

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Company Appeal (AT) (Insolvency) No. 153 of 2021**

**In the matter of:**

**The Assistant Commissioner, Park Street Division,  
Kolkata South CGST & CX Commissionerate**

**....Appellant**

**Vs.**

**Assam Company India Ltd. & Ors.**

**....Respondents**

**Present:**

**Appellant: Mr. Nitya Sharma, Advocate.**

**Respondents: Ms. Rakhi Purnima Paul, Mr. Uttiyo Mallick, Mr. Ajay Gagar, Advocates.**

**ORDER**

**(Through Virtual Mode)**

**04.03.2021:** I.A. No. 353 of 2021 has been filed by the Appellant for seeking exemption from filing certified copy of the impugned order dated 20<sup>th</sup> January, 2021. I.A. No. 353 of 2021 stands disposed off with direction to the Appellant to file the certified copy of the impugned order within one week of the same being made available to the Appellant, if the appeal survives for consideration.

2. The Appellant- Assistant Commissioner, Park Street Division, Kolkata South CGST & CX Commissionerate has preferred the instant appeal against setting aside of its claims in terms of the impugned order dated 20<sup>th</sup> January, 2021 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench, Guwahati, on the ground that such claims cannot be

Contd/-.....

entertained as the same were not lodged before the approval of the Resolution Plan.

3. It is contended by Mr. Nitya Sharma, Advocate representing the Appellant that the Resolution Plan has been wrongly passed as it failed to consider the stand of the Appellant and the application of the Appellant stands dismissed without considering that the approved Resolution Plan does not provide for payment of huge demand/ dues amounting to Rs.7,22,23,736/- payable by the Corporate Debtor to the Appellant.

4. After hearing Mr. Nitya Sharma, Advocate for the Appellant and Ms. Rakhi Purnima Paul, Advocate entering appearance on behalf of Respondent, we are of the view that the appeal lacks merit. Admittedly, Resolution Plan in respect of the Corporate Debtor stands approved by the Adjudicating Authority and the claims in question have not been lodged by the Appellant before approval of the Resolution Plan. The Adjudicating Authority has rightly placed reliance on the observations of the Hon'ble Apex Court in ***“Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.- 2019 SCC OnLine SC 1478”*** to the effect that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan submitted by him has been accepted as this would amount to a hydra

head popping up which would throw into uncertainty amounts payable by the Successful Resolution Applicant. It was further observed by the Hon'ble Apex Court that all claims must be submitted to and decided by the Resolution Professional so that a Prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor.

5. Admittedly, in the instant case, the timelines have not been adhered to and it is only after the conclusion of CIRP viz. approval of the Resolution Plan that the Appellant has come up with its claims. The Judgment pronounced by the Hon'ble Apex Court lays down a dictum loud and clear that the Successful Resolution Applicant cannot be confronted with undecided claims after approval of the Resolution Plan. That being the position of law, we are of the considered opinion that the impugned order does not suffer from any legal infirmity.

We find no merit in this appeal. The same is dismissed.

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

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

**AR/g**