

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 352 of 2024**

**(Arising out of the Order dated 21.12.2023 passed by the National Company Law Tribunal, Kolkata Bench, in I.A. (IB) No. 501/KB/2022 and I.A. (IB) No. 500/KB/2022 in C.P. (IB) No. 595/KB/2017**

**IN THE MATTER OF:**

**SPS Steels Rolling Mills Limited**

Registered Office At 701, 7th  
Floor, Diamond Prestige, 41A, AJC  
Bose Road, Kolkata, Pin-700017,  
West Bengal

**...Appellant**

**Versus**

**Central Bank of India**

Corporate Office at Chander Mukhi Nariman Point  
Mumbai- 400021  
Branch Office at Corporate Finance Branch First  
Floor, 33, Netaji Subhas Road, Kolkata 700001

**...Respondent**

**Present:**

**For Appellant**

Mr. Anup Kumar, Ms. Achint Priya, Ms. Arshi  
Hayat & Ms. Neha Jaiswal, Advocates

**For Respondent**

Mr. Brijesh Kumar Tamber, Mr. Prateek  
Kushwaha, Mr. Aryan Data & Ms. Arani  
Mukherjee, Advocates, Mr. Chandra Prakash,  
Advocate

**With**

**Comp. App. (AT) (Ins) No. 353 of 2024**

**IN THE MATTER OF:**

**SPS Steels Rolling Mills Limited**

Registered Office At 701, 7th  
Floor, Diamond Prestige, 41A, AJC  
Bose Road, Kolkata, Pin-700017,  
West Bengal

**...Appellant**

**Versus**

**1. Indian Overseas Bank**

Head Office At 6<sup>th</sup> Floor Annex Building, 763, Anna  
Salai, Chennai-600002, Tamil Nadu  
Branch Office At: P-35 India, Exchange Place,  
Kolkata-700001

**...Respondent No. 1**

**2. Assistant Commissioner of Customs  
(Apprising Group 7Z (EPCG))**

Office at Customs House, 15/1 Strand Road, Kolkata-  
700001 Being Beneficiaries of Three Bank  
Guarantees

**...Respondent No. 2**

**3. Director General of Foreign Trade**

Having Its Office At 4, Esplanade East, Kolkata-  
700069, Beneficiary of One of Bank Guarantees

**... Respondent No. 3**

**Present:**

**For Appellant**

Mr. Anup Kumar, Ms. Achint Priya, Ms. Arshi  
Hayat & Ms. Neha Jaiswal, Advocates

**For Respondent**

Mr. Chandra Prakash, Advocate

## J U D G E M E N T

(19.03.2026)

### NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals containing Comp. App (AT) (Ins) No. 352 of 2024 and Comp. App (AT) (Ins.) No. 353 of 2024 filed by the Appellant i.e. SPS Steels Rolling Mills Limited, who is the Corporate Debtor under section 61 of the Insolvency and Bankruptcy Code, 2016, [**'Code'**] assailing the order dated 21.12.2023 [**'Impugned Order'**] passed by the National Company Law Tribunal, Kolkata Bench [**'Adjudicating Authority'**] in I.A(IB) No.501/KB/2022 and in I.A(IB) No.500/KB/2022 in C.P. (IB) No. 595/KB/2017. In Comp. App (AT) (Ins) No. 352 of 2024, Central Bank of India, is the sole Respondent herein.

In Comp. App (AT) (Ins) No. 353 of 2024, Indian Overseas Bank, who is the Answering Respondent, is the Respondent No. 1 herein.

Assistant Commissioner of Customs and Director General of Foreign Trade, are the Respondent No. 2 and Respondent No. 3, herein

2. It is the case of the Appellant that on 24.08.2017, Allahabad Bank filed C.P.(IB) No.595/KB/2017 before the Adjudicating Authority, under Section 7 of the Code, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, SPS Steels Rolling Mills Ltd. The Adjudicating Authority admitted the application on 22.12.2017 and a public announcement was

issued on 28.12.2017 calling for claims from the creditors of the Corporate Debtor.

3. The Appellant submitted that the Appellant, i.e. Shakambhari Ispat and Power Limited, the Successful Resolution Applicant (SRA), submitted its Resolution Plan on 09.05.2018. The Committee of Creditors (CoC) approved the Resolution Plan and the Adjudicating Authority approved the same on 08.04.2019 in CA(IB) No.871/KB/2018. It is the case of the Appellant that upon full implementation of the Resolution Plan, including payment of Rs.32.50 Crores by the SRA to the Central Bank of India in full and final satisfaction of its claims, and the provided in the Resolution Plan has also been paid to Indian Overseas Bank. The Appellant, as the SRA, took over the management, properties and assets of the Corporate Debtor on or about 11.04.2019.

4. It is submitted that in March 2020, the Appellant discovered that the Corporate Debtor held Fixed Deposit Receipts (FDRs) with two separate banks which had neither been disclosed nor claimed during the CIRP. In Comp. App (AT) (Ins) No. 352 of 2024, FDR were lying with Central Bank of India and had been adjusted by Central Bank of India towards its own dues post-implementation of the Resolution Plan. In Comp. App (AT) (Ins) No. 353 of 2024, FDRs aggregating Rs.1,30,00,000/- were lying with the Indian Overseas Bank as margin money against Bank Guarantees issued by it. The Appellant requested both banks to release the proceeds in its favour. The Indian Overseas Bank released only Rs.79,24,041/- on 18.06.2021 but did not release the balance

amount of approximately Rs.50,75,959/- and later raised disputes regarding discharge of the Bank Guarantees.

5. The Appellant stated that it was constrained to file CA(IB) No.500/KB/2021 against Central Bank of India and CA(IB) No.501/KB/2021 and against the Indian Overseas Bank under Section 60(5) of the Code seeking directions to both Banks to credit the amount of respective FDR proceeds together with interest at commercial rates, however, the Adjudicating Authority, by the common impugned order dated 21.12.2023, dismissed both I.A.(IB) No.500/KB/2021 and I.A.(IB) No.501/KB/2021 and directed the Appellant to refund of the entire FDR proceeds (including the sum of Rs.79,24,041/- already received from Indian Overseas Bank) along with applicable interest. The Adjudicating Authority also directed the matter to be placed before the erstwhile Committee of Creditors for distribution as per their commercial wisdom.

6. The Appellant stated that said FDRs had been deposited by the Corporate Debtor with the Bank as margin against issuance of Bank Guarantees in favour of statutory authorities at the instance of the corporate debtor in connection with the business operations. The Appellant stated that the said Bank Guarantees were issued before for commencement of the CIRP and since then all such Bank guarantees have expired. The Appellant hence requested the Respondent Banks that said FDRs may be liquated and the corresponding amount with commercial interest may be returned to the corporate debtor, which is now under the management and control of the Appellant.

7. The Appellant stated that the Central Bank of India and Indian Overseas Bank were members of CoC, who has already received their dues as provided in the approved Resolution Plan towards absolute satisfaction of all their claim in respect of the corporate debtor in terms of the Resolution Plan. Thus, the Resolution Plan has been fully implemented and the Appellant has made the complete payment as contemplated/mentioned in its resolution plan.

8. It is also the case of the Appellant that the Adjudicating Authority failed to consider that admittedly the FDRs lying with the respondent Banks were in the name of the Corporate Debtor (SPS, Steel Rolling Mills Ltd.) Thus, there was no need for the Adjudicating Authority to direct the respondent banks to refund the Corporate Debtors' FDRs along with rate of interest applicable to the FDRs and place it before the erstwhile CoC of the Corporate Ddebtor, since there was no such application either by the Respondent Banks or by erstwhile CoC or by any of the creditors.

9. The Appellant submitted that FDRs of the Corporate Debtor lying with the Respondent Banks are assets of the Corporate Debtor and now as these are assets of the Appellant as it stepped into the shoes of Corporate Debtor after implementation of the resolution plan. The Appellant elaborated that the effects of the successful resolution post CIRP is that the Corporate Debtor becomes a clean slate with respect to its liabilities, however the Assets of the Corporate Debtor remains with it, albeit, with the new management as can be inferred from

the decision of the Hon'ble Supreme Court in "Ghanashyam Mishra & Sons Pvt Ltd Vs Edelweiss ARC (2021) 9 SCC 657.

**10.** Concluding the arguments, the Appellant requested this Appellate Tribunal to allow his appeal and set aside the Impugned Order.

**11.** On the other hand, both the Respondent Banks denied the averments of the Appellant as misleading and baseless.

**12.** The Respondent Banks submitted that they were the financial creditors of the Corporate Debtor, against whom the total admitted claims of Financial Creditors were of Rs. 391.79 crores which was settled by the Appellant, on the basis of the assets and liabilities mentioned in the Information Memorandum. The Respondent Banks pleaded that the Appellant, being Successful Resolution Applicant, has submitted its Resolution Plan based on the information of assets and liabilities as mentioned in the Information Memorandum and the CoC after considering the viability and feasibility of the Resolution Plan has approved the same.

**13.** It is the case of the Respondent Banks that the Appellant being Successful Resolution Applicant have discovered new assets which were not the part of the Information Memorandum and subsequently of the Resolution Plan.

**14.** The Central Bank of India submitted that the Appellant paid only Rs. 32.50 crores and further allotment of shares of very minimal value. Central Bank of India also stated that they were making the payments of the interest amount to the Corporate Debtor prior to the commencement of the CIRP and after the

commencement of the CIRP in FY 2018-19 and in FY 2019-20, TDS on the above deposits were deducted and remitted during FY 2018-19 and FY 2019-20.

**15.** The Respondent Banks further submitted that since the said FDR's were not made part of the assets of the Corporate Debtor in the Information Memorandum and discovered by the Appellant only after the approval of the Resolution Plan, the Answering Respondents have transferred the amount in the CC loan account of the Corporate Debtor as per the terms of the sanction.

**16.** The Respondent Banks also stated that the Appellant, vide his letters ordered the Respondent Banks for the closure of the FDR account. The Respondent Banks replied to the Appellant and provided the information pertinent to the deposits and also intimated that deposits stand adjusted towards settlement of Bank dues as the said FDRs were not made part of list of assets in the Information Memorandum, therefore the same has been adjusted as per the terms of sanction.

**17.** The Respondent Banks conceded that no burden of new claims can be passed upon the Successful Resolution Applicant, however, if there are any newly discovered assets discovered later, then the same also has to be considered in similar way by applying the same principles on the assets side as applicable to the liability side.

**18.** The Respondent Banks castigated the conduct of the Appellant who failed to do the due diligence and now after discovering about the new assets of the Corporate Debtor in a form of FDR has come out with a case to enrich itself

without protecting the interest of the Creditors who have taken huge haircut at the time of approving the Resolution Plan.

**19.** The Respondent Banks submitted that the feasibility and viability of the Resolution Plan was tested by the Financial Creditors forming part of the CoC considering all aspects including Information Memorandum, Request for Resolution Plan documents (RFRP), fair market value & liquidation value, negotiations etc. based on which Adjudicating Authority granted the approval of the Resolution Plan. The Respondent Banks argued that in the present case since the said FDRs were not the part of the Information memorandum and the negotiation during the CoC meetings, the Appellant cannot claim right on the said FDRs due to deficiency in preparing the Information Memorandum or not production of information by the Resolution Professional.

**20.** The Respondent Banks stated that the said FDRs are akin to the contingent assets of the Corporate Debtor and the resolution plan of the Appellant is silent on how the contingent assets has to be dealt with. In the absence of any specific clause pertaining to the contingent assets, the Appellant has no right to lodge claim on the said FDRs.

**21.** The Respondent Banks submitted that the Respondent banks forming a part of the CoC, have been put by the Appellant to get paid with huge haircut. On the other hand, the Appellant has an annual turnover of about Rs. 3,000 crores, in view thereof, the claim of the Appellant should not be considered.

22. Concluding the arguments, the Respondent Banks requested this Appellate Tribunal to dismiss the Appeal.

### **Findings**

23. We find that the only issue involved in both appeals is as to who would own the assets of the Corporate Debtor, which have not been part of the information memorandum.

24. We have noted from submissions that FDRs of the Corporate Debtor (SPS Steels Rolling Mills Ltd) were made in lieu of margin money for the Bank Guarantees (BGs) issued by Indian Overseas Bank and Central Bank of India between 2005 to 2013 and 2012 to 2014 respectively. We have also been informed that all the BGs expired between 2009 to 24.08.2017 and the said FDRs of the Corporate Debtor were not part of the Information Memorandum. We also note that the Appellant i.e., Shakambhari Ispat and Power Limited was approved as SRA under Section 31 of the Code and since then, the Appellant has said to have implemented the Resolution Plan and paid the due amount against the final settlement of their admitted claims and took over the assets and management of the Corporate Debtor.

25. We also note that there is no dispute amongst the parties including Respondent Banks that, the Appellant, after implementation of the approved resolution plan, has stepped into the shoes of the Corporate Debtor and took over management of the Corporate Debtor. The only difference of opinion

is regarding the effects of the successful resolution of the Corporate Debtor post CIRP, i.e. whether in such case, any newly found assets of the Corporate Debtor, remains with its new management or belong to the erstwhile CoC.

26. The Appellant has interpreted the decision of “*Ghanashyam Mishra & Sons Pvt Ltd Vs Edelweiss ARC (2021) 9 SCC 657* and noted that as per Para-102 of the aforesaid decision, claim against the Corporate Debtor is extinguished once a resolution plan is duly approved by Adjudicating Authority u/s 31(1) of the Code but pleaded that same is not applicable to the aspects of later discovered assets of the Corporate Debtor.

27. As regard the issue of the Margin money to be treated as part of asset of the corporate debtor, we find that this issue had been examined and dealt by this Appellate Tribunal in the case of *Indian Overseas Bank vs. Arvind Kumar [(2020) SCC OnLine NCLAT 666]*. It was held that “*The ‘margin money’ is the contribution on the part of the borrower who seeks ‘Bank Guarantee’. The said margin money remains with the Bank, as long as the Bank Guarantee is alive. If the Bank Guarantee expires without being invoked, then the margin money reverse back to the borrower, and in case the bank guarantee is invoked by the beneficiary, the margin money goes towards payment of bank guarantee to the beneficiary, and nothing remains with the financial institutions, which can be reversed to the Corporate Debtor.*”

We are bound to accept above ratio of this Appellate Tribunal on the issue of Margin Monies belong to Corporate Debtor and not to Banks.

**28.** We observe that the Adjudicating Authority has taken the view that if the information memorandum contained the details of FDRs, the resolution plan would have been enhanced and accordingly all the creditors of the Corporate Debtor would have been paid, on the basis of enhanced value and therefore the Appellant is not entitled to get the proceeds of the FDRs lying with the Respondent Banks. The Adjudicating authority further held that the amount the Appellant has already received from Indian Overseas Bank i.e. Rs. 79,24,041/- will have to be refunded by the Appellant along with Interest as applicable to the FDRs. The Adjudicating Authority further observed that the Respondent Banks have made full claim of their dues before Resolution Professional during CIRP without adjusting the Fixed deposits amounts lying with them and their claims were settled as per the Resolution plan. Therefore, even the Respondent Banks are not entitled to retain the balance amount and will have to refund it along with rate of Interest applicable to the FDR, and the matter to be placed before the erstwhile members of the CoC of Corporate Debtor, and the distribution of this amount is decided by them in the CoC meeting which will include the respondent Bank as well.

**29.** As noted earlier, the issue is regarding the assets which has not been mentioned in the information memorandum. The Respondent Banks have

pleaded empathetically that the SRA will have right only over the assets mentioned in the information memorandum or the Resolution Plan. Further assets not mentioned in the information memorandum cannot be treated as the assets of the Corporate Debtor. In this connection, we refer to Regulation 36 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 regarding information memorandum which reads as under: -

***Regulation 36: Information memorandum.***

*(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee [on or before the ninety-fifth day from the insolvency commencement date [, and its subsequent updates thereof]]*

*(2) [The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor]*

*[(a) assets and liabilities [including contingent liabilities] with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their [values;]*

*[(aa) Details of receivables of the corporate debtor, including trade receivables, inter-corporate receivables, and receivables arising under any contract;*

*(ab) Details of joint development agreements and other similar collaboration or co-development arrangements, including rights, obligations, and interests of the corporate debtor arising thereunder;*

*(ac) Details of assets which are under attachment by enforcement agencies, including particulars of the assets attached, the authority which has attached and the status of such proceedings;]*

*Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value,<sup>10</sup>[geographical coordinates of fixed assets] and any other relevant details.]*

*(b) the latest annual financial statements;*

*(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;*

*(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;*

*(e) particulars of a debt due from or to the corporate debtor with respect to related parties;*

*(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;*

*(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;*

*(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;*

*[(ha) details of all identified avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code and subsequent filings*

*before Adjudicating Authority, as referred under sub-regulation (3A) of regulation 35A;]*

*(i) the number of workers and employees and liabilities of the corporate debtor towards them;*

*[[j) company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities [;]*

*[(ja) details of all allottees, including their names, amounts due, and units allotted, whose claims are either reflecting in the books of accounts of the corporate debtor or in the records of the Real Estate Regulatory Authority as established under the Real Estate (Regulation and Development) Act, 2016 (16 of 2016), but have not submitted their claims to the resolution professional;]*

*(k) Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements [;]]]*

*[(ka) fair value:*

*Provided that the committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution process[; and]]]*

*(l) other information, which the resolution professional deems relevant to the committee.*

*(3) A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.*

*[(3A) The creditors shall provide to the resolution professional the latest financial statements and other relevant financial information of the corporate debtor available with them.]*

*[(4) The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee [\*\*\*] to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.]*

**30.** From above, it becomes clear that the purpose of information memorandum is to highlight key proposition and is required to contain all relevant information to act as a comprehensive document for guidance of the resolution applicant. The idea behind the information memorandum is to make the prospective Resolution Applicant aware about the financial health along with operational environment of the Corporate Debtor so that the prospective Resolution Applicant can submit its resolution plan accordingly.

**31.** We further note that Regulation 36(2)(a) clearly mentions that the assets and liability including contingent liabilities as on with such description as an insolvency commencement date, as are generally necessary for asserting their values, should be mentioned. Similarly, Regulation 36(2) (aa) also stipulate that details of receivables of the Corporate Debtor including trade receivables, inter corporate receivables and receivables arising under any contract, should also be mentioned. We further find that the explanation given under Regulation 36(2)

provides that description includes the details such as date of acquisition, cost of acquisition, remaining useful life, depreciation, book value, geographical coordinate of fixed assets and other relevant details. Regulation 36 also provides for inclusion of latest financial statements and audited financial statements of the Corporate Debtor for last two financial years. Similarly, Regulation 36(2)(1) stipulates to include other information, which the Resolution Professional deems relevant.

**32.** From above, we note that information memorandum is supposed to contain the details of assets and liabilities as far as possible. We further observe that the word “contingent liability” has been added in Regulation 36(2)(a), however, the word “contingent assets” has not been mentioned anywhere.

**33.** In this connection, we observe that the word “contingent liabilities” are mentioned since details of contingent liabilities may be available and are required to be mentioned in the annual financial statement of the Corporate Debtor. By very nature, the contingent liabilities arise from past events that may or may not require an outflow of resources of the Corporate Debtor. Hence, these are not recognised as financial statement but disclose in notes to the accounts based on the principle of conservatism.

**34.** Interestingly, the word “contingent assets” conspicuously do not find any place in Regulation 36. The contingent assets are possible assets arising from past events whose existence may be confirmed at later date by uncertain further events. It is observed that on the same analogy these contingent assets are also

not generally not recognised in the financial statement to avoid recognising income that may never happen.

**35.** In the present case, undisputedly the FDRs were lying with the Respondent Banks i.e., Central Bank of India and Indian Overseas Bank, which were created in the name of the Corporate Debtor long back, when bank guarantee were required to be obtained by the Corporate Debtor and these FDR were created as margin money. Typically, these FDRs should have been considered by the Resolution Professional, however, no explanation exists or have been produced before us, indicating why these FDRs were not accounted for information memorandum.

**36.** We note that the Resolution Plan has since been implemented and due payment to the creditors have been made. Whatever, the reasons the FDRs continued with the Respondent banks. We intend to agree with the Adjudicating Authority that the Resolution Banks have not lodged their claims based on these FDRs before the Resolution Professional and hence, the Respondent Banks cannot claim their rights on such FDRs post approval of Resolution Plan. However, we do not find ourselves aligned to the reasoning of the Adjudicating Authority regarding not treating these FDRs as the assets of the Corporate Debtor.

**37.** It needs to be appreciated that the Corporate Debtor may hold large number of physical as well as financial assets. Sometimes, due to many reasons some of such physical assets or even financial assets, might have been skipped

from the Resolution Professional and therefore, same might not have been mentioned in the information memorandum.

**38.** Therefore, the question arises whether such omission of mention of assets prejudice the right of the SRA like the Appellant herein, to have its claim over such assets. It may also happen that sometime the assets may be found in the premises of the Corporate Debtor which may be discovered physically later and do not find place in the information memorandum. It cannot be the case that the assets discovered later by the SRA, post approval of the Resolution Plan should never become the property of the Corporate Debtor and should be returned to the erstwhile members of CoC.

**39.** At this stage, we also take into consideration relevant regulation pertaining to Resolution Plan, which reads as under: -

***Regulation 37: Resolution plan.***

*[37. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -*

*(a) transfer of all or part of the assets of the corporate debtor to one or more persons;*

*(b) sale of all or part of the assets whether subject to any security interest or not;*

*[(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;]*

*(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;*

*[(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;]*

*(d) satisfaction or modification of any security interest;*

*(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*

*(f) reduction in the amount payable to the creditors;*

*(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*

*(h) amendment of the constitutional documents of the corporate debtor;*

*(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;*

*(j) change in portfolio of goods or services produced or rendered by the corporate debtor;*

*(k) change in technology used by the corporate debtor; and*

*(l) obtaining necessary approvals from the Central and State Governments and other authorities.]*

*[(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.]*

***Regulation 38: Mandatory contents of the resolution plan.***

***38. [(1) The amount payable under a resolution plan –***

*(a) to the operational creditors shall be paid in priority over financial creditors; and*

*(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the [plan:]]]*

*[Provided that where a resolution plan provides for payment in stages, the financial creditors who did not vote in favour of the resolution plan shall be paid at least pro rata and in priority over financial creditors who voted in favour of the plan, in each stage.]*

*[(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]*

*[(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

*(c) adequate means for supervising its implementation.*

*[(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:]*

*Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.]*

*[(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent*

*or wrongful trading under Chapter VI of Part II of the Code that were not:*

*(a) disclosed in the information memorandum; and*

*(b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans:*

*Provided that this sub-regulation shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025.]*

*[[3) A resolution plan shall demonstrate that –*

*(a) it addresses the cause of default;*

*(b) it is feasible and viable;*

*(c) it has provisions for its effective implementation;*

*(d) it has provisions for approvals required and the timeline for the same; and*

*(e) the resolution applicant has the capability to implement the resolution plan.]]*

*[(3A) Every resolution plan shall include:*

*(a) a statement of beneficial-ownership, in a format to be notified through circular by the Board, covering details of all natural persons who ultimately owns or controls the resolution applicant, together with the shareholding structure and jurisdiction of each intermediate entity; and*

*(b) an affidavit, in a format specified by the Board, that the resolution applicant is eligible/not eligible for the benefit of section 32A.]*

*[[4) (a) The committee shall consider setting up a monitoring committee for monitoring and supervising the implementation of the resolution plan.*

*(b) The monitoring committee may consist of the resolution professional or any other insolvency professional, or any other person, including representatives of the committee and representatives of resolution applicant(s), as its members:*

*Provided that where the resolution professional is proposed to be part of the monitoring committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process.*

*(c) The monitoring committee shall submit quarterly reports to the Adjudicating Authority regarding the status of implementation of resolution plan.]]*

***Regulation 39: Approval of resolution plan.***

*39. [(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*

*(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;*

*(b) [\*\*\*]; and*

*(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*

*[(1A) The resolution professional may, if envisaged in the request for resolution plan-*

*(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or*

*(b) use a challenge mechanism to enable resolution applicants to improve their plans.*

*(1B) The committee shall not consider any resolution plan-*

*(a) received after the time as specified by the committee under regulation 36B; or*

*(b) received from a person who does not appear in the final list of prospective resolution applicants; or*

*(c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).]]*

*[(2) The resolution professional shall submit to the committee all resolution plans [\*\*\*] along with the details of [non-compliant plans and] following transactions, if any, observed, found or determined by him:-*

*(a) preferential transactions under section 43;*

*(b) undervalued transactions under section 45;*

*(c) extortionate credit transactions under section 50; and*

*(d) fraudulent transactions under section 66,*

*and the orders, if any, of the adjudicating authority in respect of such transactions.]*

*[[ (3) The committee shall-*

*(a) evaluate the resolution plans received under sub-regulation (2) [which comply with the requirements of the Code and regulations made thereunder,] as per evaluation matrix;*

*(b) record its deliberations on the feasibility and viability of each resolution plan; and*

*(c) vote on all such resolution plans simultaneously.*

*(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.*

*(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:*

*Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:*

*Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.*

*<sup>9</sup>[(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in <sup>10</sup>[Form H of the <sup>11</sup>[Schedule-I] and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B]].*

*(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.*

*<sup>12</sup>[(5A) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:*

*Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India*

*(Insolvency Resolution Process for Corporate Persons)  
(Fifth Amendment) Regulations, 2020;]*

*(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.*

*(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.*

*(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.*

*[(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.]*

**40.** From above, we do not find any specific provision which binds the Resolution Applicant to submit details of assets being taken over. We have noted that the Respondent Banks have pleaded that the Appellant did not include such FDRs in its Resolution Plan nor was part of negotiation with erstwhile CoC, hence the Appellant cannot claim proceeds of these FDRs. We find that in above quoted regulations regarding Resolution Plan, no such stipulation has been made

that SRA is bound to give such specific details of the assets being taken over. The Appellant gave its Resolution Plan based on the information memorandum prepared by the Resolution Professional. It is also observed that in information memorandum there was no clause that any assets not mentioned in the information memorandum will not be passed on the Appellant being the SRA, or in other words such assets will be given to Erstwhile CoC. In view of this, we do not find merit in the argument of the Respondent Banks on this aspect.

**41.** We find merit in the logic of the Appellant that the ratio of the *Ghanshyam Mishra (Supra)* is applicable on the liability side for extinguishment of claims against the Corporate Debtor for the simple reason that the Corporate Debtor cannot be saddled with uncertain liabilities arising in future. However, the same principle may not be applicable to the assets which may come to the notice of the Corporate Debtor post approval of the Resolution Plan.

**42.** We are of the view that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the Code the claims as provided in the approved resolution plan shall stand frozen and will be binding on all the stakeholders having interest. We rely upon the judgement passed by the Hon'ble Apex Court in *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited reported in (2021) 9 SCC 657:*

*"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;*

*(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;*

*(iii) Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued."*

**43.** In the present appeals, we note that the FDRs were created by the Corporate Debtor as margin money for the purpose of bank guarantees, which have already been expired. Logically, such FDRs could not have become property of the Respondent banks and rather can be viewed as assets

of the Corporate Debtor. We hold that the Respondent Banks have no right to "adjust" such balance after the Resolution Plan has been fully implemented.

**44.** The Respondent Banks have raised an apprehension that fraud may be committed in future, if the assets of the Corporate Debtor, not part of the information memorandum, are given to the SRA. In this connection, the Appellant pleaded that the said argument is speculative and dehors the settled principal of law which states that the fraud vitiates all solemn acts. We find merit in the arguments. We also hold that if such frauds are deliberately committed to defraud creditors, these cannot be sustained at any stage.

**45.** In view of above detailed discussions, we find merit in the appeals. The Appeals succeed and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority to decide in accordance with the law. Parties are directed to appear before the Adjudicating Authority on 06/04/2026. No order as to cost. I.A., if any, are closed.

**[Justice Mohammad Faiz Alam Khan]  
Member (Judicial)**

**[Naresh Salecha]  
Member (Technical)**

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