority (National Company Law Tribunal), Court-I, Mumbai Bench on the ground that the Resolution Professional failed to check/consider Book of Accounts vis a vis Appellant while making the Resolution Plan and the Adjudicating Authority failed to appreciate the important issue.

2. After hearing learned counsel for the Appellant, we find that the Resolution Plan in the Corporate Insolvency Resolution Process against the Corporate

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Debtor has been approved by the Committee of Creditors as also by the Adjudicating Authority. That being the admitted position, Section 31 (1) of the I&B Code would come into play which provides that the Resolution Plan approved by the Committee of Creditors shall be binding on all stakeholders. After approval of the Resolution Plan by the Adjudicating Authority, the Successful Resolution Applicant could not be allowed to be faced with claims filed or admitted after the Resolution Plan was submitted by such Successful Resolution Applicant. The Successful Resolution Applicant, before submission of the Prospective Resolution Plan is entitled to know the liability of the Corporate Debtor so that he can tailor his Prospective Resolution Plan accordingly and make provision for satisfaction of the claims and making payments in terms of the approved Resolution Plan. The dictum of Hon'ble Apex Court in para 67 of the judgment rendered in **“Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.”, Civil Appeal No. 8766-67 of 2019, reported in MANU/SC/1577/19** is relevant in this regard. Relevant portion thereof is reproduced hereinbelow:

“67. For the same reason, the impugned NCLAT judgment 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 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, the NCLAT judgment must also be set aside on this count."

3. In the instant case it is not disputed that the claim has been filed by the Appellant not only at a highly belated stage but also after approval of the Resolution Plan. In these circumstances, the Adjudicating Authority was right in rejecting the application as being non maintainable.

4. We find no legal infirmity in the impugned order which has to be affirmed. The appeal is accordingly dismissed. However, there shall be no orders as to costs.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Shreesha Merla]
Member (Technical)**

am/gc