NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1757 of 2024

[Arising out of the Order dated 26.06.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench, Court-II), in IA. No. 2585 of 2019 In C.P. (IB) 1032/MB/2017]

IN THE MATTER OF:

Trinity Auto Components Ltd.
Gat No. 1419/2, Shikrapur Taluka,
Shirur, Pune - 412208
email:accounts@trinityautocomp.com
Cell: +91 9545450401 **...Appellant**

Versus

Axis Bank Ltd.
214-215, 2nd Floor, City Mall, Ganesh Khind Road, Pune-411007
E-mail: Meena.Shankar@axisbank.com;
Deepak.Vijayvargiya@axisbank.com
Contact: +91 8888812840 ; 9823152509 **...Respondent**

Present:

For Appellant	:	Mr. Sanat Jariwala (CA), Ms. Purti Gupta, Ms. Heena George & Ms. Sunidhi Shah, Advocates.
For Respondent	:	Mr. Ranjeev Carvalho, Ms. Suchitra Valjee, Ms. Rajni Shah & Mr. Vansh Ved, for Axis Bank.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been filed by the appellant under Section 60(5) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 against the order dated 26.06.2024 passed by the National Company Law Tribunal, Mumbai Bench, Court-II, whereby the IA No. 2585 of 2019 moved by the appellant has been partly allowed.

2. The case of the appellant as is reflected from the record is that the appellant/Trinity Auto Components Ltd. was engaged in the manufacture of

critical closed die forged parts for engines and chassis for heavy commercial vehicles. The company was taken over for its rehabilitation by Tarini Steels Ltd. under the scheme sanctioned by the erstwhile Board for Industrial & Financial Reconstruction (BIFR) under the provisions of erstwhile SICA, 1985, vide order dated 07.11.2014, which was also modified by the Hon'ble Delhi High Court's orders dated 15.05.2015 and 27.05.2015.

3. In the event of change of management under the BIFR scheme, the said scheme became binding on all concerned in terms of provisions of Section 19(3) r/w Section 18(8) of erstwhile SICA, 1985. The sanctioned scheme provided an option to unsecured creditors either to accept 15% of the Principal amount or to wait for recovery of full dues after the scheme worked itself out. The appellant stated that notwithstanding the provisions contained in the sanctioned scheme, the sole Respondent/Axis Bank continued to charge interest between 14.75% and 16.00% p.a. as against 12% p.a. w.e.f. 31.03.2011 and this aspect was brought to the notice of the bank and thereafter the extra interest charged was reversed/credited on 16.03.2017 to the appellant’s cash credit account by Rs. 1,18,46,343.12/-.

4. It is further the case of the appellant that pursuant to the Repeal of SICA, 1985, w.e.f. 01.12.2016, the bank again started calculating interest between 14.75% - 16.00% p.a. and despite repeated requests by the appellant to revise the same to 12% p.a. in terms of the Sanctioned Scheme, the same was not revised, which led to an excess interest debit of Rs. 82,42,351/-.

5. It is also the case of the appellant that though the SICA was repealed w.e.f. 01.12.2016, the sanctioned schemes under the said Act was saved by

Section 5(1)(d) of SICA Repeal Act, 2003 and thus the scheme sanctioned by the BIFR continued to remain binding on all concerned.

6. It is further stated that the appellant was unable to serve unsecured operational creditors as most of them were insisting on payment of their entire dues after the scheme worked out itself/ 7 years and thus the appellant was compelled to file an application under Section 10 of the Insolvency and Bankruptcy Code (IBC), 2016, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and the CIRP was initiated on 25.05.2017, however, the Respondent/ bank continued to charge interest in excess of the rate provided in the BIFR scheme.

7. It is further stated that during the course of CIRP, a resolution plan was approved by the CoC and was placed before the adjudicating authority for approval under provisions of Section 31(1) of IBC, 2016 and was approved on 22.01.2018.

8. It is further the case of the appellant that in terms of the approved resolution plan the bank was also required to provide further credit facility of Rs 400 lakhs for working capital along with existing working capital limit of Rs. 368 lakhs, with a further stipulation that an amount of Rs. 568 lakhs would be provided as working capital term loan to be repaid over a period of five years with a six-month moratorium from the date of approval of the said resolution plan. It is stated that in view of above, the bank restructured the loan facility as per the order and started charging interest @12% p.a. from December 2018. The appellant further stated that as per the approved resolution plan all unimplemented provisions pertaining to

relief/concessions approved under the sanctioned scheme of BIFR were to continue to be applicable subject to the provisions of the said resolution plan and thus the differential amount of interest charged in excess of 12% from 01.12.20216 to 30.11.2018 (Rs. 38,01,590/-) required to be credited in the bank account of the appellant for which he made various representation to the bank.

9. It is further stated that even after various letters written to the bank by the appellant only one letter has been replied and thereafter, on 10.06.2019 the bank erroneously declared that the appellant/CD has failed to convert the cash credit into a fresh term loan as per the BIFR scheme and thus the scheme has not been implemented by the appellant itself and in this view the bank sought refund of excess interest of Rs. 118 lakhs which was credited in the bank account of appellant on 16.03.2017 for the period commencing from April 2011 to September 2016 and further the bank also decided to charge higher interest rate than provided in the BIFR scheme till 25.05.2017 i.e. the date of commencement of the insolvency.

10. It is also the case of the appellant that he was constrained to approach the adjudicating authority by filing an application bearing MA No. 2585 of 2019 seeking appropriate directions, as the resolution plan was binding on all concerned, however, the said application was partially allowed on 26.06.2024 and aggrieved by the non-grant of certain reliefs the appellant has preferred the instant appeal.

11. The Respondent in its reply has stated that no attempt has been made by the appellant to implement provisions of the BIFR scheme dated 07.11.2014, sanctioned by the erstwhile Board for Industrial and Financial

Reconstruction (BIFR) which was further modified by the two orders of Hon'ble High Court of Delhi.

12. It is also the case of the Respondent that according to the own version of the appellant the scheme could not be implemented and therefore has ceased to have effect and has been further eclipsed by the Resolution Plan dated 22nd January, 2018.

13. It is further the case of the Respondent/bank that appellant has itself not complied the BIFR scheme and it was in these circumstances the appellant had approached adjudicating authority by filing an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 which was admitted on 25.05.2017 and it was categorically recorded that the appellant had failed to comply with the terms of the BIFR scheme by 31.03.2017 which was the cut off date for the implementation of the said BIFR scheme.

14. It is further the case of the Respondent/bank that the resolution plan approved by the adjudicating authority cast an obligation upon the Respondent to provide a further credit facility of Rs.4,00,00,000/- for working capital together with existing working capital limit of Rs.3,68,00,000/-, aggregating together to the tune of Rs.7,68,00,000/- to be repaid with interest@ 12% p.a. with a further stipulation that Out of the total finance of Rs.7,68,00,000/-, a sum of Rs.5,68,00,000/- would be restructured as a working capital term loan to be repaid within a period of five years with a 6- month moratorium period from the date of sanction of the Resolution Plan. The Respondent/Bank has complied with all the terms of the Resolution Plan which has eclipsed the BIFR Scheme. In view thereof, the Appellant's claim for refund/ reversal of purported excess interest

allegedly charged contrary to the terms of the BIFR Scheme was rightly rejected by the Adjudicating Authority.

15. Ld. Counsel for the appellant submits that that pursuant to the Repeal of SICA, 1985, w.e.f. 01.12.2016, the bank started calculating interest between 14.75% - 16.00% p.a. against the terms of the approved BIFR scheme and excess interest to the tune of Rs. 82,42,351/- was debited from the account of the Appellant and the same was not credited, despite many requests made by the appellant.

16. It is also submitted that the approved BIFR scheme became binding on all stake holders in terms of provisions of Section 19(3) r/w Section 18(8) of erstwhile SICA, 1985 but notwithstanding the provisions contained in the sanctioned scheme, the sole Respondent/Axis Bank continued to charge interest between 14.75% and 16.00% p.a. as against 12% p.a. w.e.f. 31.03.2011 and when this aspect was brought to the notice of the bank, the extra interest charged was credited in the appellant's cash credit account by Rs. 1,18,46,343.12/-. However now the Bank is reclaiming that amount in the, garb Rs. 1,18,46,343.12/-b that the BIFR Scheme has failed, while by approval of a Resolution plan by the Adjudicating Authority apart from the provisions of the Resolution Plan the beneficial concessions provided in the BIFR scheme remained continue and this aspect of the matter has not been considered by the Adjudicating Authority in right perspective.

17. Ld. Counsel for the Respondent submits that after passing of the BIFR scheme no attempt has been made by the appellant to implement provisions of the BIFR scheme dated 07.11.2014 and when the scheme could not be implemented due to the fault of the appellant and has been eclipsed by

approval of the Resolution Plan, the appellant could not claim any benefit provided therein.

18. It is also submitted that appellant did not comply the BIFR scheme and was compelled to file an application under Section 10 of the IBC and recorded in the petition that he had failed to comply with the terms of the BIFR scheme, thus he cannot claim any benefit given therein.

19. It is further submitted that the Respondent/bank in compliance of the resolution plan was required to provide a huge amount to the appellant and there was also the provision of restructuring of the working capital term loan which was to be repaid within a period of five years with a 6- month moratorium period from the date of sanction of the Resolution Plan and Bank has complied with all the terms of this Resolution Plan which has eclipsed the BIFR Scheme. thus the Appellant cannot claim any refund of the debited interest and is further required to repay the differential interest of Rs. 1,18,46,343.12/-earlier credited by the Bank.

20. We have heard Ld. Counsel for the parties and have perused the record including the written submissions filed by the parties.

21. It emerges that the I.A. No. 2585 of 2019 was moved by the appellant before the Adjudicating Authority was filed for grant of following prayers:

> *"(a)direct Axis Bank to comply with the provisions of unimplemented provisions of sanctioned scheme (SS)- 15 as also of the approved resolution plan as the same is binding on all concerned in terms of Section 31 (1) of the Code;*
> *(b)direct Axis Bank to credit/reverse the excess amount of Rs. 82,42,351/- along with excess interest charged on Rs. 82,42,351/- from December 2018 till date of credit to the applicant's account;*
> *(c)direct Axis bank to withdraw unconditionally its letter dated 10th June, 2019 and not demand interest of Rs.*

118.46 lakhs credited to applicant's account towards excess interest charged in violation of SS.
(d)direct the unsecured creditors of the applicant, as projected in the resolution plan approved by the Adjudicating Authority, shall accept the restructured amounts due to them under the resolution plan; and
(e)pass such other and/or further order(s) and/or direction(s) as the facts and circumstances of the case may warrant".

22. In crux, the appellant case was that the Trinity Auto Components Ltd. (TACL) was taken over for its rehabilitation by Tarini Steels Ltd. (TSL) under the scheme sanctioned by BIFR under the provisions of erstwhile SICA, 1985 on 07.11.2014 which was further modified by the orders dated 15.05.2015 and 27.05.2015 passed by the Hon'ble High Court of Delhi. The Respondent/Axis Bank appears to be the Sole Creditor of CD. According to appellant, CD in the aforesaid scheme was granted some benefits and concessions so far as the creditor/Respondent Axis Bank Ltd. is concerned and the same has been highlighted in clause 15.0(I) of the scheme which has been reproduced by the appellant in the appeal paper book and the same benefits/concessions, so far as the axis bank ltd. is concerned is being also reproduced by us herein below:

Axis Bank Ltd. Secured Creditor

"(a)The existing dues of Axis Bank Ltd. the sole secured lender of TACL to be restructured by reducing the rate of interest to 12% from 31.03.2011. The restructured outstanding dues to be converted in fresh term loan repayable in 48 equal instalments from the date of sanction of the scheme with six months' moratorium period. The amount paid towards EMD for Rs. 28.76 lakhs and the 10% amount of the dues of the secured creditors amounting to Rs. 62.38 lakhs paid to Axis Bank may be adjusted towards the outstanding restructured dues of Axis Bank Ltd. from the date of payment.

> *(b)On receipt of the entire amount as mentioned at para (a) above, Axis bank shall*
> *-vacate the charge on the assets of the said company and file Form No. 17 with the concerned Registrar of Companies;*
> *-cancel all the guarantees and return the security documents and title deeds to the said company, immediately on repayment of loan in full;*
> *-release the shares, if any, pledged with them after repayment of loan in full;*
> *-withdraw recovery suits/proceedings, if any, filed against the said company and/or its promoters, directors and guarantors before the concerned court/tribunal".*

23. A perusal of the aforesaid concession/benefits would reveal that at first the rate of interest is to be charged by the Respondent Axis Bank @ 12% p.a. from 31.03.20211 secondly, restructured outstanding dues were required to be converted in fresh term loan and this fresh term loan was repayable in 48 equal instalments from the date of sanction of the scheme with a further stipulation of six months moratorium period from the sanction of the scheme and also that the amount paid towards EMD of Rs. 28.76 lakhs and 10% of the dues of the secured creditors amounting to Rs. 62.38 lakhs, which have been paid to the Axis Bank may be adjusted towards outstanding restructured dues of Axis Bank from the date of payment. On the fulfilment of these conditions certain obligations were required to be discharged by the Respondent Axis Bank with regard to the vacation of charge on the assets of the Company as well as pertaining to the cancellation of guarantees and return of the documents to the CD.

24. The grievance of the appellant at that point of time appears to be that the Respondent Axis Bank despite the above mentioned provisions contained in the BIFR scheme continue to charge interest rate between 14.75% -16% against 12% p.a. w.e.f. 31.03.2011 and this was being done

even after the approval of the BIFR scheme and the resolution plan approved by the adjudicating authority.

25. It is stated that when this aspect was brought in the knowledge of Respondent Axis Bank by way of a notice of date 16.03.2017, Rs. 1,18,46,343.12/- were reverted back in the account of the CD as the differential of interest overcharged by the Respondent/Bank. The appellant is of the view that the bank has calculated this amount at first only till 30.11.2016 as opposed to the terms of sanctioned BIFR scheme and as per the calculation of the appellant this amount should have come as Rs. 44,40,761/- which has been charged in excess and must be credited in the bank account of the appellant and secondly pursuant to the Repeal of the SICA, bank started charging interest between 14.75% -16.00% p.a. resulting in extra interest charged for the period from 01.12.2016 to 30.11.2018 which also comes about Rs. 38,01,590/-and thereby a total amount of Rs. 82,42,351/- was required to be paid by the Respondent Bank to the appellant for overcharging the rate of interest in violation of the provisions contained under the BIFR scheme.

26. It is contended by Ld. Counsel for the appellant that since unsecured operational creditors of it were insisting on payment of entire dues after the scheme worked out itself, he filed an application under Section 10 of the Code on 18.05.2017 which was accepted on 25.05.2017 and during the course of time a resolution plan was submitted which was approved not only by the CoC but also by the adjudicating authority on 22.01.2018.

27. The relevant provision, so far as the Respondent /Axis Bank is concerned, in the resolution plan is also reproduced as under for the sake of

convenience. As has been reproduced by Ld. Tribunal in paragraph no. 17 of the impugned order:

> *"Axis Bank Limited"*
>
> *(i) Axis Bank to agree to provide further credit facility of Rs. 400 lacs for working capital along with existing working capital limit of Rs. 368 lacs i.e. total working capital finance from Axis Bank to be availed for Rs.768 Lacs @12% p.a. Out of the total Rs. 768 lacs working capital finance, Rs. 568 lacs to be provided as working capital term loan (WCTL) which will be payable in 5 years with 6 months moratorium period from the date of sanction of the Resolution.*
>
> *(ii) Axis Bank to charge rate of interest @12% from the date of admission of petition by NCLT (25.05.2017) and rate of interest should be based on MCLR of the Bank."*
> *The Applicant has placed reliance on certain terms which read as under:*
>
> ***"CONTINGENT LIABILITIES"***
>
> *(i)If any contingent liability devolves on the company with respect to statutory OR unsecured creditors in future for the past transactions prior to 31.03.2011, the same will be settled @ 15% of its crystalized principal amount as per the scheme sanctioned by BIRF.*
>
> *(ii) Subject to the provisions of this Resolution Plan, all unimplemented provisions towards other relief/concessions approved under the sanctioned scheme of BIFR like Income Tax, Sales Tax, EPFO, Excise, MESDCL etc. to be continued".*

28. It is further submitted that under the resolution plan all unimplemented provisions of BIFR scheme were to continue to be applicable subject to the provisions of the approved resolution plan, however, when he insisted for the recovery of excess interest charged by the Respondent Bank a letter dated 10.06.2019 was issued by the Bank whereby differential interest i.e. Rs. 118.46 lakhs which was earlier credited in the bank account

of the appellant was demanded and thus the Tribunal has committed an illegality in not acceding to the request made by the appellant.

29. Ld. Counsel for the Respondent submits that the Bank has complied with all the provisions of the BIFR scheme by sanctioning additional financial assistance and reducing the interest rate to 12% and also that the excess amount of Rs. 118.46 lakhs charged earlier was also credited in the bank account of the appellant. However, even if the bank has performed and complied his part in the BIFR scheme the applicant failed and it is in this background, in the event of the failure of the BIFR scheme, the Respondent Bank has sought the refund of the amount credited by it to the appellant vide letter dated 10.06.2019.

30. It is also submitted that by the approval of the resolution plan by Ld. Tribunal, the BIFR scheme stands replaced/superseded by the provisions of the approved Resolution Plan and general provisions pertaining to the relief and concessions earlier granted to the appellant in the BIFR scheme would not have any application.

31. The Tribunal in paragraph 19 and 21 of the impugned judgment has dealt with the rival contentions of the parties. For the sake of convenience paragraphs no. 19 and 21 of the impugned judgment is being reproduced as under:

> *"19. As regards the non-implementation of terms of the BIFR Scheme, it is noticed that there is no explicit term in the Resolution Plan stating that the terms and conditions contained in the BIFR Scheme shall continue to be effective and binding on the parties. It is pertinent to notice that the terms qua the Respondent are stated separately and specifically and those terms are made applicable from the date of admission of the petition by NCLT i.e., 25.05.2017. Specific mention of a date different from the date mentioned in the BIFR Scheme indicates different*

treatment under the Resolution Plan. Furthermore, the terms incorporated under the heading "Contingent Liabilities" imply that they refer only to statutory liabilities like Income Tax, Sales Tax, EPFO, Excise, MESDCL, etc., and unsecured creditors. If a different interpretation is given, it would amount to granting of all reliefs and concessions as envisaged in the BIFR Scheme without there being an obligation on the Corporate Debtor to comply with other conditions of BIFR Scheme. To state otherwise, the Applicant is seeking selective advantage of the BIFR Scheme. Since there is no provision in the Resolution Plan as regards embracing of BIFR Scheme except to the extent of contingent liabilities, the Applicant cannot seek implementation of the provisions contained in the BIFR Scheme, especially against the Respondent, when detailed terms relating to the Respondent have been incorporated in the Resolution Plan. Thus, we are of the view that the terms of the BIFR Scheme do not apply to Respondent under the approved Resolution Plan. Since we have concluded that the Resolution Plan supersedes the BIFR Scheme, terms of the BIFR Scheme cannot be sought to be implemented under the Resolution Plan and, therefore, there is no need to adjudicate disputes as regards the implementation of the BIFR Scheme and/or reduction of interest rate under the BIFR Scheme.

21. In the above circumstances, we are of the considered view that as the Resolution Plan approved by this Tribunal surpasses and supersedes the BIFR Scheme, and the explicit terms in the Resolution Plan qua the Respondent shall only be binding on the Respondent. As there has been an overcharging of interest by the Respondent for the period from 25.05.2017 to 28.08.2018 in deviation from the approved Resolution Plan, the Respondent is held liable to refund the said differential interest. Accordingly, ***M.A. No. 2585 of 2019 is partially allowed*** *to the extent of refund/adjustment of differential interest from 25.05.2017 to 28.08.2018. Parties are, however, left to bear their costs".*

32. In nutshell, it is transpired that appellant is claiming the benefits given to it under the BIFR scheme as well as in the resolution plan and the Respondent has stated that since it has fulfilled his part/obligation in the BIFR scheme and appellant did not fulfil the same therefore after the approval of the resolution plan which has eclipsed the BIFR scheme, he is

entitled to get back the amount of Rs. 118.46 lakhs which was credited by it into the bank account of the appellant as differential interest, in view of the low rate of interest provided, in the BIFR scheme.

33. It is also pertinent to mention here and is also recorded by the adjudicating authority in the impugned order that in the resolution plan it was provided that the Respondent Bank shall provide further credit of Rs. 400 lakhs for working capital along with the existing working capital limit of Rs. 368 lakhs whereby the total working capital finance from the bank to be availed for Rs. 768 lakhs @ 12 % p.a. and out of this total Rs. 768 lakhs, working capital finance, Rs. 568 lakhs required to be provided as working capital term loan which would be repayable in five years with six months' moratorium period. Thus it is transpired that under the resolution plan a heavy amount was required to be disbursed by the Respondent/Bank and it is claimed that the said amount has already been disbursed.

34. Therefore, the question before us is whether due to alleged failure of the BIFR scheme, pertaining to which allegations and counter allegations are being labelled by the parties against each other, the differential interest of Rs. 118.46 lakhs paid by the Respondent Bank before the initiation of CIRP of the appellant, may be claimed back by the Respondent/Axis Bank on the ground that BIFR scheme has failed due to non-performance of the obligations by the appellant and whether all other concessions apart from what has been provided in the resolution plan, which were granted to the appellant in the BIFR scheme would remain continue, even after approval of the resolution plan by the CoC as well as by the adjudicating authority.

35. It appears to be admitted to the parties that after approval of the BIFR scheme the same could not be acted upon by the parties and due to the pressure on the appellant, he was compelled to move an application under Section 10 of the IBC.

36. It also appears to be admitted to the parties that the resolution plan was submitted in the CIRP by the CoC wherein the appellant was also a member and the same was approved by the CoC (wherein the Respondent Bank was also having more than 96% voting share) as well as by adjudicating authority. Thus, when a resolution plan has been approved by adjudicating authority and the same has not been challenged by any party, any further and it has become absolute, final and having regard to the provisions contained under Section 31 (1) of the Code the same has become binding on all the stakeholders including the appellant as well as the Respondent-Axis Bank, any past claim of either party which was existing prior to the commencement of the CIRP of the appellant, and has not been claimed and also is not part and parcel of the improved resolution plan, would be deemed to have been extinguished.

37. Section 31 (1) of the IBC stipulates that an approved resolution plan is binding on all the stakeholders including creditors. The clean slate principle ensures that the SRA, which assumes control of the CD, free from undisclosed or unaddressed liabilities should receive the CD without any further encumbrance and it is on the principle of value maximisation and revival of the CD and also on the principle that SRA must not come across a situation which was not contemplated by it, any past claim could not be claimed.

38. Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Assets Reconstruction Company Ltd. & Ors. 2021 Vol 9 SCC 657** categorically held that all claims not forming part of the approved resolution plan stand extinguished upon approval of the same. The relevant portion of the aforesaid law is being reproduced as under:

> *"86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition Under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in Sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*
>
> *87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as*

to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

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;

Thus, in view of above precedent no proceedings in our considered opinion, with regard to the pre-CIRP dues can be initiated or continued after the approval of the resolution plan including statutory and operational claims. This principle of clean slate was reiterated to prevent surprise claim which may undermine the finality of the resolution process of a CD.

39. In **CoC of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors., 2020 (Vol 8) SCC 531**, Hon'ble Supreme Court again highlighted the binding nature of the resolution plan so far as all stakeholders are concerned, affirming that the CoC's commercial wisdom in approving the plan is paramount and not subject to judicial interference unless seems violative of Section 30 (2) of the Code.

40. In **Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Ltd., 2022 Vol 2 SCC 401**, the Hon'ble Supreme Court reinforced the finality of approved resolution plans holding that modifications or withdrawals therein

after its approval is impermissible extending the principle of clean slate to the extinguishment of uncrystallised or omitted claims, also.

41. In **Jet airways India Ltd. vs. SBI, CA (AT) (Ins) No. 707 of 2019** decided on 21.09.2021, a coordinate Bench of this Appellate Tribunal observed that even contingent or undecided claims from prior regimes are barred if not incorporated in the resolution plan.

42. In the instant case Rs. 118.46 lakhs demanded vide notice dated 10.06.2019 by the Respondent Bank which has arised on account of payment of differential interest made by the Respondent Bank (difference of rate of interest charged and provided in the BIFR scheme) was, in our considered opinion was a financial claim under Section 5 (8) of the Code and the Bank which was having about 96% of the voting share in the CoC, was having ample opportunity to include it in the proof of claim under Regulation 12 of the IBBI (Insolvency Resolution Process for CIRP Persons) Regulations, 2016 and may also ensure its presence in the resolution plan approved by it. Having approved the plan wherein there is no reference of this amount (Rs. 118.46 lakhs), the Respondent Bank may not resurrect this claim again. To allow such claim, at this stage when the resolution plan has already been finalised and approved, would amount to defeat the legislative intent of the IBC as well as the clean slate principle.

43. The SICA, repeal act, 2003 read with Section 252 of the IBC, would highlight the transition of the SICA regime to the insolvency arena provided by the Insolvency and Bankruptcy Code, allowing pending BIFR matters to abate and migrate to the IBC framework, within 180 days. In the instant case BIFR scheme having failed prior to the CIRP initiation, as according to

the rival contention of the parties the scheme failed due to non-performance obligation by either party, and the operational creditors started pressurizing the appellant for payment of their dues, forcing him to file application under Section 10 of the Code, any obligation or claim arising out of the BIFR scheme were subsumed under the IBC as pre-existing liabilities. Section 238 of the IBC provides for overriding effect of the Code over any inconsistent law including SICA.

44. Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. 2019 (4) SCC 17,** upheld the constitutional validity of the IBC, emphasizing its objective to replace the inefficacious SICA regime with a creditors driven, time bound resolution process. Therefore, in our considered view any unresolved claim from a BIFR scheme, which according to the parties has failed, must be treated as a claim of that party under Section 3 (6) of the IBC and must be adjudicated within the framework of the Code. The failure of the BIFR scheme to us, does not create an independent cause of action that too after the approval of the resolution plan by none other than the Respondent itself. Likewise, scheme of Section 10 of the IBC also contemplates and places an obligation in the corporate applicant to place all the information including all claims etc., to be mentioned in the application moved for initiation of CIRP and once the amount claimed by the appellant is not included in the resolution plan, the same in our considered opinion is extinguished by virtue of the finality attached to a resolution plan approved by a adjudicating authority, as discussed by us herein before.

45. The claim of the appellant is also in terms that the amount of interest of certain period pertaining to pre- CIRP period should have been paid to the appellant is also of no consequence for the same reason that it is outside of the purview of IBC, once the resolution plan has been approved. Hon'ble Supreme Court in **Vaibhav Goyal & Anr. vs. Deputy Commissioner of Income tax**, 2025 SCC online Supreme Court 592 again reaffirm the clean slate principle by holding that even uncrystallised statutory dues are extinguished, if the same have not been claimed during the course of CIRP. The BIFR originated claim, in our considered view have merged into the IBC framework and should have been claimed during the CIRP and when these claims/dues have not been claimed by either side they stand extinguished, by the approval of resolution plan and could not be claimed now.

46. So far as the contention of the appellant that BIFR scheme, so far as the concessions granted to it is still alive, is concerned we are in agreement with the conclusions drawn by the adjudicating authority in para no. 18, 19 and 21 of the impugned order (referred herein before) that there is no explicit term in the resolution plan stating that the terms of BIFR scheme would continue even after the approval of resolution plan. It is highlighted by Ld. Tribunal that terms with regard to axis bank quoted above in the resolution plan, have been stated specifically and separately. These terms are made applicable from the date of admission of the application under Section 10 of the Code i.e. from 25.05.2017. This date itself is different from the date of BIFR scheme which clearly shows that a different treatment has been given to the appellant and the Respondent in the approved resolution plan and the CoC has not adopted the BIFR scheme. We are also in

agreement with the observation of Ld. Tribunal that the terms incorporated under the heading of contingent liabilities, refer only to statuary liabilities and are not formulated with regard to the appellant.

47. It is to be recalled that the appellant cannot claim benefit which were given to it in BIFR scheme as well as in the resolution plan. If this is held justifiable than the same would amount to grant of all the concessions of BIFR scheme to the appellant without any reciprocal obligation on the appellant which would be highly unjustified so far as the respondent axis bank is concerned. It is further to be recalled that a huge amount appears to have been sanctioned by the respondent bank in favour of the appellant in compliance of the terms of the resolution plan.

48. Thus in our considered opinion the parties, now after the approval of the resolution plan, can only claim their rights under the resolution plan and not otherwise. In view of above no error appears to have been made by Ld. Tribunal in holding that the resolution plan approved by it has surpasses and supersedes the BIFR scheme and the terms in the resolution plan, qua the Respondent Bank shall be binding on it. However, we extend this proposition by adding that appellant would also be bound by the terms of the resolution plan which has been approved by none other than the appellant itself, having more than 96% of voting share in the CoC and subsequently by the adjudicating authority.

49. Keeping in view all the facts, circumstances and reasons mentioned hereinbefore, we do not find any merit in the appeal. In result the appeal is dismissed. There is no order as to costs.

50. Pending IA’s if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
11.09.2025.

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