Clarification on Exten-

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SEBI: Extensions of the procedural relaxations applicable to rights issue. 1.

SEBI :Amendments to Investor Grievance Redressal System and Arbitration Mechanism at stock exchanges. 3.

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Securities and Exchange Board of India

Securities and Exchange Board of India ("**SEBI**") in exercise of powers conferred by Section 11(1) read with Section 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 299 and 300 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, ("**SEBI ICDR Regulations, 2018**") issued a *Circular dated October 01, 2021* ("**Circular October 2021**") further extending the procedural relaxations applicable to rights issue opening upto March 31, 2022.

Circular October 2021 further amended SEBI *Circular dated May 06, 2020* bearing No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 ("**Circular May 2020**"). As per Regulation 76 of the SEBI ICDR Regulations, 2018, an application for rights issue can be made only through Application Supported by Blocked Amount ("**ASBA**") facility. But keeping in mind the hardships faced by the issuers due to COVID-19 Pandemic and in order to make sure that all the eligible shareholders are able to apply to the rights issue, SEBI in May 2020, had directed that the issuers along with lead manager(s) to the issue, the registrar, and other recognized intermediaries institute an optional mechanism to accept the applications of the shareholders subject to ensuring that no third party payments shall be allowed in respect of any application. This relaxation has further been extended and is now applicable for the rights issue opening upto March 31, 2022.

The aforementioned relaxation will only be available, if the issuer along with the lead manager will comply with the following requirements, mentioned at point (v) of Circular May 2020 and at point 5 of SEBI *Circular dated April 22, 2021*("**Circular April 2021**") bearing No.SEBI/HO/CFD/DIL2/CIR/P/2021/552:

1. The above mechanism will only be an addition and not substitution to the existing process;
2. It should be transparent, robust and have adequate checks and balances aiming to facilitate the subscription in an efficient manner without imposing any additional costs on the investors;
3. A Frequently Asked Questions ("**FAQ**"), online helpdesk has to be created by the issuer company along with the lead manager dedicated to guide the investors with the application process;

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4. The issuer along with lead manager(s), registrar, and other recognized intermediaries will be responsible for all investor complaints;
5. In case of any un-allotted or partially allotted applications refund should be made on or before T+1 day; and

   The registrar to the issue must ensure that the data with respect to refund instructions is free of errors to avoid any technical rejections.

With respect to mechanism and compliance requirement at point (iv) and point (v) of Circular May 2020 and paragraph No. 5 of Circular April 2021, the issuer along with Lead Manager(s), Registrar and other recognized intermediaries as incorporated in the mechanism) shall also ensure that the issuer company shall conduct a Vulnerability Test for optional mechanism (non-cash mode only) provided to accept the applications in rights issue (facility provided by Registrar and Share Transfer Agents (**“RTAs”**), from an independent IT Auditor and submit the report to Stock Exchanges (s).

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Securities and Exchange Board of India

In exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") read with Section 9(2)(n), SEBI Act, 1992 and Section 10 of Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India ("**SEBI**") has issued *Circular dated October 22, 2021* ("**Circular, 2021**") which shall become effective from January 01, 2022, amending two (2) SEBI circulars dated July 11, 2017 ("**Circular, 2017**") and March 14, 2018 ("**Circular, 2018**") respectively, pertaining to Investor Grievance Redressal System and Arbitration Mechanism at the Stock Exchanges, with the objective to further enhance the effectiveness of the same.

1. Amendments to Circular, 2017

a. Clause 2.A(v) provided for empanelment of arbitrators and segregation of arbitration and appellate arbitration panel.

b. It has now been clarified vide Circular, 2021 with regards to Clause 2.A(v) of Circular, 2017 that forming of exclusive panel for appellate arbitration is not required and members can serve both the panels, that is, the arbitration panel and appellate arbitration panel. However, the exchanges have to ensure that in case the same matter goes in appeal, the members of arbitration panel do not constitute the appellate arbitration panel.

c. Clause 2.A(v) which provides for place of arbitration / appellate arbitration now states that if the award amount exceeds Rs. 50,00,000/- (Rupees Fifty Lakhs Only) the next level of proceedings (arbitration or appellate arbitration), at the choice of the parties involved, may take place at the nearest metro city. However, the additional statutory cost for arbitration, if any, has to be borne by the party desirous of shifting the place of arbitration.

d. Clause 2.A (xi) (iii) of Circular, 2017 provides for threshold limit for interim relief paid out of Investor Protection Fund ("**IPF**") in Stock Exchanges now states that in case the award is in favour of the client and the member opts for arbitration wherein the claim value admissible to the client is not more than Rs. 20,00,000/- (Rupees Twenty Lakhs Only) then the stock exchange should undertake the following steps:

- In case the GRC order is in favour of the client, then 50% of the admissible claim value or Rs. 2,00,000/-(Rupees Two Lakhs Only), whichever is less, shall be released to the client from IPF of the Stock

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Exchange.

- In case the arbitration award is in favour of the client and the member opts for appellate arbitration, then a positive difference of, 50% of the amount mentioned in the arbitration award or Rs. 3,00,000/- (Rupees Three Lakhs Only), whichever is less, and the amount already released to the client at clause (a) above, shall be released to the client from IPF of the Stock Exchange.
- In case the appellate arbitration award is in favour of the client and the member opts for making an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the appellate arbitration award, then a positive difference of, 75% of the amount mentioned in the appellate arbitration award or Rs. 5,00,000/-(Rupees Five Lakhs Only), whichever is less, and the amount already released to the client at clause (a) and (b) above, shall be released to the client from IPF of the Stock Exchange.
- Total amount released to the client through the facility of interim relief from IPF in terms of this Circular shall not exceed Rs. 10,00,000/- (Rupees Ten Lakhs Only) in a financial year.

2. Amendments to Circular, 2018

Adding further to Clause 2 (ii) of Circular, 2018 which speaks about speeding up of the grievance redressal mechanism, SEBI vide Circular 2021 states that the additional fees charged from three (3) trading members for filing the claim beyond the prescribed timeline, if any, will now be deposited in the IPF of the respective stock exchange.

SEBI has advised all the stock exchanges to make necessary amendments to the relevant bye-laws, rules and regulations and accordingly, communicate the status of the implementation of the provisions of Circular, 2021 through Monthly Development Report to SEBI.

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Securities and Exchange Board of India

With the aim to safeguard the interests of investors with respect to securities, to promote development in the area of securities market as well as to regulate the same, Securities and Exchange Board of India ("**SEBI**") has issued *Circular dated October 18, 2021*("**Circular**") in accordance with the powers bestowed under Section 11 (1) of the Securities Exchange Board of India Act, 1992 read with Regulation 101 of the SEBI (Listing Obligations and Disclosure Requirements), 2015.

Clause 23 of Table F in Schedule 1 read along with section 56(2) and Section 56 (4)(c) of the Companies Act 2013 ("**CA, 2013**") put forth the guidelines with respect to transmission of securities to joint holder(s). Owing to counter claim or any other form of disputes raised by the legal representative of one of the deceased holder, the Registrar and Share Transfer Agents ("**RTAs**") have not effected transmission of securities to surviving joint holder(s).

Therefore, through this Circular, it is recommended that RTAs must comply with the provisions of Section 56(2) and Section 56(4)(c) of CA, 2013 and transmit the securities upon the demise of one or more joint holder(s) to the surviving joint holder(s), provided that there is nothing mentioned in the Articles of Association of the company providing for anything contrary to the same.

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CASE SUMMARY

Case Name : ***Civil Appeal 7235 of 2009 in the matter of Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Limited and Ors.***

Court Name : **Supreme Court of India**

Order Dated : **October 05, 2021**

Facts of the Case:

1. The Appellant i.e. Prem Cottex, has a business of manufacturing cotton yarn in Panipat, Haryana. Earlier the Appellant had a Large Supply ("**L.S.**") connection of 404.517 KW with a Contract Demand ("**CD**") of 449 KVA which was extended to L.S. connection of 765 KW and CD of 850 KVA on August 03, 2006. Subsequently, after three (3) years of the grant of such extension, the Appellant was served with a memo dated September 11, 2009, wherein the Sub Divisional Officer (OP), Uttar Haryana Bijli Vitran Nigam Limited i.e., the Respondent No.3 claimed that the multiply factor (MF) was wrongly recorded as five (5) instead of ten (10) for the period from August, 2006 to August, 2009 which resulted in short billing to the tune of Rs.1,35,06,585/- (Rupees One Crore Thirty-Five Lakh Six Thousand Five Hundred and Eighty-Five only) ("**Demand Amount**").

2. Aggrieved by the said notice, the Appellant filed a consumer complaint before the National Consumer Disputes Redressal Commission ("**National Commission**"), wherein the Appellant contended that the Demand Amount claimed by the Respondent No.3 is the outcome of a glaring mistake and gross negligence on their part and that under Section 56 of the Electricity Act, 2003 ("**Act**"), no amount due from a customer is recoverable after a period of two (2) years from the date on which it first became due. Vide its Order dated October 01, 2009 ("**Impugned Order**"), the National Commission dismissed the complaint stating that it was a case of "*escaped assessment*" and not "*deficiency in service*". Aggrieved by the said Impugned Order, the Appellant filed an appeal before the Hon'ble Supreme Court.

3. The Hon'ble Supreme Court while ordering notice in the above appeal, granted interim stay of the Impugned Order on November 13, 2009. But,

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consequently due to an application filed on behalf of the respondents for vacating the interim order, the Hon'ble Supreme Court modified the stay on August 19, 2014 and directed the Appellant to pay 50% (fifty percent) of the Demand Amount within six (6) weeks to Uttar Haryana Bijli Vitran Nigam Limited i.e. Respondent No. 1, on a condition that in case the Appellant succeeded with this appeal, the said amount shall be refunded with interest @ 9% per annum.

Order of the Hon'ble Supreme Court:

1. The Hon'ble Supreme Court vide its Order dated October 05, 2021 held that *"**the National Commission, in the impugned order correctly points out that it is a case of 'escaped assessment' and not 'deficiency in service'**"* by stating that the raising of an additional demand in the form of '*short assessment notice*' due to the multiply factor being wrongly mentioned in the bill, cannot amount to '*deficiency in service'* because if a licensee discovers during the course of audit or otherwise that a consumer has been short billed, the licensee is entitled to raise a demand and since the Appellant did not dispute the correctness of the claim made by the licensee, the consumer cannot claim that there was any deficiency.

2. The second aspect which was decided by the Hon'ble Supreme Court was the impact of sub-section (1) on sub-section (2) of Section 56 of the Act which has been reproduced below for ready reference:

> ***"56. Disconnection of supply in default of payment.***
> *(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

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Provided that the supply of electricity shall not be cut off if such person deposits, under protest,
(a) an amount equal to the sum claimed from him, or
(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The Hon'ble Supreme Court held that Section 56(1) of the Act only deals with the negligence on the part of a person to pay any charge for electricity and does not deal with negligence on part of any licensee. Therefore, the negligence on the part of the licensee which led to short billing in this appeal and the rectification of the same after the mistake was detected is not covered by Section 56(1) of the Act.

Further, the Appellant had relied on Section 56(2) of the Act, which stated that no amount due from a customer is recoverable after a period of two (2) years from the date on which it became first due as enumerated by the Hon'ble Supreme Court in the matter of ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited and Anr. vs. Rahamatullah Khan alias Rahamjulla (2020) 4 SCC 650***. Denying the applicability of the same in the instant matter, the Hon'ble Supreme Court held that the claim of licensee after the detection of their mistake may not fall within the mischief, namely, *" no sum due from any consumer under this Section"*, appearing in Section 56(2) of the Act, and held as under:

*"26. The matter can be examined from another angle as well. Subsection (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". **The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity.** Subsection 2 of 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to*

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recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence, the decision in ***Rahamatullah Khan*** *and Section 56(2) will not go to the rescue of the appellant.*

3. Hence, the Hon'ble Supreme Court dismissed the appeal and held that "***the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission.*** In view of the same, the Appellant was directed to pay the balance Demand Amount within eight (8) weeks of time since it had already paid 50% of the Demand Amount pursuant to the interim order passed by the Hon'ble Supreme Court on August 19, 2014.

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Case Summary

Case Name : ***Company Appeal (AT) (Insolvency) - 238 of 2020 in the matter of Vidyasagar Prasad Vs. UCO Bank and Anr.***

Court Name : **National Company Law Appellate Tribunal ("NCLAT"/"Tribunal")**

Order dated : **October 04, 2021**

Sections cited : **Section 61 of Insolvency & Bankruptcy Code, 2016 ("IBC, 2016"); Section 7 of IBC, 2016 Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act, 2002"); Section 4 to Section 20 of Limitation Act, 1963 ("Limitation Act, 1963"); Section 18 of Limitation Act, 1963; Section 25(3) of Indian Contract Act, 1872**

Facts of the Case:

1. The present appeal has been filed by Mr. Vidaysagar Prasad ("**Appellant**" / "**Suspended Director**") of Kaizen Power Limited ("**Respondent No.2**" / "**Corporate Debtor**") under Section 61 of IBC, 2016 against the Impugned Order dated December 13, 2019 ("**Impugned Order**") passed by National Company Law Tribunal, Kolkata Bench ("**NCLT**") in CP No. 254/KB/2019.
2. Corporate Debtor had availed credit facilities in the form of term loan, foreign letter of credit with bank guarantee facilities from UCO Bank ("**Respondent No. 1**" /"**Financial Creditor**") in year 2010. Subsequently, after securing the said debt by execution of various documents, the Corporate Debtor availed another term loan facility from the Financial Creditor in year 2012. But due to defaults in making timely payments of interest and principal amount as agreed, the account of Corporate Debtor was declared as a Non-Performing Asset ("**NPA**") on November 05, 2014.
3. On such classification of Corporate Debtor's account as an NPA, the Financial Creditor issued a notice of recall on November 19, 2014 under Section 13(2) of SARFAESI Act, 2002 demanding repayment of the entire loan amount along with interest from the Corporate Debtor and its guarantor. Thereafter, the Financial Creditor then filed an application before the Debt Recovery Tribunal ("**DRT**") in Mumbai, but no material orders were passed in those proceedings.
4. Further, during the pendency of the proceedings of the SARFAESI Act, 2002 the Financial Creditor filed a petition under Section 7 of the IBC, 2016

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(“**Petition**”) before Hon’ble NCLT on February 13, 2019.

5. The Hon’ble NCLT passed the Impugned Order by relying upon the balance sheet of the Corporate Debtor for the year ending March 31, 2017 and held that the Petition was not barred by limitation thus admitting the appeal under Section 7 of the Code.

6. The Appellant’s contentions can be broadly classified into three categories:

a. **No foundation laid in Form-1**: The party who is seeking exemption under Section 4 to Section 20 of Limitation Act, 1963 must provide factual foundation by referring to judgments of Hon’ble Supreme Court in ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium (2020) 15 SCC 1; Dena Bank (now Bank of Baroda) v. C.Shivakumar Reddy & Anr. 2021 SCC Online 543 (“Dena Bank Case”).*** The Appellant also contended that neither the NCLT nor this Tribunal can consider the extension of period of limitation in the absence of the necessary pleadings. Thus, in absence of anything in writing or in pleadings or any other factual foundation for exemption under the Limitation Act, 1963 an application filed more than three (3) years after the date of default ought to be rejected as being barred by limitation.

b. **No unequivocal acknowledgement and entries in the balance sheet with caveats:** The Appellant referring to judgment of Hon’ble Supreme Court in ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal 2021 (6) SCC 366(“ARCIL Case”),*** following points are to be noted:

- Necessary pleading for acknowledgement must be made by Financial Creditor seeking exemption under Section 18 of Limitation Act, 1963;
- Necessary amendments need to be made to consider the arguments about extension of limitation;
- Every entry in balance sheet of a company does not amount to an acknowledgement and whether such entry amounts to an acknowledgement depends on each case; and
- The acknowledgement has to be made unqualified and unequivocal. Thus, the only acknowledgement relied upon by the Financial Creditor was one allegedly in the balance sheet of Corporate Debtor have for the year ending March 31, 2017 and the said balance sheet would not extend the limitation period because there is no explicit, unequivocal acknowledgement.

c. **Section 25(3) of Contract Act, 1872 not applicable**: The Appellant contended that provisions of Section 25(3) of Contract Act, 1872 cannot be applied to proceedings under the IBC, 2016.

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7. The Financial Creditor contented that an acknowledgement in books of account is admissible in law to extend the period of limitation under Section 18 of Limitation Act, 1963. Reference was drawn to decisions of Hon'ble Supreme Court in ***Jignesh Shah v. Union of India (2019) 10 SCC 750***. By referring to judgment of Hon'ble Supreme Court in ***Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corporation of India Limited (1971) 1 SCC 67 ("Lakshmirattan Case")***, the Financial Creditor submitted that vide letter dated June 07, 2016 when the Corporate Debtor has given One Time Settlement proposal, there is an acknowledgement of subsisting liability of the Corporate Debtor.

Order of the Hon'ble Tribunal:

1. By relying upon ratio laid down in Dena Bank Case, the Hon'ble NCLAT held that an application filed under Section 7 of IBC, 2016 would not be barred by limitation, on the ground that it has been filed beyond a period of three (3) years from the date of classification of a loan account of the Corporate Debtor as NPA if there were an acknowledgement of the debt by the Corporate Debtor before the expiry of the period of limitation of three (3) years, in which case the period of limitation would get extended by a further period of three (3) years.
2. It was held further that non- furnishing of information by the Financial Creditor at the time of filing an application under Section 7 of IBC, 2016 need not necessarily require in dismissal of the application. Instead, an opportunity can be provided to the Financial Creditor till the admission or rejection of petition to provide any additional information required for the satisfaction of the NCLT with respect to the occurrence of the default.
3. Therefore, the NCLT was of the view that the balance sheet that has been brought on record will be taken into consideration while deciding the question of limitation and default on the part of the Corporate Debtor. The said documents cannot be ignored simply on the premise that they were not pleaded in the application filed in Form-1 for the initiation of the corporate insolvency process. It also placed reliance upon Hon'ble Supreme Courts' decision in ARCIL Case wherein it is settled that entries in books of accounts and / or balance sheets of a corporate debtor would amount to an acknowledgement under Section 18 of Limitation Act, 1963.
4. The Hon'ble Tribunal after reading of the presented documents was of the view that the Corporate Debtor has acknowledged the subsisting liability to attract the provisions of Section 18 of the Limitation Act, 1963 as the Corporate Debtor has not denied that there are no outstanding dues to the Financial Creditor and the register of charges shows that a charge of Rs. 175 Crores (Rupees One Hundred and Seventy-Five Crores Only) which was created by the Corporate Debtor has not been satisfied and still remains outstanding.

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5. Relying on the judgement of the Hon'ble Supreme Court in Lakshmirattan Case and reiterating Dena Bank's case, the Hon'ble Tribunal held that there is an acknowledgement of subsisting liability of the Corporate Debtor though it may not necessarily specify the exact nature of the liability but it shows a jural relation between the parties, and in any event the same could also be derived by implication.
6. Therefore, the appeal was dismissed.

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CASE SUMMARY

Case Name : ***Company Appeal (AT) (Ins.) 492 of 2019-GAIL India Limited. Vs.***

Court Name : **National Company Law Appellate Tribunal ("NCLAT"/ "Tribunal")**

Order Dated : **October 04, 2021**

Sections cited : **Section 30(2) of Insolvency & Bankruptcy Code, 2016 ("IBC, 2016"); Section 30(3) of IBC, 2016; Section 32(b) of IBC, 2016; Section 53 of IBC, 2016; Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("IBBI CIRP Regulations, 2016")**

Facts of the case

1. Present appeal has been preferred by GAIL India Limited ("**Appellant**") after being dissatisfied with Order dated March 08, 2019 ("**Impugned Order**") in I.A. No. 41 of 2019 (preferred by the Appellant/ Applicant in I.A. 259 of 2018 (filed by Resolution Professional) in CP(IB) No.48 of 2017 passed by the National Company Law Tribunal, Ahmedabad Bench ("**NCLT**" / "**Adjudicating Authority**").
2. The Appellant was an operational creditor who had a claim of Rs. 506.42 Crores. The approved resolution plan laid down that all operational creditors of Alok Industries Limited having dues less than Rs.3,00,000/- (Rupees Three Lakhs Only) got hundred percent (100%) payment, whereas those entities with dues over Rs.3,00,000/- (Rupees Three Lakhs Only) including the Appellant, got nil payment.

Contentions on behalf of Appellant

1. The Appellant had challenged the approval of resolution plan and contended that the resolution plan is unreasonable and arbitrary as it fails to treat equals as equal and does not provide for any reasonable justification for the kind of discrimination against operational creditors who are having dues over Rs. 3,00,000/- (Rupees Three Lakhs Only).
2. It was contended by the Appellant that the Resolution Professional shall ensure that the resolution plan shall be in strict compliance with the provisions of IBC, 2016 and other applicable Regulations before placing it

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before the 'Committee of Creditors'("**CoC**") for its approval under Section 30(3) of IBC, 2016. As per Section 30(2) of IBC, 2016, the resolution professional shall examine and ensure that it satisfies the fulfilment of the ingredients of Section 30(2) of IBC, 2016 which mandates the distribution in proposed resolution plan shall be fair and equitable.

3. The Appellant relied upon various decisions namely, ***Binani Industries Limited &Ors. v. Bank of Baroda &Ors. (2018) 150 SCL 703, J.R. Agro Industries Private Limited v. Swadisht Oils Private Limited (2018) 147 CLA 260, Essar Steel India Limited, Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531***and***Swiss Ribbons Private Limited &Anr. v. Union of India &Ors.- Writ Petition (C) No. 99 of 2018 ("Swiss Ribbons Case").***
4. The Appellant along with other contentions stated that the resolution plan goes against the basic rule of common sense. Along with this, the Appellant also initiated arbitration petition with respect to its claim arising from the gas sale agreement with Alok Industries Limited.

Contentions on behalf of Respondents

1. It was submitted on behalf of Respondent No.1 / Resolution Professional that the Resolution Professional has to give only *ex-facie* opinion as to whether the resolution plan confirms the ingredients of IBC, 2016.

2. The only payment prescription as per Section 30(2) of IBC, 2016 read with Regulation 38 of IBBI CIRP Regulations, 2016 was to provide a minimum of the amount that would have been due in the event of liquidation as per Section 53 of IBC, 2016, in priority to any other payments being made to the financial creditors. IBC has not stipulated any condition on payment terms under resolution plan in regard the operation creditors under the IBC, 2016.Respondent No.1 referred to decision in Swiss Ribbons Case wherein it was held that the resolution plan cannot pass muster under Section 30(2)(b) of IBC, 2016 read with Section 31 of IBC, 2016 unless a minimum payment is made to operational creditors, being not less than liquidation value due to them. Reference was also made on decisions in ***Essar Steel India Limited v. Satish Kumar Gupta 2019 SCC Online SC 1478***; ***K. Shashidhar v. Indian Oversees Bank &Anr. - Civil Appeal No. 10673 of 2018; Pratap Technocrats (P) Limited v. Monitoring Committee of Reliance Infratel Limited &Anr. (2021) SCC Online SC 569; Arcelor Mittal India Private Limited v. Satish Kumar Gupta &Ors. (2019) 2 SCC 1.***

3. Respondent Nos. 2 and 3 along with JM Financial Reconstruction Company Limited—March 2018—Trust do constitute the resolution consortium

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which was declared as Successful Resolution Applicants. It was submitted on behalf of Respondent Nos. 2 and 4 that in any event their claim was not towards any real supply of '***Goods'*** or '***Services***', but was in respect of '*take or pay obligation*' under a contract with the Corporate Debtor which was in nature of advance towards future supplies and not '***Goods***' or '***Services***'.

4. It was further submitted by Respondent Nos. 2 and 3 that the 'Operational Creditors' as per Section 32(b) of IBC, 2016 read with Regulation 38 of IBBI CIRP Regulations, 2018 are entitled to receive only such amounts payable to them, in the event of liquidation of Corporate Debtor as computed in terms of Section 53 of IBC, 2016 and as such the Appellant is not entitled to receive any amount(s) since the liquidation value available to the Operational Creditors is Nil.

5. Respondent Nos. 2 and 3 referred to decisions of Hon'ble Supreme Court in ***Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Limited (2021) Scc Online SC 253***;***Committee of Creditors of Essar Steel Limited v. Satish Kumar Gupta (2019) SCC Online SC 1478*** and ***Standard Chartered Bank v. Resolution Professional of Essar Steel Limited &Ors. vide Comm. Appeal (AT) (Ins.) 242 of 2019.***

6. The opinion of commercial arrangement expressed by the CoC after due deliberations through voting, as per voting shares, is a collective business decision and the manner of repayment of dues of the 'Operational Creditors' stands accepted and duly approved by the CoC.

7. It was submitted by Respondent No.4 that proceedings under the IBC, 2016 cannot be used for recovery of a contract or damages or to claim specific performance of a contract and in reality the Appellant had initiated arbitration against the Corporate Debtor in regards to it's alleged claim of Gas Supply Agreement.

Analysis and Order of Hon'ble Tribunal:

1. In the present case, though the Appellant raised the plea of 'discrimination' and 'equality concept' was not adhered by the Adjudicating Authority while approving the Resolution Plan, the Hon'ble Tribunal was of the view that Operational Creditors have been paid as per Section 30(2)(b) of IBC, 2016 coupled with Regulation 38 of IBBI CIRP Regulations, 2018, that is, Operational Creditors are entitled to receive only such money that are payable under Section 53 of IBC, 2016.

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2. The Hon'ble Tribunal observed that there is no embargo on the classification of operational creditors into separate / different categories for making a decision in the manner in which the money is distributed to Operational Creditors by the assigned CoC because they do have final discretion of 'Collective Commercial Wisdom with respect to following:

   - The amount to be paid; and
   - The quantum of money to be paid to a certain category or the incidental category of creditors and ensuring to balance the interests of stakeholders and operational creditors.

3. It was also keenly observed by Hon'ble Tribunal that the Appellant's claim is not related to the supply of goods and services to keep Alok Industries Limited i.e., the Corporate Debtor as a "going concern".
4. The Appellant had commenced arbitration proceedings in regards to its claim emanating from the 'Gas Sale Agreement' and the Appellant's claim pertains to supposed obligation to pay for goods, even where, these were not made use of as 'take or pay obligation'.
5. The Impugned Order passed by the Adjudicating Authority with respect to dismissing the application does not suffer from any material irregularity or patent illegality under the ambit of law. As the appeal was without any merits, thus, the Hon'ble Tribunal dismissed the appeal filed by the Appellant.

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Warm Regards,

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