NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 684 of 2025

[Arising out of the Impugned Order dated 20.02.2025 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench, Court-III in IB- 741 (ND)/2021]

In the matter of:

Joint Commissioner of State Taxes & Excise (SEZ)
Parwanoo, Himachal Pradesh
O/o Joint Commissioner of State Taxes & Excise,
Plot No. 34-B, Sector-2, Near LIC Office,
Parwanoo Dist. Solan, Himachal Pradesh- 173220

...Appellant

Versus

1. **M/s Radiant Castings Private Limited**
   288, EPIP Road Jharmajri, Chandigarh,
   Baddi, Solan- 173205, Himachal Pradesh
   India.
   Also at:
   1/22, Third Floor Seat No.35,
   Asaf Ali Road, New Delhi,
   Delhi, India- 110002

   ...Respondent No.1

2. **Mr. Vasudeo Agarwal**
   S/o Late Sh. Din Dayal Agarwal, age about 57
   Resolution Professional
   IBBI/IPA-001/IP-P00186/2017-18/10365
   The Indian Institute of Insolvency Professional of ICAI
   5 Fancy Lane 3rd Floor,
   Kolkata, Westbengal, 700001
   Email:- vdainfo@gmail.com

   .... Respondent No. 2

Present:

For Appellant : Ms. Mandakini Singh and Ms. Ashima Mandla, Advocates.

For Respondent : Mr. Vikram Singh Baid, Advocate for Respondent No.1.

Mr. Adarsh Tripathi, Advocate for Respondent No.2.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 20.02.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-III) in IB-741(ND)/2021. By the impugned order, the Adjudicating Authority has rejected I.A. No. 5488 of 2023 filed by the Appellant seeking recall of the order dated 30.08.2023 passed by the Adjudicating Authority approving the resolution plan of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-State Taxes & Excise Department (Government of Himachal Pradesh).

2. Capturing the factual matrix, we notice that the Corporate Debtor-M/s Radiant Castings Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process (**"CIRP"** in short) following which Interim Resolution Professional (**"IRP"** in short) was appointed. The Appellant-Joint Commissioner of State Taxes & Excise, Himachal submitted a claim of Rs 2.61 Cr. before the Resolution Professional (**"RP"** in short) in Form-C along with proof of claim. The resolution plan of the Corporate Debtor had been approved by the Committee of Creditors (**"CoC"** in short) in the 16th meeting held on 30.05.2023 with 70.02% voting share following which the resolution plan had been approved by the Adjudicating Authority on 30.08.2023. The total admitted claim of Operational Creditors by the RP in the plan was Rs 33,53,21,116/- of which an amount of Rs 6,45,373/-

was provided under the head of Government Dues in the approved resolution plan including Rs 50,309/- to the Appellant under resolution plan. This amount of Rs 50,309/- was received by the Appellant on 09.09.2023 as part of the implementation of the resolution plan by the Successful Resolution Applicant (**"SRA"** in short).

3. Making his submissions, the Ld. Counsel for the Appellant submitted that the resolution plan approved by the CoC was unjust and inequitable. It was contended that the total admitted Government Dues as per resolution plan was Rs. 33,53,21,166/-. However, the allocation in the plan for Government Dues was only Rs 6,45,373/- which was less than 1% of the total claim under the Government Due. On the other hand, the resolution plan admitted 100% amount for the Secured Financial Creditors. Furthermore, the Appellant had only been allotted Rs 50,309/- as against their admitted claim of Rs 2,61,39,552/- without factorising the additional demand of Rs 13.60 Cr. on account of tax arrears. Emphasis was laid on the fact that claim for priority of State Debt rested on the well-recognised principle that the State is entitled to revenue to use the proceeds to discharge its sovereign functions. It was submitted that aggrieved with the iniquitous plan, the Appellant had preferred IA No. 5488 of 2023 before the Adjudicating Authority with a prayer to recall the order dated 30.08.2023 which order approved the resolution plan. Besides seeking recall of the resolution plan which had been approved by the Adjudicating Authority, prayer was also made in the said I.A. to redistribute the proceeds in a fair and equitable manner considering the total claim of the Appellant including Rs 13.60 Cr. However, the Adjudicating Authority on 20.02.2025 erroneously dismissed IA No. 5488 of

2023 by taking a misconstrued view that the Appellant was attempting to seek a review of the order dated 30.08.2023 by which the plan was approved.

4. Refuting the contentions raised by the Appellant, submission was made on behalf of Respondent No.1 and Respondent No.2-erstwhile RP by their respective Ld. Counsels. Since their contentions largely overlap, we propose to club them together. Repelling the arguments raised by the Appellant, submission was pressed that it was misconceived on the part of the Appellant to contend that their claims had not been considered. The Appellant had only filed claims of Rs 2.61 Cr. which claim was duly considered and admitted by the RP. The Appellant had never actually filed their claims of Rs 13.60 Cr. regarding alleged tax arrears. Further, the Appellant was all along aware of its status as Operational Creditor and never objected for not having been treated as Secured Creditor. The present recall application was therefore only a disguise to restart the CIRP having failed to file their claims on time. It was asserted that the Adjudicating Authority had rightly relied on the judgment of the Hon'ble Supreme Court in ***Ebix Singapore Pvt. Ltd. Vs CoC of Educomp Solutions Ltd.*** in ***Civil Appeal No. 3224 of 2020*** which held that once a resolution plan is approved, the same becomes binding on all stakeholders unless the same is challenged. In the present case, the resolution plan had not been challenged by the Appellant. It was also submitted that the amount of claim allocated and disbursed to the Appellant was in accord with the provisions of IBC. Allowing their belated claim to be admitted at this stage will create hurdles in the implementation of the plan and frustrate the objectives of the IBC.

5. It was also pointed out that for the Adjudicating Authority to recall its order, the Appellant had to satisfy that the order sought to be recalled was without jurisdiction; that the Appellant had not been served with notice of the proceedings in which order under recall has been passed and that the order had been obtained by misrepresentation of facts or by playing fraud upon the Court resulting in gross failure of justice. It was contended that none of these three criteria set out for recall was ever pleaded by the Appellant.

6. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

7. It is the case of the Appellant that it had sent two communications dated 24.09.2022 and 28.10.2022 to the RP informing that the Corporate Debtor owed tax arrears of Rs 13.60 Cr. under HPGST/CGST Act, 2017. However, since this claim did not find its due place in the resolution plan, this was a clear shortcoming in the resolution plan in terms of Section 30(2) of the IBC coupled with Regulations 37 and 38 of the CIRP Regulations, 2016. It was, therefore, a fit case for recall of the order approving the plan. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in ***Greater NOIDA Industrial Development Authority Vs Prabhjit Singh Soni 2024 SCC OnLine SC 122*** to contend that even after a resolution plan is approved by the Adjudicating Authority, a recall application can be filed which can be allowed in the interest of justice. Attention was also adverted to the judgment of the Hon'ble Supreme Court in ***Dena Bank Vs Bhukhabhai Prabhudas Parekh (2000) 5 SCC 694*** in which it was stated that the principle of priority of government debts is founded on the rule of necessity and of public policy. The State is entitled to raise

money since in the absence of adequate revenue received by the State it would not be able to discharge its sovereign functions. Since the distribution/allocation of funds under the resolution plan qua Government Dues was unjust, the resolution plan did not comply with the requirements of Section 30(2) of the IBC and hence deserves to be recalled.

8. It is the rival contention of the Respondents that the resolution plan submitted by the SRA had been approved by the CoC with 70.02% voting and had been subsequently approved by the Adjudicating Authority on 30.08.2023 which included the admitted claims of the Appellant. The Appellant had only filed claims for Rs 2.61 Cr. and no further claims was ever filed by the Appellant. The Appellant had never raised the issue of whether the GST Department is a Secured Creditor or not and this contention has been raised only after the plan has been approved. Moreover, the plan has already been implemented. The recall application has been filed with the ulterior motive of restarting the CIRP so that GST Department could include its belated claims. The Adjudicating Authority has rightly relied on the ***Ebix judgment supra*** to hold that once a resolution plan is approved, the same is binding on all the stakeholders unless the same is challenged which was not done by the Appellant.

9. At this stage it may be useful to notice how the Adjudicating Authority treated the recall application filed by the Appellant. The Adjudicating Authority in the impugned order held that the prayers in the recall application cannot be allowed as it would amount to review of the orders passed on 30.08.2023 exercise of which review powers are beyond their jurisdiction. The Adjudicating Authority also took the view that the order of 30.08.2023 was passed after considering the

fact that the resolution plan of the SRA had been approved by the CoC by majority voting and that the resolution plan met the requirements of being a viable and feasible plan for revival of the Corporate Debtor and had become binding on all stakeholders including the Appellant. The Adjudicating Authority had also held that the implementation of the resolution plan was nearing completion and entertaining the recall application would derail/delay the ongoing proceedings of the Corporate Debtor. The Adjudicating Authority took the view that if the recall application was allowed it would lead to multiple other applications for filing of claims which would delay/derail the CIRP proceedings and put hurdles on the SRA in executing the resolution plan.

10. Coming to our analysis and findings in the present case, we notice that after the Corporate Debtor was admitted into the rigours of CIRP, the RP had acted in consonance with the provisions of IBC and CIRP Regulations in receiving, collating and verifying the claims submitted to him. There are no manifest signs of any irregularity in the process followed by the RP in inviting claims. Appellant Department had submitted a claim amounting Rs. 2.61 Cr which was duly considered and admitted by the RP. The Appellant after filing the claim of Rs. 2.61 Cr had thereafter clearly slept over in filing their claims in respect of Rs.13.61 Cr except for purportedly sending two communications to the RP without citing any cogent ground or plausible justification for delay in filing these additional claims.

11. It is therefore abundantly clear that though substantial time had elapsed the Appellant had clearly failed to exercise requisite diligence in filing their alleged additional claims within the stipulated time-frame. The Appellant had

clearly dropped their guard in filing their additional claims within time. When by their own conduct or inaction, the Appellant had not filed their claim, they cannot be allowed to assert their remedy afterwards on grounds of equity. The Appellant cannot be seen to take advantage of their own inaction and laxity of not filing their claims in a timely manner. It has been rightly held by the Adjudicating Authority that if any such benefit is given to the Appellant it would in turn derail the insolvency resolution process and cause prejudice to the interest of the other creditors/stakeholders beside jeopardizing the commercial and financial viability of the plan. Neither the statutory provisions nor the judicial precedents have dispensed with the filing of such claims on time. If belated claims are allowed for any specific party, there is all likelihood from others to also seek reopening of the claim window. In these circumstances, we are inclined to agree with the Adjudicating Authority that allowing the belated claims of the Appellant will open flood gates of the multiple such claims. The Adjudicating Authority has not committed any error in the given facts and circumstances in not acceding to the request of the Appellant for admission of their belated claims. In the absence of credible and genuine grounds extending the delay, it does not commend us to overturn the findings of Adjudicating Authority.

12. It is well settled law as laid down by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531*** and in ***RP Infrastructure Limited vs. Mukul Kumar & Anr.*** **(2023) 10 SCC 718** wherein the Hon'ble Supreme Court held that belated claims should not be entertained, as they could lead to indefinite delays in the CIRP

process, thereby affecting the certainty and effectiveness of resolution. Keeping in view the fact that the objective and intent of the IBC is time-bound resolution of the Corporate Debtor, if new and additional claims are allowed to pop up every now and then and such claims are entertained even after the CoC has approved the resolution plan, the CIRP would be put to jeopardy and the intent of IBC would stand frustrated. The essence of the fresh slate principle has been enunciated by the Hon'ble Supreme Court in their judgement in ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657***. Hence, in light of the well-established legal principles and the factual matrix of the present case, we are of the considered view that the Adjudicating Authority had rightly disallowed the additional claim after the CoC had approved the plan as any such indulgence shown would have carried the risk of compromising the integrity of the CIRP process and the finality of approved Resolution Plan.

13. Coming to the other limb of argument taken by the Appellant that the impugned order of 20.02.2025 should be set aside since the Adjudicating Authority did not appreciate the fact that the Appellant had first charge over the property of the Corporate Debtor. It was therefore contended by the Appellant that since their claims related to Government Dues, it should have been considered as top most priority and secured completely in the plan. It was also pointed out that the principle of priority of Government Debts is premised on the rule of necessity and of public policy and hence the Appellant was entitled to claim their outstanding dues on priority basis being Secured Creditor. In support of their contention, the Appellant has placed reliance on the judgment of the

Hon'ble Supreme Court in the case of ***State Tax Officer vs. Rainbow Papers Limited in Civil Appeal No. 1661 of 2020 judgement*** wherein the Hon'ble Supreme Court had specifically held that the State is a Secured Creditor under SARFAESI Act.

14. Per contra, it was pointed out by the Respondents that the ratio of ***Rainbow Papers judgment*** is not applicable in the present case as that judgment was passed in the context of the Gujarat Value Added Tax (GVAT) which contained an overriding provision over other statutes. In the present case, there is no such overriding effect of the HPGST Act over IBC. In such circumstances, the claims of the GST Department would qualify as "Government Dues" under Section 53(1)(e)(i) of the IBC. It was also submitted that in the ***Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd. & Ors***. in ***C.A. No. 7976 of 2019***, the Hon'ble Supreme held that State cannot be treated as a Secured Creditor and any distribution of State Dues has to be done under Section 53(1)(f) of the IBC which places the "Government Dues" below in the waterfall mechanism.

15. Contention has been raised by the Appellant that the ratio of the ***Paschimanchal judgement supra*** would not apply in the present case since Section 82 of the CGST/HPGST Act states that any amount payable to the government shall be a first charge on the property of any person. It was also stated that ***Paschimanchal judgment*** is not applicable in the present case, since in that case the issue was of a contract between parties for supply of electricity and did not relate to state or government taxes.

16. We have no quarrel with the fact that statutory dues and obligations are required to be met in insolvency proceedings as laid down in the ***Rainbow Papers***. At the very outset, however, we must note that in a subsequent judgment of the Hon'ble Supreme Court in ***Paschimanchal supra***, it has been held that the ratio of the ***Rainbow Papers*** has to be confined to the facts of that case. Coming to our findings in the present case, we notice that the present Appellant is governed by the provisions of HPGST/CGST Act while in ***Rainbow Papers,*** the Operational Creditor was held to be a secured creditor on the basis of relevant statutory provisions of GVAT. Unlike the provisions of the GVAT Act, Section 82 of the CGST Act gives precedence to the provisions of the IBC as it specifically provides for exclusion of IBC. Thus, there is no valid basis for the Appellant to make similar claim under the HPGST/CGST Act to be a secured Operational Creditor as under the GVAT. The ***Rainbow Papers judgment*** does not come to the aid of the Appellant in the present case. We are, therefore, not inclined to agree with the argument canvassed by the Appellant on the applicability of the ***Rainbow Papers judgement supra*** in the present factual matrix. Furthermore, disbursal under the present resolution plan has been implemented in terms of Section 53 of the IBC. The Adjudicating Authority has also considered the fact that the RP had submitted that the total liquidation value of the Corporate Debtor is Rs. 42,13,68,412/- and that there was no disagreement that the amount proposed to the Appellant in the Plan exceeds the entitlement of the Appellant being the Operational Creditor specified under Section 53 of the IBC. That being so, the Appellant cannot complain about the treatment meted out to them in the resolution plan since they had received more

than the minimum entitlement in terms of liquidation value. Therefore, there is no valid ground for complaint and no interference is called for in the approved resolution plan.

17. It was also submitted that the recall of judgment can be exercised only when there is any procedural error committed in delivering the earlier judgment. The Appellant has to satisfy that the order sought to be recalled was without jurisdiction; or that the Appellant had not been served with notice of the proceedings in which order under recall has been passed and/or that the order had been obtained by misrepresentation of facts or by playing fraud upon the Court resulting in gross failure of justice. None of these three criteria set out for recall were pleaded by the Appellant before the Adjudicating Authority. The power to recall a judgment cannot be exercised when none of the aforesaid grounds required for recall were ever pleaded by the Appellant. It is a well-established principle that once the Resolution Plan has been approved by the CoC, no new claims including statutory dues can be allowed. Once the plan is approved by CoC, it is binding on all stakeholders, including government bodies and statutory authorities, in accordance with Section 31 of the IBC. In the present case, when the resolution plan had been approved by the CoC with 70.02% voting, the Adjudicating Authority had no option to traverse beyond the commercial wisdom of the CoC. Having noticed the statutory framework and the purpose and objective of the IBC, we are of the considered view that the approval of a resolution plan is statutorily recognized as a closure to all claims that persons or entities may have against a corporate Debtor. There is a concomitant need to impart finality to the resolution process by protecting a successful

resolution applicant from unnecessary litigation arising out of undecided claims. In the facts of the present case, if the order is allowed to be recalled, and belated claims of the Appellant is allowed, it would amount to re-opening of the resolution plan which would not only be wholly impermissible but would also amount to overriding the pronouncements of the Hon'ble Apex Court in a catena of judgements. Hence, rejection of the additional claim by the RP and its affirmation by the Adjudicating Authority was a measure well within the legal framework of the IBC. The resolution plan already stands implemented and therefore cannot be reversed when the Appellant has failed to make out any ground as to how the resolution plan was non-compliant of Section 30(2) of IBC. The Resolution Plan also met the requirements of Regulations 37 and 38 of the CIRP Regulations, 2016. Hence, the Adjudicating Authority correctly held that the I.A. 5488 of 2023 is a review in disguise of recall.

18. In view of the foregoing discussion, we are of the considered view that the Appeal is devoid of merit. The impugned order does not warrant any interference. The Appeal is dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi

Date: 09.07.2025

Abdul/Harleen